IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

GUSTAVO A. NAJERA-PAIZ, *Petitioner,* v. **BOBBY THOMPSON**, Warden, South Texas ICE Processing Center; **MIGUEL VERGARA**, Acting Director, San Antonio Field Office, U.S. Immigration and Customs Enforcement; **TODD LYONS**, Acting Director, U.S. Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary U.S. Department of Homeland Security; and **PAMELA BONDI**, Attorney General U.S. Department of Justice *Respondents.*	Civil Action No. 5:25-cv-01916 Agency No.: [redacted] **PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner Gustavo Adolfo Najera-Paiz, is a 25-year-old native and citizen of Guatemala who has resided in the U.S. for approximately five years. Petitioner challenges his detention in the custody of U.S. Immigration and Customs Enforcement ("ICE") and respectfully petitions this Court for a writ of habeas corpus to review the lawfulness of his detention by Respondents. Petitioner's continued detention, without custody redetermination, is unlawful as it hinges on an erroneous interpretation of the Immigration and Nationality Act ("INA") and is in violation of his due process rights under the U.S. Constitution. *See, e.g., Yamataya v. Fisher*, 189 U.S. 86, 100–01 (1903) ("[T]his court has never held, nor must we now be understood as holding, that

administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in 'due process of law.'").

2. ICE insists that its authority to detain him stems from 8 U.S.C. § 1225(b) and that he is therefore ineligible for a bond hearing. This is manifestly erroneous. Further, the Executive Office for Immigration Review ("EOIR") has compounded this unlawfulness in contravention of the plain text of the statute and decades of uniformly consistent statutory interpretation and practice.

3. Federal district courts across the nation have reached a clear consensus: Section 1225(b) does not apply to Petitioner's circumstances. Thus, Respondents' reliance on such inapplicable statutory authority renders his detention unlawful. Because Petitioner cannot be detained under Section 1225(b), the only lawful basis remaining for continued detention arises under 8 U.S.C. § 1226(a)—which provides for individualized bond determinations. But Respondents do not rely on Section 1226 to justify Petitioner's detention. By detaining Petitioner under inapplicable statutory authority, while simultaneously refusing to apply the statute does, Respondents hold him in unlawful custody. Petitioner is therefore entitled to immediate release.

4. Petitioner has been detained without custody redetermination since October 7, 2025, based on the Department of Homeland Security's ("DHS") and the Department of Justice's ("DOJ") unlawful interpretation of the INA. For the reasons stated below, his continued detention of violates the INA, federal court precedent, and Petitioner's due process rights under the U.S. Constitution. Accordingly, this Court should grant the instant petition for a Writ of Habeas Corpus, find that Petitioner's detention unconstitutional, and order his immediate release from Respondents' custody.

JURISDICTION

5. This action arises under the Constitution of the United States and the INA, 8 U.S.C. § 1101 *et seq.*

6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and the Suspension Clause of the United States Constitution. U.S. CONST. art. I, § 9, cl. 2.

7. 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. *See also INS v. St. Cyr*, 533 U.S. 289, 314 (2001) ("The writ of habeas corpus has always been available to review the legality of executive detention."); *Glushchenko v. United States Department of Homeland Security*, 566 F. Supp. 3d 693, 711–12 (W.D. Tex. 2021) (addressing habeas jurisdiction and the scope of review under 28 U.S.C. § 2241 and 8 U.S.C. § 1252(e) in the context of immigration detention).

VENUE

8. Venue is proper because Petitioner is detained at the South Texas ICE Processing Center in Pearsall, Texas, which is within the jurisdiction of this District.

9. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States or under contract with the United States and a substantial part of the events or omissions giving rise to the claims occurred in this District. 18 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

10. The Court must grant the petition for writ of habeas corpus or issue an order to show cause 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 response

"within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

11. 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).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

12. 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). Nevertheless, in an abundance of caution, Petitioner has exhausted all available administrative remedies; no further administrative remedies are available to pursue. While an administrative appeal remains pending before the BIA, it is a futile endeavor as the agency lacks jurisdiction to review any claim involving a violation of due process rights. *Reno v. Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471 (1999) (finding exhaustion to be a futile exercise because the agency does not have jurisdiction to review" constitutional claims).

PARTIES

13. Petitioner is a native and citizen of Guatemala. He has continuously resided in the United States since entering the country in July 2020. Petitioner is presently detained at the South Texas ICE Processing Center. He is in the custody, and under the direct control, of Respondents and their agents.

14. Respondent Bobby Thompson is sued in his official capacity as the Warden of the South Texas ICE Processing Center, and he has immediate physical custody of Petitioner pursuant to

the facility's contract with ICE to detain noncitizens. Respondent Thompson is a legal custodian of Petitioner.

15. Respondent Miguel Vergara is sued in his official capacity as the Acting Director of the San Antonio Field Office of U.S. Immigration Customs Enforcement. Respondent Vergara is a legal custodian of Petitioner and has authority to release him.

16. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S. Immigration Customs Enforcement. Respondent Lyons is a legal custodian of Petitioner and has authority to release him.

17. Respondent Kristi Noem is sued in her official capacity as the Secretary of the DHS. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the INA, and oversees ICE, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

18. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the DOJ. In that capacity, she has the authority to adjudicate removal cases and to oversee the EOIR, which administers the immigration courts and the Board of Immigration Appeals ("BIA"). Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

19. Petitioner is a 25-year-old citizen and national of Guatemala. He was born on [redacted]. He entered the United States without inspection on or about July 7, 2020. This was Petitioner's first and only entry into the United States and has resided continuously in the United States since that time, to wit, for more than five years. Prior to his arrest and detention in October 2025, Petitioner had no contact with immigration authorities, was never apprehended at or near the border, and was not placed into any prior immigration proceedings.

20. On October 7, 2025, Petitioner was arrested and detained by Respondents or others acting under their authority. After he was taken into ICE custody, he was eventually transported to the South Texas ICE Processing Center where he remains detained.

21. Over five weeks later, Petitioner filed a motion for a custody redetermination hearing before the EOIR. *See generally* 8 C.F.R. § 1236 (2025). On November 17, 2025, an immigration judge ("IJ") denied Petitioner's request because "[t]he court lacks authority to consider the bond request." *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (finding that any noncitizen who is present in the United States without having been inspected and admitted is subject to detention under 8 U.S.C. § 1225(b)(2), not 8 U.S.C. § 1226(a)). Petitioner's Exhibit ("PEX") 1, Order of the IJ in Custody Redetermination Proceedings. Respondents are thus designating Petitioner as an applicant for admission as per 8 U.S.C. § 1225(b)(2)(A), a designation jurisdictionally barred from release on a discretionary bond by an IJ. *Cf.* 8 U.S.C. § 1226(a).

22. At a master calendar hearing, on November 26, 2025, Petitioner filed a Form I-589, Application for Asylum and Withholding of Removal with the immigration court. An individual hearing is presently scheduled for January 2, 2026.

STATUTORY & CONSTITUTIONAL FRAMEWORK

23. Independently, and as a threshold matter, Respondents' continued detention of Petitioner is unlawful because it rests on an erroneous application of the INA. DHS and EOIR are detaining Petitioner under 8 U.S.C. § 1225(b)(2) on the theory that he is an "applicant for admission," even though he entered the United States years ago without inspection and lived at liberty in the interior prior to his arrest. Section 1225(b) governs inspection and detention of noncitizens who are seeking admission at or near the border, not long-term interior residents like Petitioner. *See*

Jennings v. Rodriguez, 583 U.S. 281, 297, 303 (2018) (distinguishing detention of arriving noncitizens under § 1225 from detention of noncitizens already present in the United States under § 1226). Because § 1225(b)(2) does not authorize Petitioner's detention, and because § 1226(a) provides for discretionary detention with a bond hearing, Respondents are acting ultra vires and in violation of the INA.

24. All persons, including noncitizens, residing in the United States are protected by the Due Process Clause of the Fifth Amendment to the U.S. Constitution. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Plyer v. Doe*, 457 U.S. 202, 210 (1982). The Due Process Clause of the Fifth Amendment provides that "[n]o person shall be … deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690. Here, detention by Respondents puts at risk an individual's protected liberty interest. *Id.* at 680, 690.

Substantive Due Process

25. The substantive due process requirement of the Fifth Amendment prohibits the government from subjecting persons to preventative detention for a potentially indefinite period. *See United States v. Salerno*, 481 U.S. 739, 746 (1987). Furthermore, civil detention must be narrowly drawn to serve a legitimate and compelling governmental interest, such as ensuring that detainees if released will not present a danger to the community or abscond from future immigration proceedings. *See Zadvydas*, 533 U.S. at 690–91; *Salerno*, 481 U.S. at 747.

26. In civil cases involving potentially indefinite detention, the goal of preventing danger to the community, without more, is insufficient to justify continued detention; rather, the dangerousness rationale must also "be accompanied by some other special circumstance, such as

mental illness. That helps to create the danger." *Zadvydas*, 533 U.S. at 691. Thus, a noncitizen's mere status as removable, which bears no relationship to his dangerousness, is not a sufficient basis to justify indefinite detention. *Id.* at 691–92. Similarly, where removal is, at most, a remote possibility, prevention of flight is a weak or non-existent justification for continued detention. *Id.* at 690.

Procedural Due Process

27. The Fifth Amendment requires that, before depriving a person of his liberty, the government allow that person to be heard at a meaningful time and in a meaningful manner. *Matthews v. Eldridge*, 424 U.S. 319, 334 (1976). The determination of whether particular government conduct violates this procedural due process balances (1) the private interest affected by the official action; (2) the risk of erroneous deprivation of the interest and value (if any) of additional or substitute procedural safeguards; and (3) the government's interest, including the burden that additional or substitute procedural requirements would impose. *Id.* at 335. To conform to the requirements of due process, such a hearing must take place before an independent and impartial adjudicator. *Id.* at 334–35. A determination by an IJ to acquiesce to Respondents' erroneous construction of the INA—effectively stripping them of any custody redetermination jurisdiction—is insufficient to satisfy due process.

28. Alternatively, the Court should order a bond hearing as a habeas remedy where the burden is on the government. Indeed, "as of 2020, the 'vast majority'—an 'overwhelming consensus'—of courts granting immigration detainees' habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk." *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *12 (W.D. Tex. Sept. 22, 2025) (citation omitted). "Allocating the burden in this manner reflects the

concern that '[b]ecause the alien's potential loss of liberty is so severe … he should not have to share the risk of error equally.'" *Id.* (citing *German Santos*, 965 F.3d at 214). "And the consensus appears to be holding, with many courts in recent days ordering a bond hearing, at which the Government bears the burden of justifying the immigration habeas petitioner's continued detention by clear and convicning evidence." *Id.*; *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729, at *9 (D.N.M. Sept. 17, 2025); *Morgan v. Oddo*, No. 24-cv-221, 2025 WL 2653707, at *1 (W.D. Pa. Sept. 16, 2025).

IRREPARABLE INJURY

29. Petitioner is suffering and will continue to suffer irreparable injury because of the Respondents' refusal to consider establishing a bond in accordance with 8 U.S.C. § 1226(a). Every day that he is held in custody he suffers further injury which is irreparable.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Substantive Due Process

30. The allegations in the above paragraphs are realleged and incorporated herein.

31. As a person in the United States, Petitioner is protected by the Due Process Clause of the Fifth Amendment. "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (citation omitted). This vital liberty interest is at stake when an individual is subject to detention by ICE. *See Zadvydas*, 533 U.S. at 690 ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem.").

32. Petitioner's continued detention without bond violates substantive due process by depriving him of his fundamental liberty interest in remaining free from detention. Government detention violates an individual's fundamental liberty interest unless the detention is "narrowly

tailored to serve a compelling government interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993). Non-punitive detention must present a "special justification" that "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690.

33. Petitioner's continued detention by ICE, which is based on an erroneous interpretation of the INA, serves no compelling government interest. Additionally, the BIA's decision in *Matter of Yajure Hurtado* is contrary to the plain language of the INA, violates congressional intent, and purports to overturn nearly a century of well-settled BIA and federal court jurisprudence. 29 I&N Dec. at 216.

34. But for the fact that Respondents have wrongfully interpreted the statute, a bond amount would be established, and Petitioner released from ICE detention and allowed to return home to his family.

35. Petitioner is not a flight risk or a danger to the community, and his appearance at any future court hearings can be ensured through imposition of a reasonable bond. The absence of any individualized determination of his eligibility to be released on bond is a violation of his substantive due process rights.

COUNT TWO
Violation of Fifth Amendment Right to Procedural Due Process

36. The allegations in the above paragraphs are realleged and incorporated herein.

37. Under the Due Process Clause, a foreign national is entitled to be heard at a meaningful time and in a meaningful manner before a deprivation of liberty occurs. *Matthews*, 424 U.S. at 334. The process that is due depends on the private interest affected by the official action, the risk of erroneous deprivation of that interest, the value of additional or substitute procedural safeguards, and the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements would impose. *Id.* at 335.

38. In Petitioner's case, procedural due process requires a custody redetermination hearing before an independent and impartial adjudicator. *See Morrisey v. Brewer*, 408 U.S. 471, 486–87 (1972). ICE officials refused to set a bond based on the erroneous determination that because Petitioner is an applicant for admission, his detention is mandatory under 8 U.S.C. § 1225(b)(2) instead of discretionary under 8 U.S.C. § 1226(a). The IJ likewise refused to conduct a bond hearing on the ground that he lacked jurisdiction pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. at 216.

39. The private interest affected by the Respondents' erroneous interpretation of the law is of the highest importance, namely, a fundamental liberty interest in being free from physical restraint.

40. Respondents' refusal to set a bond for Petitioner's release from detention or to even provide a bond hearing before a neutral administrative law judge is arbitrary and capricious, is based on an erroneous interpretation of the law, and constitutes an abuse of discretion. In refusing to establish a bond amount and refusing to provide for a bond hearing before a neutral judge, Respondents have acted in violation of the INA and have violated Petitioner's procedural due process rights.

COUNT THREE
Ultra Vires Detention Under 8 U.S.C. § 1225(b)(2)

41. The allegations in the foregoing paragraphs are realleged and incorporated herein. Respondents are detaining Petitioner under 8 U.S.C. § 1225(b)(2) on the theory that he is an "applicant of admission," even though he entered the United States without inspection in July 2020, was apprehended in the interior years later, and lived at liberty prior to his arrest. Section 1225(b)(2) governs inspection and detention of noncitizens who are seeking admission at or near the border and does not authorize detention of long-term interior residents such as Petitioner. *See*

Jennings, 583 U.S. at 283, 297, 303 (explaining that § 1225 applies primarily to arriving noncitizens, while § 1226 governs detention of noncitizens already present in the United States). Because § 1225(b)(2) does not apply to Petitioner's circumstances, Respondents' continued detention of him under that provision exceeds their statutory authority and violates the INA. Where the government detains a noncitizen pursuant to an inapplicable detention statute habeas relief is warranted, and immediate release is the appropriate remedy. *See Zadvydas*, 533 U.S. at 688–90.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing, Petitioner prays this Honorable Court to grant the following relief:

(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 that Petitioner's detention violates the Due Process Clause of the Fifth Amendment and that the DHS's and EOIR's interpretation of the INA is arbitrary and capricious, and rests wholly on an erroneous interpretation of law;

(4) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody or, in the alternative, direct that a bond hearing be conducted immediately before an IJ within two days in which the government bears the burden of showing that Petitioner is a flight risk or a danger to the community; where detention is found unlawful under 8 U.S.C. § 1225(b), immediate release is the appropriate habeas remedy because immigration courts lack authority to cure the

statutory defect through discretionary bond determination. *See Zadvydas*, 533 U.S. at 688–90. This relief is independently warranted

(5) Grant such other relief as the Court may deem just and proper.

Respectfully submitted this 30th day of December 2025,

_____/s/James d. Brousseau_____

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Verification Pursuant to 28 U.S.C. § 2242

The undersigned counsel submit this verification on behalf of the Petitioner. Undersigned counsel have discussed with Petitioner the events described in this Petition for Writ of Habeas Corpus and Complaint and, on the basis of those discussions, verify that the statements in the Petition and Complaint are true and correct to the best of our knowledge.

Dated: December 30, 2025

/s/ James d. Brousseau
James D. Brousseau
Counsel for Petitioner

CERTIFICATE OF SERVICE
NAJERA PAIZ v. THOMPSON et al
Case No. 5:25-cv-01916
Agency No.: [redacted]

I hereby certify that on December 30, 2025, I have mailed by United States Postal Service the Petition for Writ of Habeas Corpus by certified mail to the following:

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U.S. Attorney General Pamela Bondi
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The above respondents were also named in the CM/ECF habeas corpus filing with the Western District of Texas court

/s/ Mark Kinzler