

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

ABRAHAN ROJAS MARTINEZ,

Petitioner,

v.

KRISTI NOEM, U.S. Secretary of Homeland Security; PAMELA BONDI, United States Attorney General; TODD M. LYONS, Acting Director, United States Immigration and Customs Enforcement; MIGUEL VERGARA, Field Office Director, San Antonio Field Office, United States Immigration and Customs Enforcement; BOBBY THOMPSON, Warden, South Texas ICE Processing Center; all named in their official capacities,

Respondents.

Civil Action No. 5:25-cv-1933

**PETITION FOR A WRIT
OF HABEAS CORPUS
PURSUANT TO 28 U.S.C.
§ 2241 AND REQUEST
FOR ORDER TO SHOW
CAUSE**

I. INTRODUCTION

1. Petitioner Abrahan Rojas Martinez is an asylum seeker from Venezuela who has lived in the United States for over four years. Petitioner was encountered by Border Patrol after entering the United States on October 8, 2021. He was then placed directly into full removal proceedings under 8 U.S.C. § 1229a and released on his own recognizance pursuant to 8 U.S.C. § 1226. Years later, on July 16, 2025, he was detained at an Immigration and Customs Enforcement (ICE) check-in without any warning or justification. He is now being held without bond pursuant to mandatory detention provisions which do not apply to him. *See* 8 U.S.C. § 1225(b)(2)(A).

2. Petitioner is charged with having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).
3. DHS is denying Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all ICE employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
5. Petitioner’s detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who are not detained while arriving to the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.
6. Respondents’ new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.
7. Accordingly, Petitioner seeks a writ of habeas corpus ordering his immediate release.

II. CUSTODY

8. Petitioner is in the physical custody of Respondents. He is detained at the South Texas ICE Processing Center (STIPC) in Pearsall, Texas. He is under the direct control of Respondents and their agents.

III. JURISDICTION AND VENUE

9. 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).
10. Pursuant to 28 U.S.C. § 2241, district courts have jurisdiction to hear habeas petitions by noncitizens who challenge the lawfulness of their detention under federal law. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas*, 533 U.S. at 687; *Maldonado v. Macias*, 150 F. Supp. 3d 788, 794 (W.D. Tex. 2015).
11. 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.
12. Venue is proper in the United States District Court for the Western District of Texas because at least one Respondent is in this District, the Petitioner is detained in this District, and the Petitioner’s immediate physical custodian is in this District. 28 U.S.C. §§ 1391(b).

REQUIREMENTS OF 28 U.S.C. § 2243

13. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

14. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . 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).

IV. PARTIES

15. Petitioner is an applicant for asylum who is being detained at STIPC. Petitioner is under the direct control and in the custody of Respondents and their agents.
16. Respondent Bobby Thompson is warden of STIPC. Mr. Thompson is an employee of The GEO Group, Inc. The Warden of STIPC is the legal custodian of Petitioner and is named in his official capacity.
17. Respondent Miguel Vergara is the Field Office Director responsible for the San Antonio Field Office of U.S Immigration and Customs Enforcement (ICE) with administrative jurisdiction over Petitioner’s cases. He is a legal custodian of Petitioner and is named in his official capacity.
18. Respondent Todd M. Lyons is the Acting Director of ICE. He is a legal custodian of Petitioner and is named in his official capacity.
19. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security (DHS). She is a legal custodian of Petitioner and is named in her official capacity.
20. Respondent Pamela Bondi is the Attorney General of the United States Department of Justice. She is a legal custodian of Petitioner and is named in her official capacity.

V. STATEMENT OF FACTS

21. Petitioner, a Venezuelan national, came to the United States seeking asylum. He entered the United States without inspection on October 8, 2021.

22. After Petitioner entered the United States without inspection he was briefly detained and then released from DHS custody on his own recognizance on or about October 9, 2021. Petitioner was released with a Form I-220A indicating that his release on his own recognizance was pursuant to INA § 236 (8 U.S.C. § 1226). A Form I-862, Notice to Appear was issued at the same time to initiate full removal proceedings under 8 U.S.C. § 1229a. Petitioner was never placed in expedited removal proceedings pursuant to 8 U.S.C. § 1225.
23. After his release from DHS custody, Petitioner timely applied for asylum and complied with all conditions of his release. Petitioner attended all hearings in immigration court and all check-in appointments with Respondents.
24. On July 16, 2025, Petitioner attended a routine check-in with ICE at the San Antonio Enforcement and Removal Operations Field Office. Petitioner was detained by ICE officers at that check-in. Petitioner was not provided with any reason for his detention and his release on his own recognizance was not vacated or modified.
25. Petitioner married his wife, Iriannys Keynibeth Nava-Mercardo, on October 28, 2022, in Austin, Texas. On March 9, 2023, an Immigration Judge (IJ) in San Antonio, Texas consolidated Petitioner's removal case with his wife's case. Petitioner was then added as a derivative asylum applicant on his wife's asylum application. Petitioner's removal case was severed from his wife's case after he was detained without cause on July 16, 2025. On November 6, 2025, Petitioner's wife was granted asylum by an IJ. As Petitioner's case had previously been severed from his wife's case, the IJ did not have jurisdiction to grant Petitioner asylum as a derivative on his wife's asylum application. But for Petitioner's unlawful detention by Respondents, Petitioner would

already have been granted asylum.

26. Petitioner also applied for and received Temporary Protected Status (TPS), which expired on April 2, 2025. Petitioner applied to renew his TPS on July 23, 2025. The 2023 TPS designation has since been terminated.
27. Five months after being detained without justification, Petitioner remains in the custody of Respondents, in conditions identical to criminal incarceration, with no end in sight. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

VI. CLAIMS FOR RELIEF

COUNT ONE

Violation of the INA

28. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
29. The Department of Homeland Security is detaining Petitioner under “mandatory detention” authority reserved for aliens who are in the process of entering the United States, 8 U.S.C. § 1225.
30. The Executive Office for Immigration Review, an agency of the United States Department of Justice, issued a precedential decision holding that immigration judges lack jurisdiction to entertain bond requests from aliens in Petitioner’s circumstances, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). This decision is contrary to the previous interpretation of the relevant statutes which has persisted for almost three decades and through various administrations.

31. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to noncitizens who, instead of being placed in expedited removal, are immediately placed in full removal proceedings, are released pursuant to 8 U.S.C. § 1226, and find themselves detained years later for no reason. Such noncitizens are not “seeking admission” and are not detained pursuant to 8 U.S.C. § 1225(b)(2). Instead, these noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.
32. Petitioner should be eligible for immigration bond under 8 U.S.C. § 1226(a) and release from detention because he is not properly subject to mandatory detention.
33. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT TWO

**Violation of the Due Process Clause
of the Fifth Amendment to the U.S.
Constitution**

34. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
35. The government may not deprive a person 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 the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
36. Petitioner has a fundamental interest in liberty and being free from official restraint.

37. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.
38. The unlawful detention of Petitioner is a violation of his rights under the Fifth Amendment to the U.S. Constitution.

VII. PRAYER FOR RELIEF

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

- A. Assume jurisdiction over this matter;
 - B. Issue an order to show cause to be returned within three days;
 - C. Enjoin Respondents from transferring Petitioner outside of this judicial district pending litigation of this matter or his removal proceedings.
- A. Order the immediate release of Petitioner;
 - B. Award Petitioner reasonable costs and attorneys' fees under the Equal Access to Justice Act; and
 - C. Grant any other relief that this Court deems just and proper.

Respectfully submitted,

/s/ Scott D. Weaver 12/31/2025
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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 has 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 are true and correct to the best of my knowledge.

Dated: December 31, 2025

/s/ Scott D. Weaver
Scott D. Weaver, Esq.
Attorney for Petitioner