UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

WILFREDO PERELLO-LARA :

Petitioner, :

-against- :

KRISTI NOEM, IN HER OFFICIAL CAPACITY, SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY; :

PAMELA BONDI, IN HER OFFICIAL CAPACITY, U.S. ATTORNEY GENERAL; :

TODD LYONS, IN HIS OFFICIAL CAPACITY, ACTING DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT; :

SILVESTRE M. ORTEGA, IN HER OFFICIAL CAPACITY ICE FIELD OFFICE DIRECTOR DETENTION AND REMOVAL; :

REYNALDO CASTRO, WARDEN, SOUTH TEXAS DETENTION FACILITY :

Respondents. :

----------X

PETITION FOR WRIT OF HABEAS CORPUS

Case No. 5:26-cv-139

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR PRELIMINARY INJUNCTIVE RELIEF

1. Petitioner, Perello-Lara ("Mr. Perello-Lara"), is a 41-year-old citizen and national of Cuba.

2. Mr. Perello-Lara entered without inspection to the United States on April 29th, 2022, after leaving Cuba.
3. On May 09, 2022, the Department of Homeland Security, initiated removal proceedings by issuing a Notice to Appear pursuant to 8 U.S.C. § 1229a; INA § 240. *See* Exhibit 1- Notice to Appear.
4. The Notice to Appear charges Petitioner as a noncitizen who was not admitted or paroled, and alleges removability under 8 U.S.C. § 1182(a)(6)(A)(i). *See* Exhibit 1- Notice to Appear
5. Additionally, the Department of Homeland Security, carried out a detention assessment pursuant to 8 U.S.C. 8 U.S.C. § 1226(a). *See* Exhibit 1- Notice to Appear
6. Officers of DHS conducted a flight and risk assessment. *See* Exhibit 2- Form I-286
7. Officers of DHS issued an Order of Release on Recognizance. *See* Exhibit 2- Form I-286
8. Based on that assessment, Officer released Petitioner on his own recognizance. *See* Exhibit 2- Form I-286
9. Petitioner was ordered to appear before the Immigration Court at 333 South Miami Ave., Ste. 700, Miami, Florida 33130. *See* Exhibit 1 - Notice to Appear
10. Petitioner pursued relief and lawful presence in the United States by traveling to Florida and filing an asylum/withholding of removal application on or about December 8, 2023 under 8 U.S.C. § 1158 and 8 U.S.C. § 1231(b)(3). *See* Exhibit 3- Asylum Receipt
11. Additionally, Petitioner applied and received his work authorization document with validity period 07/08-2024-07/07/2029. *See* Exhibit 4- Work Authorization Receipt.
12. On November 10, 2025, a change of venue was granted to the San Antonio, Texas Immigration Court. *See* Exhibit 5- Change of Venue Order

13. On December 11, 2025, after being pulled over in Austin, TX by a State Trooper who called DHS Agents, Petitioner was re-detained by DHS. This despite full compliance with terms under Order of Release On Recognizance.
14. Petitioner was transported to SOUTH TEXAS DETENTION FACILITY, 566 Veterans Dr. NA Pearsall, TX 78061. *See* Exhibit 6- ICE Locator
15. Petitioner's removal proceedings remain pending before the Immigration Court.
16. Petitioner asks this Court to find that Respondents have deprived him of his due process rights by re-detaining him after release on recognizance, and have violated the Immigration and Nationality Act by subjecting him to detention without the possibility of a bond hearing under 8 U.S.C. § 1226(a).
17. Petitioner therefore seeks immediate release from custody, and requests that this Court issue an Order to Show Cause within three days directing Respondents to explain why Petitioner is being unlawfully detained.

18. Petitioner complied with all conditions imposed by ICE, including reporting as directed.
19. Petitioner is set for his Master Calendar Hearing (*i.e.* pre-trial hearing) for January 27, 2026 at 8:30 am.
20. On July 8, 2025, DHS issued a new policy memorandum to all , On July 8, 2025, DHS issued a memo to all employees of Immigration and Customs Enforcement (Hereinafter "ICE") stating that "[t]his message serves as notice that DHS, in coordination with the Department of Justice (Hereinafter "DOJ"), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to

ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed." Memorandum, U.S. Immigration & Customs Enf't, *Interim Guidance Regarding Detention Authority for Applications for Admission* (July 8, 2025), available at AILA Doc. No. 25071607, https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

21. The BIA's September 5, 2025, precedential decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) held that the plain language of 8 U.S.C. § 1225(b)(2)(A) mandates that all aliens who have entered the United States without admission are subject to mandatory detention. . This decision is in contravention with the DHS's longstanding interpretation that noncitizens already present in the country such as Respondent were detained pursuant to 8 U.S.C. § 1226(a) and not §1225(b)(2)(A).
22. Petitioner's instant removal case is still pending.
23. Petitioner's detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who was apprehended in the interior of the U.S., should not be considered an "applicant for admission" who is "seeking admission." Rather, he should continue to be detained pursuant to 8 U.S.C. § 1226(a), which was DHS's initial determination for Mr. Perello-Lara and allows for release on conditional parole or bond.
24. Through this petition, Mr. Perello-Lara asks this Court to find that Respondents have unlawfully detained him under § 1225(b)(2)(A), that his detention is appropriate under § 1226(a), which DHS processed him under on May 9th, 2022, and immediately release

Mr. Perello-Lara from custody in accordance with the initial custody determination made on May 9th, 2022. *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

CUSTODY

25. Petitioner is in the physical custody of Defendant-Respondent SILVESTER M ORTEGA, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement ("ICE"), DHS, and Respondent, REYNALDO CASTRO Warden of the SOUTH TEXAS DETENTION CENTER. At the time of the filing of this petition, Petitioner is detained at the SOUTH TEXAS DETENTION CENTER in Pearsall, Texas. The SOUTH TEXAS DETENTION CENTER is run by DHS to detain noncitizens such as Petitioner. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

26. Jurisdiction is proper and relief is available pursuant to 28 U.S.C. 1131 (federal question), 28 USC 1346 (original jurisdiction), 5 USC 702 (waiver of sovereign immunity), 28 USC 2241 (habeas corpus jurisdiction), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

VENUE

27. Venue is proper because Petitioner is currently detained in Pearsall, TX, and now remains detained at the SOUTH TEXAS DETENTION CENTER. *See also generally* *Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004) (generally, "[w]henever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States," he must file the petition in the district of confinement and name his immediate custodian as the respondent), *see also* *Braden v. 30th Judicial Circuit of Kentucky*, 410 U.S. 484, 493-500

(1973), venue lies in the United States District Court for the Western District of Texas, the judicial district in which petitioner is currently detained.

PARTIES

Petitioner

28. Petitioner Mr. Perello-Lara is a citizen and national of Cuba. Previous to his detention, resided within the Immigration Court's jurisdiction in San Antonio, Texas. He is currently in ICE custody and detained at the SOUTH TEXAS DETENTION CENTER 566 VETERANS DR NA PEARSALL, TX 78061.

Respondents

29. Respondent Kristi NOEM is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner. In this capacity, she is responsible for the administration of immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the District of Texas; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. She is sued in her official capacity. Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.

30. Respondent Pamela BONDI is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system operates as a component agency. She routinely transacts business in the Southern District of Texas in this capacity; is responsible for the

administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(g) (2007); and as such is a custodian of the Petitioner. She is sued in her official capacity. At all times relevant hereto, Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530- 0001.

31. Respondent Todd M. LYONS is named in his official capacity as the Acting Director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the Western District of Texas, El Paso Division, is legally responsible for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner. ICE's responsibilities include operating the immigration detention system. In his capacity as ICE Acting Director, Respondent Lyons exercises control over and is custodian of persons held at ICE facilities nationally. He is the Petitioners's immediate custodian and responsible for Petitioner's detention. He is sued in his official capacity. At all times relevant hereto, Respondent Lyons's address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington DC 20536-5900.

32. Respondent SILVESTER M ORTEGA is the Field Office Director for Detention and Removal, ICE, DHS. He is the custodial official acting within the boundaries of the judicial district of the United States District Court for the Western District of Texas. Pursuant to Respondent's orders, Petitioner remains in custody. Respondent is sued in his official capacity. His address is 1777 NE LOOP 410, SAN ANTONIO, TX 78217.

33. Respondent, Warden REYNALDO CASTRO at the SOUTH TEXAS DETENTION CENTER, 566 VETERANS DR NA PEARSALL, TX 78061 where the petitioner is detained. The Warden has immediate physical custody of Petitioner. He is sued in his official capacity.

STATEMENT OF THE FACTS

34. Petitioner, Perello-Lara ("Mr. Perello-Lara"), is a citizen and national of Cuba.

35. Mr. Perello-Lara entered without inspection to the United States on April 29th, 2022, after leaving Cuba.

36. On May 09, 2022, the Department of Homeland Security, initiated removal proceedings by issuing a Notice to Appear pursuant to 8 U.S.C. § 1229a; INA § 240. *See* Exhibit 1- Notice to Appear.

37. The Notice to Appear charges Petitioner as a noncitizen who was not admitted or paroled, and alleges removability under 8 U.S.C. § 1182(a)(6)(A)(i). *See* Exhibit 1- Notice to Appear

38. Additionally, the Department of Homeland Security, carried out a detention assessment pursuant to 8 U.S.C. 8 U.S.C. § 1226(a). *See* Exhibit 1- Notice to Appear

39. Officers of DHS conducted a flight and risk assessment. *See* Exhibit 2- Form I-286

40. Officers of DHS issued an Order of Release on Recognizance. *See* Exhibit 2- Form I-286

41. Based on that assessment, Officer released Petitioner on his own recognizance. *See* Exhibit 2- Form I-286

42. Petitioner was ordered to appear before the Immigration Court at 333 South Miami Ave., Ste. 700, Miami, Florida 33130. *See* Exhibit 1 - Notice to Appear

43. Petitioner pursued relief and lawful presence in the United States by traveling to Florida and filing an asylum/withholding of removal application on or about December 8, 2023 under 8 U.S.C. § 1158 and 8 U.S.C. § 1231(b)(3). *See* Exhibit 3- Asylum Receipt

44. Additionally, Petitioner applied and received his work authorization document with validity period 07/08-2024-07/07/2029. *See* Exhibit 4- Work Authorization Receipt.

45. On November 10, 2025, a change of venue was granted to the San Antonio, Texas Immigration Court. *See* Exhibit 5- Change of Venue Order

46. On December 11, 2025, after being pulled over in Austin, TX by a State Trooper who called DHS Agents, Petitioner was re-detained by DHS. This despite full compliance with terms under Order of Release On Recognizance.

47. Petitioner was transported to SOUTH TEXAS DETENTION FACILITY, 566 Veterans Dr. NA Pearsall, TX 78061. *See* Exhibit 6- ICE Locator

48. Petitioner's removal proceedings remain pending before the Immigration Court.

49. Petitioner asks this Court to find that Respondents have deprived him of his due process rights by re-detaining him after release on recognizance, and have violated the Immigration and Nationality Act by subjecting him to detention without the possibility of a bond hearing under 8 U.S.C. § 1226(a).

50. Petitioner therefore seeks immediate release from custody, and requests that this Court issue an Order to Show Cause within three days directing Respondents to explain why Petitioner is being unlawfully detained.

51. Petitioner complied with all conditions imposed by ICE, including reporting as directed.

52. Petitioner is set for his Master Calendar Hearing (*i.e.* pre-trial hearing) for January 27, 2026 at 8:30 am.

53. Without relief from this court, Petitioner faces continued detention in violation of his due process rights with no possibility of an individualized bond hearing.

LEGAL BACKGROUND

54. Section 2241 of 28 United States Code provides in relevant part that "[w]rits of habeas corpus may be granted by . . . the district courts within their respective jurisdictions" when a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(a), (c)(3); *see also* I.N.S. v. St. Cyr, 533 U.S. 289, 305, 121 S. Ct. 2271 (2001).

55. District courts grant writs of habeas corpus to those who demonstrate their custody violates the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3).

56. Habeas corpus "entitles [a] prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law." Boumediene v. Bush, 553 U.S. 723, 779, 128 S. Ct. 2229 (2008) (*quoting*, St. Cyr, 533 U.S. at 302.

57. The Fifth Amendment's Due Process Clause protects the right of all persons to be free from "depriv[ation] of life, liberty, or property, without due process of law." U.S. Const. amend. V.

58. "It is well established that the Fifth Amendment entitles aliens to due process of law[.]" Trump v. J. G. G., 604 U.S. ---, 145 S. Ct. 1003, 1006 (2025) (*quoting* Reno v. Flores, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)).

59. "Freedom 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, 533 U.S. at 690.

60. The INA prescribes three basic mechanisms for detention for non-citizens, 8 U.S.C. § 1225, for arriving aliens and applicants for admission, § 1226 the default detention statute, and § 1231 for post–final order detention.

61. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208. Div. C, §§ 302-03, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

62. Following the enactment of the IIRIRA, the U.S. Department of Justice's Executive Office of Immigration Review ("EOIR") drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formed referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

63. Thus, in the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an Immigration Judge ("IJ"), unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other

hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

64. For decades, noncitizens in the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to 8 U.S.C. § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.

65. On July 8, 2025, however, DHS stated a new position with regard to custody determinations as follows:

> An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole**. These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).**
>
> Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. *See* https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (emphasis original).

66. As a result, according to DHS all noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, are now considered to be subject to mandatory detention under INA § 235(b) and ineligible for release on bond. Conversely, according to DHS "[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c)." *Id.*

67. Prior to July 8, 2025, the predominant form of detention authority for anyone arrested in the interior of the United States was 8 U.S.C. § 1226(a). Further, the Petitioner in this case was initially arrested and released pursuant to 8 U.S.C. § 1226(a), and is demonstrated by DHS's own forms.

68. Under § 1226(a) the Attorney General may release a detainee on bond on the authority of ICE or by an Immigration Judge. There are standards for release: bond is available if the detainee "demonstrate[s] . . . that such release would not pose a danger to property or persons, and that [he] is likely to appear for any future proceeding." 8 C.F.R. § 36.1(c)(8). "[T]he immigration judge is authorized to exercise the authority . . . to detain the alien in custody, release the alien, and determine the amount of bond." Id. § 236.1(d)(1). If denied release at the initial bond hearing, a § 1226(a) detainee may request a custody redetermination hearing before an IJ. That request will "be considered only upon a showing that the alien's circumstances have changed materially." *Id.* § 1003.19(e).

CAUSES OF ACTION

COUNT I

VIOLATION OF 8 U.S.C. § 1226(a)

UNLAWFUL DENIAL OF RELEASE ON BOND

1. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.
2. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, 8 U.S.C. § 1225(b)(2) does not apply to those persons Respondents previously determined should be detained and released under 8 U.S.C. § 1226(a). Further, 8 U.S.C. § 1225(b)(2) does not justify cancellation of a bond or release order issued under 8 U.S.C. § 1226(a).
3. Nonetheless, Respondents have adopted a policy and practice of re-interpreting the detention and release statutory scheme in the INA.
4. The unlawful application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II

VIOLATION OF BOND REGULATIONS

8 C.F.R. §§ 236.1, 1232.1 and 1003.19

UNLAWFUL DENIAL OF RELEASE ON BOND

5. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

6. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) *will be eligible for bond and bond redetermination*." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.
7. Nonetheless, Respondents have adopted a policy and practice of applying 8 U.S.C. § 1225(b)(2) to noncitizens like Petitioner whom Respondents previously determined should be detained and released pursuant to § 1226(a).
8. The unlawful application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1232.1 and 1003.19.

COUNT III

VIOLATION OF DUE PROCESS CLAUSE

9. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.
10. Substantive due process protects against arbitrary and unjustified deprivations of liberty. In the immigration context, every detention must rest on a valid statutory foundation and bear a reasonable relationship to the statute's purpose. *See* Zadvydas v. Davis, 533 U.S.690; Demore v. Kim, 538 U.S. 523. When the government misapplies the

statutory basis for detention, no legitimate justification exists, and due process is infringed. *Id.*

11. DHS affirmatively chose to process Petitioner under section 8 U.S.C. § 1226(a), as demonstrated by by issuance of a Notice to Appear on November 26, 2025 and absence of expedited removal forms (I-867AB, I-860)[1]. By subsequently detaining him under section 1225(b), DHS did not provide him with the bond protections specified under 8 U.S.C. § 1226(a), resulting in a statutory mismatch that affected the legal basis for her continued detention.

12. Respondents' actions violate Petitioner's substantive due process rights.

CLAIM FOR RELIEF

I. VIOLATION OF 8 U.S.C. § 1226(a) , UNLAWFUL DENIAL OF RELEASE ON BOND

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

42. Mr. Perello-Lara was initially detained and processed on May 9, 2022. At that time, ICE released from detention under 8 U.S.C. § 1226(a).

43. On December 11, 2025, Mr. Perello-Lara was detained and taken into custody even though he did not violate the terms of order of recognizance. At this time, DHS subjected him to detention under 8 U.S.C. § 1225, stating that he is subject to mandatory detention.

44. Petitioner may only be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

45. Petitioner's continuing detention is therefore unlawful.

---

[1]

II. CONTINUED DETENTION CONSTITUTES A VIOLATION OF DUE PROCESS

46. Petitioner incorporates all factual allegations as though restated here.

47. ICE detained Mr. Perello-Lara without reasonable suspicion and continues to do so in violation of his constitutional rights protected under the Fifth Amendment.

48. 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.

49. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." Zadvydas, 533 U.S. at 690.

50. Mr. Perello Lara's detention violates his Fifth Amendment rights for at least three related reasons.

51. First, immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." Demore v. Kim, 538 U.S. 510, 527 (2003) (*citing* Zadvydas, 533 U.S. at 690).

52. Whereas here, the government has ordered release order of release on own recognizance, detention is not reasonably related to its purpose.

53. Second, the Due Process Clause requires that any deprivation of Mr. Perelo Lara's liberty is narrowly tailored to serve a compelling government interest. *See* Reno v. Flores, 507 U.S. 292, 301-02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest"); Demore, 538 U.S. at 528 (applying less rigorous standard for "deportable aliens").

54. Petitioner's on-going imprisonment does not satisfy that rigorous standard as he did not commit any crime, was released from custody, and has a pending asylum case.

55. Third, "the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention." *Zadvydas*, 533 U.S. at 718 (2001) (Kennedy, J., dissenting).

56. Mr. Perello-Lara was detained under 8 U.S.C. §1226(a), but for a new policy memorandum now subjecting everyone present in the United States who entered without a valid visa to mandatory detention, deprives the Petitioner of an individualized bond determination.

57. The "essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976).

58. In *Mathews v. Eldridge*, three factor balancing test is carried out when determining the adequacy of process in the context of civil immigration confinement. *Id. at* 851.

    a. Private interest

        i. Mr. Perello-Lara invokes "the most significant liberty interest there is– the interest in being free from imprisonment." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

        ii. Petitioner was wrongfully detained without an individualized determination of his flight risk or dangerousness. (*i.e.* who made the decision to detain him, when that decision occurred, on what basis the decision to detain him was made, whether there was any material change

in circumstances with respect to what triggered his detention, or whether there was some policy change that triggered his detention.

iii. Petitioner states that DHS must comply with the procedures already in place, and its failure to do so amounts to a complete and arbitrary denial of due process.

iv. DHS, acting pursuant to the wrong statute, deprived Mr. Perello-Lara of his statutorily mandated procedural protections

b. The Risk of erroneous deprivation

i. When DHS released Mr. Perello-Lara, on own recognizance, it could not have done so validly unless it did not consider him a flight risk or danger to the community at the time. 8 U.S.C. 1226(a)

ii. When DHS rearrested and detained Mr. Perello-Lara on May 9th, 2022, its determination solely rests upon falling under 8 U.S.C. § 1225(b)(2); INA § 235(b)(2).

iii. DHS has not articulated what change happened between the initial grant of order of release on own recognizance and May 9th, 2022 to detention.

c. The Government's interest

i. DHS has discretion to detain individuals under 8 U.S.C. § 1226 (a), and is valid when it advances a legitimate government interest, such as ensuring the appearance of noncitizens at future immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690.

ii. Here Mr. Perello-Lara is not a flight risk or danger to the community. He has complied with his conditions . He has established community ties in the US and he does not have a criminal history.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Declare that Respondents' new mandatory detention policy that all noncitizens that entered the U.S. without admission or inspection are "applicants for admission" and charged with removability under § 1182 are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b) is unlawful and in violation of the INA;
3. Order Respondents to file with the Court a complete copy of the administrative file from the Dept. of Justice and the Dept. of Homeland Security;
4. Order Respondents to return back to Petitioner his wallet along with its contents including but not limited to Identity Documents, Work Authorization (I-765) and Bank Cards;
5. Enjoin ICE from transferring Petitioner outside of the Western District of Texas while this matter is pending;
6. Issue an order directing Respondents to show cause why the writ should not be granted within seventy-two hours;
7. Find that a custody redetermination pursuant to 8 C.F.R. 236.1(d) is an inadequate remedy because of DHS's lack of initial decision to review.

8. Find that DHS exercised no discretion under 8 C.F.R. § 236.1(d).
9. Find that redetaining Petitioner under the wrong statute, DHS afforded him no due process, after all bond hearings before an Immigration Judge are held after DHS makes an initial determination to detain[2].
10. Find that Petitioner's detention under 8 U.S.C. § 1226 absent an individualized assessment is a violation of his due process rights.
11. Find that DHS's failure to follow its own regulations and its failure to afford Petitioner the minimal due process under the 5th Amendment violated his rights.
12. In the alternative, Respondents should provide Petitioner a fair bond redetermination hearing before an Immigration Judge as provided by 8 U.S.C. § 1226 and enjoin his further detention under 8 U.S.C. § 1225(b). Many courts, including some in this district, have placed the burden on Respondents to bear the burden of justifying Petitioner's continued detention by clear and convincing evidence at the bond redetermination hearing. *See* Vieira v. Anda-Ybarra, No. EP-25-CV-00432-DB, 2025 WL 2937880, 2025 U.S. Dist. LEXIS 203930 (W.D. Tex. Oct. 16, 2025) (collecting cases); Erazo Rojas v. Noem, No. EP-25-CV-442-KC, 2025 WL 3038262, 2025 U.S. Dist. LEXIS 217585 (W.D. Tex. Oct. 30, 2025).
13. Award the Petitioner reasonable costs and attorneys' fees under the Equal Access to Justice Act, as amended, 28 U.S.C. §2412; undersigned counsel recognizes the Fifth Circuit's decision in Barco v. Witte, 65 F.4th 782 (5th Cir. 2023), cert. denied, 144 S. Ct.

---

[2] The BIA and Immigration judges lack jurisdiction to decide constitutional challenges to the Immigration and Nationality Act or its implementing regulations. In Cantu-Delgadillo v. Holder, the Fifth Circuit held that "the BIA lacked jurisdiction to consider" an alien's due process claims, citing the BIA's own precedent in Matter of C-, which established that "it is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations" (Cantu-Delgadillo v. Holder, 584 F.3d 682 (2009))
This principle applies to both facial and as-applied constitutional challenges, as "any error was harmless because the BIA lacked jurisdiction to consider those challenges" (Cantu-Delgadillo v. Holder, 584 F.3d 682 (2009)

553 (2024) ruling that fees are not available to be awarded in 28 U.S.C. § 2241. Nonetheless, the issue is ripe for redetermination at the Fifth Circuit. Recently, the Tenth Circuit held that the reasoning in *Barco* was not compelling and granted EAJA fees in an immigration detention habeas action. *Daley v. Ceja*, 2025 WL 3058588, 2025 U.S. App. LEXIS 28669 at *24-26 (10th Cir. Nov. 3, 2025) (declining to follow the Fourth and Fifth Circuit precedents holding that habeas is a "hybrid proceeding" no matter the underlying detention.); *see also Abiove v. Oddo*, 2024 WL 4304738, 2024 US. Dist. LEXIS 174205 at *5-8 (W.D. Pa. Sept. 26, 2024) (highlighting the circuit split between the Fourth and Fifth Circuits versus the Second and Ninth Circuits). Given ICE's recent actions in detaining individuals without substantial justification, EAJA fees are needed to ensure attorneys can confront detention that is unconstitutional.

14. Grant any other relief that this Court deems just and proper.

Respectfully submitted,

/s/ David H. Square
DAVID H. SQUARE, ESQ.
SD TX FED. NO. 1155619
TX S. CT. 24076013
LAW OFFICE OF DAVID H. SQUARE, PLLC
225 PALM BLVD.
BROWNSVILLE, TX 78520
T: (956) 421-1010
E: DAVID@LAWOFFICEOFDHS.COM

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

I represent Petitioner, Wilfredo Perello-Lara and 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 January 13th, 2025.

/s/ David H. Square
David H. Square, Esq.