

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

IVAN LUIS FABREGAS COLINA	)	Case No. 2:26-cv-00084-KCD-NPM
Petitioner,	)	
	)	
v.	)	PETITION FOR WRIT OF
	)	HABEAS CORPUS
	)	
Warden, Glades County Detention Center et al.	)	
	)	
	)	
Respondents.	)	
	)	

**PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR WRIT
OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

INTRODUCTION

1. Petitioner respectfully submits this Memorandum of Law in support of his Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241, based on an unlawful civil immigration detention that persists despite a final and binding Immigration Judge bond order and Petitioner's full compliance with all conditions of release. After an Immigration Judge granted bond pursuant to 8 U.S.C. § 1226(a) and the Department of Homeland Security ("DHS") declined to appeal, Petitioner posted bond and was released. Nevertheless, U.S. Immigration and Customs Enforcement ("ICE") re-detained Petitioner at a routine compliance check-in without a warrant, without written justification, and without a new custody determination.
2. Since re-detention, ICE has transferred Petitioner repeatedly across the country, including from Florida to Texas, then to California, and is presently transferring him again without identifying a destination. These serial transfers have occurred while this habeas action is pending, after this Court ordered service and directed Respondents to show cause. ICE's conduct violates the

Due Process Clause of the Fifth Amendment, exceeds statutory detention authority, and constitutes ultra vires and arbitrary agency action.

3. Petitioner challenges ****only the legality of his custody—not the merits of removal—****this Court has jurisdiction under 28 U.S.C. § 2241, and jurisdiction is not defeated by ICE-effectuated transfers. The Court should order Petitioner's immediate release under the existing bond order, or, at minimum, a prompt custody hearing before a neutral adjudicator with constitutionally sufficient procedures.

JURISDICTION

4. This Court has jurisdiction under 28 U.S.C. § 2241. See 28 U.S.C. § 2241(c)(3). The habeas petition does not seek review of a final order of removal and therefore is not barred by 8 U.S.C. § 1252(a)(5) or (b)(9). Venue is proper in the Fort Myers Division because at the time of filing, Petitioner was detained at Glades County Detention Center, 1297 FL-78, Moore Haven, Florida, within this Division. The case is ripe for adjudication.

FACTUAL BACKGROUND

5. Petitioner entered the United States on February 27, 2022 and was processed by DHS into removal proceedings, after which ICE issued an Order of Release on Recognizance (Form I-220A) and placed Petitioner on supervision. *See* Exh. A Forms I-213, I-830, I-220A, and I-862. Petitioner complied with all reporting requirements for years. In May 2025, ICE detained Petitioner, and on June 10, 2025, an Immigration Judge conducted an individualized custody hearing pursuant to 8 U.S.C. § 1226(a) and granted Petitioner bond in the amount of \$3,000, expressly finding that he was neither a danger to the community nor a flight risk. DHS did not appeal the bond order. *See* Exh. B- IJ Bond Order (June 10, 2025).

6. Petitioner posted bond on June 12, 2025 and was released on June 13, 2025. After Petitioner's later re-detention, the Immigration Judge issued an order on January 5, 2026 confirming that the June 10, 2025 bond remained valid and in effect and ordering Petitioner released on his own recognizance. *See* Exh. C- IJ Order Reaffirming Bond. On January 15, 2026, the Immigration Judge denied DHS's motion to reconsider, reaffirming that the bond order was administratively final and operative, and further determining that Petitioner remained in § 240 removal proceedings because the underlying merits decision was on appeal and not administratively final. *See* Exh. D- IJ Order Denying DHS Motion to Reconsider.
7. Despite Petitioner's full compliance with all conditions of release, ICE re-detained him on November 5, 2025 at a scheduled check-in in Miramar, Florida, without a warrant, without written explanation, and without initiating a new bond or custody proceedings. ICE initially detained Petitioner at Glades County Detention Center in Moore Haven, Florida, then transferred him to Port Isabel Service Processing Center in Los Fresnos, Texas on January 26, 2026, and subsequently to Otay Mesa Detention Center in San Diego, California on January 28, 2026. Petitioner was thereafter transferred once more and is currently detained at Florida Soft Side South. These serial transfers occurred after this Court ordered service of the habeas petition and directed Respondents to show cause. *See* Exh. E- ICE Custody Records.

ARGUMENT

I. ICE LACKS STATUTORY AUTHORITY TO DETAIN PETITIONER AFTER A FINAL BOND ORDER

8. Civil immigration detention during pending removal proceedings is governed by 8 U.S.C. § 1226(a). That statute authorizes the arrest and detention of a noncitizen pending a decision on removal, but it expressly permits release on bond or conditional parole, subject to adjudication

by an Immigration Judge. Through regulation, the Attorney General has delegated that custody authority to Immigration Judges, and DHS is bound by those adjudications unless they are modified or vacated through the prescribed administrative process. Nothing in § 1226(a) authorizes ICE to unilaterally disregard a final bond order or to continue detention absent a lawful bond revocation or modification issued by an Immigration Judge.

9. Here, the Immigration Judge conducted an individualized custody hearing under § 1226(a), granted bond, and DHS declines to appeal. The custody determination becomes administratively final and binding on the agency. More specifically, The Immigration Judge granted Petitioner bond on June 10, 2025, following an individualized custody hearing, and DHS did not appeal. After ICE later re-detained Petitioner, the Immigration Judge issued two separate orders—dated January 5 and January 15, 2026—expressly holding that the June 10, 2025 bond remains valid and in effect, denying DHS’s motion to reconsider, and reaffirming that Petitioner remains in § 240 removal proceedings governed by § 1226(a). These orders leave no statutory ambiguity: the operative custody determination is final, and ICE lacks authority to continue detaining Petitioner.
10. The Eleventh Circuit has made clear that federal courts retain habeas jurisdiction to determine whether DHS has statutory authority to detain a noncitizen at all, as opposed to reviewing discretionary custody judgments. See *Madu v. U.S. Att’y Gen.*, 470 F.3d 1362, 1366–67 (11th Cir. 2006) (“Whether the Attorney General has the authority to detain an alien at all is a question of law” reviewable under § 2241). Petitioner’s claim falls squarely within that category. He does not seek review of a discretionary bond decision; rather, he challenges ICE’s continued detention after its statutory authority has expired.

11. ICE's continued detention of Petitioner in defiance of a final and binding bond order is therefore ultra vires. An agency may not manufacture detention authority by executive fiat once Congress has vested custody adjudication in Immigration Judges and the agency has exhausted its opportunity for administrative review. Continued detention without statutory authorization violates § 1226(a) itself and constitutes unlawful agency action subject to habeas relief.

II. POST-BOND RE-DETENTION WITHOUT A NEW HEARING VIOLATES DUE PROCESS

12. Civil immigration detention implicates a substantial liberty interest protected by the Fifth Amendment's Due Process Clause. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (civil detention requires "special justification" and is subject to due-process limits). While Congress may authorize civil detention in limited circumstances, due process requires that deprivations of liberty occur only pursuant to fair and reliable procedures. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Where the government has already afforded an individualized custody hearing before a neutral adjudicator and ordered release on bond, that adjudication gives rise to a protected liberty interest in continued release absent lawful modification or revocation through prescribed procedures. See *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (once liberty is granted, it may not be withdrawn without due process).
13. Once an Immigration Judge conducts a custody hearing under 8 U.S.C. § 1226(a), makes individualized findings regarding flight risk and danger, and orders release, the government may not summarily reverse that determination through executive action alone. At a minimum, due process requires notice of the grounds for re-detention, a meaningful opportunity to be heard, and a neutral decisionmaker before liberty is again taken away. See *Morrissey*, 408 U.S. at 488–89; *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973). These procedural safeguards are

especially critical where, as here, the government seeks to undo a prior adjudicated release decision, rather than to make an initial custody determination. See *United States v. Salerno*, 481 U.S. 739, 746–52 (1987) (pretrial detention constitutionally permissible only with robust procedural protections).

14. ICE’s re-detention of Petitioner at a routine compliance check-in—without a warrant, without written explanation, and without initiating any new custody proceedings—failed to provide even the most basic procedural protections. ICE did not allege a violation of bond conditions, did not identify changed circumstances, and did not seek revocation or modification of bond before an Immigration Judge. Instead, ICE unilaterally nullified an existing judicial custody determination and returned Petitioner to detention by executive fiat. Such action deprives Petitioner of liberty without notice, without an opportunity to contest the basis for detention, and without review by a neutral adjudicator, in direct contravention of due process. See *Mathews*, 424 U.S. at 333; *Morrissey*, 408 U.S. at 488.

15. The constitutional defect is not merely the absence of a bond hearing, but the summary nature of the re-detention itself. Due process does not permit the government to grant release through a formal adjudication and then retract that liberty interest informally, without process, at an administrative check-in. See *Morrissey*, 408 U.S. at 482; *Gagnon*, 411 U.S. at 781. Where the government believes re-detention is warranted, the Constitution requires it to invoke the same procedural framework that governed release in the first instance. ICE’s failure to do so renders Petitioner’s post-bond detention constitutionally infirm and unlawful.

III. ICE VIOLATED THE ACCARDI DOCTRINE BY IGNORING BINDING CUSTODY ORDERS

16. Under the Accardi doctrine, administrative agencies are bound to follow their own duly promulgated regulations and adjudicative procedures, particularly where those rules are

intended to protect individual rights or to constrain agency discretion. When an agency disregards its own rules or binding adjudicative outcomes, it acts “without observance of procedure required by law,” and its action is unlawful. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265–68 (1954); see also *Service v. Dulles*, 354 U.S. 363, 388 (1957) (agency must adhere to self-imposed procedural limits); *Vitarelli v. Seaton*, 359 U.S. 535, 545–46 (1959) (same); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (agency must follow its own procedures before depriving individuals of benefits).

17. Congress vested authority over custody determinations during removal proceedings in Immigration Judges pursuant to 8 U.S.C. § 1226(a) and the implementing regulations. DHS invoked that regulatory framework here, litigated custody before an Immigration Judge, and received an adverse determination granting Petitioner release on bond. DHS then declined to pursue administrative review. Under the agency’s own rules, that custody determination became administratively final and binding. Having chosen to proceed through the Immigration Judge bond process and having exhausted—or waived—its appellate remedies, DHS was obligated to comply with the resulting custody order. See *Accardi*, 347 U.S. at 266–67 (agency must exercise discretion “according to the regulations”).
18. ICE nevertheless disregarded the Immigration Judge’s custody determination and later re-detained Petitioner without seeking bond revocation or modification through the procedures prescribed by regulation. That action directly contravenes the agency’s own rules, which require that custody determinations—and any reconsideration thereof—be made by Immigration Judges through formal proceedings. ICE may not nullify an adjudicated bond order through unilateral executive action or substitute its own judgment for that of the neutral adjudicator to whom Congress delegated custody authority. See *Vitarelli*, 359 U.S. at 546 (“An

executive agency must be rigorously held to the standards by which it professes its action to be judged.”).

19. The violation is particularly stark here because the Immigration Judge did not issue a single, ambiguous custody ruling. Instead, the court issued multiple orders, including orders dated January 5 and January 15, 2026, expressly confirming that the original bond remained valid and in effect and denying DHS’s attempt to relitigate custody. ICE’s continued detention of Petitioner in the face of those binding determinations reflects a wholesale failure to observe the procedures and limits that govern its authority. Under *Accardi* and its progeny, such action is unlawful and cannot be sustained. See *Morton*, 415 U.S. at 235.
20. Since ICE acted in defiance of binding adjudicative outcomes issued pursuant to the agency’s own regulations, its continued detention of Petitioner violates the *Accardi* doctrine and is unlawful. Habeas relief is therefore warranted to restore compliance with the procedures Congress and the agency itself have established.

IV. SERIAL TRANSFERS CONFIRM THE NEED FOR HABEAS RELIEF

21. ICE’s repeated transfers of Petitioner across multiple states while this habeas action is pending underscore the necessity of judicial intervention. Habeas corpus is designed to provide a meaningful and effective remedy for unlawful custody, and the government may not frustrate that remedy through strategic relocation of a detainee after judicial review has been invoked. Once a habeas petition is properly filed, jurisdiction attaches and is not defeated by subsequent transfers effectuated by the government. See *Ex parte Endo*, 323 U.S. 283, 306–07 (1944); *Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004).
22. Courts have long recognized that permitting the government to defeat habeas review through post-filing transfers would allow executive detention to evade judicial scrutiny altogether. See

Endo, 323 U.S. at 307 (rejecting the notion that the government may “defeat habeas corpus by the simple expedient of removing the prisoner from the territorial jurisdiction of the District Court”). Accordingly, venue and jurisdiction are assessed at the time of filing, and ICE’s subsequent transfers—particularly where undertaken while a show-cause order is pending—cannot divest this Court of authority or moot the petition.

23. Here, ICE has transferred Petitioner repeatedly—from Florida to Texas, then to California, and again to an undisclosed location—after this Court ordered service of the habeas petition and directed Respondents to show cause. These serial transfers have no apparent custodial justification and serve only to complicate access to counsel and judicial review. Allowing ICE to continue detaining and relocating Petitioner in the face of a final bond order and ongoing habeas proceedings would undermine the core purpose of the writ and render judicial relief illusory.

24. The Court’s intervention is therefore necessary to preserve the integrity of habeas review. Where, as here, detention has already been adjudicated unlawful by a neutral decisionmaker and the government nevertheless persists in custody while shifting the petitioner from facility to facility, habeas relief is required to prevent executive action from nullifying judicial oversight.

CONCLUSION

25. For the foregoing reasons, Petitioner’s continued detention is unlawful. An Immigration Judge granted bond following an individualized custody hearing under 8 U.S.C. § 1226(a), DHS declined to appeal, and the Immigration Judge subsequently reaffirmed that the bond order remains valid and in effect. ICE’s post-bond re-detention—without notice, without a new hearing, and in defiance of binding custody orders—exceeds statutory authority, violates the

Due Process Clause of the Fifth Amendment, and contravenes the agency's own regulations.

ICE's repeated transfers of Petitioner while this habeas action has been pending further underscore the need for judicial intervention to preserve meaningful review.

26. Accordingly, the Court should grant the petition for writ of habeas corpus and order Petitioner's immediate release under the existing Immigration Judge bond and conditions. In the alternative, the Court should order a prompt custody hearing before a neutral adjudicator, with Petitioner released unless and until the Government satisfies its burden to justify continued detention.

Respectfully submitted,

/s/ Arno J. Lemus
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241** was filed via CM/ECF and served on all counsels of record on this 10 day of February, 2025.

Respectfully submitted,

/s/ Arno J. Lemus
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