

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Fernando Rosabal-Morandeira

Petitioner,

v.

Warden of South Texas ICE Processing Center, in their official capacity; **BRET BRADFORD**, Supervisory ICE Official, in his official capacity, **TODD M. LYONS**, Acting Director, U.S. Immigration and Customs Enforcement, in his official capacity; and, **KRISTI NOEM**, Secretary of the Department of Homeland Security, in her official capacity.

Respondents.

Case No. 5:26-cv-672

Agency No. 

**PETITION FOR WRIT OF HABEAS
CORPUS (Under 28 U.S.C. § 2241)**

I. INTRODUCTION

1. This habeas petition challenges the continued detention of Fernando Rosabal-Morandeira, a noncitizen who lived freely in the United States for more than three years in full compliance with immigration supervision, prepared his asylum case on the non-detained docket, and was then suddenly taken into custody during a routine ICE check-in, without any allegation of flight risk, danger, or a violation of supervision.
2. Mr. Rosabal-Morandeira was released into the interior of the United States in 2022 and remained compliant with ICE reporting requirements and immigration court proceedings while preparing for a non-detained individual hearing in Dallas. On October 29, 2025, DHS detained him during an interior check-in. From that moment forward, his case was forced

into a detained posture marked by speed, instability, and the absence of basic procedural safeguards.

3. Within thirty-four days of his detention, Mr. Rosabal-Morandeira appeared before an Immigration Judge, who stated on the record that he was retiring and that a new judge would issue a scheduling order. No scheduling order or filing deadlines were ever issued. Instead, on Day 47, Mr. Rosabal-Morandeira received three separate rescheduling notices that reset his case for merits without a procedural roadmap. At his first merits hearing on Day 55, his motion to continue was denied the same day. DHS orally moved to pretermitt his applications, and the court deferred decision.
4. On Day 71, Mr. Rosabal-Morandeira appeared for a second merits hearing before a different Immigration Judge. The hearing lasted approximately five minutes, and no testimony was taken. The Immigration Judge stated she would issue a written decision granting DHS's motion to pretermitt. A written order subsequently issued, pretermittng asylum, withholding of removal, and CAT protection, and ordering Mr. Rosabal-Morandeira removed to Ecuador pursuant to the U.S.-Ecuador Asylum Cooperative Agreement.
5. Mr. Rosabal-Morandeira timely appealed the decision to the Board of Immigration Appeals. The BIA has acknowledged receipt of the appeal, and DHS is subject to an automatic administrative stay of removal pending those proceedings.
6. Removal has not been executed, and DHS has not shown that removal to Ecuador is scheduled, imminent, or practicable.
7. Despite the absence of imminent removal and Mr. Rosabal-Morandeira's long history of compliance, DHS continues to detain him. Although he filed a motion for redetermination of custody on Day 52 and a bond hearing was scheduled for Day 78, the Immigration Judge

denied bond without conducting a hearing, reviewing the record, or making any individualized findings.

8. The sudden loss of liberty after years of stability, along with quick judicial reassignments, denial of continuances, a brief five-minute merits hearing, and ongoing detention without a proper constitutional custody decision, has caused severe psychological distress. It has also made Mr. Rosabal-Morandeira's detention more punitive than administrative. Keeping him detained under these conditions violates the Fifth Amendment's Due Process Clause and exceeds DHS's lawful detention authority.
9. Mr. Rosabal-Morandeira seeks a writ of habeas corpus ordering his immediate release, or in the alternative, a prompt and constitutionally adequate custody hearing at which the government bears the burden of justifying continued detention.

II. CUSTODY

10. Petitioner Fernando Rosabal-Morandeira is currently in the physical custody of the Department of Homeland Security ("DHS") and is detained at the South Texas ICE Detention Facility in Pearsall, Texas.
11. Respondent, Warden of the South Texas ICE Processing Center, is Petitioner's immediate custodian and is responsible for Petitioner's day-to-day confinement at that facility.
12. Respondent, Bret Bradford, is a supervisory official of U.S. Immigration and Customs Enforcement ("ICE") with authority over immigration detention operations in the region that includes El Valle Detention Center.

13. Todd M. Lyons, in his official capacity, Acting Director of U.S. Immigration and Customs Enforcement, and Kristi Noem, Secretary of the Department of Homeland Security, as well as their agents and employees. Respondents exercise exclusive authority over Petitioner's detention, custody status, and conditions of confinement.

III. VENUE

14. Venue is proper in the United States District Court for the Western District of Texas, San Antonio Division, pursuant to 28 U.S.C. § 1391(e), because Petitioner is detained at the South Texas ICE Detention Facility in Pearsall, Texas, within this District.
15. Because Petitioner is detained in this District and seeks relief from his present physical custody, this Court is the proper venue to adjudicate this Petition.

IV. JURISDICTION

16. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.* This Court has jurisdiction over this Petition pursuant to 28 U.S.C. § 2241 because Petitioner is presently in federal custody and challenges the lawfulness of that custody under the Fifth Amendment to the United States Constitution.
17. This Court also has jurisdiction under 28 U.S.C. § 1331 because this action presents a federal question arising under the Constitution and laws of the United States. Jurisdiction is further supported by Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause), which guarantees that the writ of habeas corpus shall not be suspended except in cases of rebellion or invasion.
18. Petitioner does not seek review of a final order of removal, the denial of asylum, or any discretionary immigration determination. He challenges only the constitutionality of his

continued civil detention and the government's refusal to provide the procedural safeguards required by due process.

19. This Court has authority to grant relief pursuant to 28 U.S.C. § 2241 and the All Writs Act, 28 U.S.C. § 1651.

V. PARTIES

20. Petitioner Fernando Rosabal-Morandeira is a noncitizen currently detained by the Department of Homeland Security ("DHS") at the South Texas ICE Detention Facility in Pearsall, Texas.
21. Respondent Warden of the South Texas ICE Detention Facility is Petitioner's immediate custodian and is responsible for Petitioner's day-to-day physical confinement. The Warden is sued in their official capacity.
22. Respondent Bret Bradford is a supervisory official of U.S. Immigration and Customs Enforcement with authority over immigration detention operations in the region that includes the South Texas ICE Processing Center. In his official capacity, Respondent Bradford exercises authority over Petitioner's continued detention and the implementation of custody and release decisions. He is sued in his official capacity.
23. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement, the agency responsible for the custody, detention, and supervision of noncitizens in removal proceedings.
24. Respondent Kristi Noem is the Secretary of the Department of Homeland Security, the federal department with ultimate authority over immigration detention and enforcement.
25. Each Respondent is sued in their official capacity.

VI. PROCEDURAL AND DETENTION HISTORY

26. In April 2022, Fernando Rosabal-Morandeira, a Cuban national, entered the United States.
27. Shortly after entry, the Department of Homeland Security (“DHS”) released Petitioner into the interior of the United States on his own recognizance. His removal proceedings were placed on the non-detained docket.
28. From May 2022 through October 29, 2025, Petitioner lived in the community in compliance with all ICE supervision requirements and immigration court obligations. He attended required ICE check-ins, kept his address current, and prepared his asylum case with counsel for a non-detained individual hearing scheduled in Dallas, Texas.
29. On October 29, 2025, Petitioner appeared for a routine ICE check-in. During that check-in, DHS suddenly took him into custody. The arrest was an interior enforcement action, not a border apprehension, and was not based on any alleged violation of supervision, flight risk, or danger to the community.
30. On December 2, 2025, thirty-four days after detention, Petitioner appeared for a master calendar hearing before Immigration Judge Alcorn. At that hearing, IJ Alcorn stated on the record that he was retiring and that a new Immigration Judge would issue a scheduling order. No scheduling order or evidentiary deadlines were issued.
31. On December 15, 2025, forty-seven days after detention and without any intervening scheduling order, Petitioner received three separate rescheduling notices, all of which reset the case for a merit hearing on December 23, 2025.
32. On December 20, 2025, fifty-two days after detention, Petitioner filed a Motion for Custody Redetermination (Bond).
33. On December 23, 2025, fifty-five days after detention, Petitioner appeared for his first merits hearing before a different Immigration Judge. Petitioner moved to continue the hearing due

to the sudden detained posture of the case, the lack of a scheduling order, and the recent judicial reassignment. The motion to continue was denied the same day.

34. At the December 23, 2025, hearing, DHS orally moved to pretermite Petitioner's applications for asylum, withholding of removal, and protection under the Convention Against Torture. The court admitted evidence into the record but did not resolve the motion at that time.
35. On January 8, 2026, seventy-one days after detention, Petitioner appeared for a second merits hearing before yet another Immigration Judge. The hearing lasted approximately five minutes. No testimony was taken. The Immigration Judge stated on the record that she would issue a written decision granting DHS's motion to pretermite.
36. On January 8, 2026, the Immigration Court issued a written order pretermiteing Petitioner's I-589 application, and ordered Petitioner removed to Ecuador pursuant to the U.S.–Ecuador Asylum Cooperative Agreement.
37. On January 14, 2026, Petitioner timely appealed the Immigration Judge's decision to the Board of Immigration Appeals ("BIA"). The BIA acknowledged receipt of the appeal. Pursuant to applicable regulations, DHS is subject to an automatic administrative stay of removal during the pendency of the appeal.
38. Removal has not been executed. DHS has not demonstrated that removal to Ecuador is scheduled, imminent, or practicable.
39. On January 15, 2026, seventy-eight days after detention, Petitioner was scheduled for his Custody hearing. The request for a custody hearing was submitted on December 2025. Counsel appeared and waited to be called. The Immigration Judge stated that Petitioner was not on the bond calendar and, without reviewing the record, indicated that if the request was

based on recent district court authority, the court would nonetheless apply existing Board precedent.

40. The Immigration Judge stated that he would review the record and reschedule the hearing if necessary. Instead, approximately one hour later, the court issued a written order denying bond. No custody hearing was conducted, no evidence was considered, and no individualized findings regarding flight risk, danger, or alternatives to detention were made.
41. As of the filing of this Petition, Petitioner remains detained at the South Texas ICE Detention Facility, despite having lived in the community for more than three years, despite the absence of imminent removal, and despite never having received a constitutionally adequate custody determination.
42. The abrupt loss of liberty after years of stability, combined with rapid judicial reassignment, denial of continuances, a five-minute merits hearing, and continued detention without meaningful custody review, has caused significant psychological distress and exacerbated Petitioner's mental health condition.

VII. ARGUMENT I. Petitioner's Continued Detention Without Imminent Removal Violates the Due Process Clause of the Fifth Amendment.

43. Petitioner's Immigration detention is civil in nature and is constitutionally permissible only so long as it serves a legitimate regulatory purpose. Detention pending removal is justified only where removal is reasonably foreseeable, and detention bears a rational relationship to that purpose. When removal is not imminent, continued detention becomes punitive rather than regulatory and violates due process.
44. Here, Petitioner has been detained since October 29, 2025, despite the absence of any realistic prospect of removal in the reasonably foreseeable future. An Immigration Judge ordered Petitioner removed to Ecuador, a third country with which Petitioner has no prior

residence, status, or ties, pursuant to the U.S.–Ecuador Asylum Cooperative Agreement.

Petitioner timely appealed that decision to the Board of Immigration Appeals.

45. The Board has acknowledged receipt of the appeal, and DHS is subject to an automatic administrative stay of removal pending those proceedings. As a result, removal is not legally executable at present.

46. Independently, DHS has not demonstrated that removal to Ecuador is practically imminent.

DHS has not shown that Ecuador has agreed to accept Petitioner, that travel documents have been issued, or that removal has been scheduled. As of the filing of this Petition, no steps toward execution of removal have been identified.

47. Where removal is neither legally nor practically imminent, continued detention cannot be justified as incidental to removal. Under these circumstances, detention loses its regulatory purpose and violates the Fifth Amendment's guarantee of due process.

48. The constitutional infirmity of Petitioner's detention is compounded by DHS's manner of initiating custody. Petitioner was released into the interior of the United States in 2022 and lived in the community for more than three years in full compliance with ICE supervision and immigration court proceedings. He was not apprehended at the border, did not abscond, and did not violate any condition of supervision.

49. Instead, Petitioner was suddenly detained during a routine ICE check-in, an interior enforcement action undertaken after years of compliance. Once the government has exercised its discretion to release a noncitizen into the community, the individual acquires a significant liberty interest in remaining free from arbitrary re-detention absent individualized justification.

50. The subsequent course of proceedings underscores that detention no longer serves a regulatory purpose. Within seventy-one days of detention, Petitioner's case was transferred among multiple Immigration Judges, denied a scheduling order, denied a continuance, subjected to a five-minute merits hearing, and resolved through pretermission. None of these events brought removal closer to execution.
51. Continued detention under these circumstances is not tethered to removal. It functions solely as confinement for its own sake, which the Constitution forbids.
52. The harm inflicted by this prolonged and purposeless detention is not abstract. The abrupt loss of liberty after years of stability, combined with rapid judicial reassignment, procedural disarray, and continued confinement without clarity as to removal, has caused significant psychological distress and exacerbated Petitioner's mental health condition. Where detention inflicts such harm without serving a legitimate governmental objective, due process is violated.
53. Because Petitioner's detention is no longer reasonably related to effectuating removal, and because removal is not imminent as a matter of law or fact, his continued detention violates the Due Process Clause of the Fifth Amendment.
54. This Court therefore has authority to grant habeas relief and order Petitioner's immediate release, or, at a minimum, require a prompt custody hearing at which the government bears the burden of establishing that continued detention is constitutionally permissible.

VIII. ARGUMENT II, The Denial of a Meaningful Custody Hearing Violates the Due Process Clause of the Fifth Amendment

55. The Fifth Amendment guarantees that civil immigration detention may not be imposed without fundamentally fair procedures. Where detention is prolonged or where the

government re-detains an individual after a period of liberty, due process requires a meaningful, individualized custody determination before a neutral decision-maker.

56. At a minimum, due process requires that the noncitizen be afforded: (1) notice of the custody determination, (2) a meaningful opportunity to be heard, (3) consideration of individualized evidence, and (4) reasoned findings addressing flight risk, danger, and alternatives to detention.

57. Petitioner received none of these protections.

58. On December 20, 2025, Petitioner filed a Motion for Custody Redetermination. A bond hearing was scheduled for January 15, 2026, seventy-eight days after detention.

59. Counsel appeared for the scheduled custody redetermination hearing and waited to be called.

When the Immigration Judge addressed the matter, he stated that Petitioner was not on the bond calendar and that he had not reviewed the record.

60. Without receiving evidence, without hearing argument, and without reviewing Petitioner's submissions, the Immigration Judge stated that if the request was based on recent district court authority, the court would nonetheless apply existing Board precedent.

61. The Immigration Judge stated that he would review the record and reschedule the hearing if necessary. Instead, approximately one hour later, the court issued a written order denying bond.

62. No custody hearing was conducted. No evidence was considered. No testimony was taken.

No individualized findings regarding flight risk, danger, or alternatives to detention were made.

63. A custody determination issued under these circumstances does not satisfy due process. A written denial issued without a hearing, without record review, and without findings is not a meaningful custody determination; it is a constructive denial of process.
64. The constitutional violation is especially acute here because Petitioner was previously released into the community and lived freely for more than three years in compliance with all supervision requirements. Once the government has exercised discretion to release a noncitizen, re-detention without individualized justification triggers heightened due process protections.
65. Instead of providing such protections, the government confined Petitioner based on categorical assumptions and procedural shortcuts, denying him any real opportunity to demonstrate that he is neither a danger nor a flight risk and that alternatives to detention are plainly available.
66. The resulting detention is not the product of an individualized assessment but of procedural failure. Due process does not permit the government to deprive an individual of liberty through a process that exists in name only.
67. Because Petitioner has been denied a meaningful custody hearing, his continued detention violates the Due Process Clause of the Fifth Amendment, independent of the length of detention or the likelihood of removal.
68. This Court therefore has authority to grant habeas relief and order Petitioner's immediate release, or, at a minimum, require a prompt custody hearing that satisfies constitutional requirements and places the burden on the government to justify continued detention.

IX. RELIEF REQUESTED

WHEREFORE, Petitioner Fernando Rosabal-Morandeira respectfully requests that this Court:

- A. Assume jurisdiction over this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241.
- B. Declare that Petitioner's continued civil detention violates the Due Process Clause of the Fifth Amendment because removal is not imminent and because Petitioner has been denied a constitutionally adequate custody determination.
- C. Order Petitioner's immediate release from DHS custody, subject to appropriate conditions of supervision, or release on his own recognizance.
- D. In the alternative, order Respondents to provide Petitioner with a prompt, individualized custody hearing before a neutral adjudicator, at which:
 1. The government bears the burden of proving by clear and convincing evidence that continued detention is necessary.
 2. The adjudicator considers Petitioner's individualized circumstances, including his history of compliance, length of prior release, mental health, and the absence of imminent removal; and
 3. Alternatives to detention are meaningfully considered.
- E. Enjoin Respondents from continuing to detain Petitioner absent compliance with constitutional due process requirements.
- F. Grant such other and further relief as this Court deems just and proper.

DATED this 3rd of February, 2026.

Respectfully submitted,

s/Jennifer Walker Gates
JLW Immigration Law Group

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Counsel for Petitioner

X. VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

02/03/2026
DATE

s/Jennifer Walker Gates
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Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2026, I sent a true and correct copy of the foregoing Petition for Writ of Habeas Corpus to be served pursuant to Fed. R. Civ. P. 5 and in compliance with the Local Rules of the United States District Court for the Western District of Texas to the Respondents via electronic filing through CM/ECF:

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