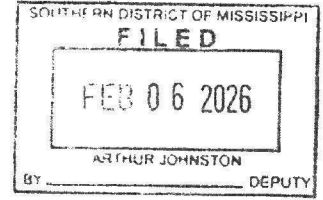


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI



EVER CAX,

A# 

Petitioner/Plaintiff,

v.

RAFAEL VERGARA, Warden,
Adams County Correctional Center,
TODD LYONS, Acting Director, Immigration
and Customs Enforcement, **KRISTI NOEM**,
Secretary of United States Department of
Homeland Security, **SCOTT LADWIG**,
Immigration and Customs Enforcement,
New Orleans Field Office Director,
PAMELA BONDI, United States Attorney General,

Respondents/Defendants

Civil Action No. 5:26 cv 54-DCB-BWR

**PETITION FOR WRIT OF
HABEAS CORPUS UNDER 28
U.S.C. § 2241 AND COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

I. INTRODUCTION

Petitioner, Ever Eliu Cax, seeks a writ of habeas corpus under 28 U.S.C. § 2241, challenging his current and ongoing immigration detention, which violates the Due Process Clause of the Fifth Amendment and exceeds statutory authority. Petitioner is detained at the Adams County Jail in Natchez, Mississippi, pursuant to authority from Immigration and Customs Enforcement (“ICE”). The Petitioner has been detained since June 1, 2025, without a constitutionally adequate bond hearing and following immigration proceedings that were fundamentally unfair, infected by legal error, and based on repeated mischaracterizations of the evidentiary record. Because Petitioner’s detention is prolonged, indefinite, and rests on proceedings that violated due process, continued custody is unlawful.

II. JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is “in custody” within this District.
2. Federal courts retain jurisdiction to review constitutional claims and questions of law arising from immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).
3. Venue is proper in the Southern District of Mississippi because Petitioner is detained in Adams County, Mississippi, and his immediate custodian is located in this District.

III. PARTIES

4. Petitioner Ever Eliu Cax is a native and citizen of Guatemala who entered the United States on March 30, 2013, in Arizona, and is currently detained by ICE.
5. Respondent Kristi Noem is the Secretary of the Department of Homeland Security and is responsible for the administration of immigration detention.
6. Respondent Rafael Vergara is the Warden of Adams County, Mississippi, and Petitioner’s immediate physical custodian.
7. Respondent Pamela Bondi is the Attorney General for the United States.
8. Respondent Todd Lyons is the Director of Immigration and Customs Enforcement.
9. Respondent Scott Ladwig is the ICE Field Office Director responsible for Petitioner’s detention.

IV. FACTUAL AND PROCEDURAL BACKGROUND



a. Entry, Credible Fear, and Release on Bond

10. Petitioner entered the United States on or about March 30, 2013, in Arizona.
11. He was apprehended by ICE and placed into immigration custody. *See* Doc. No. 1-1, Notice and Order of Expedited Removal.

12. On April 2, 2013, Petitioner was determined to be inadmissible to the United States under INA § 212(a)(7)(A)(i)(I), and was placed into Expedited Removal Proceedings.

13. On April 30, 2013, Petitioner underwent a Credible Fear Interview (“CFI”), during which an asylum officer determined that Petitioner demonstrated:

- a. A significant probability that his asylum claim would be found credible; and
- b. A credible fear of torture if returned to Guatemala. *See* Doc. No. 1-2, Credible Fear Interview.

14. During the CFI, Petitioner reported that armed narcotraffickers in Guatemala 


 *Id.*

15. On May 2, 2013, DHS issued a Form I-862 Notice to Appear (“NTA”) against Petitioner, charging him under INA § 212(a)(7)(A)(i)(I), specifically noting that the NTA was issued after an asylum officer found the Petitioner to have demonstrated a credible fear of persecution or torture. The issuance of the NTA terminated expedited removal proceedings. *See* Doc. No. 1-3, May 2013 NTA.

16. On May 17, 2013, ICE released Petitioner from detention on a \$1,500 cash bond, which he paid. *See* Doc. No. 1-4, Notice of Alien Address.

17. Petitioner complied with all conditions of release.

b. Timely Asylum Application

18. Petitioner filed his Form I-589 Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture on March 14, 2014, within one year of his entry. *See* Doc. No. 1-5, Petitioner’s Timely Asylum Application.

19. The asylum application was therefore statutorily timely under INA § 208(a)(2)(B).

c. Removal Proceedings and Re-Detention

20. On August 14, 2024, Petitioner's immigration removal proceedings were dismissed by an Immigration Judge ("IJ") in Chelmsford, Massachusetts. *See* Doc. No. 1-6, Order on Motion to Dismiss.
21. On June 1, 2025, Petitioner was detained by ICE following a new misdemeanor arrest in Lynn, Massachusetts.
22. On June 2, 2025, Petitioner was served with a new NTA, now alleging that he is inadmissible under INA § 212(a)(6)(A)(i). *See* Doc. No. 1-7, June 2025 NTA.

d. Pending T-Visa and Waiver Applications

23. On August 4, 2025, Petitioner filed Forms I-914 (Application for T Nonimmigrant Status) and Form I-192 (Applicant for Advance Permission to Enter as a Nonimmigrant). Doc. No. 1-8, T Visa Application and Receipts.
24. Federal regulations permit continuation or termination of removal proceedings where a T visa application is pending.
25. Federal regulations establish a framework that strongly favors the continuance or administrative deferral of removal proceedings when a respondent has filed a pending, bona fide application for T nonimmigrant status, absent an affirmative showing by DHS that the application is frivolous or the respondent is clearly ineligible. *See* 8 C.F.R. § 214.11(d)(2) (authorizing deferred action and a stay of removal during the pendency of a T visa application); 8 C.F.R. § 214.11(d)(3) (recognizing continued presence and protection from removal during adjudication); 8 C.F.R. § 1003.29 (permitting continuances for good cause shown).

26. Consistent with these regulations, the EOIR IJ guidance instructs that where a respondent has filed a pending T visa application, IJs should grant continuances or administrative closure to permit USCIS adjudication, absent clear evidence of ineligibility, and that removal proceedings should not be used to circumvent the statutory protections afforded to victims of trafficking. *See* EOIR Immigration Judge Benchbook, “Victims of Trafficking (T and U Visas),” Continuances and Administrative Closure sections (advising that removal proceedings should not be used to undermine the statutory protections afforded to trafficking victims or USCIS’s exclusive adjudicatory authority).
27. Despite these binding regulations and EOIR guidance, the IJ denied Respondent’s motion to continue removal proceedings based on an erroneous legal standard and improper evidentiary demands. The IJ held that a continuance was unwarranted because, “[a]mong other things, Respondent has not provided sufficient evidence that: he has received any request from a law enforcement agency for assistance in the detection, investigation, or prosecution of human trafficking; he is eligible for a waiver of any ground of inadmissibility; or he would suffer extreme hardship involving unusual and severe harm if he were removed from the United States, such that he is likely to be granted a T visa.” *See* Doc. No. 1-9, Order Denying Continuance.
28. The IJ further faulted Respondent for failing to provide evidence “regarding the length of time it would take for U.S. Citizenship and Immigration Services to adjudicate his T visa application,” stating that such evidence was “particularly relevant” because Respondent was detained.
29. This reasoning contravenes the governing regulatory framework, which does not require a respondent to prove ultimate eligibility for T nonimmigrant status, to establish extreme

hardship, or to demonstrate cooperation with law enforcement as a prerequisite to a continuance. *See* 8 C.F.R. §§ 214.11(d)(2)–(3), 1003.29. Nor do the regulations place the burden on a detained respondent to predict USCIS adjudication timelines, which are within the agency's exclusive control.

30. By requiring Respondent to litigate the merits of his T visa application in removal proceedings—despite USCIS's exclusive jurisdiction over such applications—the IJ imposed an unlawfully heightened standard, effectively nullifying the statutory and regulatory protections afforded to victims of trafficking and contributing directly to the prolongation of Respondent's detention.
31. Thereafter, on September 26, 2025, Petitioner filed a motion to terminate removal proceedings, arguing that termination was appropriate because USCIS has exclusive jurisdiction over adjudication of T nonimmigrant status, and that termination is expressly authorized to promote judicial efficiency where a respondent has a credible T visa claim. *See* 8 C.F.R. § 1003.1(m)(1)(ii)(D) (granting immigration judges and the Board authority to terminate removal proceedings to permit adjudication of T nonimmigrant status by USCIS).
32. Petitioner further acknowledged that termination is discretionary, not mandatory, but explained that the purpose of this discretion is to avoid duplicative adjudication and to allow USCIS to exercise its exclusive jurisdiction over trafficking-based relief in a streamlined manner. *See* 8 C.F.R. § 1003.1(m)(1)(ii).
33. On September 30, 2025, the IJ denied the motion to terminate, reasoning that “[r]espondent’s T visa application has not yet been approved such that termination is mandatory,” citing 8 C.F.R. § 1003.18(d)(1)(i)(D)(4), and further concluding that

40. The IJ repeatedly mischaracterized the evidentiary record, including: (1) Ignoring Petitioner's sworn testimony that [REDACTED] (2) Minimizing armed attacks as mere "beatings," and (3) Concluding that explicit death threats were not genuine due to a perceived lack of severity.

41. The IJ allowed DHS trial counsel to reference an alleged "indecent exposure" charge without evidence and penalized Petitioner for not addressing it, and without giving the Petitioner time to obtain any records alluded to by the government.

42. The IJ further faulted Petitioner for not paying the \$100 asylum fee, despite the fee portal having been open for only approximately 1.5 weeks, and directions to the immigration respondents were unclear.

43. Petitioner, left with no relief in immigration court, was ordered removed. *See* Doc. No. 1-

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44. Petitioner timely appealed his removal order, making it a non-final order.

V. CLAIMS FOR RELIEF

COUNT I – Denial of Due Process Based on a Legally Deficient Merits Hearing

45. Petitioner realleges the foregoing paragraphs.

46. The Fifth Amendment guarantees noncitizens in removal proceedings the right to a full and fair hearing and a meaningful opportunity to present evidence. *See, e.g., Reno v. Flores*, 507 U.S. 292, 306 (1993).

47. Petitioner does not seek review, reversal, or vacatur of the IJ's removal order in this proceeding. Rather, Petitioner alleges that the manner in which the merits hearing was conducted was so procedurally deficient that it cannot constitutionally serve as the basis for his continued civil detention.

48. The IJ pretermitted Petitioner's timely filed asylum application without a merits adjudication, relying on an improper legal framework and erroneous factual assumptions.
49. In doing so, the IJ repeatedly mischaracterized or disregarded material evidence, including Petitioner's sworn Credible Fear Interview testimony that narcotraffickers fired weapons at him after threatening to kill him for refusing to cooperate.
50. Despite this evidence, the IJ minimized the harm as mere "beatings," discounted explicit death threats as not genuine, and speculated that the perpetrators did not intend to kill Petitioner—findings that directly contradicted the record.
51. The IJ further applied an erroneous legal standard to Petitioner's proposed particular social group by concluding that [REDACTED] was not immutable because Petitioner could "change his mind," while ignoring that Petitioner's status [REDACTED] is immutable and that his past refusal and defiance are immutable historical facts motivating future harm.
52. In addition, the IJ: (1) Limited the evidentiary record to a single country conditions report; (2) Took judicial notice of the absence of a later report and weighed that absence against Petitioner; (3) Permitted DHS to raise an unsupported criminal allegation without evidence; and (4) Penalized Petitioner for not rebutting that allegation.
53. The procedural unfairness of the merits hearing was further compounded by the IJ's denial of Petitioner's motions to continue and to terminate proceedings, despite the pendency of Petitioner's T nonimmigrant status application. Those denials prevented Petitioner from fully presenting his protection claims in a manner consistent with the regulatory framework governing trafficking-based relief and materially affected the fairness of the adjudication that followed.

54. By denying both continuance and termination and then proceeding immediately to pretermit Petitioner's asylum application, the IJ effectively required Petitioner to litigate the merits of trafficking-related relief in a forum lacking adjudicatory authority over such relief, while simultaneously depriving him of the procedural accommodations contemplated by regulation and EOIR guidance. *See* 8 C.F.R. §§ 214.11(d)(2)–(3), 1003.29; EOIR Immigration Judge Benchbook, "Victims of Trafficking (T and U Visas)," Continuances and Administrative Closure sections (advising that removal proceedings should not be used to undermine the statutory protections afforded to trafficking victims or USCIS's exclusive adjudicatory authority). This sequence of rulings contributed directly to a hearing that was not full or fair.

55. Taken together, these errors demonstrate that the hearing failed to comport with basic requirements of procedural fairness and deprived Petitioner of a meaningful opportunity to be heard.

56. While this Court lacks jurisdiction to adjudicate the merits of Petitioner's removal case, it retains jurisdiction to assess whether continued civil detention may constitutionally rest on proceedings that were fundamentally unfair.

57. Because Petitioner's current detention flows directly from proceedings that were procedurally defective, his continued custody violates due process unless independently justified through constitutionally adequate custody procedures.

COUNT II – Detention Exceeding Statutory Authority

58. Petitioner realleges the foregoing paragraphs.

59. Respondents are currently detaining Petitioner as if he were subject to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b).

60. This classification is legally erroneous and exceeds statutory authority.
61. Petitioner is not an arriving alien subject to § 235(b) detention. Rather, he was previously placed into removal proceedings, found to have established a credible fear of persecution and torture, and released from immigration custody on a cash bond pursuant to INA § 236(a), 8 U.S.C. § 1226(a) on May 17, 2013.
62. Once DHS exercised its discretion to release Petitioner on bond under § 236(a), Petitioner's custody classification was conclusively governed by that statutory scheme.
63. Redetention of a noncitizen previously released on § 236(a) bond must occur, if at all, within the § 236(a) framework, which provides for discretionary detention and the availability of bond. DHS lacks the authority to retroactively reclassify such an individual as subject to mandatory detention under § 235(b).
64. Courts have consistently recognized that § 235(b) applies only to noncitizens who are currently seeking admission at the border and does not govern the detention of individuals who have been released into the interior pursuant to § 236(a) and have resided in the United States for years. See *e.g.*, *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (distinguishing detention authority for arriving versus admitted noncitizens).
65. Petitioner has lived in the United States for over a decade, complied with immigration supervision, and previously demonstrated his suitability for release on bond.
66. By treating Petitioner as subject to mandatory detention under § 235(b), Respondents have unlawfully stripped him of the procedural protections afforded by § 236(a), including the right to seek bond and individualized consideration of flight risk and dangerousness.
67. This misclassification is not a discretionary judgment but a legal error, rendering Petitioner's current detention *ultra vires* and unconstitutional.

68. Because Petitioner's detention is governed by § 236(a) as a matter of law, his continued detention without a constitutionally adequate bond hearing violates the Due Process Clause of the Fifth Amendment.

COUNT III – Prolonged Detention Under 8 U.S.C. § 1226(a) Without a Constitutionally Adequate Bond Hearing

69. Petitioner realleges the foregoing paragraphs.

70. Petitioner is detained pursuant to 8 U.S.C. § 1226(a), which authorizes discretionary civil detention pending removal proceedings.

71. Civil immigration detention is subject to the Due Process Clause of the Fifth Amendment and must be accompanied by adequate procedural safeguards as detention becomes prolonged.

72. Although detention under § 1226(a) may be permissible for a limited period, due process requires a meaningful, individualized custody hearing once detention becomes prolonged, at which the government bears the burden of justifying continued detention.

73. Whether continued detention satisfies due process is assessed under the balancing framework set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), which considers: (1) The private interest affected by the official action; (2) The risk of erroneous deprivation through the procedures used and the value of additional safeguards; and (3) The government's interest.

74. Petitioner's private interest in freedom from prolonged civil confinement is fundamental and substantial, particularly where detention has lasted many months and continues with no defined end date.

75. The risk of erroneous deprivation is high where, as here, Petitioner has not received a bond hearing at which a neutral adjudicator considered flight risk, dangerousness, or alternatives to detention, and where the burden was not placed on the government to justify continued custody.
76. Additional procedural safeguards—specifically, a bond hearing at which the government must demonstrate by clear and convincing evidence that continued detention is warranted—would significantly reduce the risk of erroneous deprivation.
77. The government’s interests in ensuring appearance and protecting the community can be adequately addressed through such a hearing and do not justify prolonged detention without an individualized process.
78. Although immigration detention must bear a reasonable relation to its purpose, *see Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), Petitioner’s detention has become prolonged and untethered to any individualized determination that continued custody is necessary.
79. Petitioner has been detained since June 1, 2025, while removal proceedings remain ongoing and humanitarian relief applications are pending, rendering the duration of detention uncertain.
80. Continued detention under these circumstances, without a constitutionally adequate bond hearing, violates the Due Process Clause.
81. The appropriate remedy is an order requiring Petitioner’s release subject to appropriate conditions, or, in the alternative, a prompt bond hearing before a neutral adjudicator at which the government bears the burden of proving that continued detention is justified.


VI. RELIEF REQUESTED

Petitioner respectfully requests that this Court:

- A. Assume jurisdiction over this writ of habeas corpus;
- B. Enjoin Respondents from transferring Petitioner out of this District during the pendency of these proceedings, absent prior notice to counsel and leave of Court, except in the event of a medical emergency;
- C. Issue a writ of habeas corpus and order Petitioner's immediate release from custody;
- D. In the alternative, issue an order to show cause and schedule an expedited hearing at the Court's earliest availability;
- E. Order Respondents to promptly return all personal property taken from Petitioner in connection with his arrest and detention, including but not limited to his driver's license and evidence of work authorization, within 24 hours of any release order (or within a Court-ordered timeframe), and to provide a written inventory and chain-of-custody confirmation for any items not immediately returned; and
- F. Grant such other and further relief as the Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted this the 3rd day of February, 2026.



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