UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Jefferson Javier Guana Tenoria,

Petitioner,

v.

Pamela Bondi, Attorney General,

Daren K. Margolin, Director for Executive Office for Immigration Review,

Nathan L. Herbert, Assistant Chief Immigration Judge responsible for the Immigration Courts in El Paso,

Kristi Noem, Secretary, U.S. Department of Homeland Security,

Todd M. Lyons, Acting Director of Immigration and Customs Enforcement, and

Mary de Anda Ybarra, Field Director of Enforcement and Removal Operations, El Paso Field Office, Immigration and Customs Enforcement, and

and

Warden of the ERO El Paso Camp East Montana,

Respondents

C/A No. 3:26-cv-444

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Agency # [redacted]

INTRODUCTION

1. Respondents are detaining Petitioner in violation of law.

2. Respondents unlawfully detained Petitioner without an administrative warrant or any sort of pre-detention hearing in violation of the Fifth Amendment's Due Process Clause.

3. The continued detention of Petitioner, absent a bond hearing, serves no legitimate purpose and violates the United States Constitution and a binding class action order.

4. To remedy this unlawful detention, Petitioner seeks declaratory relief and a writ of habeas corpus in the form of an order to hold a bond hearing in which Respondents bear the burden to prove Petitioner poses a danger or flight risk within three days.

5. Pending the adjudication of this Petition, Petitioner respectfully requests that Respondents be ordered to provide counsel with seventy-two (72) hour notice of any movement of Petitioner.

JURISDICTION AND VENUE

6. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), § 1651 (All Writs Act), and § 2241 (habeas corpus); Art. I, § 9, cl. 2 of the U.S. Constitution ("Suspension Clause"); 5 U.S.C. § 702 (Administrative Procedure Act); and 28 U.S.C. § 2201 (Declaratory Judgment

Act). This action further arises under the Constitution of the United States and the Immigration and Nationality Act ("INA").

7. Because Petitioner seeks to challenge his custody as a violation of the Constitution and laws of the United States, jurisdiction is proper in this court.

8. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Jennings v. Rodriguez*, 138 S. Ct. 830, 839–41 (2018); *Nielsen v. Preap*, 139 S. Ct. 954, 961–63 (2019); *Sopo v. U.S. Attorney Gen.*, 825 F.3d 1199, 1209-12 (11th Cir. 2016).

9. Venue is proper in this Court pursuant to 28 USC §§ 1391(b), (e)(1)(B), and 2241(d) because Petitioner is detained within this District. He is currently detained at the ERO El Paso Camp East Montana in El Paso, Texas.

PARTIES

10. Petitioner is a citizen of Ecuador. Prior to his detention, he was residing in Minnesota. He is not an arriving alien, nor is he seeking admission.

11. Petitioner is currently in Immigration and Customs Enforcement ("ICE") custody at the ERO El Paso Camp East Montana facility.

12. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the head of the Department of

Justice, which encompasses the Board of Immigration Appeals ("BIA") and the immigration judges through the Executive Office for Immigration Review ("EOIR"). Attorney General Bondi shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Noem. Attorney General Bondi is a legal custodian of Petitioner. She is sued in her official capacity.

13. Respondent Daren K. Margolin is the Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the BIA, including bond hearings. As such, he is a legal custodian of Petitioner. He is sued in his official capacity only.

14. Respondent Nathan L. Herbert is the Assistant Chief Immigration Judge responsible for the Immigration Courts in El Paso and as such, he is responsible for the policies and practices of the immigration judges in those courts and their ability to hold or deny access to bond hearings. As such, he is a legal custodian of Petitioner. He is sued in his official capacity only.

15. Respondent Kristi Noem is being sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to § 103(a) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1103(a), routinely transacts business in the Western District of Texas, supervises the

El Paso ICE Field Office, and is legally responsible for pursuing Petitioner's detention. As such, Respondent Noem is a legal custodian of Petitioner.

16. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Respondent Lyons is responsible for Petitioner's detention. As such, Respondent Lyons is a legal custodian of Petitioner.

17. Respondent Mary de Anda-Ybarra is being sued in her official capacity as the Acting Field Office Director for the El Paso Field Office for ICE within DHS. In that capacity, Field Director Easterwood has supervisory authority over the ICE agents responsible for detaining Petitioner. The address for the El Paso Field Office is 11541 Montana Ave, Suite E, El Paso, TX 79936. As such, Respondent de Anda-Ybarra is a legal custodian of Petitioner.

18. Warden of the ERO El Paso Camp East Montana is being sued in his or her official capacity as the warden of the ERO El Paso Camp East Montana detention facility. In that capacity, Warden has supervisory authority over the individuals detaining Petitioner. As such, Respondent Warden is the legal and physical custodian of Petitioner.

EXHAUSTION

19. ICE asserts authority to detain Petitioner pursuant to the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(a), the Board of Immigration Appeals'

decision in *Matter of Yahure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026).

20. No statutory requirement of exhaustion applies to Petitioner's challenge to the lawfulness of his detention. *See, e.g., Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014) ("There is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention."); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *11 (W.D. Wash. Apr. 24, 2025) (citing *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 962 (N.D. Cal. 2019) ("this Court 'follows the vast majority of other cases which have waived exhaustion based on irreparable injury when an individual has been detained for months without a bond hearing, and where several additional months may pass before the BIA renders a decision on a pending appeal.'"); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025) ((citing *Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74, 77 (1st Cir. 1997) (quoting *McCarthy v. Madigan*, 503 U.S. 140, 146 (1992)).

21. Prudential exhaustion is not required when to do so would be futile or "the administrative body . . . has . . . predetermined the issue before it." *McCarthy*

v. Madigan, 503 U.S. 140, 148 (1992), *superseded by statute on other grounds as stated in Woodford v. Ngo*, 548 U.S. 81 (2006).

22. The Board of Immigration Appeals' published decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) binds the immigration court and denies all noncitizens situated as Petitioner access to bond hearings on the basis that they are subject to detention under 8 U.S.C. § 1225(b)(2)(A).

23. The Fifth Circuit's ruling in *Buenrostro-Mendez*, 2026 WL 323330 reinforces the Board's statutory analysis.

24. The Board of Immigration Appeals "ha[s] no authority to rule on the constitutionality of the laws enacted by Congress." *Matter of Fitzpatrick*, 26 I&N Dec. 559, 561 (BIA 2015).

25. Petitioner entered the United Sates without inspection, was not detained and is not subject to detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231, but the Immigration Court cannot consider the constitutionality of 8 U.S.C. § 1225(b)(2)(A), as it applies to Petitioner, so the Immigration Judge cannot hold a bond hearing absent some intervention from the Article III federal courts.

26. As such, exhaustion would be futile here.

FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

27. Petitioner is a native and citizen of Ecuador.

28. Petitioner entered the United States without inspection.

29. Petitioner had contact with border patrol officials when entering the United States in 2023 and was released on supervision.

30. On September 5, 2025, the Board of Immigration Appeals, issued a precedential decision, binding on lower immigration courts, finding that "Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission." *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

31. Petitioner has no criminal history of the sort that would subject him to mandatory custody under 8 U.S.C. § 1226(c).

32. On or about February 8, 2026, Respondents took Petitioner into custody without providing any administrative warrant.

33. Petitioner was detained, processed at Fort Snelling, and immediately transferred to Texas with no notice to his family.

34. Petitioner is presently held in ICE custody at the ERO El Paso Camp East Montana.

LEGAL FRAMEWORK

35. Removal proceedings are governed under 8 U.S.C. § 1229a, which provides that "[a]n immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien," 8 U.S.C. § 1229a(a)(1) and that

"[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States." 8 U.S.C. § 1229a(a)(3).

36. To initiate removal proceedings, "written notice (in this section referred to as a 'notice to appear') shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any)." 8 U.S.C. § 1229(a)(1).

37. The "[a]pprehension and detention of aliens" is governed under 8 U.S.C. § 1226, which provides that:

> **On a warrant issued by the Attorney General**, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, **the Attorney General ... may release the alien on bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General.**

8 U.S.C. § 1226(a)(2)(A) (emphasis added).

38. This warrant requirement is also at 8 U.S.C. § 1357, which holds that:

> Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant ... to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States.

8 U.S.C. § 1357(a)(2).

39. In instances where the government arrests a noncitizen without a warrant,

> a determination will be made within 48 hours of the arrest, except in the event of an emergency or other extraordinary circumstance in which case a determination will be made within an additional reasonable period of time, whether the alien will be continued in custody or released on bond or recognizance and whether a notice to appear and warrant of arrest as prescribed in 8 CFR parts 236 and 239 will be issued.

8 C.F.R. § 287.3(d).

40. At the border, the situation is different, as there:

> Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant …to arrest any alien who in his presence or view is *entering or attempting to enter the United States in violation of any law or regulation* made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens.

8 U.S.C. § 1357(a)(2).

41. In *Buenrostro-Mendez*, the Fifth Circuit held that the mandatory detention provision at 8 U.S.C. § 1225(b)(2)(A) applies to noncitizens like Petitioner who are present in the United States without admission and have been for years. 2026 WL 323330, at *4 (5th Cir. Feb. 6, 2026).

42. However, in *Buenrostro-Mendez*, "the petitioners [did not] dispute that if § 1225(b)(2)(A) applie[d] to them, it would require their detention without eligibility for bond." *Id.* at *4.

43. Section 1225(b)(2)(A) holds that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A).

44. The *Buenrostro-Mendez* court made no mention of the Fifth Amendment, due process, *Mathews v. Eldridge*, 424 U.S. 319 (1976), or the constitutionality of mandatory detention without any sort of hearing or bond determination as it applied to long-present noncitizens like Petitioner. *See generally id.*

45. "'It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." *Trump v. J.G.G.*, 604 U.S. 673 (2025) ((quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).

46. "To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976)." *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025).

47. Those factors are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the

function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

48. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 333 (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

49. First, "the interest in being free from physical detention by one's own government" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The first factor favors Petitioner.

50. Second, where there is no "opportunity to contest the existence, nature, or significance of [any] supervision violations' or otherwise make an individualized assessment of the need to re-detain, … there is a high risk that [Petitioner] has been and will continue to be erroneously deprived of his liberty." *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025). The second factor favors Petitioner.

51. Third, where a noncitizen "not abscond from his proceedings … [n]or is there anything in the record to indicate that he has committed any crimes or endangered anyone during his three years at liberty in the United States," the burden to the government is minimal and any concerns about flight and danger "would be squarely addressed if the Court were to grant the petition and order a bond hearing." *Id.* The third factor favors Petitioner.

52. Courts in this district and around the country have sided with Petitioner on this issue. *See, e.g.*, *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668 (W.D. Tex. 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025); *Camacho-Guierrez v. Thompson et al.*, No. 5:25-CV-01876-MA, 2026 WL 195758 (W.D. Tex. Jan. 16, 2026); *Parada-Hernandez v. Johnson*, No. 3:25-CV-2729-K-BN, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025); *George v. Noem*, No. 3:25-CV-02935-S-BW, 2026 WL 30829 (N.D. Tex. Jan. 5, 2026); *De Law Cruz Salmeron v. Olson*, No. 4:25-CV-198-RGJ, 2026 WL 324486 (W.D. Ky. Feb. 6, 2026); *Hernandez-Parrilla v. De Anda-Ybarra*, No. 2:25-CV-01224-MIS-KK, 2025 WL 3632769 (D.N.M. Dec. 15, 2025); *Cuya-Priale v. Castro*, No. 2:25-CV-01166-KG-DLM, 2025 WL 3564145 (D.N.M. Dec. 12, 2025); *Guerra v. Noem*, No. 1:25-CV-1341, 2025 WL 3204289 (W.D. Mich. Nov. 17, 2025); *E.V. v. Raycraft*, No. 4:25-CV-2069, 2025 WL 3122837 (N.D. Ohio Nov. 7, 2025); *Azalyar v. Raycraft*, No. 1:25-CV-916, 2026 WL 30741 (S.D. Ohio Jan. 2, 2026); *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Destino v. FCI Berlin, Warden*, No. 1:25-CV-374-SE-AJ, 2025 WL 4010424 (D.N.H. Dec. 24,

2025); *Serrano v. Albarran, et al.*, No. 25-CV-08408-EKL, 2025 WL 4110874 (N.D. Cal. Nov. 28, 2025).

REMEDY

53. Respondents' detention of Petitioner without an administrative warrant or any sort of hearing in which Petitioner might challenge his detention under 8 U.S.C. § 1225(b)(2)(A) violates the Due Process Clause of the United States Constitution's Fifth Amendment.

54. To remedy this Fifth Amendment violation, Petitioner requests a constitutionally adequate custody determination bond hearing in which Respondents bear the burden to illustrate that his continued detention is justified based on danger or flight risk within three days.

CAUSE OF ACTION

COUNT ONE: DECLARATORY RELIEF

55. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

56. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner's mandatory detention absent any hearing or venue in which Petitioner might challenge that determination or Respondents might justify it under 8 U.S.C. § 1225(b)(2)(A) violates the Fifth Amendment's Due Process Clause such that Respondents must hold a bond hearing and justify

Petitioner's ongoing detention by illustrating that he poses either a danger or a flight risk by clear and convincing evidence within three days, or otherwise release him.

COUNT TWO: VIOLATION OF THE FIFTH AMENDMENT

57. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

58. The Fifth Amendment Due Process Clause protects against arbitrary detention and requires that detention be reasonably related to its purpose and accompanied by adequate procedures to ensure that detention is serving its legitimate goals.

59. The mandatory detention provisions at 8 U.S.C. § 1225(b)(2)(A), absent any bond hearing or venue to challenge detention, are unconstitutional as applied to Petitioner under the standard set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

60. As such, Respondents must hold a bond hearing and justify Petitioner's ongoing detention by illustrating that he poses either a danger or a flight risk by clear and convincing evidence within three days, or otherwise release him.

PRAYER FOR RELIEF

WHEREFORE, Petitioner asks this Court for the following relief:

1. Assume jurisdiction over this matter.

2. Issue an order requiring Respondents to provide 72-hour notice of any intended movement of Petitioner.

3. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C. § 153.

4. Declare that Petitioner's detention absent a bond hearing violates the Due Process Clause of the Fifth Amendment.

5. Order that Respondents hold a bond hearing in which they bear the burden to justify Petitioner's ongoing detention by clear and convincing evidence of either danger to the public or flight risk within three days.

6. Order that Respondents release Petitioner if they fail to hold the requisite bond hearing referenced in ¶ 4 within three days.

7. Declare that Respondents' action is arbitrary and capricious.

8. Grant Petitioner reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A).

9. Grant all further relief this Court deems just and proper.

DATED: February 13, 2026

Respectfully submitted,

/s/ David Wilson

David Wilson
MN Attorney Lic. No. 0280239
Wilson Law Group
3019 Minnehaha Avenue
Minneapolis, MN 55406
(612) 436-7100 / dwilson@wilsonlg.com

Attorney for Petitioner

Verification by Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I have discussed the events described in this Petition with Petitioner's family, the attorney in his underlying case, and reviewed relevant documents. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's detention status, are true and correct to the best of my knowledge.

/s/ David Wilson _____ Date: February 13, 2026