

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

SEGUNDO TAXI-TIXI

Petitioner

V.

Case No. **3:26-cv-457**

Agency File



WARDEN, EL PASO CAMP EAST MONTANA;

U.S. DEPARTMENT OF HOMELAND SECURITY;

**FIELD OFFICE DIRECTOR, El Paso ICE,
U.S. Immigration and Customs Enforcement,;**

Defendants-Respondents

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

The petitioner, Segundo Taxi-Tixi, submits this Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, by and through undersigned counsel, and alleges as follows:

INTRODUCTION

1. Segundo Taxi-Tixi is in the physical custody of Respondents at the El Paso Camp East Montana (ICE) located in El Paso, Texas. He is unlawfully detained pursuant mandatory detention policies recently adopted by the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR).

2. Petitioner was detained on his way to work by U.S. Immigration and Customs Enforcement (“ICE”) on August 19, 2025, and has been held since then without a meaningful bond hearing before a neutral arbiter. At a December 17, 2025 bond hearing, the Immigration Judge found no jurisdiction.
3. Petitioner is currently in §1229a removal proceedings with the next hearing scheduled for April 7, 2026.
4. Prolonged civil detention without an individualized custody determination violates the Due Process Clause of the Fifth Amendment.
5. Petitioner seeks immediate release or, at a minimum, a constitutionally adequate bond hearing before a neutral adjudicator.
6. Petitioner is charged with having entered the United States without admission or parole at an unknown time and unknown place on or about April 9, 2019. See 8 U.S.C. § 1182(a)(6)(A)(i). Based on this allegation, DHS and EOIR deem Petitioner subject to mandatory detention as an “applicant for admission” who is “seeking admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.
7. DHS and EOIR each have nationwide policies mandating the detention of all persons who entered without admission or parole, regardless of whether that person was apprehended upon arrival. Most recently, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals (BIA) held that all persons who have entered the United States without admission or parole are now subject to mandatory detention under § 1225(b)(2)(A).

8. Accordingly, Petitioner seeks a writ of habeas corpus. Petitioner requests an order requiring his release unless the respondents provide a new bond hearing under § 1226(a) within fourteen days.

JURISDICTION

9. This action arises under the Constitution of the United States of America, 28 U. S. C. § 2241 et seq. (habeas corpus), the Immigration and Nationality Act (INA), 8 U. S. C. § 1101 et seq., Title 8 of the Code of Federal Regulations, and the Administrative Procedure Act (APA), 5 U. S. C. §§ 555(b), 701, et seq.
10. The Court has jurisdiction over this case under 28 U. S. C. § 2241 (habeas corpus), and § 1331 (federal question).
11. The Court may grant relief pursuant to the U.S. Const., art. I, § 9, cl. 2 (Suspension Clause), 28 U. S. C. § 1651 (All Writs Act), 28 U. S. C. §§ 2201–02 (declaratory relief), 28 U. S. C. § 2241 (habeas corpus), and 5 U. S. C. §§ 701 et seq. (Administrative Procedure Act).

VENUE

12. Venue is proper in this district under 28 U. S. C. §§ 1391(e)(1) & 2241 because: (1) “a substantial part of the events or omissions giving rise to the claim occurred” in this district; and (2) this is the district where the “the custodian can be reached by service of process.” *Rasul v. Bush*, 542 U. S. 466, 478–79 (2004).
13. Additionally, the Petitioner is being held in the custody of the respondents in this district.

PARTIES

14. Petitioner, **Segundo Tixi-Tixi**, is a citizen of Guatemala. He was present in the United States as a result of entering the United States on or about April 9, 2019, via the border, and was recently arrested and placed in detention by the respondents. He is being held in ICE custody at the El Paso Camp East Montana (ICE) located in El Paso, Texas, under the jurisdiction of the respondents.
15. Defendant, **Warden, El Paso Camp East Montana** is sued in his or her official capacity. In this capacity, the Warden has custody of Petitioner and is authorized to produce him before the Court and effectuate his release. The Warden is the proper respondent for habeas relief. The remaining respondents are named solely for purposes of declaratory and injunctive relief.
16. Respondent, **U.S. Department of Homeland Security (DHS)**, is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.
17. Defendant, **Field Office Director, El Paso ICE, U.S. Immigration and Customs Enforcement** is sued in his or her official capacity. In this capacity, the Field Office Director has jurisdiction over the detention facility in which the petitioner is held, is authorized to release the petitioner, and is a legal custodian of the petitioner

EXHAUSTION OF REMEDIES

18. No exhaustion is required for the Petitioner's habeas claim because "[e]xceptions to the exhaustion requirement are appropriate where the

available administrative remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action.” *Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012)

19. Although the Fifth Circuit recognizes a prudential exhaustion doctrine in § 2241 cases, exhaustion is not required where remedies are inadequate or futile. See *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994).
20. Courts have recognized that exhaustion is not required where the claim presents a pure constitutional question or where administrative remedies are inadequate or futile. *Warsame v. U. S. Att’y Gen.*, 796 Fed. Appx. 993, 1006 (CA11 2020); accord *Haitian Refugee Ctr., Inc. v. Nelson*, 872 F. 2d 1555, 1561 (CA11 1989), *aff’d sub nom. McNary v. Haitian Refugee Ctr., Inc.*, 498 U. S. 479 (1991) (exhaustion had “no bearing” where Petitioner sought to make a constitutional challenge to procedures adopted by the INS).
21. The Petitioner urgently seeks and is entitled to habeas relief because he has no meaningful opportunity to challenge the constitutionality of his detention through any available administrative process. See *Boumediene v. Bush*, 553 U. S. 723, 783 (2008). In fact, the administrative processes that determine his custody are at odds with each other.
22. And with respect to the Petitioner’s APA claim, an agency’s failure to obey the regulations is reviewable agency action, *Norton v. S. Utah Wilderness Alliance*, 542 U. S. 55, 61–62 (2004), and there are no administrative

remedies available that the Petitioner is required to exhaust under *Darby v. Cisneros*, 509 U. S. 137 (1993).

REQUIREMENTS OF 28 U.S.C. § 2243

23. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
24. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F. 3d 1116, 1120 (CA 9 2000)(citation omitted); *See also, Johnson v. Rogers*, 917 F.2d 1283, 1284 (10th Cir. 1990).

FACTUAL ALLEGATIONS

25. Segundo Tixi-Tixi is a native and citizen of Guatemala.
26. Mr. Tixi-Tixi initially entered the U.S. in April 2019 without inspection or admission at an unknown place.
27. His entry was initially undetected by any immigration officials.
28. He was eventually encountered by immigration officials and held until he paid \$5000 for an ICE bond for his release on August 23, 2019.

29. ICE previously determined that Petitioner did not pose a danger or flight risk when it released him on bond in 2019, and no material change in circumstances has been identified to justify his re-detention without a new custody determination.
30. Mr. Tixi-Tixi has been at liberty for the past six years, living and working as his asylum application has been pending.
31. Mr. Tixi-Tixi's pending asylum claim was filed and his case is pending in the immigration court with next hearing date of April 7, 2026.
32. The respondents (as well as the immigration judge) refuse to acknowledge that the petitioner is not subject to mandatory detention and the immigration judge refused to take jurisdiction.

LEGAL FRAMEWORK

8 U.S.C. § 1225 & §1226 and Due Process

33. The Immigration and Nationality Act ("INA") establishes several statutory frameworks governing civil immigration detention during removal proceedings, each with distinct procedural protections and constitutional implications.
34. First, 8 U.S.C. § 1226 governs detention of noncitizens placed in standard removal proceedings before an Immigration Judge pursuant to 8 U.S.C. § 1229a. Individuals detained under § 1226(a) are generally entitled to an individualized custody determination before an Immigration Judge. See 8 C.F.R. §§ 1003.19(a), 1236.1(d). By contrast, certain individuals with

specified criminal histories may be subject to mandatory detention under § 1226(c).

35. Second, 8 U.S.C. § 1225 governs inspection and processing of applicants for admission and authorizes mandatory detention for certain individuals seeking admission or subject to expedited removal. That provision is directed primarily at individuals encountered at or near the border while the government determines admissibility.
36. Third, 8 U.S.C. § 1231 governs detention after a final order of removal has been entered and establishes separate standards for post-order custody.
37. This case concerns the proper characterization of Petitioner's detention under §§ 1226(a) and 1225(b)(2) and the constitutional limits that apply regardless of which statutory provision is invoked.
38. Sections 1226 and 1225 were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546. Section 1226 was amended in 2025 by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3, but Congress did not alter the statute's fundamental distinction between discretionary detention pending removal proceedings and mandatory detention in narrowly defined circumstances.
39. Following enactment of IIRIRA, implementing regulations reflected the longstanding understanding that individuals already present in the United States and placed into removal proceedings were generally detained under § 1226 rather than § 1225. 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).

40. For decades thereafter, noncitizens who were present in the United States and placed into standard removal proceedings ordinarily received custody hearings unless subject to a specific statutory exception. That practice was consistent with prior statutory regimes recognizing a right to a custody determination for noncitizens already inside the country. See former 8 U.S.C. § 1252(a) (1994); H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (explaining § 1226 largely restated prior detention authority).
41. In July 2025, DHS announced new guidance asserting that individuals who entered without admission or parole would be treated categorically as applicants for admission subject to § 1225 mandatory detention regardless of how long they had resided in the United States.
42. The Board of Immigration Appeals later adopted a similar interpretation in *Matter of Yajure Hurtado*, concluding that certain noncitizens present in the United States without admission could be treated as applicants for admission ineligible for bond hearings.
43. More recently, the Fifth Circuit held in *Buenrostro-Mendez v. Bondi* No. 25-20496 (5th Cir. 2026) that § 1225(b)(2) may apply to certain noncitizens present in the United States who have not been formally admitted. That decision, however, did not address the constitutional limits on prolonged civil detention without individualized review.

44. Regardless of statutory classification, civil immigration detention remains subject to the Fifth Amendment's Due Process Clause. The Supreme Court has repeatedly emphasized that freedom from physical restraint lies at the core of liberty protected by due process and that civil detention must be carefully limited. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
45. Courts considering detention challenges after the government's recent policy shift have therefore focused not only on statutory interpretation but also on whether the government's reading would authorize prolonged detention without procedural safeguards.
46. Even where courts have concluded that the statutory question is unsettled or disputed, they have recognized that constitutional concerns arise if a statute is interpreted to permit extended mandatory detention without a hearing. Under settled principles of constitutional avoidance, courts must adopt a permissible interpretation that avoids serious constitutional questions unless Congress has clearly required the contrary. *Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018); *Zadvydas*, 533 U.S. at 689.
47. Section 1226 expressly authorizes detention "pending a decision on whether the [noncitizen] is to be removed," which encompasses individuals placed into removal proceedings under § 1229a to determine admissibility or deportability. Nothing in that provision clearly eliminates individualized custody review for persons in that posture.
48. By contrast, § 1225(b) is structured around inspection and admissibility determinations for persons seeking entry into the United States. The Supreme

Court has described that framework as governing detention at the Nation's borders and ports of entry while admissibility is determined. *Jennings*, 583 U.S. at 287.

49. Interpreting § 1225 to authorize prolonged mandatory detention of individuals long present in the United States without access to a custody determination would raise serious constitutional concerns because civil detention must bear a reasonable relation to its purpose and must be accompanied by adequate procedural protections. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Foucha v. Louisiana*, 504 U.S. 71, 79 (1992).
50. Nothing in the statutory text clearly requires such a result. Where one interpretation of a detention statute would authorize extended confinement without individualized review and another would permit a hearing, courts must adopt the latter construction to avoid constitutional infirmity. *Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018).
51. Accordingly, even if Respondents' statutory interpretation were considered plausible, due process principles require construing the detention framework to permit an individualized custody determination before a neutral decisionmaker.
52. Petitioner therefore is entitled, at minimum, to a bond hearing at which the Government must justify continued detention, and continued confinement without such a determination is unlawful.

CLAIMS FOR RELIEF

COUNT I:

Unlawful Detention in Violation of Due Process

53. The allegations in paragraphs 1-56 are realleged and incorporated herein.
54. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
55. The petitioner has a fundamental interest in liberty and being free from official restraint.
56. The government’s detention of the petitioner without a bond redetermination hearing to determine whether they are a flight risk or danger to others violates their right to due process.
57. Therefore, the petitioner is entitled to a writ of habeas corpus granting him a bond hearing conducted either by the Court, or by the Immigration Judge, with the burden of proof upon the government to demonstrate by clear and convincing evidence that the petitioner is a danger or a flight risk.

COUNT II:
Violation of the Administrative Procedures Act

58. The allegations in paragraphs 1-56 are realleged and incorporated herein.
59. The purpose of the Administrative Procedures Act (“APA”) is to prevent abuse of discretion by federal agencies by granting federal judiciary authority to review the actions of such agencies.

60. The APA also empowers Federal Courts to review federal agencies to “compel agency action unlawfully withheld or *unreasonably* delayed”. 5 U.S.C. § 706(1) (emphasis added).

61. The Court may also hold unlawful and set aside agency action that, inter alia, is found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law”. 5 U.S.C. § 706(2)(A); or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(D). “Agency action” includes, in relevant part, “an agency rule, order, license, sanction, relief or the equivalent or denial thereof, or *failure to act*.” 5 U.S.C. §551(13)(emphasis added).

62. The dramatic reversal of past policy without explanation regarding the applications of § 1225 and § 1226 by the Board of Immigration Appeals, raises legal issues under the APA in the following way: the recent decisions by the BIA to abandon decades-old practice of bond hearings under 1226(a) and in violation of Congressional intent and statutes, is a violation of the APA.

63. The APA, therefore, grants this Court authority to review that agency action (i.e. refusal to determine whether the appeal overcomes the grounds for denial) to determine whether such agency action constitutes an “abuse of discretion” or has been “unreasonably delayed” in violation of the APA.

PRAYER FOR RELIEF

WHEREFORE, the petitioner prays that the Court grant the following relief:

(a) Assume jurisdiction over this matter;

- (b) Set this matter for expedited consideration pursuant to 28 U.S.C. § 1657;
- (c) Issue a writ of habeas corpus declaring that Petitioner's continued detention without an individualized custody determination is unlawful;
- (d) Order the respondents to refrain from transferring the petitioner out of the jurisdiction of this Court during the pendency of this proceeding and while the petitioner remains in the respondents' custody;
- (e) Grant the petitioner a writ of habeas corpus ordering that either the petitioner be released or afforded bond hearing conducted either by the Court, or by the Immigration Judge, with the burden of proof upon the government to demonstrate by clear and convincing evidence that the petitioner is a danger or a flight risk;
- (f) Award petitioner attorneys' fees and costs under the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. § 2412, and on any other basis justified under law; and
- (g) Grant any other and further relief that the Court deems just and proper.

Dated February 14, 2026

/s/Bonnie Smerdon
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**VERIFICATION BY SOMEONE ACTING ON THE PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242**

I, Bonnie Smerdon, am submitting this verification on behalf of the petitioner because I am the petitioner's attorney. I am acting on behalf of the petitioner, Segundo Tixi-Tixi, based on discussions with his immigration attorney and himself. On the basis of these discussions and reviewing the record, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: February 14, 2026

/s/Bonnie Smerdon

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