

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

NELSON PAPAGAYO LOPEZ,

Petitioner,

vs.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security (DHS); **TODD M. LYONS**, Acting Director, U.S. Immigration and Customs Enforcement (ICE); **DEREK GORDON**, Acting Executive Associate Director, Homeland Security Investigations (HSI), U.S. Immigration and Customs Enforcement (ICE); **MARCOS CHARLES**, Acting Executive Associate Director, Enforcement and Removal Operations (ERO), U.S. Immigration and Customs Enforcement (ICE); **DAREN K. MARGOLIN**, Director, Executive Office For Immigration Review; **WARDEN**, Folkston ICE Processing Center,

Respondents.

CASE NO. 5:26-cv-239

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW Petitioner, Nelson Papagayo Lopez , by and through undersigned counsel, petitions this Honorable Court on an Emergency basis for a Writ of Habeas Corpus under 28 U.S.C. § 2241. Petitioner is a native and citizen of Colombia who has been unlawfully detained by the Department of Homeland Security (DHS) for a prolonged period in violation of statutory and constitutional law. This Court's

intervention is necessary to end this unlawful detention and protect the rights guaranteed to Petitioner under the Due Process Clause of the Fifth Amendment and federal immigration law.

INTRODUCTION

1. This is a habeas corpus petition brought by Nelson Papagayo Lopez, Alien No.: [REDACTED] [REDACTED] a native and citizen of Colombia, who has been unlawfully detained by U.S. Immigration and Customs Enforcement (ICE) at least since December 12, 2025, after he was pulled over in a car, detained by ICE and taken into custody.
2. Mr. Papagayo Lopez has resided continuously and peacefully in the United States since his entry in 2023.
3. The government is detaining him under 8 U.S.C. § 1225(b), claiming he is subject to mandatory detention without the possibility of a bond hearing. This is incorrect. Since he was arrested well over three years after entering the United States, and inside the country, he is not subject to expedited removal or mandatory detention under § 1225.
4. Because of this unlawful practice, Petitioner seeks a writ of habeas corpus challenging his ongoing civil immigration detention, which has now extended for more than a month without a constitutionally adequate bond hearing. Mr. Papagayo entered the United States on February 25, 2023, and has resided continuously in this country ever since. After a brief initial period of detention, he was released on or about March 23, 2023, and has since made Miami, Florida his home. For over two years, he lived peacefully and productively in the community – working to support himself and his

spouse, paying taxes, complying with all immigration requirements, and earning the support and trust of numerous United States citizens who have submitted affidavits on his behalf.

5. Mr. Papagayo has a pending Form I-589 application for asylum and withholding of removal, filed in June 2023. He has not violated any laws, failed to appear, or engaged in conduct suggesting that he poses a danger or flight risk. Nevertheless, he has been continuously detained at Stewart Detention Center since at least January 2, 2025. When he requested a bond hearing, his request was denied based on *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), a decision that does not account for the profound liberty interests at stake when a noncitizen has been permitted to live in the United States for years and establish deep community ties. As applied to Mr. Papagayo, this categorical denial of a bond hearing violates the Fifth Amendment's guarantee of due process.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 2241, which authorizes federal courts to grant writs of habeas corpus to individuals in custody in violation of the Constitution, laws, or treaties of the United States.
7. This Court also has jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction), as this action arises under the Constitution and laws of the United States, including the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

8. Petitioner's claim is not barred from review by 8 U.S.C. § 1252(g) as Petitioner does not challenge the Respondent's decision to commence removal proceedings against him, the decision to arrest and detain him, or the methods by which he is detained. Petitioner challenges the Attorney General's treatment of him as an "alien seeking admission," whose detention is governed by 8 U.S.C. § 1225(a)(2) rather than 8 U.S.C. § 1226(a). *Cf. Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006) ("While [Section 1252(g)] bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions.").
9. Similarly, this Court is not stripped of jurisdiction by the "zipper clause" of the INA, *see* 8 U.S.C. § 1252(b)(9), because Petitioner is "not asking for review of an order of removal;" he is not "challenging the decision to detain [him] in the first place or to seek removal;" and he is "not even challenging any part of the process by which [his] removability will be determined." *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018); *see also Madu*, 470 F.3d at 1365 (holding the INA did not divest the district court of jurisdiction over a § 2241 challenge to detention of the petitioner pending deportation).
10. Venue is proper in the Middle District of Georgia pursuant to 28 U.S.C. § 1391(e)(1)(B), because Petitioner is currently detained in this District and a substantial part of the events or omissions giving rise to this action occurred here.

PARTIES

11. Petitioner, Nelson Papagayo Lopez, is a native and citizen of Colombia, born on



12. Respondent Kristi Noem, Secretary of the U.S. Department of Homeland Security (DHS), is the head of DHS, the federal department charged with administering and enforcing the nation's immigration laws. Secretary Noem has the ultimate authority over ICE and all subordinate agencies involved in Petitioner's detention. She is sued in her official capacity.

13. Respondent Todd M. Lyons, Acting Director of U.S. Immigration and Customs Enforcement (ICE), is responsible for the nationwide administration and oversight of ICE, the agency charged with the enforcement of immigration detention and removal. He is sued in his official capacity.

14. Respondent Derek Gordon, Acting Executive Associate Director of Homeland Security Investigations (HSI), ICE, oversees investigative operations of ICE, including matters involving the apprehension of noncitizens. While HSI is primarily investigative, its leadership participates in the broader enforcement mechanisms of DHS. He is sued in his official capacity.

15. Respondent Marcos Charles, Acting Executive Associate Director of Enforcement and Removal Operations (ERO), ICE, is directly responsible for the supervision and operation of ICE's detention and removal activities. His division has direct oversight of the detention facility where Petitioner is currently held. He is sued in his official capacity.

16. Respondent, Daren K. Margolin, is the Director of the Executive Office for Immigration Review (EOIR), a component of the U.S. Department of Justice responsible for adjudicating immigration cases, including asylum claims, in removal proceedings. She is sued in her official capacity.
17. Respondent, Warden of the Stewart Detention Center in Lumpkin, Georgia. He is responsible for the oversight of the Stewart Detention Center, as well as its detainees. He is sued in his official capacity.

FACTUAL ALLEGATIONS

18. Petitioner entered the United States on February 25, 2023, and has resided continuously in the country ever since.
19. After a short period of detention, Petitioner was released on or about March 23, 2023.
20. Since his arrival, Petitioner has made Miami, FL, his home. He has lived quietly, worked to support himself and his spouse.
21. He has diligently paid his taxes, contributed to his community, and has an incredible showing of support from his friends in the community who have all known him for a long time.
22. Petitioner has had a pending Form I-589, Application for Asylum and for Withholding of Removal since June of 2023.
23. It has now been more than a month since Mr. Papagayo's detention by ICE. He has not violated any laws.

24. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon his request, receive a bond hearing with strong procedural protections. *See Hernandez-Lara*, 10 F.4th at 41; *Doe*, 11 F.4th at 2; *Brito*, 22 F.4th at 256-57 (affirming class-wide declaratory judgment); 8 C.F.R. §§ 236.1(d), 1003.19(a)-(f).
25. Petitioner requested such a bond hearing on February 3, 2026.
26. On February 10, 2025, Petitioner was denied bond. The Immigration Judge found that Petitioner is ineligible pursuant to *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019).
27. Under *Matter of M-S-*, the Attorney General only decided that individuals who are transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear of persecution or torture are ineligible for release on bond, and that such individual must be detained until removal proceedings conclude. *Id.* The Attorney General recognized that individuals may be paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A). *Id.* at 516-17. And when the purpose of such parole has been served, the individual must be returned to custody. *Id.*
28. However, in *Matter of M-S-*, the Attorney General did not address the Constitutional rights of individuals who are permitted to remain in the United States for a prolonged period of time and establish connections within.
29. Here, the Petitioner has established a deep connection to the United States as evidenced by the numerous affidavits submitted to the Immigration Court from United States citizens who willingly wrote in support of Mr. Papagayo's release from custody.

30. Thus, *Matter of M-S-*, as applied to the Petitioner, is unconstitutional.

31. Since his arrest, Petitioner has been detained at Stewart Detention Center in the Middle District of Georgia, a civil immigration detention center. He has been held continuously since at least January 2, 2025.

CAUSES OF ACTION

COUNT I

Violation of Fifth Amendment Right to Due Process

(Failure to Provide an Individualized Hearing for Domestic Civil Detention)

32. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through thirty-one (31) as though fully set forth herein.

33. The Fifth Amendment to the United States Constitution provides that no person shall “be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V.

34. The Fifth Amendment’s Due Process Clause forbids the government to “depriv[e]” any “person . . . of . . . liberty . . . 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 Clause Protects.” *Zadvydas v. David*, 533 U.S. 758, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). The Supreme Court “has said that government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, see *United States v. Salerno*, 481 U.S. 739, 746 (1987), or, in certain special and ‘narrow’

nonpunitive ‘circumstances,’ *Foucha*, 504, U.S. at 80, where a special justification, such as harm-threatening mental illness, outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997).

35. The Supreme Court’s balancing test in *Mathews v. Eldridge* is dispositive. “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). “[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors”: (1) “the private interest that will be affected by the official action”; (2) “the [g]overnment’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail,” and (3) “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.” *Id.* at 335.

36. The First factor weighs heavily in Petitioner’s favor. “Freedom from imprisonment — from government custody, detention, or other forms of physical restraint — lies at the heart of the liberty [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. A noncitizen’s interest in his freedom pending the conclusion of his removal proceedings deserves great “weight and gravity.” See *Addington v. Texas*, 441 U.S. 418, 427 (1979); *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). Courts have held that once

released from immigration custody, noncitizens acquire a “protectable liberty interest in remaining out of custody on bond.” See *Lopez-Arevelo v. Ripa*, 3:25-CV00337-KC, 2025 WL 2691828 at *11 (W.D. Tex. Sept. 22, 2025). Here, Petitioner has lived in the United States since 2023 and was previously released from custody and allowed to establish himself in the United States for over two years.

37. Turning onto the second factor, the Court shall consider “the [g]overnment'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. There is no doubt that Respondents have an interest in ensuring that noncitizens appear for their removal hearings and for them not to pose a risk to the communities in which they live. But that interest, in this case, seems particularly diluted given Respondent’s own decision to release Petitioner on his own recognizance once before. Further, there is nothing to suggest that Petitioner’s actions have materially changed as he has not failed to appear before immigration authorities, nor he has acquired a criminal record. If Respondents due have such facts, a bond hearing in front of an Immigration Judge would be the proper venue to address any such issues. Further, any fiscal or administrative burdens Respondents may assert by having to provide a bond hearing are also diminished given that the government has conducted such hearings for the part thirty years until a change in the agency’s interpretation of the law. Thus, the second factor also weighs in favor of the Petitioner.
38. The third *Mathews* factor calls for the Court to consider “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.” *Mathews*, 424 U.S. at 335. Here, Section 1225(b) and *Matter of M-S-* as applied creates a substantial risk of erroneous deprivation of Petitioner’s interest in being free from arbitrary confinement pending resolution of his removal proceedings. The risk lies in the continued deprivation of liberty for a noncitizen who has already been determined to not be a flight risk nor a danger to the community, and has lived in the United States for a prolonged period of time, especially where there are no facts in the record to reflect material changes in Petitioner’s dangerousness or flight risk.

39. District courts around the Eleventh Circuit have agreed with Petitioner’s position. See *Arellano v. Ripa*, No. 26-20044-CIV, 2026 U.S. Dist. LEXIS 13005, at *15 (S.D. Fla. Jan. 23, 2026) (concluding that the revocation of the petitioner’s release on his own recognizance, violated the Fifth Amendment due process clause); see also *Perez v. Mordant*, No. 2:25-cv-00947-SPC-DNF, 2025 U.S. Dist. LEXIS 235337, at *11 (M.D. Fla. Dec. 2, 2025) (finding that the petitioner’s interest in freedom from detention “‘lies at the heart of the liberty’ the Due Process Clause protects.”) (quoting *Zadvydas*, 533 U.S. at 690); *Carmona v. Ripa*, No. 2:25-cv-1128-SPC-DNF, 2025 U.S. Dist. LEXIS 260293, at *13 (M.D. Fla. Dec. 17, 2025) (finding that ICE violated Gonzalez Carmona’s right to due process by revoking his parole, designating him for expedited removal, and detaining him without reasonable notice and a meaningful opportunity to be heard); *Blanco v. Bondi*, No. 2:26-cv-00051-SPC-DNF, 2026 U.S. Dist. LEXIS 15245, at *10 (M.D. Fla. Jan. 28, 2026) (same).

40. The government's refusal to provide Petitioner a bond hearing violates his procedural and substantive due process rights under the Fifth Amendment. The continued detention of Petitioner without any bond hearing, based solely on the misapplication of a statute that does not govern his case, is arbitrary, capricious, and unconstitutional.
41. For the reasons stated above, Petitioner's continued detention under 8 U.S.C. § 1225(b) and *Matter of M-S-*, without a meaningful opportunity to be heard, violates the Fifth Amendment's Due Process Clause as applied to him. Because the *Mathews v. Eldridge* factors weigh decisively in his favor, his confinement constitutes an unlawful deprivation of liberty. Petitioner respectfully requests that this Court grant the Petition for Writ of Habeas Corpus and order his immediate release or, at minimum, a constitutionally adequate bond hearing.

COUNT II

Violation of Fifth Amendment Right to Due Process

(Substantive Due Process)

42. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through forty-one (41) as though fully set forth herein.
43. Because Petitioner is not being provided a bond hearing, the government is not taking any steps to effectuate its substantive obligation to ensure that immigration detention bears a "reasonable relation" to the purposes of immigration detention (i.e., the prevention of flight and danger to the community during the pendency of removal

proceedings) and is not impermissibly punitive. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring).

44. Petitioner's detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that this Honorable Court will:

45. Assume jurisdiction over this matter pursuant to 28 U.S.C. § 2241 and Article I, Section 9, Clause 2 of the U.S. Constitution (the Suspension Clause);
46. Order Respondents to Show Cause within three days unless, for good cause, additional time, not exceeding twenty (20) days, is allowed pursuant to 28 U.S.C. § 2243.
47. Order that Petitioner shall not be transferred outside the Middle District of Georgia.
48. Declare that Petitioner is not subject to detention under 8 U.S.C. § 1225(b), and that he is lawfully detainable, if at all, only under 8 U.S.C. § 1226(a);
49. Declare that Petitioner's continued detention without an individualized bond hearing violates: (a) the Immigration and Nationality Act; (b) the Due Process Clause of the Fifth Amendment (procedural and substantive); (c) the Administrative Procedure Act, 5 U.S.C. § 706;

50. Issue a preliminary injunction and Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or, in the alternative, order Respondents to release Petitioner if he is not provided a bond hearing within seven (7) days after the Court's order;
51. Under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d) & 5 U.S.C. § 504 et seq., individuals can recover attorneys' fees and costs for successful federal court litigation against the U.S. government. The EAJA statute applies to "any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action." 28 U.S.C. § 2412(d)(1)(A); and
52. Grant such other and further relief as the Court deems just, proper, and equitable.

Respectfully submitted,

/s/ Thomas Evans

Thomas Evans

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(Designated Local Counsel)

VERIFICATION PURSUANT TO 8 U.S.C. § 2242

I represent Petitioner, Nelson Papagayo Lopez, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Date: February 18, 2026

/s/ Thomas Evans
Thomas Evans

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on February 18, 2026, I electronically filed the foregoing document with the Clerk of Court using PACER. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties, either via transmission of Notices of Electronic Filing generated by PACER or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted,

/s/ Thomas Evans

Thomas Evans

KUCK BAXTER LLC