

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

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**FIDEL SALCEDO PARRA**

Petitioner,

Case No.:

v.

MICHAEL ROSE, in his official capacity as ICE Field Office Director; KRISTI NOEM, in her official capacity as Secretary of Homeland Security, and TODD M. LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement, JAMAL LAWRENCE JAMISON, Warden of the Philadelphia Federal Detention Center, and PAMELA BONDI, in her official capacity as Attorney General of the United States,

**VERIFIED PETITION FOR HABEAS  
CORPUS**

Respondents.

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**INTRODUCTION**

1. Petitioner Fidel Salcedo Parra (hereinafter “Mr. Salcedo” or Petitioner) is a native and citizen of Mexico who entered the United States without inspection around 2005 and has not left the United States since.

2. Mr. Salcedo is eligible for 42B Cancellation of Removal through his U.S. citizen wife and three U.S. citizen children.

3. Immigration and Customs Enforcement (“ICE”) agents detained Mr. Salcedo while leaving Home Depot on March 9, 2026. Mr. Salcedo was brought to the Federal Detention Center in Philadelphia, Pennsylvania where he has been detained since. See Exhibit A.

4. On or about September 5, 2025, the Board of Immigration Appeals (the “Board”)

has issued decisions, including *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which have said that those who are classified as “entry without inspection” are now “applicants for admission” under 8 U.S.C. § 1225(b) and not eligible to apply for bond in front of an immigration judge, even if they are not caught near the border and have been in the United States for an extended period of time. Historically, these individuals were subject to the detention rules under 8 U.S.C. § 1226(a), which permitted them to apply for a bond in front of an immigration judge.

5. Until September 5, 2025, Mr. Salcedo would otherwise have been eligible to apply for a bond in front of an immigration judge. He is now not eligible for any bond and must stay detained for the duration of his immigration court proceedings, including any appeal if he loses.

6. In addition, DHS violated Mr. Salcedo's due process rights under the Fifth Amendment of the U.S. Constitution by detaining him without conducting an individualized assessment to determine if his detention was warranted. Detention for those detained under 8 U.S.C. § 1226(a) is used to ensure that an individual will show up to court and is not a danger to persons or property. DHS has not demonstrated that Mr. Salcedo, who did not require detention before under either of those categories now poses a flight risk or is a danger to persons or property.

7. For these reasons, Mr. Salcedo requests that the Court declare that DHS has violated his due process rights by detaining him under 8 U.S.C. § 1225(b) and declare that he is detained under 8 U.S.C. § 1226(a) and either (1) order his immediate release as DHS has violated his due process rights, (2) order that he receive a bond hearing with the burden on the government to prove by clear and convincing evidence that he is either a danger persons or property and/or a flight risk and that there is no combination of alternatives to detention that could mitigate those risks.

### **JURISDICTION**

8. This action arises under the Constitution of the United States, the APA, and the

Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.

9. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

10. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

### **VENUE**

11. Venue is proper because Petitioner was detained at the Philadelphia Federal Detention Center (“FDC”) in Philadelphia, Pennsylvania, which is within the jurisdiction of this District when this action was originally filed.

12. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States, a substantial part of the events or omissions giving rise to Petitioner’s claims occurred in this District, and Petitioner resides in this District. There is no real property involved in this action. 28 U.S.C. § 1391(e).

### **REQUIREMENTS OF 28 U.S.C. § 2243**

13. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

14. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most

important writ known to the constitutional law of England, 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).

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

15. To the extent required, Petitioner has exhausted his administrative remedies as required by law and his only remedy is by way of this judicial action. In addition, the administrative agency has already predetermined that Petitioner is not eligible for any relief through the agency. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Therefore, any attempt to seek relief through the agency would be futile.

### **PARTIES**

16. Petitioner is currently detained by the Department of Homeland Security. He was at the Philadelphia Federal Detention Center when he filed his habeas petition with this Court.

17. Respondent, Michael Rose, is the ICE Field Office Director for the ICE Philadelphia Field Office. He was the Petitioner’s immediate custodian at the time this habeas was filed, and, upon information and belief, resides in the Eastern District of Pennsylvania.

18. Respondent Todd Lyons is sued in his official capacity as Acting Director of the United States Immigration and Customs Enforcement. In this capacity, Respondent Lyons oversees all detention of noncitizens held in ICE custody and is a legal custodian of petitioner with the authority to release him.

19. Respondent Kristi Noem is sued in her official capacity as Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees ICE, the component agency responsible for Petitioner’s detention and custody. Respondent Noem is a

legal custodian of Petitioner.

20. Respondent is Jamal Lawrence Jamison, Warden of the Federal Detention Center in Philadelphia, Pennsylvania. Respondent is a legal custodian of Petitioner.

21. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals.

### **STATEMENT OF FACTS**

22. Petitioner is a native and citizen of Mexico.

23. Petitioner entered the United States without inspection around 2005.

24. DHS Detained Mr. Salcedo on March 9, 2026 while he was leaving Home Depot, transported him to the Federal Detention Center, and initiated removal proceedings through the issuance of a Notice to Appear.

25. Mr. Salcedo is eligible for 42B Cancellation of Removal with his qualifying relatives being his U.S. citizen wife and three U.S. citizen children. See Marriage Certificate; Birth Certificates of U.S. Citizen Children.

26. Upon information and belief, Petitioner is currently being held in ICE's custody in the Eastern District of Pennsylvania at the Federal Detention Center or was at the FDC when this habeas petition was required.

27. Upon information and belief, Petitioner does not have a criminal record.

28. Upon information and belief, neither DHS nor its sub-agencies have made any claim that he is a danger to persons or property or a flight risk.

29. Upon information and belief, DHS did not perform an individual assessment prior to or contemporaneously with the decision to detain Petitioner.

### **LEGAL BACKGROUND**

#### **PETITIONER'S DETENTION VIOLATES PETITIONER'S DUE PROCESS RIGHTS UNDER THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION.**

##### **I. This Court has jurisdiction to hear this matter.**

30. As noted above, "Federal courts have jurisdiction to review habeas petitioners filed by immigration detainees who assert that they are 'in custody in violation of the Constitution or laws or treaties of the United States.'" *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 U.S. Dist. LEXIS 196847, at \*8 (E.D.N.Y. Oct. 5, 2025) quoting 28 U.S.C. § 2241(c)(3). Therefore, this Court has jurisdiction to hear this matter.

##### **II. Petitioner is not required to exhaust his administrative remedies.**

31. Petitioner is not required to exhaust his administrative remedies by seeking a bond or requesting discretionary parole.

32. While courts generally require exhaustion of administrative remedies before detainees may challenge their detention in court via a petition for a writ of habeas corpus, exhaustion is a prudential matter, not a statutory requirement. *See eg. Pereira v. O'Neill*, 2025 WL 3516665 (E.D. Pa. Dec. 8, 2025) (Marston, J.); *Conde v. Jamison*, 2025 WL 3499256 (E.D. Pa. Dec. 5, 2025) (Brody, J.); *Suspes v. Rose*, 2025 WL 3492820 (E.D. Pa. Dec. 5, 2025) (Brody, J.); *Hidalgo et al. v. O'Neill*, No. 25-cv-6775 (E.D. Pa. Dec. 5, 2025) (Diamond, J.); *Delgado Villegas v. Bondi*, No. 25-cv-6143 (E.D. Pa. Dec. 4, 2025) (Diamond, J.); *Nogueira-Mendes v. McShane*, 2025 WL 3473364 (E.D. Pa. Dec. 3, 2025) (Slomsky, J.); *Juarez v. O'Neill*, 2025 WL 3473363 (E.D. Pa. Dec. 3, 2025) (Henry, J.); *Yilmaz v. Warden of Fed. Det. Ctr. Philadelphia*, 2025 WL 3459484

(*E.D. Pa. Dec. 2, 2025*) (*Rufe, J.*). Further, the Board of Immigration Appeals (BIA) does not have jurisdiction to adjudicate constitutional issues. See *Qatanani v. Att’y Gen. of the US*, 144 F 4<sup>th</sup> 485, 500 (3d Cir. 2025). Therefore, any administrative proceedings would be futile because Petitioner raises a constitutional due process claim. *Qatanani*, 144 F 4<sup>th</sup> at 500.

33. Next, this petition raises a substantial constitution question, i.e., whether DHS has violated his due process rights under the U.S. Constitution in detaining him. Therefore, Petitioner should not be required to exhaust his administrative remedies.

### **III. PETITIONER IS DETAINED UNDER 8 U.S.C. § 1226(a).**

34. The next issue is to determine what section of the Immigration and Nationality Act (“INA”) governs Petitioner’s detention.

35. Petitioner’s detention is governed by 8 U.S.C. § 1226(a).

#### **A. Background of 8 U.S.C. §§ 1225 and 1226.**

36. Two sections of Immigration and Nationality Act govern detention of non-citizens who have not received a final order of removal: 8 U.S.C. § 1225 and 8 U.S.C. § 1226.

37. 8 U.S.C. § 1225 governs those who are considered “applicants for admission.” 8 U.S.C. § 1225(a)(1). This section states that “[a]n alien present in the United States who has not been admitted or who arrives in the United States. . . shall be deemed for purposes of this chapter an applicant for admission.”

38. Applicants for admission under 8 U.S.C. § 1225 are divided into two subsections: those covered by 8 U.S.C. § 1225(b)(1) and those covered by 8 U.S.C. § 1225(b)(2).

39. 8 U.S.C. § 1225(b)(1) generally applies to those noncitizens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” This section also applies to other aliens who receive a special designation by the Attorney General of the United

States. 8 U.S.C. § 1225(b)(1)(A)(iii). These individuals are subject to what is commonly known as “expedited removal.”

40. Noncitizens who fall under 8 U.S.C. § 1225(b)(1) are subject to immediate removal unless they make a fear-based claim. Upon making that claim, if they pass a credible fear interview, they are put into removal proceedings where their fear-based application is considered. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Noncitizens who either do not make a fear-based claim or do not make a credible fear-based claim are detained until removal. 8 U.S.C. §§ 1225(b)(1)(A)(ii), (B)(iii)(IV). Those who make a fear-based claim are detained while an immigration court considers the non-citizen’s claim. *Jennings*, 583 U.S. at 287 citing 8 U.S.C. § 1225(b)(1)(B)(ii).

41. The next category of individuals fall under 8 U.S.C. § 1225(b)(2). This is a general “‘catchall provision’ that applies to all other applicants.” *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 U.S. Dist. LEXIS 191630, at \*12 (E.D.N.Y. Sep. 29, 2025) quoting *Jennings*, 583 U.S. at 285. Those detained under this section are commonly known as “arriving aliens.”

42. 8 U.S.C. § 1225(b)(2)(A) provides 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” while the non-citizen is in removal proceedings under 8 U.S.C. § 1229a.

43. Detention is mandatory under 8 U.S.C. § 1225. But DHS may grant anyone who falls under 8 U.S.C. § 1225(b) temporary parole on a case-by-case and individualized basis. But when the purposes of the parole have been accomplished and/or the terms of that parole are concluded, the individual is returned to detention. *J.U.*, 2025 U.S. Dist. LEXIS 191630, at \*13-14. Those designated as applicants for admission are not eligible to apply for a bond from an



immigration judge.

44. Historically, these individuals are noncitizens who go to a border checkpoint crossing and request entry.

45. The next category of individuals fall under 8 U.S.C. § 1226. Noncitizens detained under this section are then classified under one of two subsections here as well: 8 U.S.C. § 1226(a) and 8 U.S.C. § 1226(c).

46. “Section 1226(a) governs a separate non-mandatory detention scheme and provides for the ‘*default rule*’ for detaining and removing aliens ‘already present in the United States.’” *J.U.*, 2025 U.S. Dist. LEXIS 191630, at \*14 quoting *Jennings*, 583 U.S. at 303.

47. This section 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.” 8 U.S.C. § 1226(a).

48. “While that decision is pending, the Attorney General may “continue to detain the arrested alien,” “release the alien on bond of at least \$1,500,” or “release the alien on conditional parole.” 8 U.S.C. § 1226(a)(1)-(2).

49. 8 U.S.C. § 1226(c) contains several “exceptions [to 8 U.S.C. § 1226(a)] for persons ‘who fall[ ] into one of the enumerated categories involving criminal offenses and terrorist activities.’” *J.U.*, 2025 U.S. Dist. LEXIS 191630, at \*14 quoting *Jennings*, 583 U.S. at 303. Detention is mandatory for those who fall under 8 U.S.C. § 1226(c).

50. But even those detained under 8 U.S.C. § 1226(c) can file a petition for a writ of habeas corpus for prolonged detention in violation of the Due Process Clause of the Fifth Amendment of the U.S. Constitution. A federal judge can then order that an immigration judge conduct a bond hearing with the burden on the government to show by clear and convincing

evidence that the individual is a danger to persons or property or a flight risk and that no alternatives to detention exist that could mitigate that risk for the detention to continue. *See Black v. Dir. Thomas Decker*, 103 F.4th 133 (2d Cir. 2024); *Cantor v. Freden*, 761 F. Supp. 3d 630, 635-41 (W.D.N.Y. 2025).

51. An NTA issued by the DHS can indicate the non-citizen's detention status. The NTA has specific boxes for those who fall under 8 U.S.C. § 1225(b)(1) and (b)(2). Those under 8 U.S.C. § 1225(b)(1) fall under the box that states, "Section 235(b)(1) order was vacated pursuant to: [ ] 8 CFR 208.30 [ ] 8 CFR 235.3(b)(5)(iv)." Those under 8 U.S.C. 1225(b)(2) fall under the box that states, "You are an arriving alien." Finally, those who fall under 8 U.S.C. § 1226(a) fall under the box entitled "You are an alien present in the United States who has not been admitted or paroled."

**B. Petitioner is detained pursuant to 8 U.S.C. § 1226(a).**

52. Petitioner is detained pursuant to 8 U.S.C. § 1226(a) for several reasons.

53. Upon information and belief, Petitioner has been charged as alien present without parole or admission under INA 240.

54. Petitioner, to our knowledge, has never committed an aggravated felony that would subject him to mandatory detention nor is he subject to mandatory detention provisions under the Laken Riley Act.

55. In addition, Petitioner does not fall into any other category.

56. DHS makes no allegation that he ever was under expedited removal under 8 U.S.C. § 1225(b)(1), which is referred to generally as "expedited removal." In addition, since he arrived in 2005, he cannot be subject to expedited removal as a noncitizen must be in the country for less than two years to qualify for expedited removal. *See Make the Road New York v. Noem*, No. 25-

190, 2025 WL 2494908, at \*23 (D.D.C. Aug. 29, 2025).

57. In addition, Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2) because he has already in the United States several years and is not presently “seeking admission” to the United States. *See Kashranov v. Jamison*, 2025 WL3188399 (E.D. Pa. Nov 14 2025)(Wolson. J.) (explaining that the terms “arriving” and “seeking admission” are present-tense words and do not apply to an individuals who have been in the country for several years).

58. To the extent that Respondent argues that Petitioner is detained under 8 U.S.C. § 1225(b) as an applicant for admission pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), this argument fails.

59. In *Yajure Hurtado*, the Board of Immigration Appeals held that anyone who is classified as an “inadmissible alien who establishes that he or she has been present in the United States for over 2 years” can be detained under 8 U.S.C. § 1225(b)(2) and “shall be detained for a proceeding under section 240.” *Id.* at 219-220. The consequence of this decision is that individuals who were historically classified as entry without inspection or EWI and eligible to apply for a bond before an immigration judge under 8 U.S.C. 1226(a) are now ineligible for an immigration judge-issued bond. But the Board’s reversal of historical practice and newly revised interpretation of the detention statutes are not entitled to any deference. *See Loper Bright Ent. v. Raimondo*, 603 U.S. 369, 412-13 (2024). Numerous courts around the country have rejected the reasoning in *Yajure Hurtado* and held that those who have been in the United States longer than two years are classified under 8 U.S.C. § 1226(a) were, at minimum, entitled to a bond hearing before an immigration judge. *Artiga*, 2025 U.S. Dist. LEXIS 196847, at \*15-24; *Orellana v. Moniz*, Civil Action No. 25-cv-12664-PBS, 2025 U.S. Dist. LEXIS 196282, at \*13-14 (D. Mass. Oct. 3, 2025) (collecting cases).

60. Furthermore, the government's policy in *Yajure Hurtado* renders other statutes, e.g., 8 U.S.C. § 1226(c) and the Laken Riley Act, superfluous. *J.U.*, 2025 U.S. Dist. LEXIS 191630, at \*22-24.

61. Petitioner was not, at the time of arrest, paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A), and, therefore, Petitioner could not “be returned” under that provision to mandatory custody under 8 U.S.C. § 1225(b). Petitioner is therefore not subject to mandatory detention under § 1225 for this reason as well.

62. In addition, Petitioner is not lawfully subject to mandatory detention under 8 U.S.C. § 1226(c), including because he has not been convicted of any crime that triggers such detention. *See Demore v. Kim*, 538 U.S. 510, 513-14, 531 (2003) (allowing mandatory detention under § 1226(c) for brief detention of persons convicted of certain crimes and who concede removability).

63. Accordingly, Petitioner is subject to discretionary detention under 8 U.S.C. § 1226(a) based on Respondents' treatment of Petitioner and the plain text of the statute.

64. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon his request, receive a custody redetermination hearing (colloquially called a “bond hearing”) with strong procedural protections. 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

65. If the Court does not release Petitioner outright, Petitioner respectfully requests a bond hearing with the burden on the government to prove by clear and convincing evidence that he is not a danger to the public or property and not a flight risk and to likewise demonstrate by clear and convincing evidence that no alternatives to detention can mitigate the risk of flight or danger.

#### **IV. Petitioner's Arrest and Detention Violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution.**

66. The Due Process Clause of the Fifth Amendment of the U.S. Constitution prevents

the “Government from depriving any person of ‘life liberty or property, without due process of law.’” *J.U.*, 2025 U.S. Dist. LEXIS 191630, at \*27. “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 v. Davis*, 533 U.S. 678, 690 (2001).

67. It is well-established that the Due Process clause “applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

68. DHS arrested and detained Petitioner without an individualized assessment as to whether he is a flight risk and/or a danger to the community in violation of the Due Process Clause of the Fifth Amendment of the U.S. Constitution.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

#### **Violation of Fifth Amendment Right to Due Process (Unlawful Arrest and Detention)**

69. Petitioner alleges and incorporates all prior paragraphs above.

70. DHS detained Petitioner with no process, no showing of changed circumstances and no opportunity for Petitioner to respond to its decision to detain him.

71. This violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution.

72. Petitioner’s arrest and continued detention is therefore unlawful.

73. Petitioner’s continuing detention is therefore unlawful.

74. Therefore, Petitioner requests immediate release from custody.

#### **COUNT TWO**

#### **Violation of Fifth Amendment Right to Due Process (Failure to Provide Bond Hearing Under 8 U.S.C. § 1226(a))**

75. Petitioner alleges and incorporates all prior paragraphs above.

76. Because Petitioner is a person arrested inside the United States and is subject to detention, if at all, under 8 U.S.C. § 1226(a).

77. Petitioner has not been, and will not be, provided with a bond hearing as required by law.

78. Petitioner's continued detention is therefore unlawful.

79. Under the Due Process Clause of the Fifth Amendment to the United States Constitution, 8 U.S.C. § 1226(a), and 8 C.F.R. 236.1(d) & 1003.19(a)-(f), if the Court does not order Petitioner's immediate release, he is entitled to receive a bond hearing before an immigration judge with strong procedural protections.

80. Therefore, if the Court does not release Petitioner outright, Petitioner requests a court order that he is entitled to a bond hearing in front of an immigration judge with the burden on the government to prove by clear and convincing evidence that he is not a danger to the public or property and not a flight risk and to likewise demonstrate by clear and convincing evidence that no alternatives to detention can mitigate the risk of flight or danger or on conditions the Court deems just and proper.

#### **PRAYER FOR RELIEF**

Wherefore, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;
2. Order that Petitioner shall not be transferred outside the Commonwealth of Pennsylvania.

3. Adjudicate this petition pursuant to 28 U.S.C. § 1657 which requires that the Court expedite consideration of any action brought under 28 U.S.C. Chapter 153, which governs habeas petitions.

4. Declare that Petitioner's detention is unlawful.

5. Issue an order requiring Respondents to release Petitioner immediately, or, in the alternative, to provide Petitioner with a bond hearing with the burden on the government to prove by clear and convincing evidence that he is not a danger to the public or property and not a flight risk and to likewise demonstrate by clear and convincing evidence that no alternatives to detention can mitigate the risk of flight or danger or on conditions the Court deems just and proper.

6. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

7. Grant any further relief this Court deems just and proper.

Dated: January 28, 2026  
Philadelphia, PA

Respectfully submitted,

/s/ Fiona Powell

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*Attorney for Petitioner*

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner, Fidel Salcedo Parras, 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.

Dated this 11<sup>th</sup> Day of March, 2026.

/s/ Fiona Powell  
Fiona Powell



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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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MARCIN KEGEL

Petitioner,

Case Action No.: 2:26-cv-1213  
**Hon. Murphy**

v.

MICHAEL ROSE, et. al.

Respondents.

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**PETITIONER'S RESPONSE TO RESPONDENT'S  
OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS**

**A. CHANGED CIRCUMSTANCES SINCE INITIAL FILING.**

Since Mr. Kegel initially filed the above caption Petition for Writ of Habeas Corpus on February 25, 2026, there have been material changes in the facts surrounding the case.

On March 3, 2026, in response to this Petition, counsel for Respondents contacted Petitioner's counsel offering to de-escalate the extra-judicial conditions that ICE had unilaterally added to Mr. Kegel's bond the Immigration Judge had set a \$5000. Despite being unable to reach an agreement – Petitioner's counsel had asked that the government remove any and all extra-judicial conditions – on March 6, 2025, ICE did remove Mr. Kegel's ankle monitor. In its

place, however, ICE merely changed the monitoring program to their less cumbersome, but still extra-judicially restrictive SmartLINK phone “app” -- GPS-based supervision program.<sup>1</sup>

The BI SmartLINK Agreement requires that individuals:

1. Install the SmartLINK application on their personal mobile device;
2. Keep their personal mobile device charged, powered on, and on their person at all times;
3. Allow SmartLINK to access location information;
4. Submit to random check-ins which provide biometric information to GEO Group;
5. *Remain within the area designated by ERO [Pennsylvania, New Jersey, and Delaware], and seek, and receive, ICE’s permission to travel beyond the area.*

**B. MR. KEGEL REMAINS “IN CUSTODY” BY VIRTUE OF HIS ENROLLMENT IN ISAP.**

Respondents argue that Mr. Kegel is no longer “in custody” and so does no longer meet the threshold requirement for habeas relief. But custody is not limited to actual physical detention in a jail or prison. Rather, the Petitioner must only show that he is "subject to restraints 'not shared by the public generally'" to qualify for habeas relief. *Hensley v. Municipal Ct.*, 411 U.S. 345, 351, 93 S.Ct. 1571, 36 L.Ed.2d 294 (1973) (quoting *Jones v. Cunningham*, 371 U.S. 236, 240, 243, 83 S.Ct. 37, 39 L.Ed.2d 285 (1963)). That is certainly the case here, as the public, generally, is not connected and monitored to a government GPS tethering device, nor do members of the public have to remain in the tri-state area, nor ask for, and wait for, permission to travel beyond those states’ borders.

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<sup>1</sup> The BI SmartLINK application is an alternate form of electronic monitoring used by ICE for individuals enrolled in the Intensive Supervision Appearance Program (ISAP). BI SmartLINK is owned by GEO group, a for profit company which operates prisons and immigration detention centers in the United States.

Respondents have conceded that in the immigration context, the use of GPS monitoring through ISAP constitutes custody and meets the threshold requirement for habeas relief. Gov't Resp. at 5. Indeed, the Respondents have acknowledged that courts have found that even just an order of supervision upon release from detention is custody. Gov't Resp. at 6.

Although ICE removed Mr. Kegel's ankle monitor, the government continues to impose significant restraints on his liberty through its SmartLINK monitoring program.<sup>2</sup> These restrictions, mandatory GPS monitoring, compelled electronic reporting, and geographic confinement, are precisely the types of restraints that the Supreme Court has long held constitute "custody" for purposes of habeas jurisdiction.<sup>3</sup>

### **C. THE CONDITIONS OF RELEASE IMPOSE VIOLATE CONSTITUTIONAL DUE PROCESS**

The Due Process violation that undergirds this petition is that the government (i.e., ICE), despite participating as Petitioner's adversary in a full and fair detention hearing, has gone far beyond what the Immigration Judge imposed, after hearing the very government's arguments. Not only is Mr. Kegel restricted in his physical movement, but ICE and its "app" now require him not only to install the SmartLINK application on his personal mobile phone but also permit ICE to monitor the status of his cellular data coverage, Wi-Fi connectivity, and location services.

As a result, Mr. Kegel cannot freely visit his family in Maryland, where he and his wife spend nearly half their time caring for her elderly mother and visiting family. Nor can he freely

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<sup>2</sup> In an apparent attempt to assuage the Petitioners, Respondents assert that SmartLINK uses only "single GPS point monitoring" and point to ICE's own publication to confirm this notion. Gov't Resp. at 5. Respondents fail to note that the cited description of the Alternatives to Detention program is archived and "not reflective of current practice." ICE, Alternatives to Detention, <https://www.ice.gov/features/atd> (last updated Jan. 7, 2026). As a result, neither Mr. Kegel nor the Court can determine whether ICE is using SmartLINK for continuous location monitoring or whether Mr. Kegel's personal device is functioning as a 24-hour tracking device. But that ambiguity is of no moment, as members of the public, generally, have no such enforceable tethers to the government.

<sup>3</sup> Respondents mischaracterize Mr. Kegel's current reporting conditions as "temporary" and "minimally invasive." Although ICE removed Mr. Kegel's ankle monitor after he challenged its legality, he remains subject to onerous reporting requirements that significantly burden his liberty, far beyond what a member of the public experiences.

plan the couple's marriage celebration scheduled in Maryland in August 2026. See Document 1. These restrictions exist despite an Immigration Judge's determination that Mr. Kegel is not a flight risk and setting a minimal bond.

SmartLINK does more than restrict Mr. Kegel's ability to move freely, it also is highly invasive. The application requires access not only to camera and location services but also requests permission to record audio and make phone calls. Its privacy policy indicates that it may collect extensive app activity, including responses to notifications, in-app searches, web browsing, phone calls, and video conferencing. Documents, *Meet SmartLINK, the App Tracking Nearly a Quarter Million Immigrants*, <https://documentedny.com/2022/06/27/smartlink-app-tracking-immigrants-ice-privacy/> (June 27, 2022).

Respondents also state that the conditions imposed on Mr. Kegel are "temporary in nature." Gov't Resp. at 6. Respondents claim that these conditions are "temporary" because ICE's "best practices" recommend periodic review.<sup>4</sup> Gov't Resp. at 6. But members of the public are not subject to any form of targeted government restraint, let alone one with "period review." Respondent's invocation of internal "best practices" therefore provides little assurance that these restrictions will be temporary, but rather may be more accurately classified as indefinite.

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<sup>4</sup> Reporting has shown that ICE frequently fails to follow its own policies, let alone its best practices. For example, a 2025 investigation found that ICE detained individuals in temporary holding rooms for weeks or even months despite agency policy limiting such confinement to short periods. The Guardian, *Revealed: ICE Violates Its Own Policy by Holding People in Secretive Rooms for Days or Weeks*, <https://www.theguardian.com/us-news/2025/oct/30/ice-hidden-detention-sites> (Oct. 30, 2025). Likewise, federal inspections have repeatedly found ICE detention facilities operating in violation of the agency's own detention standards. The Washington Post, *60 violations in 50 days: Inside ICE's giant tent facility at Ft. Bliss*, <https://www.washingtonpost.com/business/2025/09/16/ice-detention-center-immigration-violations/> (Sept. 16, 2025).

**D. ICE DOES NOT HAVE AUTHORITY TO SET ADDITIONAL CONDITIONS OF RELEASE FOLLOWING A CUSTODY RE-DETERMINATION BY AN IMMIGRATION JUDGE.**

Respondents assert that the power to impose release conditions rests solely with ICE, with an opportunity for an immigration judge to review. Gov’t Resp. at 9. But that is as incorrect as it is disingenuous. The under the INA , ICE has the authority in the first instance, for obvious reasons of efficiency, to release one of their detainees subject to “bond of at least \$1,500 with security approved by, and containing conditions prescribed by, [ICE]; or conditional parole . . . .” 8 U.S.C. § 1226(a). But, if aggrieved by ICE’s decision, the detainee may request a bond *redetermination* hearing – where ICE is represented by counsel – before an Immigration Judge. *Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 275 (3d Cir. 2018) (cleaned up); 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8)2; 8 C.F.R. 1003.19(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1) (identical text; separate codifications for DHS and DOJ). If ICE is there aggrieved or if the detainee is, either may then appeal to the Board of Immigration Appeals (“BIA”). 8 C.F.R. § 1236.1(d)(3).

This regulatory framework is sequential and must be read altogether to avoid surplusage. 8 C.F.R. Sections 236.1(c)(8) and 1236.1(c)(8) give ICE authority only to set conditional parole in the first instance. This regulatory power is derived from 8 U.S.C. Section 1226(a)(2). But if ICE denies a detainee conditional parole or sets an unaffordable bond, the detainee may request an immigration judge’s review. *Johnson v. Guzman Chavez*, 594 U.S. 523, 527-28 (2021) (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). Because of this framework, the name of the hearing before an immigration judge is a “bond redetermination hearing.”

If a party is dissatisfied with the immigration judge’s custody redetermination, either may appeal the immigration judge’s order to the Board of Immigration Appeals. That is, ICE cannot simply add a custody or other special condition to a bond unilaterally as the bonded person

makes his way out of the forum, into the community, and back to his home and family.

Accordingly, based on ICE's own regulations, only an immigration judge and the BIA may redetermine custody conditions. Permitting ICE to impose additional conditions after a full and fair adversarial hearing during which an immigration judge ordered release and set conditions renders the administrative adjudicatory process null.

Respondents contend that the regulations are nonsequential and exist independently of each other. Respondents state that the power to "impose release conditions rests solely with ICE," and an immigration judge's power pursuant to 8 C.F.R. Section 1236.1(d) pertains only to review of ICE's release conditions. Gov't Resp. at 9. A complete textual analysis of the regulations requires that they be read together, giving meaning to each section so as to avoid absurd outcomes, redundancy, and futility of certain provisions. If ICE's interpretation of the process were correct—that ICE may initially determine release conditions under 8 C.F.R. Section 1236.1(c)(8), the immigrant may appeal those conditions to an immigration judge under 8 C.F.R. Section 1236.1(d)(1) in a bond redetermination hearing, yet ICE can thereafter impose additional harsher release conditions notwithstanding the immigration judge's order, all while never having advocated for such conditions before the immigration judge or appealed to the BIA under Section 1236.1(d)(3)—then the administrative adjudicatory process would be rendered meaningless and superfluous.

In sum, although ICE did remove the GPS monitory that they had strapped onto Mr. Kegel's ankle after the judge's grant of the \$5,000 bond, he remains subject to significant restraints on his liberty through the SmartLINK monitoring and geographic travel restrictions imposed unilaterally by ICE. These conditions place Mr. Kegel firmly "in custody" for purposes of habeas jurisdiction and impose burdens that are inconsistent with the Immigration Judge's

custody determination. ICE cannot circumvent the administrative custody process by imposing additional surveillance and travel restrictions after an Immigration Judge has ordered release on bond. As such, the Court should grant the petition and provide appropriate relief.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I certify that, on this date, I filed the foregoing Response to the Opposition to Petition for Writ of Habeas Corpus via the Court's CM/ECF System, thereby making it available for viewing and download for all parties to the case.

Dated: March 16, 2026

/s/ Fiona Powell  
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