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8 Application *Pro Hac Vice* Forthcoming

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF ARIZONA

12 David Jose Vazquez Arevalo
13 Petitioner,

14 v.

Case No:
**Petition for the Writ of
Habeas Corpus**

15 David R. Rivas, Warden, San Luis Regional Detention Center;
16 Todd Lyons, in his official capacity as Acting
17 Director of U.S. Immigration and Customs Enforcement;
18 Kristi Noem, in her official capacity as Secretary of the
19 United States Department of Homeland Security; and
20 Pamela Bondi, in her official capacity as Attorney General
21 of the United States,
22 Respondents.

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INTRODUCTION

28 NOW COMES Petitioner, by and through undersigned counsel, and seeks a writ of
29 habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his continued
30 immigration detention at San Luis Regional Detention Center. Petitioner contests Respondents'
31 determination that he is subject to mandatory detention as an applicant for admission,
32 notwithstanding his prior encounter with immigration authorities, positive credible fear

1 determination, discretionary release into the interior of the United States, and placement into
2 removal proceedings. As applied to Petitioner, this detention classification, adopted by the
3 Attorney General, and as enforced through recent Board of Immigration Appeals precedent, has
4 resulted in prolonged confinement without any forum empowered to conduct an individualized
5 custody determination or order release.
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7 **PARTIES**

8 1. Petitioner David Jose Vazquez Arevalo is a native and citizen of Venezuela who is
9 currently detained by U.S. Immigration and Customs Enforcement (“ICE”) at San Luis Regional
10 Detention Center, located in San Luis, Arizona. Petitioner is in ICE custody under color of
11 immigration authority and seeks relief through this petition for a writ of habeas corpus to
12 challenge the legality of his detention.
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14 2. Respondent David R. Rivas Warden of San Luis Regional Detention Center is
15 Petitioner’s immediate custodian and is sued in his official capacity. The Warden is responsible
16 for the day-to-day operation and oversight of the facility where Petitioner is confined and
17 exercises legal and physical control over Petitioner.
18

19 3. Respondent Todd Lyons is the Acting Director of ICE. As the Senior Official Performing
20 the Duties of the Director of ICE, Respondent Lyons is responsible for the administration and
21 enforcement of the immigration laws of the United States. He routinely oversees operations
22 within the jurisdiction of the Arizona District Court, and is legally responsible for pursuing
23 removal of noncitizens including Petitioner, and is therefore a legal custodian of Petitioner.
24 Respondent Lyons may be served at: ICE, Office of the Principal Legal Advisor, 500 12th Street
25 SW, Mail Stop 5900, Washington, DC 20536-5900.
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1 4. Respondent Kristi Noem is named in her official capacity as Secretary of the U.S.
2 Department of Homeland Security. In this role, she has authority under Section 103(a) of the
3 Immigration and Nationality Act, 8 U.S.C. § 1103(a), for the administration and enforcement of
4 the immigration laws. She routinely oversees operations within the jurisdiction of the Arizona
5 District Court, and and is a legal custodian of Petitioner. Respondent Noem may be served at:
6 U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King
7 Jr. Avenue SE, Washington, DC 20528-0485.
8

9 5. Respondent Pamela Bondi is the Attorney General of the United States and is sued in her
10 official capacity. As head of the U.S. Department of Justice, she is responsible for oversight and
11 enforcement of immigration law under 8 U.S.C. § 1103(g). She routinely transacts business in
12 the Arizona District Court and is a legal custodian of Petitioner. Respondent Bondi may be
13 served at: U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530-
14 0001.
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16 **JURISDICTION & VENUE**

17 6. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2241,
18 Article I, §9, cl. 2 (the Suspension Clause) and Article III of the U.S. Constitution, the
19 Administrative Procedure Act, 5 U.S.C. § 701 et seq.; and 28 U.S.C. § 2201 (Declaratory
20 Judgment).
21

22 7. An actual and justiciable controversy exists between the parties under 28 U.S.C. § 2201,
23 and this Court has authority to grant declaratory and injunctive relief. Id. §§ 2201, 2202. The
24 Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651.
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1 8. Venue is proper in the District of Arizona under 28 U.S.C. § 2241 and 28 U.S.C. § 1391.
2 At the time this proceeding was initiated, Petitioner was detained at the San Luis Regional
3 Detention Center. The Petitioner is presently detained at the direction of Respondents and a
4 substantial part of the events giving rise to the claims and relevant facts occurred within this
5 district.
6

7 **STATEMENT OF FACTS**

8 9. Petitioner David Jose Vazquez Arevalo (A# ) is a native and citizen of
9 Venezuela currently detained by the Department of Homeland Security ("DHS"), Immigration
10 and Customs Enforcement ("ICE").
11

12 10. Petitioner entered the United States on or about November 7, 2023, after receiving
13 advance authorization through the CBP One appointment process.

14 11. Following that authorization, Petitioner presented himself at the border to immigration
15 authorities as required and sought refuge in the United States based on his credible fear of
16 returning to Venezuela.
17

18 12. After presenting at the border and expressing his fear of return, Petitioner was processed
19 by immigration authorities and placed into removal proceedings.

20 13. As is typical in such cases, Petitioner was released from immigration custody after his
21 initial processing, either to parole or on his own recognizance, while his immigration case
22 proceeded.
23

24 14. Petitioner was issued a Notice to Appear ("NTA") initiating removal proceedings and
25 requiring him to appear before the Immigration Court to pursue his claims for relief.
26

1 15. In accordance with that process, Petitioner filed an Application for Asylum and for
2 Withholding of Removal (Form I-589) on October 10, 2024, seeking protection in the United
3 States.

4 16. Petitioner complied with the requirements of the immigration process and remained at
5 liberty while his immigration case proceeded.

6 17. On or about October 9, 2025, Petitioner was taken into ICE custody following arrest on
7 suspicion of possession of a controlled substance out of Nassau County, New York. That charge
8 remains pending and is believed to be unresolved as a result of his immigration detention for
9 which a bench warrant issued due to his custody with ICE.

10 18. Following that arrest, Petitioner was transferred into immigration custody and has
11 remained continuously detained since that time.

12 19. Petitioner is currently detained at the San Luis Regional Detention Facility, pursuant to
13 ICE authority.

14 20. Petitioner's detention arises within the context of a broader change in federal immigration
15 enforcement posture under the current administration, pursuant to which many asylum seekers
16 who previously entered the United States, sought refuge, and were released into the community
17 while awaiting adjudication of their immigration cases have been re-detained by DHS.

18 21. Under these revised enforcement policies, individuals such as Petitioner—who previously
19 entered the United States, sought asylum, and were released pending their immigration
20 proceedings—are now being reclassified by DHS as “applicants for admission.”
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1 22. Through this classification, DHS has asserted detention authority that places custody
2 determinations solely within the discretion of the Department, rather than subject to review by
3 Immigration Judges.

4 23. In practice, Immigration Judges have frequently declined jurisdiction to review custody
5 or bond determinations for individuals classified in this manner, relying on recent Board
6 interpretations adopted within the Executive Office for Immigration Review, as well as internal
7 agency memoranda and enforcement policies.
8

9 24. As a result, Petitioner is effectively without access to meaningful bond hearings or
10 custody redetermination proceedings, leaving his detention outside meaningful review within the
11 immigration court system.

12 25. Consequently, Petitioner remains detained at the San Luis Regional Detention Facility
13 without having received a meaningful individualized custody determination before a neutral
14 adjudicator.
15

16 26. Petitioner therefore brings the within Petition for Writ of Habeas Corpus, challenging
17 Respondents' continued detention of him and the failure to provide meaningful review of his
18 custody and bond status.
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20 **GROUND FOR RELIEF**

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22 **GROUND ONE**

23 **Unlawful Detention Authority and Statutory Misclassification**

24 *(28 U.S.C. § 2241 — Statutory Claim)*
25

1 27. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set
2 forth herein.

3 28. Respondents are unlawfully detaining Petitioner under an interpretation of 8 U.S.C. §
4 1225(b)(2) that purportedly authorizes mandatory detention without access to a bond hearing.

5 29. Under Respondents' interpretation, any noncitizen who initially entered the United States
6 without admission may be detained under § 1225(b)(2) as an "applicant for admission,"
7 regardless of how long that person has been physically present in the United States or whether
8 that individual was previously released from immigration custody.

9 30. Respondents rely on the statutory language concerning the inspection of applicants for
10 admission to assert detention authority that places custody determinations solely within the
11 discretion of the Department of Homeland Security and outside the jurisdiction of Immigration
12 Judges.
13

14 31. Petitioners across the United States—including Petitioner here—have challenged this
15 interpretation, arguing that detention in these circumstances is properly governed by 8 U.S.C. §
16 1226(a), which provides for discretionary detention subject to bond hearings before an
17 Immigration Judge.
18

19 32. Section 1226(a) expressly authorizes the detention of noncitizens pending removal
20 proceedings but provides that such detention is subject to custody redetermination by an
21 Immigration Judge, including the opportunity for release on bond.
22

23 33. Respondents' interpretation of § 1225(b)(2) effectively nullifies this statutory framework
24 by permitting the Executive Branch to detain individuals without access to a bond hearing simply
25 by classifying them as "applicants for admission," even after they have already entered the
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1 United States, been processed by immigration authorities, and released while their immigration
2 cases proceed.

3 34. Courts across the country have repeatedly rejected this interpretation as inconsistent with
4 the structure and text of the Immigration and Nationality Act.

5 35. In a recent decision from the United States District Court for the Middle District of
6 Pennsylvania, the Court rejected the government's reading of the statute and held that detention
7 in these circumstances is governed by 8 U.S.C. § 1226(a) rather than § 1225(b)(2). See
8 *Bharatkumar Chaudhari v. Rose*, No. 3:26-CV-242, 2026 WL 540378, at *5 (M.D. Pa. Feb. 26,
9 2026).
10

11 36. As the Court explained, "every active district judge in this District has rejected the
12 government's reading of the statute and held that detention is actually governed by § 1226(a),
13 rather than § 1225(b)(2)." *Id.*
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15 37. The Court further observed that the rulings in that District align with hundreds of
16 decisions from other federal district courts nationwide rejecting the government's interpretation
17 of the detention statutes. *Id.*

18 38. The Court also explained that the government's expansive reading of § 1225(b)(2) raises
19 serious concerns under the major questions doctrine, because Congress has not clearly authorized
20 the sweeping detention authority the government claims. *Id.*
21

22 39. Accordingly, the Court concluded that under the best reading of the statutory language,
23 the prevailing precedent within the District, and the major questions doctrine, detention in these
24 circumstances is governed by § 1226(a) rather than § 1225(b)(2). *Id.*
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1 40. Under the plain language of § 1226(a), individuals detained pending removal proceedings
2 are entitled to custody redetermination before an Immigration Judge, including the opportunity to
3 seek release on bond.

4 41. However, the Board of Immigration Appeals has taken the position that Immigration
5 Judges lack authority to grant bond to individuals whom DHS classifies as applicants for
6 admission, relying on *Matter of Yajure-Hurtado*. *Id.*

7 42. Because Immigration Judges are obligated to follow that precedent, ordering a bond
8 hearing in such circumstances may provide no meaningful remedy where Immigration Judges
9 believe themselves bound to deny jurisdiction. *Id.*

10 43. Recognizing this problem, courts addressing this issue have concluded that where
11 detention rests on an unlawful statutory interpretation and Immigration Judges are constrained by
12 agency precedent, the appropriate remedy is release from detention rather than a hollow bond
13 hearing. *Id. at 6.*

14 44. Because Respondents are detaining Petitioner under an unlawful statutory interpretation
15 and misclassification of the governing detention authority, Petitioner's continued detention is not
16 authorized by law.

17 45. Petitioner is therefore entitled to relief under 28 U.S.C. § 2241, including an order
18 directing his immediate release from detention or such other relief as this Court deems just and
19 proper.
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GROUND TWO

Violation of the Fifth Amendment Due Process

(Prolonged Detention Without Hearing or Judicial Review)

46. Petitioner realleges and incorporates by reference all preceding paragraphs as if more fully set forth herein.

47. Even if Respondents contend that Petitioner's detention is authorized under the immigration detention provisions of the Immigration and Nationality Act, the Due Process Clause of the Fifth Amendment independently limits the Government's authority to detain individuals physically present within the United States.

48. Petitioner entered the United States, presented himself to immigration authorities seeking refuge, and was processed and released while his immigration case proceeded.

49. After residing in the community and complying with the immigration process, Petitioner was subsequently re-detained by DHS and placed into immigration custody, where he remains confined.

50. Throughout Petitioner's detention, no neutral decision-maker has conducted any individualized custody determination, including any assessment of flight risk, danger to the community, or the necessity of continued confinement.

51. As a result, Petitioner's continued detention rests solely on executive custody determinations, without any adversarial process, burden of proof, or meaningful opportunity to contest his confinement before a neutral adjudicator.

1 52. Civil immigration detention without any individualized custody hearing, and without any
2 forum capable of ordering release, violates fundamental due process protections guaranteed by
3 the Fifth Amendment.

4 53. Courts within this Circuit and across the country have repeatedly recognized that
5 noncitizens physically present in the United States are entitled to the protections of the Due
6 Process Clause of the Fifth Amendment.

7 54. As explained by numerous courts addressing circumstances similar to those presented
8 here:
9

10 The facts of this case are similar to many other cases within this
11 Circuit and across the country where courts have concluded that
12 noncitizens present in the United States enjoy the protections of the
13 Due Process Clause, including this Court in *Y- C-*, 2025 W 3653496.
14 Thus, the Court need not belabor the point again. As a “person[]
15 within the United States,” petitioner enjoys due process rights.
16 *Zadvydas*, 533 U.S. at 693; see *Barrera Simon v. Olson*, No. 25-cv-
17 14799, 2025 WL 3567469, at *6 (N.D. Ill. Dec. 13, 2025) (“The
18 Fifth Amendment’s Due Process Clause applies to all persons within
19 the United States, including aliens, whether their presence here is
20 lawful, unlawful, temporary, or permanent.”) (citing *Zadvydas*, 533
21 U.S. at 693); see also *Rocano Buestan*, 2025 WL 3496361, at *4
22 (holding that procedural due process rights applied to petitioner who
23 entered without inspection); *R.P.L.*, 2025 WL 3731864, at 3 (same).
24 *Crespo Tacuri v. Genalo*, 25-CV-06896 (NCM), 2026 WL 35569, at
25 6 (E.D.N.Y. Jan. 6, 2026).

26 55. These principles apply with full force here, where Petitioner—an individual physically
27 present within the United States and pursuing relief through the immigration courts—has been
detained without any opportunity to obtain an individualized custody determination before a
neutral adjudicator.

1 56. Because Petitioner has been detained without any meaningful opportunity to challenge
2 the necessity of his confinement, his continued detention violates the Fifth Amendment's
3 guarantee of due process.

4 57. Petitioner is therefore entitled to *habeas relief* including immediate release from custody
5 and an order enjoining Respondents from continuing to detain him under the challenged
6 detention framework, or, at minimum and in the alternative, an order directing Respondents to
7 provide a prompt and constitutionally adequate individualized custody hearing before a neutral
8 adjudicator with authority to order release.
9

10 **NO ADEQUATE ALTERNATIVE REMEDY**

11 23. Petitioner has no meaningful administrative avenue through which to obtain review of his
12 continued immigration detention. Under the detention policies currently applied by the
13 Department of Homeland Security to individuals classified as applicants for admission, custody
14 determinations are treated as matters committed to the sole discretion of DHS.
15

16 24. Consistent with these policies, Immigration Judges routinely decline to exercise
17 jurisdiction over bond or custody redeterminations for individuals in Petitioner's position,
18 relying on precedential decisions of the Board of Immigration Appeals that interpret the
19 governing statutes to limit Immigration Court authority over such custody determinations, as
20 well as internal EOIR memoranda further guiding the judges' decisions.
21

22 25. Those precedential decisions reflect the Board's endorsement of the government's
23 position that individuals subject to the challenged detention classification are not entitled to
24 routine bond hearings before Immigration Judges.
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1 26. As a result, individuals situated like Petitioner are effectively foreclosed from obtaining
2 meaningful custody review through the Immigration Court system.

3 27. The Board of Immigration Appeals has repeatedly affirmed the legal policies relied upon
4 by DHS to justify such detention practices, leaving no realistic prospect that further
5 administrative proceedings would result in reconsideration of the legality of Petitioner's custody.
6

7 28. Because the Immigration Court frequently disclaims jurisdiction over custody review in
8 cases such as this, and because the Board has adopted interpretations aligned with the
9 government's detention position, further administrative attempts to obtain custody review would
10 be futile.

11 29. In practice, the current administrative framework governing immigration detention has
12 created a system in which executive detention decisions are largely insulated from meaningful
13 review within the agency itself.

14 30. Requiring Petitioner to pursue additional administrative review under these
15 circumstances would serve no practical purpose and would merely prolong Petitioner's already
16 extended detention while his removal proceedings continue.

17 31. Because no effective administrative forum remains available to test the legality or
18 constitutionality of Petitioner's continued confinement, habeas corpus relief under 28 U.S.C. §
19 2241 is the only mechanism through which Petitioner may obtain meaningful judicial review of
20 his detention.
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23 **RELIEF REQUESTED**

24 WHEREFORE, for the foregoing reasons, Petitioner respectfully requests that this Court
25 grant the Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, order Petitioner's
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1 immediate release from custody, order that Petitioner shall not be re-detained pursuant to 8
2 U.S.C. § 1225(b)(2) absent a material change in relevant circumstances, direct Respondents to
3 certify compliance with the Court's order of release within a time period set by the Court, and
4 award attorneys costs and fees under the EAJA, and grant such other and further relief as the
5 Court deems just and proper.
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8 Respectfully submitted,

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26 ¹ Attorney Motion to Appear Pro Hac Vice Forthcoming
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