

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

Jose Alejandro Suarez-Garcia,

Petitioner,

v.

WARDEN, Florida Soft Side South,
Alligator Alcatraz;
GARRETT J. RIPA, Miami Field
Office Director, U.S. Immigration and
Customs
Enforcement and Removal Operations;
KRISTI NOEM, Secretary of the U.S.
Department of Homeland Security;
PAMELA BONDI, Attorney General
of the
United States, in their official capacities,

Case No. 2:26-cv-00687

**PETITION FOR WRIT OF
HABEAS CORPUS**

Respondents.

**PETITION FOR WRIT OF HABEAS CORPUS
INTRODUCTION**

Petitioner, Mr. Jose Alejandro Suarez-Garcia ("Petitioner"), is a citizen of Spain and a native of Venezuela with no criminal history. He entered the United States lawfully under the Visa Waiver Program ("VWP"). He applied for asylum within the one-year statutory deadline. Respondents have arbitrarily detained him for over twenty-nine (29) days. On or about February 8, 2026, Petitioner was detained in Miami, Florida, while lawfully employed and contributing to the Sunshine State as a Vessel Captain, when an

Immigration Officer directed him to dock the vessel he was operating—an Azimut 68 ft—despite having committed no traffic or criminal violation, and without a judicial warrant. He is currently detained under poor conditions at Florida Soft Side South, Alligator Alcatraz, without the opportunity to seek release on bond, in violation of his human rights, constitutional rights, and the Immigration and Nationality Act (“INA”).

Petitioner is eligible for bond under 8 U.S.C. § 1226(a). Although he is neither a flight risk nor a danger to the community and was arbitrarily arrested in the interior of the United States, where he has lived, worked, and sought lawful protection, he was unlawfully denied bond before the Immigration Court. The denial relied on *Matter of A-W-*, 25 I&N Dec. 45 (BIA 2009), which bars an Immigration Judge from considering bond for VWP entrants when a Notice to Appear (“NTA”) has not been filed. This rule is excessive. When VWP entrants applied for asylum, they do not receive an NTA but instead are issued a Form I-863, Notice of Referral to Immigration Judge. 8 C.F.R. §§ 217.4(b)(1), 208.2(c)(1)(iv). Requiring an NTA under these circumstances is therefore contrary to law, as it does not reflect the procedure established for asylum-only proceedings.

Several district courts have rejected *Matter of A-W-* and declined to defer to it even under the deferential *Chevron* framework, which was subsequently overruled by *Loper Bright Enterprises, et al. v. Raimondo*, 603 U.S. ____ (2024) (No. 22-451). *Matter of A-W-* is erroneous because it concluded that detention of VWP entrants is governed by 8 U.S.C. §1187(c)(2)(E). However, that statute, as a matter of law, does not provide authority for detention, as it merely obligates VWP countries to accept repatriations. Under the INA, detention authority covers: (1) noncitizens detained under 8 U.S.C. § 1226, including

mandatory detention for noncitizens with certain criminal cases, 8 U.S.C. § 1226(c); (2) noncitizens subject to expedited removal or seeking admission under 8 U.S.C. § 1225; and (3) noncitizens with a final order of removal under 8 U.S.C. § 1231. *Matter of A-W-* exceeds statutory authority and cannot justify detention.

The Petitioner's statutory and constitutional rights to meet confidentially with his attorney have also been violated by Respondents, including deprivation of attorney-client privilege. The official DHS website for Alligator Alcatraz has an incorrect phone number listed for visitor information. Therefore, due to the lack of direct access to attorney visits, Petitioner has been forced to contact his attorney through an application that monitors and records the conversations. Respondents' actions promote incommunicado detention and deprive the Petitioner of his rights. Petitioner presents neither a flight risk, a danger to the community, nor a threat to national security. Petitioner therefore seeks an order from this Court declaring his continued detention without the right to bond unconstitutional under the Fifth Amendment of the U.S. Constitution and ordering his immediate release or a bond hearing under 8 U.S.C. § 1226.

JURISDICTION

1. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security (DHS). He is detained at Florida Soft Side South, Alligator Alcatraz, in Ochopee, Florida, and is under the direct control of Respondents and their agents.
2. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

3. This Court has subject matter jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, clause 2 of the United States Constitution (Suspension Clause).
4. 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.
5. Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§ 1252(b)(9), 1252(f)(1), or 1226(e). Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839-41 (2018) (holding that 8 U.S.C. §§ 1252(b)(9) and 1226(e) do not bar review of challenges to prolonged immigration detention).

VENUE

6. Venue is proper because Petitioner is detained at Florida Soft Side South, Alligator Alcatraz, in Ochopee, Florida, which is within this District. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973).
7. Venue also lies in this District because Respondents are employees, officers, or agencies of the United States, and the detention underlying this claim is continuing within the Middle District of Florida. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

8. 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.*

9. 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).

PARTIES

10. Petitioner Mr. Jose Alejandro Suarez-Garcia is an asylum seeker and citizen of Spain and Venezuela, who most recently entered the United States on or about March 10, 2021. Petitioner is currently detained at Florida Soft Side South, Alligator Alcatraz, in Ochopee, Florida. He has been in custody of the Department of Homeland Security (DHS) and under the direct control of Respondents and their agents since February 8, 2026.
11. Respondent Warden is sued in his official capacity as the Warden of Florida Soft Side South, Alligator Alcatraz, located at Ochopee, Florida, and has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner.
12. Respondent Mr. Garrett J. Ripa is sued in his official capacity as the Acting Director of the Miami Field Office of U.S. Immigration and Customs Enforcement and Removal Operations. Respondent Mr. Ripa is a legal custodian of Petitioner and has the authority to release him.
13. Respondent Ms. Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this

capacity, Respondent Ms. Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees the U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's custody. Respondent Ms. Noem is a legal custodian of Petitioner.

14. Respondent Ms. Pamela 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 BIA. Respondent Ms. Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

Lawful Entry and Asylum Compliance

15. Petitioner Mr. Jose Alejandro Suarez-Garcia is a 26-year-old citizen of Spain and a native of Venezuela.
16. On March 10, 2021, Petitioner entered legally to the United States under the Visa Waiver Program ("VWP"). Since that date, he has resided continuously in the United States.
17. On November 3, 2021, Petitioner timely applied for asylum within the one-year statutory deadline. Petitioner fled Spain after he was subjected to xenophobia and threats for being Venezuelan, but also due to his past persecution in Venezuela on account of his political opinion, he urgently needed to leave the country to protect his life. Neither of his parents live in Venezuela or Spain for the same reason.
18. Petitioner cannot safely return to Venezuela or Spain, as he has a well-founded fear of future persecution.

19. Petitioner has the right to defend his asylum claim before an Immigration Judge. As of now, his next hearing has not been scheduled yet, and the record confirms that he is not subject to a final executable order of removal. (*See* Ex. A, EOIR Automated Case Information)

Detained at Alligator Alcatraz

20. On or about February 8, 2026, Petitioner was detained in the interior of the United States, in Miami, Florida, while lawfully employed as a Vessel Captain. At that time, an Immigration Officer directed him to dock the vessel he was operating—an Azimut 68-ft—despite having committed no traffic or criminal violation, and without a judicial warrant authorizing such detention.
21. Petitioner is currently detained by U.S. Immigration and Customs Enforcement at Florida Soft Side South, Alligator Alcatraz, in Ochopee, Florida, separated from his family, community and workplace. (*See* Ex. B, Current Detention Facility.)

Motion for Bond Rejected on Jurisdictional Grounds

22. Petitioner filed a written Pre-NTA Motion for Custody Redetermination before the Immigration Court in Miami, Florida.
23. On February 20, 2026, Petitioner appeared at a bond hearing before the Immigration Judge, raising statutory and constitutional objections, but the hearing was not completed, as the Judge stated that he lacked jurisdiction under INA § 236, 8 U.S.C. § 1226, as Petitioner entered the United States on a visa waiver and a Notice to Appear (“NTA”) has not been served. Therefore, no individualized custody determination was made.
24. Prior to the Judge’s determination that he lacked jurisdiction, and as an alternative to constitutional claims under the Fifth Amendment,

the Petitioner respectfully inquired whether, under the discretionary authority of the Department of Homeland Security (DHS) to issue a NTA pursuant to INA § 239(a), 8 U.S.C. § 1229(a), an NTA would be issued in the Petitioner's favor, given that he has no criminal record and contributes positively as a Vessel Captain to the Miami community. DHS, however, declined to exercise its discretion.

25. As a result of that jurisdictional ruling, the Immigration Judge's written bond decision does not acknowledge, address, or resolve Petitioner's statutory and constitutional arguments, nor indicate that they were considered. It also does not evaluate the evidence presented showing that Petitioner is not a flight risk, is not a danger to the community, and has strong family and community ties. (See Ex. C, Immigration Judge Written Bond Decision.)

26. Petitioner has remained in immigration detention for more than 29 days without any criminal convictions. He is not a flight risk, poses no danger to the community, and contributes to the U.S. economy through employment. Petitioner has strong family and community support, including his U.S. citizen sponsor, Gerardo Antonio Matos Diaz, and his employer, Bound Yachting. (See Ex. D, Sponsor's Affidavit of Support; Ex. E, Employer's Letter of Support.)

Procedural Irregularities and Detention Conditions

27. Since being retained, Petitioner's Immigration Counsel has attempted to meet confidentially with his client in order to safeguard the client's right to communicate with counsel, and to protect the attorney-client privilege.

28. As of today, the official DHS page for the Florida Soft Side South, Alligator Alcatraz, detention facility lists (305) 207-2100 as the contact

number for visitor information. (*See* Ex. F, Facility Page.) Despite repeated attempts by Petitioner's Immigration Counsel to contact this number, he has been unable to schedule a confidential visit with his client. (*See* Ex. G, Declaration of Immigration Counsel.)

29. On February 23, 2026, an ICE officer confirmed to the Immigration Counsel that the number listed in the official website is not the Alcatraz facility number, but the number for the Krome detention facility, and that the system had not been updated. Despite requesting the correct information, the Immigration Counsel was denied the number needed to schedule a confidential visit with his client. The officer stated that he would have to search for it on Google, effectively preventing private attorney-client communication. (*See* Ex. G.)

30. On February 26, 2026, due to barriers ICE has placed on communication between the attorney and the client, the client was forced to call his Immigration Counsel using an application that detainees use to contact their family members. The Immigration Counsel warned the Petitioner that this was not a secure means of communication because the call was being recorded and an attorney-client privilege exists. Petitioner understood and testified to the Immigration Counsel that, since his detention at Alligator Alcatraz, his health has deteriorated and he has experienced difficulty sleeping. (*See* Ex. G.)

31. According to Amnesty International USA research, detainees at Alligator Alcatraz experience unsanitary and inhumane conditions, including overflowing toilets near sleeping areas, limited access to showers, exposure to insects, constant lighting, and lack of privacy. The report also notes that access to medical care is often inconsistent,

inadequate, or denied, creating serious risk to physical and mental health.¹

32. Amnesty International further observes that the absence of registration or tracking mechanisms for detainees at Alligator Alcatraz can result in incommunicado detention, preventing detainees from contacting their lawyers. This context illustrates the barriers the Petitioner has faced in attempting confidential communication with his Immigration Counsel.²

33. Petitioner has fully complied with all immigration proceedings to date. However, he has not received an individualized bond hearing before a neutral decision-maker to assess the justification for his detention, and he remains at risk of removal to a country where he fears persecution.

LEGAL FRAMEWORK

Due Process Clause

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

35. The Supreme Court and federal courts have repeatedly recognized that the protections of the Due Process Clause apply to all persons within the United States, including noncitizens, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

36. The Due Process Clause affords Petitioner significant protections against unlawful detention. As the Supreme Court has explained, “[f]reedom from imprisonment—from government custody, detention, or

¹ Amnesty International USA, *New Findings Reveal Human Rights Violations at Florida’s “Alligator Alcatraz” and Krome Detention Centers*, Dec. 4, 2025.

² *Id.*

other forms of physical restraint—lies at the heart of the liberty” safeguarded by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

37. Due process requires “adequate procedural protections” to ensure that the government’s asserted justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* (internal quotation marks omitted).
38. In the immigration context, the Supreme Court has recognized only two legitimate purposes for civil detention: preventing flight and protecting the community from danger. *Id.*; *Demore v. Kim*, 538 U.S. 510, 522, 528 (2003). Detention for any other purpose is unconstitutional.
39. Accordingly, when detention becomes prolonged, or where the noncitizen raises a substantial defense to removal or claims to relief, due process requires an individualized hearing before a neutral decisionmaker to determine whether continued detention remains reasonably related to its permissible purposes. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (noting that an “individualized determination as to [a noncitizen’s] risk of flight and dangerousness” may be required “if the continued detention became unreasonable or unjustified”); cf. *Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the “initial commitment” requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) (stating that “lesser safeguards may be appropriate” for “short-term confinement”; *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment context, that “the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards”).

40. Due process also requires certain minimum procedural safeguards at bond hearings. These include:
- (1) placing the burden of proof on the government by clear and convincing evidence to justify continued detention;
 - (2) requiring the decisionmaker to consider alternatives to detention; and
 - (3) when the government fails to meet its burden, requiring the decisionmaker to assess a noncitizen's ability to pay a bond when setting bond conditions.
41. Continued immigration detention implicates significant liberty interests under the Fifth Amendment. The Supreme Court has recognized in contexts involving detention that threatens fundamental liberty that due process requires meaningful procedural safeguards and may demand that the government justify detention by a heightened standard of proof. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pretrial detention where the detainee was afforded a “full-blown adversary hearing” requiring “clear and convincing evidence”); *Foucha v. Louisiana*, 504 U.S. 71, 81–83 (1992) (striking down civil detention scheme that placed burden on the detainee); *Zadvydas v. Davis*, 533 U.S. at 692 (finding post-final-order custody review procedures deficient because, *inter alia*, they placed burden on detainee).
42. Due process further requires that a neutral decisionmaker consider available alternatives to detention. Because a principal purpose of immigration detention is to ensure a noncitizen's appearance at removal proceedings, detention must be reasonably related to that objective. *Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Prolonged detention

without an individualized assessment of flight risk or dangerousness violates due process particularly where, as here, Petitioner has strong community ties, stable employment, and no criminal history.

43. Due process likewise requires consideration of a noncitizen's ability to pay a bond. Detention based solely on inability to afford monetary bail is impermissible where appearance can reasonably be ensured through alternative conditions of release. *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc) (pre-1981 Fifth Circuit decision, recognized as binding in the Eleventh Circuit). Thus, constitutional principles require consideration of financial circumstances and alternative conditions to avoid detention based on poverty.
44. Evidence about immigration detention and the adjudication of removal cases provide further support for the due process right to a bond hearing in cases of prolonged detention.
45. Immigration detainees face severe hardships while incarcerated. They are held in lockdown facilities, with limited freedom of movement and access to their families. As the Supreme Court has observed, "the circumstances of their detention are similar, so far as we can tell, to those in many prisons and jails," and "in some cases the conditions of their confinement are inappropriately poor." *Jennings v. Rodriguez*, 138 S. Ct. 830, 861 (2018) (Breyer, J., dissenting) (citing Dept. of Homeland Security (DHS), Office of Inspector General (OIG), DHS OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE Detention Facilities (2017)).
46. These harsh conditions only further underscore the serious due process concerns that prolonged immigration detention pose for

noncitizens like the Petitioner and reflect the need for a decision before a neutral decisionmaker regarding continued detention.

47. Under the Fifth Amendment, prolonged detention without individualized consideration of flight risk, dangerousness, alternatives to detention, and ability to pay violates due process.

48. Applying the BIA's own standards, Petitioner is entitled to release on bond. According to *Matter of Patel*, 15 I. & N. Dec. 666 (BIA 1976), detention is appropriate when an individual poses a risk of flight, a danger to public safety, or a threat to national security. In assessing bond eligibility and determining its appropriate amount, the Court should consider factors such as employment, length of residence, the existence of family ties, lack of criminal history and no prior immigration violations. *See Matter of Spiliopoulos*, 16 I. & N. Dec. 561 (BIA 1978) (citing *Matter of Patel*, 15 I. & N. Dec. 666 (BIA 1976)).

49. All these considerations strongly support Petitioner's release on bond.

Detention Authority

50. The Immigration and Nationality Act ("INA") establishes three (3) principal detention regimes governing most noncitizens placed in removal proceedings as follows:

- (1) 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Noncitizens detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to an individualized bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). By contrast, 8 U.S.C. § 1226(c) mandates detention without bond for a narrowly

defined class of noncitizens who have been arrested for, charged with, or convicted of specific criminal offenses, for the duration of their removal proceedings.

(2) INA mandates detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1), as well as certain recent arrivals “seeking admission” under 8 U.S.C. § 1225(b)(2).

(3) INA authorizes detention of noncitizens who have received a final order of removal from the United States pursuant to 8 U.S.C. § 1231(a)–(b).

51. The Supreme Court has repeatedly held that civil immigration detention is constitutionally permissible only when it is reasonably limited in duration and accompanied by adequate procedural safeguards. *Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001) (holding that indefinite civil detention raises serious constitutional problems); *Demore v. Kim*, 538 U.S. 510, 523 (2003) (upholding mandatory detention only as brief and finite); *Jennings v. Rodriguez*, 583 U.S. 281, 308–09 (2018) (confirming that constitutional challenges to prolonged detention remain available).

52. Limitations on Immigration Judge bond authority do not divest Federal Courts of their longstanding habeas jurisdiction. Pursuant to 28 U.S.C. § 2241, courts retain the power to review whether immigration detention is authorized by statute and consistent with the Constitution.

53. As the Supreme Court has explained, habeas courts remain the proper forum for resolving constitutional challenges to immigration detention. *Jennings v. Rodriguez*, 583 U.S. at 308–09. Accordingly, this Court may grant habeas relief, including ordering an individualized

bond hearing, where categorical detention without individualized review is unlawful.

54. The statutory text supports the conclusion that the Petitioner remains entitled to an individualized bond hearing under § 1226(a). 8 U.S.C. § 1226(a) establishes the default framework for detention pending removal proceedings and expressly authorizes release on bond. By contrast, 8 U.S.C. § 1226(c) mandates detention without bond for noncitizens with certain criminal convictions or those who have engaged in terrorist activities. Because the Petitioner does not meet these criteria, § 1226(c) is inapplicable. 8 U.S.C. § 1225 also does not apply because the Petitioner is not classified as an arriving alien. Moreover, because the Petitioner does not have a final order of removal from the United States, mandatory detention under 8 U.S.C. § 1231(a)–(b) is likewise inapplicable.

55. Congress has conferred no statutory authority on the Visa Waiver Program (“VWP”) to regulate, limit, or otherwise control the bond process. *See* 8 U.S.C. § 1187. Petitioner, a noncriminal lawful entrant under the VWP, without any final order of removal, falls solely within ICE’s discretionary detention authority under 8 U.S.C. § 1226(a). Any detention beyond this discretionary framework lacks statutory basis and violates Petitioner’s right to due process. This provides an independent statutory basis for habeas relief.

Visa Waiver Program and Bond Rights

56. The Visa Waiver Program (“VWP”) allows nationals of designated countries to enter the United States for up to 90 days without obtaining a visa. 8 U.S.C. § 1187(a)(1). While these travelers are exempt from the

visa requirement, they must complete registration through the Electronic System for Travel Authorization (“ESTA”) prior to entry.

57. Entry under the VWP carries statutory requirements: participants waive eligibility for most forms of relief from removal, including cancellation of removal. 8 U.S.C. § 1187(b). However, VWP entrants remain eligible to apply for asylum. 8 U.S.C. § 1187(b)(2).

58. For VWP entrants seeking asylum, the Department of Homeland Security (DHS) must issue Form I-863, Notice of Referral to Immigration Judge, initiating an asylum-only proceeding. 8 C.F.R. §§ 217.4(b)(1), 208.2(c)(1)(iv).

59. While asylum-only proceedings focus on eligibility for relief, bond determinations are procedural, independent safeguards, designed to prevent unlawful or indefinite detention. *See Sutaj v. Rodriguez*, No. 16-5092 (JMV), slip op. at 10 (D.N.J. Jan. 5, 2017); 8 C.F.R. § 208.2(c)(3)(i). The constitutional significance of bond hearings is paramount, providing a critical check against indefinite detention and ensuring due process. *See Sopo v. United States AG*, 825 F.3d 1199, 1212–13 (11th Cir. 2016).

60. Given these principles, the Court should exercise its authority to prevent continued, unnecessary detention.

Statutory and Constitutional Right to Counsel and Attorney-Client Privilege

61. Noncitizens possess a statutory and constitutional right to be represented by counsel, even if at their own expense. 8 U.S.C. § 1362 provides that “[i]n any removal proceedings before an immigration judge . . . the person concerned shall have the privilege of being represented by such counsel.” While the statute specifically references removal

proceedings, the underlying principle — meaningful access to counsel — extends to any proceeding affecting a detainee's liberty, including bond hearings. The Eleventh Circuit has emphasized that this statutory right requires access sufficient to allow effective communication, preparation, and participation in legal proceedings. *See Flores-Panameno v. U.S. Att'y Gen.*, 913 F.3d 1036, 1040 (11th Cir. 2019).

62. The Fifth Amendment guarantees that no person may be deprived of liberty without due process of law. U.S. Const. amend. V. This protection extends to noncitizens in any proceeding affecting liberty, including bond hearings. Because a bond hearing directly determines whether a detainee will remain in custody, due process requires that the detainee have meaningful opportunity to consult with counsel and to participate effectively in the proceeding. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (recognizing that freedom from government detention lies at the core of the liberty protected by the Due Process Clause); *see also Yamataya v. Fisher*, 189 U.S. 86, 100 (1903) (recognizing that noncitizens may not be deprived of liberty without a fair opportunity to be heard).
63. Confidential communications between a client and counsel are protected under the attorney-client privilege, a well-established legal principle that ensures full and candid communication necessary for effective representation. *See Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981) (recognizing that the privilege exists to encourage honest and complete communication between attorneys and clients).
64. In immigration proceedings, which involve noncitizen detainees, any interference with access to counsel or obstruction of confidential attorney-client communications directly undermines the detainee's

ability to meaningfully participate in proceedings affecting their liberty, including bond hearings. *See Cobourne v. INS*, 779 F.2d 1564, 1566 (11th Cir. 1986) (holding that government interference with confidential communications between a noncitizen and counsel violates due process); *see also Ibrahim v. INS*, 821 F.2d 1547, 1550 (11th Cir. 1987) (recognizing that preventing a detainee from confidentially consulting with counsel undermines effective representation and due process).

65. By blocking or restricting confidential communication with counsel, the government effectively deprives the detainee of the ability to present arguments for release, evaluate evidence, or make informed decisions regarding legal strategy, all of which are essential to a fair and meaningful bond determination. Accordingly, any action by immigration authorities that obstructs, delays, or interferes with access to counsel or disrupts confidential attorney-client communications directly contravenes statutory and constitutional protections and provides compelling grounds for habeas relief, including in bond hearings.

CLAIMS FOR RELIEF

COUNT ONE

The Text of 8 U.S.C. § 1187(b) Does Not Limit or Prohibit Requesting a Bond Hearing Pursuant to 8 U.S.C. § 1226(a) When an Asylum Application is Pending

66. The allegations in the above paragraphs are realleged and incorporated herein.
67. Petitioner is detained under 8 U.S.C. § 1226(a), and he is statutorily entitled to an individualized bond hearing before an Immigration Judge. The immigration court system has unlawfully deprived him of that right.

68. Petitioner entered the United States under the Visa Waiver Program (“VWP”) and timely filed an application for asylum. Because Petitioner’s entry was lawful and he has a pending asylum claim, he did not waive the procedural right to a bond hearing.

69. 8 U.S.C. § 1187(b) provides:

WAIVER OF RIGHTS. An alien may not be provided a waiver under the program unless the alien has waived any right:
(1) to review or appeal under this Act of an immigration officer’s determination as to the admissibility of the alien at the port of entry into the United States, or
(2) to contest, other than on the basis of an application for asylum, any action for removal of the alien.

70. Under the plain language of 8 U.S.C. § 1187(b):

- a. A VWP entrant waives only the right to challenge admissibility at the port of entry and to contest removal, except through asylum.
- b. The statute does not mention detention, bond, or custody review, and contains no language prohibiting a request for a bond hearing.
- c. Requesting a bond hearing challenges only the legality and necessity of continued detention, not admissibility or removal, and is therefore outside the scope of rights waived under 8 U.S.C. § 1187(b).

71. Petitioner retains a statutory entitlement to a bond hearing under 8 U.S.C. § 1226(a), which explicitly provides for discretionary release pending removal proceedings. Section 8 U.S.C. § 1187(b) does not override or limit that entitlement, and any interpretation suggesting otherwise would improperly add restrictions that Congress did not include.

72. The Constitution of the United States is the supreme law of the land (U.S. Const. art. VI, cl.2), and the Fifth Amendment guarantees

that no person shall be deprived of liberty without due process of law. U.S. Const. amend. V. Even if a statute waives certain procedural rights, it cannot eliminate constitutional protections, including the right to challenge unlawful detention.

73. The Supreme Court has consistently held that noncitizens in the United States retain due process protections regarding detention. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

74. Blanket mandatory detention under the Visa Waiver Program's Waiver of Rights, 8 U.S.C. § 1187(b), without an individualized assessment, is arbitrary and unconstitutional. Due process requires adequate procedural safeguards in civil detention, including an individualized review of risk of flight and dangerousness, placement of the burden on the government to justify continued detention, and consideration of alternatives to detention. *See Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001); *Demore v. Kim*, 538 U.S. 510, 532 (2003) (Kennedy, J., concurring).

75. Denying Petitioner an individualized bond hearing while his asylum application is pending, and applying 8 U.S.C. § 1187(b) as a categorical bar to such hearings, deprives Petitioner of liberty without due process. By eliminating individualized determinations, this approach ignores statutory limits, contravenes 8 U.S.C. § 1226(a), disregards constitutional protections afforded to all persons in the United States, and exposes noncitizens to potentially prolonged and unjustified detention.

COUNT TWO

**Denial of an Individualized Bond Hearing Under *Matter of A-W*-
Contravenes Federal Statute, Governing Regulations, and the Fifth
Amendment**

76. The allegations in the above paragraphs are realleged and incorporated herein.
77. Petitioner entered the United States lawfully, does not have a final order of removal, and has no criminal history. No statutory provision beyond 8 U.S.C. § 1226(a) authorizes his detention.
78. In *Matter of A-W*, 25 I. & N. Dec. 45 (B.I.A. 2009), the Board of Immigration Appeals held that a noncitizen admitted under the Visa Waiver Program (“VWP”) who has not been served with a Notice to Appear (“NTA”) under 8 C.F.R. Part 1240 is not entitled to a custody redetermination hearing before an Immigration Judge. This decision effectively denies access to an individualized bond hearing based solely on the absence of a charging document.
79. The Board grounded its holding in 8 U.S.C. § 1187(c)(2)(E), asserting that it provides statutory authority for detention. That premise is incorrect as a matter of statutory text.
80. The plain text of 8 U.S.C. § 1187(c)(2)(E) governs only repatriation following a final executable order of removal:

REPATRIATION OF ALIENS. The government of the country accepts for repatriation any citizen, former citizen, or national of the country against whom a final executable order of removal is issued not later than three weeks after the issuance of the final order of removal. Nothing in this subparagraph creates any duty for the United States or any right for any alien with respect to removal or release. Nothing in this subparagraph gives rise to any cause of action or claim under this paragraph or any other law against any official of the United States or of any State to compel the release, removal, or consideration for release or removal of any alien.

The provision addresses one subject: repatriation following a final executable order of removal. It does not regulate pre-final-order detention. The final sentences operate as a disclaimer preventing the creation of enforceable duties or private causes of action related to removal timing. They do not create detention authority.

81. Nothing in § 1187(c)(2)(E):
 - a. authorizes detention,
 - b. mandates detention,
 - c. eliminates eligibility for bond, or
 - d. governs custody determinations pending a decision on removal.

Converting this repatriation provision into a mandatory detention rule impermissibly extends the statute beyond its plain meaning.

82. Congress separately addressed detention pending removal decisions in 8 U.S.C. § 1226(a), which provides, “[o]n 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... [and] may be released on bond...” Section 1226(a) establishes discretionary detention and expressly authorizes release on bond. When Congress intends to impose mandatory detention, it does so explicitly, as in 8 U.S.C. § 1226(c). No such mandatory detention provision applies to VWP entrants.
83. Petitioner falls squarely within § 1226(a), not § 1187(c)(2)(E). He has no final executable order of removal, has a pending asylum application, and has no criminal history. Thus, detention, if any, is discretionary and requires individualized consideration. A categorical denial of bond conflicts with § 1226(a).

84. Bond proceedings are governed by 8 C.F.R. § 1003.19, which implements § 1226(a). Section 1187(c)(2)(E) does not regulate bond proceedings.

85. No NTA is required to commence bond proceedings. 8 C.F.R. § 1003.14(a) provides “No charging document is required to be filed with the Immigration Court to commence bond proceedings pursuant to 8 C.F.R. §§ 1003.19, 1236.1(d) and 1240.2(b).” The regulation expressly rejects the premise that a NTA is a prerequisite to a bond hearing. *Matter of A-W-* conflicts with this binding regulatory text.

86. Bond determinations are separate and apart from removal proceedings. 8 C.F.R. § 1003.19(c) provides:

“Consideration by the Immigration Judge of an application or request of a respondent regarding custody or bond under this section shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding. The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or the Service.”

The regulation makes clear that bond determinations are independent proceedings. Conditioning access to bond on the procedural posture of removal proceedings directly contradicts this regulatory framework.

87. Requiring an NTA is legally irrelevant and structurally arbitrary. Because bond is a legally separate process, the presence or absence of an NTA has no bearing on custody review. Furthermore, Respondent

officials control issuance of NTAs; conditioning access to bond on a document solely within the detaining authority's control permits unilateral prevention of review and undermines fundamental due process principles.

88. In VWP asylum-only proceedings, the noncitizen receives a Form I-863, Notice of Referral to Immigration Judge—not a Notice to Appear—to initiate proceedings. Requiring an NTA in this procedural posture imposes a condition unsupported by statute or regulation and incompatible with the structure of VWP asylum-only proceedings.
89. Even more, DHS's position regarding the NTA is legally inconsistent. While *Matter of A-W-* conditioned access to bond for VWP entrants on the issuance of a NTA, Respondents currently maintain that such individuals have no right to bond because the NTA applies only to removal proceedings under INA § 240, 8 U.S.C. § 1229a. This stance is inconsistent with the reasoning of *Matter of A-W-*, but also exceeds the limited authority granted by Congress under 8 U.S.C. § 1226(a), imposing conditions on VWP entrants that the law does not contemplate and thereby unlawfully restricting access to release.
90. In *Loper Bright Enterprises v. Raimondo*, 599 U.S. ____ (2024), the Supreme Court held that courts must exercise independent judgment in determining whether an agency has acted within the authority granted by Congress. Courts may not defer automatically to an agency's interpretation of a statute, even when the statutory language appears ambiguous. This principle confirms that the BIA's reading of 8 U.S.C. § 1187(c)(2)(E) in *Matter of A-W-* is not binding; the statute must be interpreted independently.

91. Federal district courts addressing *Matter of A-W-* have consistently declined to grant it deference, even under the previously highly deferential *Chevron* framework. For example, the District of Massachusetts in *Neziri v. Johnson* criticized *Matter of A-W-* for not identifying “where in 8 U.S.C. § 1187(c)(2)(E) the BIA finds the Secretary of Homeland Security’s authority to detain aliens”, and concluded that the statute does not authorize such detention. *Neziri v. Johnson*, No. CV 15-14092, 2016 WL 2757377, at *2 (D. Mass. May 11, 2016).
92. Similarly, the District of New Jersey has repeatedly held that 8 U.S.C. § 1187 does not provide a basis for detention and that petitioners are entitled to bond hearings under § 1226(a) and its implementing regulations. *Sutaj v. Rodriguez*, No. CV 16-5092, 2017 WL 66386, at *5 (D.N.J. Jan. 5, 2017); *Szentkiralyi v. Ahrendt*, No. CV 17-1889, 2017 WL 3477739, at *4 (D.N.J. Aug. 14, 2017); *Gjergj G. v. Edwards*, No. CV 19-5059, WL 1254561, at *4 (D.N.J. Mar. 18, 2019). Collectively, these rulings confirm that categorical denial of bond under *Matter of A-W-* conflicts with both statutory text and fundamental due process.
93. Other federal district courts have likewise recognized that individuals admitted under the Visa Waiver Program (“VWP”) are not categorically barred from seeking release on bond. In several jurisdictions, courts have granted habeas relief to noncitizens who entered under the VWP and ordered individualized bond hearings before an Immigration Judge under 8 U.S.C. § 1226(a). *See Dukuray v. Decker*, No. CV 18-2898, 2018 WL 5292130, at *4 (S.D.N.Y. Oct. 25, 2018); *Romance v. Warden York Cnty. Prison*, No. CV 20-0760, 2020 WL 6054933, at *6 (M.D. Pa. July 28, 2020); *Malets v. Horton*, No. CV 20-1041, 2021 WL 4197594, at *7 (N.D. Ala. Sept. 15, 2021).

94. Last year, ICE effectively recognized the flaws in *Matter of A-W-* by agreeing to provide bond hearings for VWP entrants. *See Krause v. Joyce*, No. 25-cv-2379, ECF 14 (S.D.N.Y. Mar. 27, 2025); *Semelik v. Field Office Director*, No. 24-cv-24924, ECF 11 (S.D. Fla. Dec. 31, 2024). This demonstrates that the agency itself recognizes the statutory and constitutional deficiencies of *Matter of A-W-*, further supporting Petitioner’s entitlement to an individualized bond hearing under 8 U.S.C. § 1226(a).

100. As recently as February 25, 2026, the U.S. District Court for the Middle District of Florida, Fort Myers Division, in *Miguel Antonio Nardella Mago v. Rogers*, granted the petitioner’s habeas corpus petition and ordered that he, a citizen of Venezuela and Italy who entered the United States under the Visa Waiver Program, be provided an individualized bond hearing before an Immigration Judge or released within ten days if such a hearing could not be timely provided under 8 U.S.C. § 1226(a). While the habeas petition in that case involved other legal arguments, the relevant fact for these proceedings is that the court ensured the petitioner’s opportunity to seek release on bond despite his VWP entry. *Nardella Mago v. Rogers*, No. 2:26-cv-00278-SPC-NPM, (M.D. Fla. Feb. 25, 2026).

101. A foundational principle of American law is that freedom from imprisonment lies at the heart of the liberty protected by the Constitution. As established in the Fifth Amendment, no person shall “be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. The Supreme Court has recognized that “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due

Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Denying an individualized bond hearing to a VWP entrant with a pending asylum application and no criminal history, based solely on a repatriation statute, deprives Petitioner of liberty without constitutionally adequate process.

102. *Matter of A-W-* extends 8 U.S.C. § 1187(c)(2)(E) beyond its plain text, conflicts with § 1226(a), contradicts 8 C.F.R. §§ 1003.14 and 1003.19, disregards the structure of VWP asylum-only proceedings, and authorizes detention without individualized review. The decision is erroneous as a matter of statutory interpretation and unconstitutional as applied. Petitioner is therefore entitled to a prompt individualized bond hearing before a neutral Immigration Judge.

COUNT THREE

Violation of the Administrative Procedure Act—Unlawful Denial of Bond

103. The allegations in the above paragraphs are realleged and incorporated herein.
104. The application of 8 U.S.C. § 1187(c)(2)(E) to Petitioner, asserting that it provides statutory authority for detention, is incorrect, arbitrary, capricious, and not in accordance with law. Under 8 U.S.C. § 1226(a), Petitioner is entitled to bond determination, which requires individualized review of relevant factors, including risk of flight and danger to the community or national security. 8 U.S.C. § 1187(c)(2)(E) cannot be read to override or limit that statutory entitlement.
105. By categorically denying bond without individualized review, Respondents have acted in disregard of statutory limits, failed to

consider relevant factors such as flight risk and dangerousness, and disregarded the procedural protections guaranteed by the Due Process Clause. For these reasons, the application of 8 U.S.C. § 1187(c)(2)(E) violates the Administrative Procedure Act. *See* 5 U.S.C. § 706(2).

COUNT FOUR

Denial of Meaningful and Confidential Access to Counsel in Violation of 8 U.S.C. § 1362 and the Due Process Clause

106. The allegations in the above paragraphs are realleged and incorporated herein.
107. Noncitizens have a recognized right, both statutory and constitutional, to retain legal counsel, even at their own expense. This right extends beyond mere presence of an attorney and includes the ability to consult privately, communicate candidly, and prepare strategically for any proceeding where liberty is at stake, including bond hearings.
108. The Fifth Amendment protects all persons, including noncitizens, from deprivation of liberty without due process of law. Meaningful access to counsel is a critical component of this protection, ensuring that detainees can understand the proceedings, evaluate options, and make informed decisions regarding their liberty.
109. The Supreme Court has long recognized that access to counsel is fundamental to due process for noncitizens. Courts have confirmed that liberty interests, such as freedom from detention, require opportunities for fair and informed participation in proceedings. *See Yamataya v. Fisher*, 189 U.S. 86, 100 (1903); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

110. Confidential communication between a client and attorney is protected under the attorney-client privilege, which is essential to effective representation. This privilege encourages open and honest exchanges, allowing counsel to provide fully informed guidance. See *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981).
111. The Eleventh Circuit has confirmed that statutory and constitutional rights to counsel extend to noncitizens in immigration proceedings. Interference with access to counsel or obstruction of confidential communications violates due process and undermines effective representation. See *Flores-Panameno v. U.S. Att’y Gen.*, 913 F.3d 1036, 1040 (11th Cir. 2019); *Cobourne v. INS*, 779 F.2d 1564, 1566 (11th Cir. 1986); *Ibrahim v. INS*, 821 F.2d 1547, 1550 (11th Cir. 1987). These principles make clear that any hindrance to confidential consultation directly impairs a detainee’s ability to participate meaningfully in bond proceedings. Such interference prevents detainees from effectively presenting arguments, evaluating evidence, and making informed legal decisions.
112. Petitioner’s Immigration Counsel has sought confidential meetings to ensure Petitioner can exercise his statutory and constitutional rights, yet these efforts have been blocked (Facts 32–35). Misleading or incomplete contact information for detainee visitation at Florida Soft Side South, Alligator Alcatraz, has prevented scheduling of secure attorney visits. Forced reliance on a recorded platform restricts confidential communication and hampers strategic legal preparation.
113. These challenges are compounded by facility conditions at Alligator Alcatraz, as documented in independent research (Facts 36–37), which reveal that detainees are held with limited privacy,

constrained access to medical care, and that the lack of tracking mechanisms can result in incommunicado detention. These conditions further hinder confidential communication and meaningful access to counsel, directly impacting Petitioner's ability to prepare for and participate in bond proceedings.

114. By creating these obstacles, Respondents have denied Petitioner his statutory and constitutional rights under 8 U.S.C. § 1362 and the Fifth Amendment, as interpreted by the Supreme Court and the Eleventh Circuit.

115. The deprivation of meaningful access to counsel and interference with confidential communications has caused actual prejudice, undermining Petitioner's ability to participate effectively in bond proceedings and to make informed decisions regarding his legal rights. Petitioner is therefore entitled to relief.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Honorable Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Issue an Order to Show Cause directing Respondents to show cause why this Petition should not be granted within three (3) days;
3. Declare that Petitioner's detention without an individualized determination violates the Fifth Amendment's Due Process Clause;
4. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately from custody; hold a hearing if warranted; and determine that Mr. Jose Alejandro Suarez-Garcia's detention is not justified because the government has not established by clear and

convincing evidence that he presents a risk of flight or a danger to the community in light of the available alternatives;

5. Issue an Order prohibiting Respondents from transferring Petitioner from the district and the United States without the Court's approval;
6. Declare that Mr. Suarez-Garcia's continued detention is unconstitutional and unlawful, as it is not reasonably related to any valid purpose of immigration detention and violates the Fifth Amendment guarantee of due process;
7. Declare that Respondents' conduct violates the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706, as arbitrary, capricious, and not in accordance with law;
8. Order Respondents to ensure Petitioner's immediate, confidential, and meaningful access to counsel;
9. Order Respondents to immediately provide Petitioner with a confidential meeting with his Immigration Counsel, either in person or virtually;
10. Order Respondents to correct the contact information and attorney visitation procedures for the Florida Soft Side South, Alligator Alcatraz, detention facility in the Online Detainee Locator System to permit confidential attorney visits;
11. Order Respondents to include Florida Soft Side South, Alligator Alcatraz, on ERO eFile's Detention Facility Appointment Scheduler (DFAS).
12. In the alternative, should the Court determine that immediate release is not warranted, order Respondents to provide Mr. Suarez-Garcia with an expedited individualized bond hearing before an impartial Immigration Judge, as soon as practicable and in no event later than seven (7) days from the Court's order, at which the

government bears the burden to justify continued detention by clear and convincing evidence, ensuring that Petitioner receives meaningful access to relief in accordance with the Fifth Amendment's Due Process Clause;

13. Award reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and
14. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Bonnie Smerdon

Bonnie Smerdon (FL Bar No.
123933)

Luce Law PLLC

22966 Overseas Hwy

Cudjoe Key, FL 33042

Phone: (954) 624-2622

Email: bsmerdon@lucelawpllc.com

COUNSEL FOR PETITIONER

Dated: March 10, 2026.

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

I represent Petitioner, Mr. Jose Alejandro Suarez-Garcia, 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 10th day of March, 2026.

/s/ Bonnie Smerdon
Bonnie Smerdon (FL Bar No.
123933)