

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Jose Alves Batista,	)	CASE NO. 2:26-cv-986
	)	
Petitioner	)	PETITION FOR WRIT OF HABEAS
	)	CORPUS UNDER 28 U.S.C. § 2241
vs.	)	AND COMPLAINT FOR INJUNCTIVE
	)	AND DECLARATORY RELIEF
TODD LYONS, Acting	)	
Director,	)	
Immigration and Customs	)	
Enforcement, KRISTI	)	
NOEM,	)	
Secretary of United	)	
States Department of	)	
Homeland Security,	)	
JULIO HERNANDEZ, Acting	)	
Director Immigration	)	
and Customs	)	
Enforcement, Seattle	)	
Field Office, Bruce	)	
Scott, Warden,	)	
Northwest ICE	)	
Processing Center,	)	
PAMELA BONDI, United	)	
States Attorney	)	
General,	)	
Respondents.	)	

INTRODUCTION

1. Petitioner, Jose Alves Batista, ("Petitioner" or "Mr. Alves"), is in the physical custody of the Respondents at the Northwest ICE Processing Center in Tacoma, WA.
2. Petitioner's detention is unlawful because ICE detained him without a warrant and without any probable cause that he was a flight risk in violation of the INA and Due Process.
3. Accordingly, Petitioner seeks a writ of habeas corpus ordering his immediate release.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction under 28 U.S.C. §2241(c)(5) (habeas corpus), 28 U.S.C. 1331 (federal question), and Article I, section 9, clause 2 of the U.S. Constitution (the Suspension Clause).
5. This Court may grant relief pursuant to 28 U.S.C. §2241, the Declaratory Judgment Act, 28 U.S.C. §2201, et. seq., and the All Writs Act, 28 U.S.C. §1651.
6. Venue is proper in the Western District of Washington because Petitioner is located at Northwest ICE Processing Center in Tacoma, WA, under color of the authority of the United States, in violation of the Constitution and laws thereof, 28 U.S.C. §§1391, 2241, and because Respondent's potential and likely

transfers to varying jurisdictions would prevent any other court from obtaining jurisdiction.

7. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this district, where Petitioner is, or was, in Respondent's custody. 28 U.S.C. §1391c.

III. REQUIREMENTS OF 28 U.S.C. §2243

8. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith" unless the Petitioner is not entitled to relief. If an order to show cause issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed."

IV. PARTIES

9. Petitioner is unlawfully detained by DHS at Northwest ICE Processing Center in Tacoma, WA.
10. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement ("ICE"). He is one of Petitioner's custodians and is named in his official capacity.
11. Respondent Kristi Noem is the Secretary of Homeland Security and is Petitioner's ultimate custodian. She is sued in her official capacity.

12. Respondent Julio Hernandez is the Acting Field Office Director for ICE Seattle Field Office. He is one of Petitioner's custodians and is named in his official capacity.
13. Respondent Bruce Scott is the Warden of Northwest ICE Processing Center where Petitioner is detained. He is named in his official capacity.
14. Respondent Pamela Bondi is the Attorney General of the United States. She oversees the EOIR and is sued in her official capacity.

V. FACTS¹

15. Petitioner entered the United States on August 1, 2018 with a B2 visitor visa.
16. Petitioner has no criminal history of any kind.
17. He has resided since 2018 in Washington State where he founded and runs a business, JD Flooring Installation, LLC., which is fully insured and licensed.
18. He has a fixed residential address in Lynwood, Washington pursuant to a lease and owns a Sprinter cargo van.
19. He has strong community ties and support.

¹ See Exhibit A: Motion for custody determination, submitted to establish the facts ICE made no effort to ascertain before executing an unlawful warrantless arrest. The presentation of this motion and evidence to the Immigration Court is irrelevant to the illegal nature of Petitioner's arrest. Certain exhibits are removed because they are not relevant to this Petition and to protect privacy.

20. ICE made no attempt to inquire as to any such information prior to arresting him without a warrant. See Exhibit B: ICE Form I-213.
21. On January 6, 2026, after Petitioner had been residing in, and conducting business in, the State of Washington for almost eight years, ICE encountered Mr. Alves in the field in Everett, WA.
22. ICE confirmed his manner of entry and that there were no departures. Based only on this, without any inquiry or evaluation of the risk of flight, and without a warrant, he was arrested.

VI. LEGAL FRAEMEWORk

POINT ONE

No arrest warrant - Violation of the INA

23. 8 USC 1226 states, "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." ICE's failure to obtain a warrant from the Attorney General does not affect a person's eligibility for bond; rather, ICE's failure to obtain a warrant deprives ICE of statutory authority to detain that person and must result in the person's immediate release. In other words, in absence of

a warrant, ICE may issue a notice to appear to initiate removal proceedings, but it may not detain.

24. It follows that the burden to establish the existence of a warrant is on the Government, as it is in all proceedings in which a warrant is required. The government's failure to establish that a warrant issued prior to detention must result in immediate release from detention. The government's successful establishment of the existence of a warrant only serves to trigger discretionary arrest and detention by the plain wording of the portion of the statute referencing a warrant by the Attorney General.

25. It need not be explained how the fundamental principle of the protection of liberty absent a warrant must be protected pursuant to the United States Constitution and centuries of caselaw.

26. 8 U.S.C. 1357(a)(2) allows Respondents to arrest a person inside the United States without a warrant if the arresting officer has probable cause the person is in violation of the immigration laws and is likely to escape before a warrant can be obtained.

27. By the Respondents' own records, See Exhibit B: I-213, they did not have a warrant to arrest the Petitioner and they made no effort to evaluate whether Petitioner was a flight risk, let alone to establish probable cause of flight risk.

28. While an evaluation of the available information and facts make it clear that Mr. Alves is not a flight risk, this is actually irrelevant to the illegality of ICE's actions. It is the complete and total failure to attempt to evaluate the likelihood of flight as required by the INA and Due Process that is determinative. That the Petitioner is clearly not a flight risk only makes the Respondents' actions more egregious.

29. An arrest and detention that were unlawful at the time they were made cannot be cured by a later custody determination hearing even if that hearing provided Due Process. However, at this point in time, bond hearings in the immigration court generally do not provide Due Process compliant hearings.² The harm of being incarcerated for days, weeks or months prior to such a hearing cannot be undone or cured.

30. The issue of whether such unlawful arrests should result in dismissal of the removal proceedings as Fruit of the Poisonous Tree is an issue for another day, but that the Petitioner must be released while that issue is litigated must be resolved by this Court.

31. Respondents' failure to obtain a warrant before arrest or to conduct the necessary evaluation of risk of flight

² Because even a Due Process compliant hearing in the immigration court cannot cure the unlawful arrest and detention, it is not necessary to evaluate the Petitioner's hearing.

before a warrantless arrest cannot be tolerated or cured and is a violation of the Immigration and Nationality Act and Due Process.

POINT TWO

No Arrest Warrant - Violation of Due Process

32. "Freedom 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).

33. The Supreme Court has held 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 v. Davis, 533 U.S. at 693.

34. Throughout the Court's civil detention jurisprudence, it has always required the government to bear the burden of proof. Addington v. Texas, 441 U.S. 418 (1979).

35. Thus, the Court has required that civil detention be the "exception", not the norm. See United States v. Salerno, 481 U.S. 739, 755 (1987) (allowing for pretrial detention in "carefully limited" circumstances).

36. At a minimum, due process requires "adequate procedural protections" to ensure that the Government's asserted justification for physical confinement "outweighs the

individual's constitutionally protected interest in avoiding physical restraint." Zadvydas v. Davis, 533 U.S. at 690 (quoting Kansas v. Hendricks, 521 U.S. 346, 356 (1997)).

37. In civil detention cases, the Supreme Court "repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty." Singh, 638 F.3d 1196, 1204-05 (9th Cir. 2011) (quoting Addington v. Texas, 441 U.S. 418, 425 (1979)) (emphasis in original).

38. The circumstance of warrantless arrests by ICE resulting in unlawful detention is a new problem and no court has addressed whether a subsequent bond hearing in immigration court cures the harm caused by ICE's unlawful actions.

39. However, courts have established in many circumstances that the harm of Constitutional violations cannot be cured by subsequent proceedings. Miliken v. Bradley, 433 U.S. 267 (1977) (remedies cannot retroactively erase a constitutional violation and must address its consequences); People v. Sharp, 42 N.Y.3d 369 (2024) (a subsequent hearing in the defendant's presence does not cure an earlier one in his absence); Knick v. Twp. Of Scott, 588 U.S. 180 (2019) (subsequent compensation does not cure an unlawful taking); Missouri v. Seibert, 542 U.S. 600 (2004) (subsequent Miranda warnings do not necessarily cure the earlier violation).

40. The only permissible remedy to cure the harm done by ICE's unlawful arrest is immediate release. This is the only remedy that returns the Petitioner as close to the condition prior to the violation as possible.

VII. CLAIMS FOR RELIEF

COUNT ONE

Violation of the INA for Warrantless Arrest

41. Petitioner incorporates by reference the allegations of facts set forth in the preceding paragraphs.
42. The INA clearly bars detention without a warrant unless ICE has probable cause that the person is likely to escape before a warrant can be obtained.
43. Respondents' failure to establish such probable cause, or to even try, violates the INA.
44. The plain language of the INA bars detention under these circumstances and Petitioner must be released.

COUNT TWO

Violation of Due Process for Warrantless Arrest

45. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
46. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V.

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

47. Petitioner has a fundamental interest in liberty and being free from official restraint.

48. Respondents' unlawful warrantless arrest without undertaking the necessary flight risk evaluation violated Petitioner's right to Due Process.

49. No subsequent proceeding could cure the harm of this unlawful detention and Petitioner must be immediately released as there is no other available remedy.

VIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request the Court to:

- a. Assume jurisdiction over this matter;
- b. Order that Petitioner not be transferred to another jurisdiction other than the Western District of Washington, while this petition is pending;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- d. Declare that Petitioner's detention is unlawful in violation of the INA and order Petitioner's immediate release;

- e. Declare that Petitioner's detention is unlawful in violation of Due Process and order Petitioner's immediate release;
- f. Order that no conditions that constitute de facto custody, such as house arrest, geographic limitations, or GPS monitoring, be imposed upon Petitioner's release;
- g. Order that Respondents are prohibited from re-detaining Petitioner absent advance authorization from this Court;
- h. Award Petitioner attorney's fees and cost under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. §2412, and on any other basis justified by law;
- i. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,

Date: March 24, 2026

By: /s/ Eric M. Mark
Eric M. Mark
Law Office of Eric M. Mark
96 Summer Ave., Fl. 1
Newark, NJ 07104
Tel: (973) 306-4246
Email: EricM@ericmarklaw.com

/s/ A. Fiona McKinnon
Gibbs Houston Pauw
1000 Second Ave., Suite 1600
Seattle, WA 98104
Tel: 206-682-1080
Fiona.McKinnon@ghp-law.net

Attorneys for Petitioner