

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Josein Eduardo Acosta Ortega,

Petitioner,

-v-

Miguel Vergara, San Antonio Field Office
Director, US Immigration and Customs
Enforcement; Todd M. Lyons,
Acting Director of US Immigration and
Customs Enforcement,

Respondents.

Case No: 5:25-cv-00632-XR

**Petitioner's Traverse in Support of
Petition for Writ of Habeas Corpus**

I. Introduction

Petitioner is a Venezuelan asylum seeker who entered the United States in November of 2021. He has complied with all terms of his release from detention, but was detained without cause or process on May 27, 2025. He has been detained by Respondents for two months, and there is no likelihood that they will release him. Respondents contend that Petitioner is now subject to "mandatory detention" and ineligible for release even with a bond.

Until his detention, Petitioner's case followed the standard processing in removal proceedings. He submitted an application for asylum and his proceedings have been delayed for several years due to being rescheduled by the immigration court. He has not delayed his proceedings in any way.

On May 15, 2025, the Board of Immigration Appeals decided for the first time that individuals like Petitioner are subject to mandatory detention based on a novel reading of 8

U.S.C. § 1225. This new interpretation has upended decades of practice in the immigration courts which permitted bonds. During a routine check-in with Immigration and Customs Enforcement, he was detained without any due process. He was informally told that his process “was taking too long” and that they were going to speed up the process by detaining him while he was waiting for a decision on his asylum application. He applied for and was denied bond by an immigration judge based solely due to Respondents’ novel interpretation of 8 U.S.C. § 1225.

Respondent’s determination that Petitioner is subject to mandatory detention is as new as it is sweeping. Since it was enacted in 1998, 8 U.S.C. § 1225 has never been interpreted to mandate detention for individuals like Petitioner. Their interpretation is erroneous and made with the specific intent to induce asylum seekers like Petitioner to “self-deport” by locking them up without any meaningful chance to be released. At the same time, Respondents have subjected their own officers to “detention quotas” that require them to detain a certain number of immigrants every day or face adverse actions.

Petitioner asks the Court to order his release because Respondents have violated his rights under the Fourth and Fifth Amendments to the Constitution, the Immigration and Nationality Act, and applicable regulations.

II. Statement of the Facts

Petitioner Josein Eduardo Acosta Ortega is an asylum seeker from Venezuela. *See* Ex. A (Form I-213, Record of Deportable/Inadmissible Alien). He entered the United States on November 5, 2021 and was released on his own recognizance on November 7, 2021. *See* Ex. A, C (Order of Release on Recognizance). Until his detention on May 27, 2025, Josein was free and subject only to the conditions of release.

The order granting Josein release on his own recognizance states that his release from detention is “[i]n accordance with section 236 [8 U.S.C. § 1226]” of the INA. *See* Ex. C. He was required to report for any hearings as well as to meet with his ICE Deportation Officer. *Id.* The release order further states:

“NOTICE: Failure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by the Department of Homeland Security.”

Id. Josein did not violate the conditions of his release at any point. Also on November 7, 2021, Josein was issued a “Notice of Custody Determination.” *See* Ex. D. That Notice states that he was released “[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act [8 U.S.C. § 1226] and of title 8, Code of Federal Regulations.” *Id.*

The DHS officer who issued Josein’s Notice to Appear in immigration court improperly left off the date and time that he was ordered to appear in court. *See* Ex. B (Notice to Appear dated November 7, 2021). As a result, he was not formally placed into proceedings until November 22, 2022 when a superseding Notice to Appear was issued that contained all the statutorily required information. *See* Ex. E (Notice to Appear dated November 22, 2022). Josein was placed into removal proceedings and he submitted an application for asylum, withholding of removal, and withholding under the Convention Against Torture on November 4, 2022, initially with USCIS and later with the immigration court following commencement of proceedings.

In January of 2025, ICE officials were directed to arrest at least 1,200 people a day. *See* Ex. J (Washington Post, Trump officials issue quotas to ICE officers to ramp up arrests). ICE field offices were given individual quotas of 75 arrests per day. *Id.* ICE managers were threatened that they would be held accountable if arrests were lower than these quotas. *Id.* In late May, the Trump Administration increased the arrest quota to a minimum of 3,000 per day. *See* Ex. K at p. 5 (New York Times, Under Pressure From the White House, ICE Seeks New Ways to

Ramp Up Arrests). This figure was confirmed by White House Deputy Chief of Staff Stephen Miller. *Id.*

On May 15, 2025, the Board of Immigration Appeals issued a precedential decision, *Matter of Q. Li*, which substantially affected the rights of all individuals who were arrested near their place of arrival in the United States. *See* Ex. L (*Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025)). The BIA's decision represented a substantial shift in the interpretation of 8 U.S.C. § 1225, which has not been changed since 1998, vastly expanding mandatory detention requirements to potentially include millions of immigrants.

Josein was detained during a mandatory report with ICE on May 27, 2025. *See* Ex. F (Notice to EOIR). Since that date he has been detained at the South Texas Detention Center which is operated by Respondents. Josein requested an immigration bond and a bond hearing was held on June 16, 2025. The Immigration Judge denied bond, finding that he was ineligible for a bond based on the Board of Immigration Appeals' decision in *Matter of Q. Li*. *See* Ex. G (Bond Memorandum & Order of the Immigration Judge). Josein appealed his bond denial on June 24, 2025, and that appeal remains pending with the Board of Immigration Appeals. *See* Ex. H (Filing Receipt for Appeal).

III. Argument

Petitioner asks this Court to order his release because he has been detained without due process as part of unlawful detention quotas and subjected to mandatory detention without the possibility of release. These violations cannot be remedied by the same agencies that put these procedures in place. Respondents have provided no evidence to justify their detention of Petitioner. The Court has jurisdiction to release Petitioner pursuant to a writ of habeas corpus.

A. Petitioner was unlawfully detained after his order of release was revoked without due process

Josein was unlawfully detained during a routine appointment with ICE on May 27, 2025. His detention was devoid of due process and in violation of established regulations. The Court should order his release because Respondents will not provide him due process and will subject him to indefinite mandatory detention.

Following Josein's arrival in the United States, he has consistently been informed that he was subject to the provisions of 8 U.S.C. § 1226(a), Section 236 of the Immigration and Nationality Act. That section allows the government to detain aliens, but also provides for their release on bond or with conditional parole. In this case, Josein was released without any bond, on his own recognizance, with the conditions that he comply with his order of release. His documents consistently cite this statutory authority as the basis for his detention and release. Now, after more than three years in the United States, Respondents are detaining him and subjecting him to an entirely different statute which applies to individuals who have recently crossed the border, 8 U.S.C. § 1225.

At the time he was detained, Josein's release order had not been revoked, nor was he provided any other kind of process. Regulations at 8 C.F.R. § 236.1(c)(9) and (g)(1) require specific procedures to release or revoke the release of an individual. This regulation also limits the authority to make these decisions to specific enumerated officers. Respondents have not shown that these revocation procedures were complied with in this case. Petitioner was simply informed that he was being detained, and he was informally told that it would speed up his process because his case "was moving too slowly." Respondents have not provided any documentation to show that Petitioner was lawfully detained.

Petitioner has been unlawfully deprived of his due process rights under the Constitution as well as regulations. The Fifth Amendment mandates that "[n]o person shall be ... deprived of life, liberty, or property without due process of law." The Supreme Court has held that an "alien" is a "person" for purposes of the Fifth Amendment. *See Wong Wing v. United States*, 163 U.S. 228, 237–238 (1896). To hold Josein without due process or the right to a bond is to deprive him of "liberty." *See United States v. Salerno*, 481 U.S. 739 (1987). There has been no "process" here at all under the applicable regulations to terminate Josein's release.

"Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Josein has been deprived of his personal liberty without any process. This deprivation is especially severe because there is no time limit that Respondents can detain Petitioner under their interpretation. As the Supreme Court noted in *Zadvydas v. Davis*, "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem." 533 U.S. 678, 690 (2001). As in *Zadvydas*, here the purpose of Petitioner's detention is civil in nature, nonpunitive in purpose, and as a result there is no "sufficiently strong special justification here for indefinite civil detention..." *Id.*

The Court should remedy Josein's unlawful detention by ordering his release from immigration custody.

B. Respondents have unlawfully detained Petitioner to comply with unconstitutional detention quotas

Through a combination of unlawful detention quotas and unprecedented expansion of mandatory detention, Respondents have detained Petitioner in order to induce him to "self-deport." Josein's statutory and constitutional rights are being violated by his continued detention.

The Fourth Amendment protects against "egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness..." *Immigration & Naturalization Serv. v. Lopez-Mendoza*, 468 U.S. 1032, 1050 (1984). Josein is being subjected to an egregious violation of his Fourth Amendment rights as part of an unprecedented and systematic effort to detain individuals, regardless of their particular circumstances, to meet detention quotas.

Respondents have engaged and widespread and systemic violations of the Fourth Amendment. Immigration officers have been instructed to detain immigrants purely to meet established quotas and without any individualized consideration for the individual's risk of flight or danger to their community. Officers who refuse to comply face disciplinary action such as reassignment, demotion, and termination. *See* Ex. J at p. 2.

Respondents have adopted a detention-first policy intended to punish asylum seekers and induce them to self-deport. As officials pushed to detain more and more immigrants every day, they made no plans for their post-detention due process. The administration's goal is not for immigrants to have their day in court. Detention is being used as a policy tool to encourage self-deportations and induce immigrants to leave the United States rather than pursue their cases. This is demonstrated by the fact that Josein has been detained for two months and he has not even had a preliminary hearing in his removal proceedings.

The record shows that there was no legitimate reason for Josein's detention. Before his detention, he was scheduled to attend a preliminary hearing in immigration court. His removal case, which was initiated on November 22, 2022, has been prolonged because the immigration court has continuously rescheduled his hearing date. Subsequent to his detention, Josein's case remains at a standstill. He has not had a single hearing in immigration court since his detention.

Respondents did not even notify the immigration court of Josein's detained status for more than a month following his detention.

The Court should order Josein's release because Respondents have unlawfully detained him as part an unlawful system of "detention quotas." These quotas are directly intended to induce Josein to self-deport rather than be detained for months or even years.

C. Respondents have unlawfully subjected Petitioner to mandatory detention

Respondents contend that Petitioner cannot be released because he is subject to mandatory detention pursuant to 8 U.S.C. § 1225. This interpretation upends nearly 27 years of practice in which immigrants like Petitioner have been eligible for release on bond or with conditions. Indeed, Petitioner was himself released on his own recognizance since shortly after his arrival.

This novel interpretation of 8 U.S.C. § 1225 is both unlawful and erroneous. This section of the Immigration and Nationality Act relates to immigrants who are arriving in the United States, their inspection and admission, and subsequent procedures should they be placed into "expedited removal" proceedings. This section is wholly inapplicable to Petitioner, who was detained and released from immigration detention pursuant to 8 U.S.C. § 1226.

The provisions of 8 U.S.C. § 1225 do not apply to immigrants, like Petitioner, who are detained long after their arrival and inspection. Indeed, Josein has been present in the United States for more than three years, since November 5, 2021. The text of the statute makes this distinction clear. 8 U.S.C. § 1225 is titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." The title references "arriving aliens" who are being inspected and subjected to "expedited removal." Josein was not arriving in

the United States on May 27, 2025, when he was detained by Respondents. Nor was he seeking inspection and admission to the United States.

Other provisions of 8 U.S.C. § 1225 make clear that it relates to immigrants who are in the process of arriving in the United States. 8 U.S.C. § 1225(a)(1) refers to “An alien present in the United States *who has not been admitted or who arrives in the United States*” (emphasis added). The statute uses the present tense, “arrives,” rather than the past tense, “arrived,” demonstrating that it applies at the time of the actual entry and inspection of an alien to the United States.

The statute contemplates that some immigrants will arrive at the border and later seek asylum. 8 U.S.C. § 1225(b)(1)(A)(i) states that

“If an immigration officer determines that an alien...who is arriving in the United States or is described in clause (iii) is inadmissible under section 212(a)(6)(C) or section 212(a)(7) of this Act, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 208 of this Act or a fear of persecution.”

Respondents did not follow these procedures in Josein’s case. He was not ordered removed in “expedited removal proceedings.” He was simply released pursuant to 8 U.S.C. § 1226. The procedures for individuals in true expedited removal proceedings are starkly different. Should an immigrant request asylum at the time of entry, the statute states that:

“If an immigration officer determines that an alien...who is arriving in the United States or is described in clause (iii) is inadmissible under section 212(a)(6)(C) or section 212(a)(7) of this Act and the alien indicates either an intention to apply for asylum under section 208 of this Act or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).”

8 U.S.C. § 1225(b)(1)(A)(ii). Josein was never referred for such an interview because he was never subject to expedited removal procedures in the first instance. He was not placed into expedited removal proceedings and was not provided an interview with an asylum officer as

required by statute. Instead, he was processed under 8 U.S.C. § 1226(a), released on his own recognizance, and provided a court date to appear in immigration court to pursue his case.

Respondents believe that they can subject Petitioner to an entirely different detention scheme without any due process. The Court should find that Josein is not subject to proceedings under 8 U.S.C. § 1225, and is therefore not subject to mandatory detention. The Court should order that Petitioner be released from custody.

D. Exhaustion is not required and is inappropriate in Petitioner's circumstances

Respondents contend that Petitioner must appeal his bond denial to the Board of Immigration Appeals and wait for a decision prior to petitioning for a writ of habeas corpus. There is no statutory exhaustion requirement in 28 U.S.C. § 2241. The courts have routinely reviewed the detention of immigrants pursuant to different statutes in habeas proceedings. *See, e.g., Tran v. Mukasey*, 515 F.3d 478 (5th Cir. 2008). Furthermore, exhaustion is inappropriate here because appeal to the Board of Immigration Appeals is futile and inadequate.

Exhaustion of administrative remedies is inappropriate “where the attempt to exhaust such remedies would itself be a patently futile course of action.” *Hessbrook v. Lennon*, 777 F.2d 999 at 1003 (5th Cir. 1985). Appeal to the Board of Immigration Appeals (BIA) here is futile and inadequate for three reasons. First, the BIA is the same agency which determined that Petitioner is subject to mandatory detention. *See* Ex. G, p. 2. Second, Petitioner presents claims including constitutional violations which the BIA cannot review. Finally, appeal to the BIA is inadequate as a remedy to Petitioner's unlawful detention because he would be deprived of his liberty during the pendency of the appeal.

Appeal to the BIA is futile because that agency issued the very same precedential decision which led to him being subject to mandatory detention. That decision was issued on

May 15, 2025. *See* Ex. L. Since that date, no subsequent decisions by the Board have narrowed or distinguished that decision. The BIA's decision in *Matter of Q. Li* entirely forecloses the possibility of Petitioner receiving an immigration bond or otherwise being released from detention. Even if an individual poses no risk of flight or danger to their community, an immigration judge cannot order their release. The BIA would have to overrule its own precedential decision issued only two months ago to provide any relief to Petitioner. Appealing to the BIA is futile because the agency that issued the decision resulting in Petitioner's mandatory detention should not be expected to rule against itself.

Petitioner's claims also fall outside of the issues which the BIA could decide. Petitioner's unlawful detention implicates his constitutional rights under the Fourth and Fifth Amendments. The BIA cannot decide Petitioner's constitutional claims and they would have to be presented to a federal court. The Court should determine whether Petitioner's indefinite detention is lawful in the first instance rather than requiring Petitioner to present those claims to the BIA first.

Appeal to the BIA is also an inadequate remedy because an appeal could take months or even years during which Petitioner is deprived of liberty. The BIA does not release any statistics on the average processing time of an appeal. However, Petitioner filed his appeal on June 24, 2025, and his appeal has not advanced since that date.

E. The Court has jurisdiction to review Petitioner's detention in habeas proceedings

Respondents contend that the Court cannot review their actions related to Petitioner's detention. This position is contravened by established precedent. "28 U.S.C. 2241[] confers jurisdiction upon the federal courts to hear these cases." *Zadvydas v Davis*, 533 U.S. 678, 687 (2001). The Supreme Court in *Zadvydas* explained how "statutory provisions that limit the circumstances in which judicial review of deportation decisions is available...do not deprive an

alien of the right to rely on 28 U.S.C. 2241 to challenge detention that is without statutory authority." *Id.* at 687.

Respondents references to these statutory provisions are unavailing. 8 U.S.C. § 1226(e) states only that “[t]he Attorney General's discretionary judgment regarding the application of this section shall not be subject to review.” Petitioner’s unlawful detention is not a discretionary judgment; Respondents have not provided any documentation of their process or decision to detain Petitioner.

8 U.S.C. § 1252(a)(5) is similarly inapplicable here. That section bars habeas review of a “an order of removal entered or issued under any provision of this chapter” rather than a challenge to unlawful detention. 8 U.S.C. § 1252(g) relates to the commencement of removal proceedings, the adjudication of cases, and the execution of removal orders. None of those matters are being challenged here.

Respondents acknowledge that Petitioner has due process rights under the Fifth Amendment which apply to these proceedings. *See* Response, Doc. 7 at p. 3. Respondents also acknowledge that “as-applied constitutional challenges to immigration detention may be brought under certain circumstances.” *Id.* at 4. Petitioner is presenting precisely that type of challenge here. As both parties agree the Court has jurisdiction over this type of claim, there is no matter truly in dispute here regarding the Court’s jurisdiction over this matter.

IV. Conclusion

Because Respondents have unlawfully detained him, the only means that Petitioner has for being released is by order of this Court. Therefore, Petitioner respectfully asks this Court to grant his Petition and issue a writ of habeas corpus ordering his release.

Respectfully submitted,

/s/ Joseph Krebs Muller

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