



(Jul. 8, 2025). Through the filing of this writ, Petitioner seeks an order from this Court declaring that his continued detention is unconstitutional, or otherwise unlawful, and ordering his immediate release from Respondents' custody, pursuant to the IJ's July 8, 2025 final order granting Respondent a bond.

## **I. CUSTODY**

1. Petitioner is in the physical custody of Respondents and their agents, as he is detained at the Houston Contract Detention Facility ("CDF"), located at "15850 Export Plaza Drive, Houston, Texas 77032." *See* Exhibit 2—Proof of Current Detention.
2. The CDF contracts with the Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), and the ICE Office of Enforcement and Removal Operations ("ERO") to detain and house aliens, such as Petitioner.

## **II. JURISDICTION**

3. This action arises under the Constitution of the United States, and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et. seq.*, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. No. 104-08, Stat. 1570.
4. This Court has jurisdiction over this action under 28 U.S.C. §§ 2241(c)(1) and (3), art. I, § 9, cl. 2 of the United States Constitution (the "Suspension Clause"),

and 28 U.S.C. § 1331, as Petitioner is presently in custody “under or by color of the authority of the United States,” and such custody is in violation of “the Constitution or laws or treaties of the United States.”

5. This Court may grant the relief that Petitioner is requesting, pursuant to 28 U.S.C. § 2241, and 28 U.S.C. § 1651 (the “All Writs Act”).

### III. VENUE

6. Pursuant to 28 U.S.C. § 1391(b)(1)-(2), venue is proper in this district, because it is where Respondent resides and is currently being unlawfully detained. *See* Exhibit 2, *supra*.

### IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

7. After Petitioner was granted a bond by the IJ, he exhausted all of his administrative remedies with respect to attempting to secure his release from custody through ICE. *See* Exhibit 3—Proof of Attempts to Secure Release. All requests for Petitioner’s release have been denied by ICE. *Id.*
8. The only remedy Petitioner has available to him now is through the filing of this writ.

### V. PARTIES

9. Petitioner, Emerson Ernesto Romero Mena, is presently detained unlawfully by the Respondents, in Houston, Texas. *See* Exhibit 2, *supra*. As noted above, Petitioner has been granted a bond by an IJ, but Respondents refuse to comply

with the IJ's order by continuing to unlawfully detain Petitioner. *See* Exhibits 1 and 3, *supra*.

10. Respondent, Kristi Noem, is the Secretary of the DHS. She, and her agents, have actual and physical custody of Petitioner. *See* Exhibit 2, *supra*.

11. Respondent, Todd Lyons, is the Acting Director of ICE. He, and his agents, have actual and physical custody of Petitioner. *Id.*

12. Respondent, Kenneth Genaldo, is the Acting Executive Associate Director of ICE ERO. He, and his agents, have actual and physical custody of Petitioner. *Id.*

13. Respondent, Bret Bradford, is the Field Office Director of Houston ERO. He, and his agents, have actual and physical custody of Petitioner. *Id.*

14. Respondent, Martin Frink, is the Warden of the CDF in Houston, where Respondent is currently being detained. He, and his agents, have actual and physical custody of Petitioner. *Id.*

## VI. STATEMENT OF FACTS

15. Petitioner is a native and citizen of El Salvador. *See* Exhibit 4—Notice to Appear (“NTA”).

16. On or about June 6, 2025, Petitioner was apprehended by ICE officials and detained pursuant to an immigration warrant for his arrest, after he was arrested and detained in Fort Bend County Jail. *See* Exhibit 2, *supra*; *see also* Exhibit 5—Bond Worksheet. He was then served with an NTA and placed in removal

proceedings, once the NTA was filed by the DHS with the immigration court in Conroe, Texas. *See Exhibit 4, supra.*

17. While Petitioner was detained, he filed a Motion for Bond with the IJ, which was granted on July 8, 2025. *See Exhibit 1, supra.* During the bond proceedings, the DHS did not raise the issue of whether Petitioner was subject to mandatory detention, nor did the IJ address it. *Id.* The bond order specified that Petitioner was to be released on a bond amount of \$5,000. *Id.*
18. The DHS did not appeal the IJ's grant of bond, thus making the bond order the final and binding decision on the case. *See Matter of Valles*, 21 I&N Dec. 769 (BIA 1997).
19. On or about July 8, 2025, Petitioner's family member submitted a bond payment request to ICE to pay Petitioner's bond and secure his release from ICE's custody. *See Exhibit 3, supra.* However, on or about July 9, 2025, ICE stated that it was denying the bond payment request, because Petitioner was subject to mandatory detention. *Id.*
20. On or about July 10, 2025, Petitioner's family member went to the ICE office and inquired why the bond payment was rejected by ICE. *Id.* ICE informed Petitioner's family member that it was due to a new ICE policy, which stated that "any person that entered the country illegally will not be released from custody regardless o[f] whether or not they were granted a bond." *Id.*



21. On or about August 11, 2025, Petitioner's immigration attorney, Gerardo P. Periera, sent a letter to ICE, demanding that Respondents release Petitioner from their custody pursuant to the IJ's final bond order granting Petitioner's release on bond. *Id.* To date, no response from ICE has been received.

22. Because Respondents are not releasing Petitioner at this time, despite the IJ's final order granting him a bond, and Petitioner cannot file an action with any administrative body to remedy his unlawful detention, this writ is the only option that Petitioner has left.

## **VII. CLAIMS FOR RELIEF**

### **COUNT 1 – CONSTITUTIONAL VIOLATION**

23. Petitioner incorporates, by reference, the factual allegations contained in paragraphs 1 through 22, above.

24. Petitioner contends that his continued detention violates his substantive and procedural due process rights under the Fifth Amendment of the U.S. Constitution.

25. The Fifth Amendment forbids the federal Government from depriving any "person...of...liberty...without due process of law." U.S. Const. Amend. V.

26. In this case, Petitioner submits that his continued detention, without the ability to seek a release from the DHS (or ICE), despite the IJ issuing a final order that he be released on bond, has deprived him of his fundamental due process rights

under the Fifth Amendment. Therefore, this Court should order his immediate release from custody at this time.

## COUNT 2 – STATUTORY VIOLATION

27. Petitioner incorporates, by reference, the factual allegations contained in paragraphs 1 through 26, above.

28. Petitioner's continued detention violates the INA, and as previously noted, the U.S. Constitution.

29. Under 8 U.S.C. § 1226(a), an alien may be released on bond by an IJ if the alien was arrested and detained by the DHS pursuant to an immigration arrest warrant. *See also* 8 C.F.R. § 236.1(d)(1).

30. In this case, Petitioner was taken into ICE custody pursuant to a warrant of arrest, after he was transferred from Fort Bend County Jail. *See* Exhibits 2 and 5, *supra*. He therefore squarely falls under 8 U.S.C. § 1226(a) and is eligible to be released on bond, which the IJ correctly ordered. *See* Exhibit 1, *supra*. Yet, the Respondents are in open defiance of that final order, and the INA, by refusing to release Petitioner from their custody.

31. ICE contends that Petitioner falls under 8 U.S.C. § 1225(b)(2)(A)—the mandatory detention provision at issue here. That provision states, in relevant part, that if an alien is both an “applicant for admission” and is “seeking admission,” ICE may continue to indefinitely detain the alien until the completion

of his or her removal proceedings. But Petitioner cannot fall under that provision, because while he is an “applicant for admission” (under 8 U.S.C. § 1225(a)(1)), for being present in the United States without being admitted, it cannot be said that he was “seeking admission” into the United States at the time of his initial unlawful entry in 2006. *See* Exhibit 5, *supra*. In fact, by entering without inspection, Petitioner was actively trying *not* to seek an admission.

32. Nor was Petitioner “seeking admission” at the time that he was detained by ICE, on or about June 6, 2025, as by that point, he was an alien *already present* in the United States for a period of approximately nineteen years and who was never apprehended near a border or paroled at the border. *See Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018) (stating that 8 U.S.C. § 1225(b) “applies to aliens *seeking entry into the United States...*” while 8 U.S.C. § 1226(a) “applies to aliens *already present* in the United States”); *Matter of Q. Li*, 29 I&N Dec. 66, 70 (BIA 2025) (noting that 8 U.S.C. § 1226(a) “applies to aliens *already present* in the United States”). Accordingly, and contrary to the ICE’s assertions, Petitioner was not an alien “seeking admission,” and therefore, he cannot be subject to the mandatory detention provisions of 8 U.S.C. § 1225(b)(2) under a plain reading of the statute.

33. Because Petitioner does not fall under 8 U.S.C. § 1225(b)(2)(A), and no other grounds of mandatory detention apply in this case, he must fall under 8 U.S.C. §



1226(a). The grant of his bond by an IJ was therefore proper. And by refusing to release Petitioner pursuant to that grant, Respondents are in clear violation of the INA. As such, this Court should order Petitioner's release at this time.

### **COUNT 3 – ATTORNEY'S FEES**

34. If Petitioner prevails in this action, Petitioner requests attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412.

### **VIII. PRAYER FOR RELIEF**

35. WHEREFORE, premises considered, Petitioner respectfully requests that this Court:

- a. accept jurisdiction and venue as proper;
- b. hold that Respondent's current detention of Petitioner is unlawful and unconstitutional;
- c. order Respondents to immediately release Petitioner from their custody;
- d. grant reasonable attorney's fees, expenses, and costs of court pursuant to the EAJA; and
- e. grant Petitioner any other relief as the Court may deem proper.

Respectfully submitted,

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Canada

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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Emerson Ernesto Romero Mena,

Petitioner,

v.

Kristi Noem, Secretary of the Department  
of Homeland Security; Todd Lyons, Acting  
Director of Immigration and Customs  
Enforcement; Kenneth Genaldo, Acting  
Executive Associate Director of  
Enforcement and Removal Operations;  
Bret Bradford, Field Office Director of  
Houston Enforcement and Removal  
Operations; Martin Frink, Warden of  
Houston Contract Detention Facility

Respondents.

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**LIST OF EXHIBITS**

Exhibit 1—IJ Decision Granting Bond (Jul. 8, 2025)

Exhibit 2—Proof of Current Detention

Exhibit 3—Proof of Attempts to Secure Release

Exhibit 4—NTA

Exhibit 5—Bond Worksheet