

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

ADISSON ISMAR MAJANO FUENTES

(); and

FERNANDO JOSE MAJANO FUENTES

()

Petitioner(s),

v.

PAMELA BONDI, U.S. Attorney General;
KRISTI NOEM, Secretary of the U.S. Department
of Homeland Security;
TODD M. LYONS, in his official capacity as
Acting Director of U.S. Immigration and Customs
Enforcement;
JAMES A. MULLAN, in his official capacity as
Assistant Field Office Director in charge of ICE
New Orleans Field Office;

Respondents.

Case No.: 25-cv-1909

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner Adisson Ismar Majano Fuentes (“Mr. Adisson Majano Fuentes”) and Petitioner Fernando Jose Majano Fuentes (“Mr. Fernando Majano Fuentes”, and collectively with Mr. Adisson Majano Fuentes, the “Petitioners”), both native and citizens of El Salvador, challenge their continued custodial detention by the Department of Homeland Security Immigration and

Customs Enforcement (“ICE”) since October 29, 2025 as an unconstitutional and unjustified restraint and deprivation of their physical liberty, and seek immediate relief from this Court.

2. Petitioners are being unlawfully subjected to continued custodial detention by Respondents without the ability to pursue substantive administrative remedies with the Department of Justice Executive Office for Immigration Review (“EOIR”).

3. Petitioners’ continued detention by ICE, without any further meaningful mechanism to challenge their confinement, violates the U.S. CONST. Due Process Clause of the Fifth Amendment (the “Fifth Amendment”), the INA and the Administrative Procedures Act, 5 U.S.C. § 702 (the “APA”).

4. Petitioners petition for a writ of habeas corpus to remedy their unlawful detention, and pray this Court will issue an order 1) staying Petitioners’ transfer outside of the Eastern District of Virginia pending resolution of this Petition; 2) declaring that the continued immigration detention of Petitioners violates the Due Process Clause of the Fifth Amendment, the INA and the APA; 3) granting Petitioners their immediate release from the custody of Respondents, or in the alternative, a bond hearing before an immigration judge under section 236 of the INA; and 4) preventing Respondents from once again taking Petitioners into custody unless they are determined to be a flight risk and/or a danger to the community.

JURISDICTION AND VENUE

5. Petitioners are detained in Chantilly, Virginia at the ICE Washington Field Office, which is within the jurisdiction of the United States District Court for the Eastern District of Virginia (“EDVA”).

6. This action arises under the Due Process Clause of the Fifth Amendment, the INA and the APA.

7. This Court has subject-matter jurisdiction under 28 U.S.C. § 2241 (“Habeas Corpus”), 28 U.S.C. § 1346 (civil actions against the United States), 28 U.S.C. § 1651 (“All Writs Act”), and 28 U.S.C. §§ 2201-02 (“Declaratory Relief”), as Petitioners are presently held in custody under or by color of the authority of the United States. Their detention by Respondents is a “severe restraint” on their individual liberty “in violation of the...laws ... of the United States.” See Hensley v. Municipal Court, San Jose-Milpitas Jud. Dist., 411 U.S. 345, 351 (1973).

8. This Court has jurisdiction to hear Habeas Corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by U.S. immigration officials. See, e.g., Jennings v. Rodriguez, 138 S. Ct. 830,841 (2018); Demore v. Kim, 538 U.S. 510, 516-17 (2003); Zadvydas v. Davis, 533 U.S. 678, 687.

9. In addition to the habeas protections in the Constitution and INA, federal district courts have subject-matter jurisdiction under 28 U.S.C. § 1331 (“Federal Questions”) to hear claims by individuals challenging the lawfulness of agency action.

10. The All Writs Act, 28 U.S.C. § 1651(a) empowers the federal courts to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. Courts in this district have recently invoked the All Writs Act to prevent the transfer of individuals detained within the “judicial district unless and until the Court issues a contrary order.” See Garcia Guardado v. Lyons, et al., 1:25-cv-1741-MSN-WBP (E.D. Va. Oct. 15, 2025) (citing 28 U.S.C. § 1651; FTC v. Dean Foods Co., 384 U.S. 597,603 (1966) (“The All Writs Act, 28 U.S.C. § 1651 (a), empowers the federal courts to ‘issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.’”); see also Guevara Gomez v. Crawford, 1:25-cv-1781-PTG-LRV (E.D. Va. Oct. 16, 2025).

11. Petitioners request that this Court invoke the All Writs Act to prevent any transfer out of the Eastern District of Virginia during the pendency of their habeas action, given the likelihood that they will be ordered to appear at a bond hearing shortly after this Court rules upon the habeas petition. Their counsel operate primarily out of Virginia and Maryland, they will need to participate in the preparation for and attendance at their bond hearing, and they will incur additional, unnecessary expenses and difficulty in returning to their residence in Maryland should they be granted a bond hearing after they are transferred out of state. See <https://www.tsa.gov/travel/security-screening/identification> (listing documents required to board an airplane, which does not include ICE release paperwork); see also Ozturk v. Trump, 779 F. Supp. 3d 462, 497 (D. Vt. 2025) (noting that presence in the judicial district where an action is pending “facilitate[s]” the petitioner’s “ability to work with [his or] her attorneys, coordinate the appearance of witnesses,” and generally present claims related to detention); cf. Suri v. Trump, 785 F. Supp. 3d 128, 147-48 (E.D. Va. May 6, 2025) (discussing ICE’s transfer of individuals throughout the country and the strain that places on lawyers attempting to represent them in habeas petitions).

12. Venue is proper because Petitioners are currently detained within the EDVA. At 4:05 p.m. Eastern Time on October 30, 2025, the ICE Detainee Locator indicated that they were detained in ICE custody and Petitioners communicated to Counsel verifying that they were in Chantilly, Virginia.

PARTIES

13. Petitioner Adisson Majano Fuentes is citizen and national of El Salvador born on December 1, 2001. Petitioner Fernando Majano Fuentes is a citizen and national of El Salvador

born on August 3, 1999. Petitioners are brothers. They are currently detained by the Respondents at the ICE Washington Field Office within the EDVA since October 29, 2025.

14. Respondent Pamela Bondi is the U.S. Attorney General, and in that capacity is responsible for the EOIR which includes the Board of Immigration Appeals and immigration courts. She is sued in her official capacity.

15. Respondent Kristi Noem is the Secretary of Homeland Security, and in that capacity is responsible for the Department of Homeland Security ("DHS") and all sub-cabinet agencies of DHS, including ICE and the United States Citizenship and Immigration Services ("USCIS"). She is sued in her official capacity.

16. Respondent Todd M. Lyons is the Acting Director of ICE, responsible for ICE's detention and removal operations of non-citizens such as Petitioner, among all its other functions. He is sued in his official capacity.

17. Respondent James A. Mullan is the Assistant Field Office Director of the ICE Washington Field Office, and is responsible for ICE's operations in the State of Virginia. Upon information and belief, he is the immediate custodian of Petitioners. He is sued in his official capacity.

JOINDER

18. Petitioners are asserting right to relief jointly with respect to the same occurrence, namely their detention by Respondents on October 29, 2025 as they were on their way to work together in their vehicle.

19. Petitioners also assert that the same questions of law and fact that are common to the both of them will arise in this action.

STATEMENT OF FACTS

20. Mr. Adisson Majano Fuentes is a citizen of El Salvador born on December 1, 2001. He entered the United States as a 17-year-old minor child on November 9, 2018 and was detained by DHS. Mr. Fernando Majano Fuentes is a citizen of El Salvador born on August 3, 1999. He entered the United States as a 16-year old minor child on April 1, 2016. Petitioners are brothers who were raised together in El Salvador by their biological mother until 2008 and then by their maternal grandmother once they left for the United States.

21. Petitioners were processed by the DHS as Unaccompanied Alien Children ("UAC") in accordance with the Trafficking Victims Protection Reauthorization Act ("TVPRA") and related INA provisions. Petitioners were released to the custody of the Department of Health and Human Services Office of Refugee Resettlement ("ORR") which is an office within the HHS. *See* 8 U.S.C. § 1232(b)(3), 6 U.S.C. § 279. ORR released both Petitioners into the care and custody of their mother, who lived in the State of Maryland. 8 U.S.C. § 1232(b)(3) of the TVPRA and 6 U.S.C. § 279 (the "Sponsorship Agreement"). Such release was made under INA § 236 per the TVPRA.

22. As UACs, DHS placed Petitioners into INA § 240 proceedings through the issuance of a Notice to Appear (the "NTA"). The NTA for Mr. Adisson Majano Fuentes was never filed with EOIR and proceedings were never initiated. The NTA for Mr. Fernando Majano Fuentes was filed with EOIR and his proceedings were dismissed after DHS agreed to not oppose dismissal on May 18, 2022.

23. Petitioners have never been arrested, charged or convicted of any crimes either in their home country or in the United States. Their only detention was by DHS upon their entry to the United States as minor children. They have lived continuously lived in the State of Maryland after their respective entries.

24. Petitioners live with their mother in the State of Maryland and have been gainfully employed as carpenters for over five years. Mr. Fernando Majano Fuentes is also the father to a three (3) year-old US citizen child that lives with him and he financially supports.

25. Petitioners were detained by ICE together on October 29, 2025 in the State of Maryland as they were on their way to work. They were immediately transferred to the ICE Washington Field Office in the State of Virginia where they were told that they would be detained without bond pending proceedings before an immigration judge.

26. Petitioners are unable to file a bond redetermination with the EOIR to challenge their custody that will be meaningfully considered as a result of the BIA publishing Matter of Yajure-Hurtado, 29 I&N Dec. 216 (BIA 2025) on September 5, 2025. Matter of Yajure-Hurtado deemed individuals such as Petitioners as subject to mandatory detention under Section 235 of the INA.

27. The BIA's decision in Matter of Yajure-Hurtado has been found by dozens of Federal courts across the country as an unlawful interpretation of the INA. Petitioners are unable to meaningfully submit any evidence demonstrating that they are neither a flight risk nor a danger to the community to secure their release from custody by an immigration judge under the INA.

EXHAUSTION

28. The decision to detain Petitioners is subject to challenge through a petition for a writ of habeas corpus, and Petitioners need not exhaust additional administrative remedies which might be available to him before seeking this Court's review. See, e.g., McCarthy v. Madigan, 503 U.S. 140, 147-48 (1992) ("[A]n administrative remedy may be inadequate [because] ... an agency, as a preliminary matter, may be unable to consider whether to grant relief because it lacks institutional competence to resolve the particular type of issue presented, such as the

constitutionality of a statute” or “where the administrative body ... has otherwise pre-determined the issue before it.”).

29. Moreover, further exhaustion would be futile because Petitioners will be pursuing a remedy to no avail. See Janvier, 174 F. Supp. 2d at 434 (recognizing that exhaustion is not necessary “where the pertinent administrative agency lacks the competence to reach a definitive resolution of the particular issue presented[,]” such as “where, as here, the administrative agency may consider constitutional claims, but lacks authority to rule dispositively on those claims, because “the final say on constitutional matters rests with the courts.”). In particular, under new BIA precedent, Petitioners are no longer considered eligible for bond to be granted by an immigration judge.

30. The detention of Petitioners by ICE, years after they last entered the United States, without the ability to challenge his detention is unconstitutional, and administrative exhaustion is excused. See Guitard v. U.S. Sec’y of the Navy, 967 F.2d 737, 741 (2d Cir. 1992) (“Exhaustion of administrative remedies may not be required when ...a plaintiff has raised a substantial constitutional question.”).

CLAIMS FOR RELIEF

COUNT ONE

Petitioners’ Detention Violates Their Right to Substantive Due Process under the Fifth

Amendment

31. Petitioners re-allege and incorporate by reference the paragraphs above.

32. As a “person” within the meaning of the Fifth Amendment, Petitioners are entitled to due process of law while in the United States, and certainly while in immigration custody. U.S.

CONST. amend. V; see Reno v. Flores, 507 U.S. 292, 306 (1993) (“It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.”).

33. The Substantive Due Process Clause protects a person’s freedom from arbitrary confinement. See Zadvydas, 533 U.S. at 693. The Supreme Court has recognized this protection applies regardless of a person’s immigration status. See id.; see also Mathews v. Diaz, 426 U.S. 67, 77 (1976).

34. Civil detention, such as immigration detention, must be carefully limited to avoid due process concerns. See, e.g., Foucha v. Louisiana, 504 U.S. 71, 80 (1992) (“Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action”); Addington v. Texas, 441 U.S. 418, 425 (1979) (“This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection”); see also United States v. Salerno, 481 U.S. 739, 755 (1987) (“In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception”).

35. The Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and prevent flight. See Demore, 538 U.S. at 528; see also Matter of Patel, 15 I. & N. Dec. 666 (BIA 1976) (“An alien generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security, or that he is a poor bail risk[.]” (internal citation omitted)). Additionally, a period of detention must “bear [a] reasonable relation to the purpose for which the individual was committed.” See Demore, 538 U.S. at 516–17.

36. Petitioners are being denied substantive due process as the Respondents continue to exercise their authority contrary to law in order to prevent Petitioners from seeking release under

the INA before an immigration judge. The EOIR, through the BIA, took the position in Matter of Yajure Hurtado that individuals such as Petitioners, who were previously detained and released under Section 236 of the INA by DHS, are subject to the mandatory detention provisions of Section 235 of the INA.

37. Under Section 236 of the INA, an immigration judge would be able to consider any evidence submitted by Petitioners. The immigration judge would determine, as a neutral fact-finder, whether Petitioners were a flight risk or a danger to the community. The Respondents have made applications for bond by Petitioners under Section 236 of the INA futile by applying Matter of Yajure-Hurtado to cases with the same facts and circumstances as Petitioners.

38. But for Matter of Yajure-Hurtado, Petitioners would have the ability to demonstrate to a neutral fact-finder that they are not a flight risk as they have ample ties to the community through their family and employment. They would also have been able to demonstrate that they were not a danger to the community. No justification exists to deprive Petitioners with the ability to present such evidence.

COUNT TWO

Petitioners' Detention Violates Their Right to Procedural Due Process Under the Fifth Amendment

39. Petitioners re-allege and incorporate by reference the paragraphs above.

40. "Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty" that the Fifth Amendment's Due Process Clause protects. See Zadvydas, 533 U.S. at 690.

41. To that end, due process demands "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.” Id. (internal quotation marks omitted).

42. Given the gravity of the liberty deprivation when the government preventively detains individuals, due process requires the jailers bear the burden of proof. See, e.g., Salerno, 481 U.S. at 751 (affirming legality of pre-trial detention where burden of proof was on the government); see also Foucha, 504 U.S. at 81-82 (holding unconstitutional a state “statute that place[d] the burden on the detainee to prove that he is not dangerous”). The Court has held that it is improper to ask an “individual to share equally with society the risk of error when the possible injury to the individual-deprivation of liberty-is so significant.” See Addington, 441 U.S. at 427.

43. In Mathews v. Eldridge, the Supreme Court set forth the factors to consider in determining if government action deprives an individual’s Fifth Amendment right to procedural due process or whether the government process is constitutionally adequate. 424 U.S. 319 (1976). The Mathews factors apply here to determine if Petitioner’s procedural due process rights as a civil detainee have been violated by the Government’s continued custodial detention by operation of the automatic stay.

44. Petitioners have a substantial liberty interest in their bodily freedom. The unlawful detention by Respondents is preventing Petitioners to their right to bodily freedom.

45. Yet Petitioners were not provided any process at all in the course of their arrest, processing, and detention by ICE through notice and an opportunity to respond that would reduce the risk of an erroneous deprivation of their interests. ICE deprived Petitioners adequate procedural protection in their substantial interest with respect to their liberty by taking them into custody with no regard to its own long-established practices, procedures and applicable statutes and regulations. Specifically, the statutory provisions of the TVPRA regarding the detention of UAC’s who turn

18 were completely and arbitrarily ignored by DHS in contravention of the Sponsorship Agreement.

COUNT THREE

Petitioners' Detention by ICE is in Violation of the INA

46. Petitioner re-alleges and incorporates by reference the paragraphs above.

47. 8 U.S.C. § 1225 authorizes the mandatory detention of “arriving aliens” and those noncitizens who cannot demonstrate they have “been physically present in the United States continuously for the 2-year period immediately prior[.]” See 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

48. As noted above, Petitioners were detained under § 236 of the INA as UACs upon their respective entries to the United States and have lived in the United States for more than five years after such entry.

49. However, Respondents are detaining Petitioners as not eligible for bond by characterizing their detention under § 235 of the INA despite DHS initially detaining them under § 236. The EOIR itself has ruled that an individual detained under § 236 of the INA cannot by operation of law be considered to be detained under § 235 of the INA. See Matter of Cabrera-Fernandez, 28 I&N Dec. 747 (BIA 2023). As previously argued, Petitioners' status as UACs also put their detention within the purview of the TVPRA and its protection for UACs.

COUNT FOUR

Petitioners' Detention by ICE is in Violation of the APA 5 U.S.C. § 702 (Unconstitutional, unlawful, arbitrary, and capricious actions)

50. Petitioners re-allege and incorporate by reference the paragraphs above.

51. The decision to detain Petitioners and hold them without any opportunity to challenge their custody is arbitrary, capricious, and not in accordance with the INA, and contrary to Petitioners' right to due process under the Fifth Amendment.

52. This Court may set aside agency action which is arbitrary, capricious, unlawful, or contrary to constitutional right, power, privilege, or immunity. See 5 U.S.C. §§ 706(2)(A), (B).

53. Petitioners were released by DHS under the TVPRA and have lived over five years in the United States, after which they were arrested without any cause and have since been detained without further justification in immigration custody.

54. Additionally, the determination by ICE that Petitioners are subject to mandatory detention under § 235 of the INA, despite having been detained under § 236 of the INA, was without any basis in law. Such actions are arbitrary and capricious, and should be held unlawful and set aside.

55. As a result of the arbitrary, capricious, unlawful, and unconstitutional actions by Respondents, Petitioners have suffered prejudice, actual and substantial hardship, and irreparable injury in fact.

56. Petitioners have no other adequate remedy at law.

PRAYER FOR RELIEF

Based on the foregoing, Petitioners requests that this Court:

- a. Assume jurisdiction over the matter;
- b. Issue an emergency order staying Petitioner's transfer outside the District of Eastern District of Virginia;
- c. Declare that the continued immigration detention of Petitioners violates the Due Process Clause of the Fifth Amendment;

d. Declare that the continued immigration detention of Petitioners is in violation of the INA and the APA 5 U.S.C. § 702 as unconstitutional, unlawful, arbitrary, and capricious actions;

e. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioners from their custody or allow them to seek bond before an immigration judge under Section 236 of the INA;

f. Issue an order preventing Respondents from once again taking Petitioners into custody unless they are determined to be a flight risk and/or a danger to the community in accordance with the U.S. Constitution;

g. Award Petitioners all costs incurred in maintaining this action; and

h. Grant any other and further relief this Court deems just and proper.

Respectfully submitted,

October 30, 2025

/s/ Michael E. Rosado

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