

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Jorge Luis TORRES VILLASANA,

Petitioner,

v.

Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Pam BONDI, in her official capacity as Attorney General; Todd LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement; Sylvester ORTEGA, in his official capacity as Director of the San Antonio Field Office of Immigration and Customs Enforcement; Bobby THOMPSON, his official capacity as Warden of the South Texas ICE Processing Center

Respondents.

Case No. 5:25-cv-1579

**PETITION FOR A WRIT
OF HABEAS CORPUS**

PRELIMINARY STATEMENT

This petition challenges the sudden and unjustified redetention of Jorge Luis Torres-Villasana (“Mr. Torres”). Mr. Torres is a longtime lawful permanent resident (LPR) who suffers from an intellectual disability and who is pursuing a U-visa as the victim of domestic violence perpetrated by his U.S. citizen ex-wife. He was released on his own recognizance by DHS more than 13 years ago, and there is no reason whatsoever to justify his recent redetention.

Throughout the more than 13 years that he has been in immigration removal proceedings, Mr. Torres has had no further criminal arrests, and he has complied with all terms of his release on recognizance. Despite this, ICE suddenly redetained Mr. Torres on October 22, 2025, after he was stopped by officials from the Texas Department of Public Safety conducting immigration

enforcement in San Antonio. He has not engaged in any conduct since his release in 2012 that would suggest that he is dangerous or a flight risk.

Mr. Torres brings this habeas action to contest this unconstitutional deprivation of his liberty that has separated him from his family and his community. He hereby seeks his immediate release or, at minimum, a bond hearing at which ICE must demonstrate by clear and convincing evidence that he is a danger to the community or a flight risk.

PARTIES

1. Petitioner Jorge Luis Torres Villasana is a longtime lawful permanent resident who is, upon information and belief, detained at the South Texas ICE Processing Center in Pearsall, TX, in the custody of Immigration and Customs Enforcement and under the direction of the San Antonio ICE Field Office. His immigration case is pending before the San Antonio Immigration Court.
2. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (ICE). ICE is responsible for the administration of immigration laws as well as the execution of detention and removal determinations and is a custodian of the Petitioner. Respondent's address is 500 12th Street SW, Washington, D.C.
3. Respondent Pam Bondi is named in her official capacity as Attorney General of the United States. In this capacity, she routinely transacts business in the Southern District of New York; is responsible for the administration of the immigration laws pursuant to INA § 103(a), 8 U.S.C. § 1103(g); and as such is a custodian of the Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530-0001.

4. Respondent Kristi Noem is named in her official capacity as Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a); routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485
5. Respondent Sylvester Ortega is named in his official capacity as Field Office Director of the San Antonio Field Office of Immigration and Customs Enforcement, within the United States Department of Homeland Security. In his capacity, he is responsible for the administration of immigration laws as well as the execution of detention and removal determinations and is a custodian of the Petitioner. Respondent Ortega's address is San Antonio ICE Field Office Director, 1777 NE Loop 410, 15th floor, San Antonio, TX 78217.
6. Respondent Bobby Thompson is named in his official capacity as Warden and/or immediate custodian at the South Texas ICE Processing Center. Respondent Thompson's address is 566 Veterans Dr, Pearsall, TX 78061.

JURISDICTION

7. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 2241 (habeas corpus), as well as Article I, § 9, cl. 2 (the Suspension Clause), Article III, and the Fifth Amendment of the U.S. Constitution.

8. Mr. Torres is in custody for the purposes of habeas jurisdiction because he is detained by Immigration and Customs Enforcement. *Hensley v. Mun. Court, San Jose Milpitas Judicial Dist., Santa Clara Cty., California*, 411 U.S. 345, 351 (1973). Federal district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).
9. An actual and justiciable controversy exists between the parties under 28 U.S.C. § 2201, and this Court has authority to grant declaratory and injunctive relief. *Id.* §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, *Id.* § 1651.

VENUE

10. Venue is proper in this district because the Petitioner is detained within this district, and a substantial amount of the events giving rise to this claim occurred within this district. 28 U.S.C. § 1391(e)(1).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

11. The applicable caselaw dictates that Mr. Torres need not exhaust administrative remedies before challenging his detention in this court. Exhaustion is required only when specifically mandated by Congress. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). In all other instances, “sound judicial discretion governs.” *Id.* The detention statute, 8 U.S.C. § 1226(c) contains no exhaustion requirement. In addition, because Mr. Torres’s petition challenges the constitutionality of his continued detention, his claim cannot be heard by an Immigration Judge or the BIA. *Matter of C-*, 20 I. & N. Dec. 529, 532 (BIA

1992) (immigration judges and BIA cannot decide constitutional questions). Thus, there are no appropriate administrative procedures through which to exhaust Mr. Torres's claims, because the agency "lack[s] authority to grant the type of relief requested."

McCarthy v. Madigan, 503 U.S. at 148.

12. In addition, exhaustion is inappropriate where there is "an unreasonable or indefinite time frame for administrative action." *Id.* at 147. Mr. Torres's case has been pending in immigration court since 2012, and his next master calendar hearing is not scheduled until October 2026. His removal proceedings will likely not conclude within a timeframe that would allow him to pursue a timely challenge to his unlawful detention.

13. Finally, exhaustion is inappropriate where a petitioner "may suffer irreparable harm if unable to secure immediate judicial consideration of his claim." *Id.* Each day that Mr. Torres must wait in order for a court to rule on his petition is another day that he will spend unjustly incarcerated. This harm is significant and it is not reparable. *See Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir.1984) (most courts hold that deprivation of a constitutional right is per se irreparable injury); see also *Hardy v. Fischer*, 701 F. Supp. 2d 614, 619 (S.D.N.Y. 2010) ("Ongoing unlawful deprivations of liberty and the threat of unlawful detention and reimprisonment would violate plaintiffs' constitutional rights and therefore constitute quintessential irreparable harm."). Thus, this Court should not require Mr. Torres to exhaust administrative remedies before considering his petition.

STATEMENT OF FACTS

14. Mr. Torres was born in Mexico January 5, 1984, and he entered the United States lawfully when he was only eleven years old, more than thirty years ago, using a visitors visa. In 2005, more than twenty years ago, he became a lawful permanent resident via

marriage to his ex-spouse, and he has remained a permanent resident ever since. He is the father of three U.S. citizen children.

15. According to medical records from Mexico, Mr. Torres was born by cesarean section after suffering acute fetal distress. From birth, he was under supervision of doctors for psychomotor development disorders and seizures. While in the United States, he was treated as a student with special needs and placed in a special education program. In Mexico, medical professionals concluded that he has an IQ of 63, meeting the threshold for intellectual disability. See Exhibit A, parole request.
16. In 2012, ICE arrested Mr. Torres and charged him with deportability following a federal conviction for conspiracy to transport non-citizens within the United States. Despite this conviction, however, ICE officials chose to release Mr. Torres on his own recognizance, thus finding that he did not present a danger to the community or a flight risk. See Exhibit B, letter granting release on recognizance.
17. In 2014, Mr. Torres was the victim of domestic violence perpetrated by his U.S. citizen ex-wife. In 2018, he obtained necessary certification from the San Antonio Police Department to apply for protection against removal in the form of a U-visa. That application has been pending since 2019 and remains pending. See Exhibit C, U-visa application and receipts.
18. In immigration court, Mr. Torres's removal proceedings until very recently were administratively closed in order to allow USCIS to adjudicate his U-visa application. He is currently scheduled for his next master calendar hearing in October 2026.
19. Throughout the more than 13 years that he has been in immigration removal proceedings, Mr. Torres has had no further criminal arrests, and he has complied with all terms of his

release on recognizance. Despite this, ICE suddenly redetained Mr. Torres on October 22, 2025, after he was stopped by officials from the Texas Department of Public Safety conducting immigration enforcement in San Antonio. He has not engaged in any conduct since his release in 2012 that would suggest that he is dangerous or a flight risk.

CLAIMS FOR RELIEF

20. ICE has detained Mr. Torres in violation of the Fifth Amendment of the Constitution. All of the paragraphs above are incorporated into each cause of action listed below.

FIRST CLAIM FOR RELIEF

REDETENTION WITHOUT A PRE-DEPRIVATION PROCESS VIOLATES MR. TORRES'S RIGHT TO PROCEDURAL DUE PROCESS UNDER THE FIFTH AMENDMENT'S DUE PROCESS CLAUSE

21. Individuals released from custody have a constitutionally protected interest in their continued liberty. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997) (finding liberty interest for petitioner on pre-parole conditional supervision program when parole was denied and he was ordered back into custody); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973) (holding that a liberty interest attaches for individuals released on probation).
22. Redetention implicates the same sort of liberty interests, and due process therefore requires a procedurally adequate process to test the basis for detention, including notice of the reasons for redetention and an opportunity to be heard. *See Villiers v. Decker*, 31 F.4th 825, 833 (2d Cir. 2022) (“an individual whose release is sought to be revoked [by ICE] is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing”); *see also Saravia for A.H. v. Sessions*,

905 F.3d 1137, 1144–45 (9th Cir. 2018) (upholding preliminary injunction requiring hearings for class of minors redetained by ICE after initial release from immigration detention); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (enjoining ICE from re-detaining petitioner “unless and until a hearing, with adequate notice, is held in Immigration Court to determine whether his bond should be revoked or altered”); *Erazo Rojas v. Noem et al.*, No. EP-25-CV-443-KC, 2025 WL 3038262 (W.D. Tex. Oct. 30, 2025); *Lopez-Arevelo v. Ripa*, --- F. Supp. 3d ----, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Rojas v. Almodovar*, 25-CV-7189 (LJL), 2025 WL 3034183 (S.D.N.Y. October 30, 2025); *Artiga v. Genalo*, 25-CV-5208 (OEM) (E.D.N.Y. October 5, 2025); *Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO (HC), 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Diaz-Diaz v. Mattivelo*, No. 1:25-cv-122226-JEK (D. Mass. Aug. 27, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK (D. Mass. Aug. 14, 2025).

23. Mr. Torres received no such notice or process. He was redetained without so much as a word of explanation, and has yet to be afforded a hearing at which a judge can hear his testimony and determine whether ICE has a permissible basis for redetaining him. He has not been provided with the procedures that his liberty interest and the Fifth Amendment’s Due Process Clause require.

24. Mr. Torres’s redetention is particularly egregious in light of his lawful permanent resident status, his prior release more than 13 years ago, and the absence of any relevant change in circumstances. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V. The Due Process Clause permits civil immigration detention only where such detention is reasonably related to the government’s interests. Here, ICE’s

rationale for detention must be grounded in the detainee's flight risk or their dangerousness. Mr. Torres— who has not had a single arrest in over fourteen years, and has had no arrest since his release from immigration custody thirteen years ago, and who has complied with all requirements of his release on recognizance — does not fall within *Demore v. Kim*'s narrow exception to the general requirement of an individualized hearing to ensure that civil detention serves legitimate purposes. 538 U.S. at 526.

25. When ICE released Mr. Torres in 2012, it determined that, taking into account Mr. Torres's intellectual disability and his extremely strong family ties to the United States, his circumstances did not warrant continued detention.
26. Since his release from detention in 2012, Mr. Torres has attended all immigration court hearings, and he has filed for relief from removal. He has had no further criminal charges or arrests.
27. All of these facts strongly suggest that ICE has no lawful basis for redetaining Mr. Torres, which makes the need for adequate procedural and substantive due process all the more necessary.

SECOND CLAIM FOR RELIEF

MR. TORRES'S DETENTION WITHOUT A BOND HEARING IS AN UNCONSTITUTIONAL APPLICATION OF 8 U.S.C. 1226(C).

28. Absent an individualized bond hearing, 8 U.S.C. § 1226(c) would be unconstitutional as applied here. *See Nielsen v. Preap*, 586 U.S. 392, 419 (2019) (rejecting a facial constitutional challenge to § 1226(c) where the government fails to detain a non-citizen immediately after they are released from criminal custody, but expressly preserving the possibility of as-applied challenges to the statute's constitutionality).

29. ICE recently arrested Mr. Torres more than 13 years after he had been released from prison for his sole criminal conviction. This delay, coupled with Mr. Torres's lawful conduct during that time, makes Mr. Torres's "reliance on his freedom...compelling and goes far beyond that present in a typical detention situation under" § 1226(c). *Perera v. Jennings*, 598 F. Supp. 3d 736, 744 (N.D. Cal. 2022) (finding an as-applied constitutional violation where petitioner was not detained until six years after their release from prison). *See also Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533 (S.D.N.Y. 2014) (holding that petitioner's detention under § 1226(c) without any process "offend[ed] the Constitution," as petitioner "was not taken into immigration detention when released from prison; he was plucked out of the community where he had lived for almost five years following his conviction"); *Martinez-Done v. McConnell*, 56 F. Supp. 3d 535, 548 (S.D.N.Y. 2014) ("ICE frequently waits many years to take aliens into custody under section § 1226(c), despite the fact that, with so much time elapsed, they often pose little to no risk of flight, and even less danger to 'public safety.' Unsurprisingly, once habeas petitions are granted, and bond hearings are afforded, many aliens originally taken into custody under § 1226(c) are released").
30. The government's delay should entitle Mr. Torres to a bond hearing to evaluate whether he is dangerous or a flight risk.

PRAYER FOR RELIEF

WHEREFORE, petitioner respectfully requests that this court:

- a. Ordering the Respondents, pursuant to 28 U.S.C. § 2243, to demonstrate within five days why the Petitioner's writ of habeas corpus should not be granted.

- b. Granting a writ of habeas corpus finding that the Petitioner's detention is unlawful and unconstitutional;
- c. Providing declaratory relief that the Petitioner's detention is unlawful;
- d. Ordering Petitioner's immediate release from custody on his own recognizance in order to restore the status quo, or, in the alternative, ordering Respondents to provide him a bond hearing under 8 U.S.C. § 1226(a) within five days of this Court's order, at which DHS bears the burden to justify his redetention by demonstrating, by clear and convincing evidence, materially changed circumstances rendering Petitioner a danger to the community or a flight risk;
- e. Ordering that Respondents not transfer the Petitioner to any facility outside of the boundaries of the Western District of Texas while this writ is pending.
- f. Awarding Petitioner reasonable attorney's fees, expenses and costs; and
- g. Granting Petitioner such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

Respectfully submitted,

/s/ Kathrine Russell
Kathrine Russell
Texas Bar No. 24070538
Kat.russell@dmcausa.com

/s/ Lance Curtright
Lance Curtright
Texas Bar No. 24032109
Lance@dmcausa.com

/s/ Alejandra Martinez
Alejandra Martinez
Texas Bar No. 24096346
Alejandra.martinez@dmcausa.com

De Mott, Curtright, Armendariz, LLP
8023 Vantage Drive, Ste. 800
San Antonio, Texas 78230
(210) 590-1844 (telephone)
(210) 212-2116 (facsimile)

ATTORNEYS FOR PETITIONER

VERIFICATION UNDER 28 U.S.C. § 2242

Acting on behalf of the Petitioner, I verify that the foregoing factual allegations are true and correct as required by 28 U.S.C. § 2242.

/s/ Kathrine Russell

Kathrine Russell