UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

LUIS BAUTISTA PEREZ

Petitioner

-against-

KRISTI NOEM, IN HER OFFICIAL CAPACITY, SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY

PAMELA BONDI, IN HER OFFICIAL CAPACITY, U.S. ATTORNEY GENERAL

TODD LYONS, IN HIS OFFICIAL CAPACITY, ACTING DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT,

REYNALDO CASTRO, WARDEN IN HIS OFFICIAL CAPACITY, SOUTH TEXAS DETENTION FACILITY

SYLVESTER ORTEGA, IN HIS OFFICIAL CAPACITY ICE FIELD OFFICE DIRECTOR DETENTION AND REMOVAL

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

Case No: 5:26-cv-232

INTRODUCTION

1. Luis Bautista-Perez, (hereinafter "Petitioner") is a thirty-five-year-old citizen and native of Mexico.
2. Mr. Bautista-Perez entered without inspection to the United States on or about 2009.
3. Prior to his detention by DHS, he was living in Sterling, VA with his family.
4. Petitioner has been married since 2019 to a USC spouse, Maria Rodas Portillo.
5. Petitioner has an 11 year old USC child.
6. Petitioner is the primary financial provider in the family.
7. The petitioner also provides emotional support to his wife and child.
8. On October 12, 2025 was detained after leaving "Inti Restaurant" by ICE agents.
9. ICE officers told him that they were looking for him.
10. ICE officers ran his biometrics and concluded they had the wrong individual.
11. Nonetheless, ICE officers noted that he did not have legal status in the US and took him into custody.
12. The petitioner was placed in removal proceedings by the issuance of a Notice to Appear pursuant to 8 U.S.C. 1229a. *See* Exhibit 1- Notice to Appear
13. Mr. Bautista-Perez will be applying for Cancellation of Removal for Certain Non-Permanent Residents and Adjustment of Status before the Immigration Court 8 U.S.C. 1229b(b).
14. Petitioner requested a bond hearing before an Immigration Judge, which took place on December 23, 2025, before the Immigration Court.
15. Mr. Bautista-Perez's Request for Redetermination of Custody Status was denied by the immigration judge, finding no jurisdiction to review his custody redetermination under

Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025). The Immigration Judge made an alternative holding that he would have set $5,000.00 if he had jurisdiction. *See* Exhibit 2- IJ Bond Denial Order

16. Without relief from this court, Petitioner faces continued detention without the possibility of an individualized bond hearing.

17. On July 8, 2025, DHS issued a new policy memorandum to all employees of Immigration and Customs Enforcement ("ICE") stating that "[t]his message serves as notice that DHS, in coordination with the Department of Justice (Hereinafter "DOJ"), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed." Memorandum, U.S. Immigration & Customs Enf't, Interim Guidance Regarding Detention Authority for Applications for Admission (July 8, 2025), available at AILA Doc. No. 25071607, https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

18. Through his pending application, Petitioner will have the opportunity to become a lawful permanent resident, and his removal is not reasonably foreseeable due to a pending application for relief.

19. Petitioner is detained at the South Texas Detention Facility away from his family. *See* Exhibit 3- ICE Locator

20. Petitioner's detention pursuant to 8 U.S.C. § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who was apprehended in the interior of the U.S., should not be considered an "applicant for admission" who is "seeking admission." Rather, he should continue to be detained pursuant to 8 U.S.C. § 1226(a), which was DHS's initial determination for Petitioner and allows for release on conditional parole of bond.

21. Through this petition, Petitioner asks this Court to find that Respondents have unlawfully detained him under 8 U.S.C.§ 1225(b)(2)(A), that his detention is appropriate under 8 U.S.C. § 1226(a).

JURISDICTION

22. Jurisdiction is proper and relief is available pursuant to 28 U.S.C. § 1131 (federal question), 28 USC § 1346 (original jurisdiction), 5 USC §702 (waiver of sovereign immunity), 28 USC 2241 (habeas corpus jurisdiction), and Article I, § 9, cl. 2 of the United States Constitution(Suspension Clause).

VENUE

23. Venue is proper because Petitioner and his immediate family reside in Texas and he now remains detained at the SOUTH TEXAS Detention Facility, 566 VETERANS DR NA PEARSALL, TX, United States 78061. *See* ICE Detainee Locator; *see also* generally *Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004) (generally, "[w]henever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States," he must file the petition in the district of confinement and name his immediate custodian as the respondent), *see also Braden v. 30th Judicial Circuit of Kentucky*, 410 U.S.

484,493-500 (1973), venue lies in the United States District Court for the Western District of Texas, the judicial district in which petitioner is currently detained.

PARTIES

24. Petitioner Mr. Bautista-Perez, is a citizen and national of Mexico. Previous to his detention, he resided with his wife and 1 USC child in Sterling, VA

25. He is currently in ICE custody and detained at SOUTH TEXAS Detention Facility, 566 VETERANS DR NA PEARSALL, TX, United States 78061.

26. Respondent Kristi NOEM is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner. In this capacity, she is responsible for the administration of immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the District of Texas; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. She is sued in her official capacity. 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.

27. Respondent Pamela BONDI is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system operates as a component agency. She routinely transacts business in the Western District of Texas in this capacity; is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. §

1103(g) (2007); and as such is a custodian of the Petitioner. She is sued in her official capacity. At all times relevant hereto, Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530- 0001.

28. Respondent Todd M. LYONS is named in his official capacity as the Acting Director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the District of Texas, San Antonio Division, is legally responsible for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner. ICE's responsibilities include operating the immigration detention system. In his capacity as ICE Acting Director, Respondent Lyons exercises control over and is custodian of persons held at ICE facilities nationally. He is the Petitioners' immediate custodian and responsible for Petitioner's detention. He is sued in his official capacity. At all times relevant hereto, Respondent Lyons's address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington DC 20536-5900.

29. Respondent REYNALDO CASTRO is the warden at the SOUTH TEXAS Detention Facility, 566 VETERANS DR NA PEARSALL, TX, United States 78061, where the petitioner is detained. The Warden has immediate physical custody of Petitioner. The Warden is sued in his official capacity.

30. Respondent, SYLVESTER ORTEGA, is ICE Field Officer Director of Detention and Removal. Respondent ORTEGA is a custodial official acting within the boundaries of the judicial district of the United States Court for the Western District of Texas. Pursuant to Respondent ORTEGA's orders, Petitioner remains behind bars.

LEGAL BACKGROUND

31. Section 2241 of 28 United States Code provides in relevant part that "[w]rits of habeas corpus may be granted by . . . the district courts within their respective jurisdictions" when a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(a), (c)(3); *see also* I.N.S. v. St. Cyr, 533 U.S. 289, 305, 121 S. Ct. 2271 (2001).

32. District courts grant writs of habeas corpus to those who demonstrate their custody violates the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3).

33. Habeas corpus "entitles [a] prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law." Boumediene v. Bush, 553 U.S. 723, 779, 128 S. Ct. 2229 (2008) (quoting, St. Cyr, 533 U.S. at 302.

34. The Fifth Amendment's Due Process Clause protects the right of all persons to be free from "deprivation of life, liberty, or property, without due process of law." U.S. Const. amend. V.

35. "It is well established that the Fifth Amendment entitles aliens to due process of law[.]" Trump v. J. G. G., 604 U.S. ---, 145 S. Ct. 1003, 1006 (2025) (quoting Reno v. Flores, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)).

36. "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*, 533 U.S. at 690.

37. The INA prescribes three basic mechanisms for detention for non-citizens, 8 U.S.C. § 1225, for arriving aliens and applicants for admission, § 1226 the default detention statute, and § 1231 for post–final order detention.

38. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208. Div. C, §§ 302-03, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

39. Following the enactment of the IIRIRA, the U.S. Department of Justice's Executive Office of Immigration Review ("EOIR") drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formed referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination).

40. Thus, in the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an Immigration Judge ("IJ"),

unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

41. For decades, residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.

42. On July 8, 2025, however, DHS changed its position about custody determinations as follows:

An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole. These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated. The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal

proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).

43. Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. *See* https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-forapplications-for-admission (emphasis original).

44. As a result, according to DHS, all noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, are now considered to be subject to mandatory detention under INA § 235(b) and ineligible for release on bond. Conversely, according to DHS "[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c)." Id.

45. Prior to July 8, 2025, the predominant form of detention authority for anyone arrested in the interior of the United States was 8 U.S.C. § 1226(a).

46. Under § 1226(a) the Attorney General may release a non-citizen from custody on bond or on the non-citizen's own recognizance. 8 U.S.C. § 1226(a) confers such authority to the Executive Office for Immigration Review and ICE.

47. Under the current statutory and regulatory scheme, once a non-citizen is detained, ICE makes the initial custody determination. See 8 C.F.R. § 236.1(c)(8). If ICE makes an unfavorable detention decision, a non-citizen has the right to have an Immigration Judge redetermine the non-citizen's custody status. "[T]he Immigration Judge is authorized to exercise the authority… to detain the alien in custody, release the alien, and determine the amount of bond." *Id* § 236.1(d)(1).

CONSTITUTIONALLY ADEQUATE BOND HEARING

48. The Due Process Clause requires constitutionally adequate bond hearings. "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). Detention must "bear [a] reasonable relation to the purpose for which the individual [was] committed." Id. At 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972))

49. 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." *Id.* (internal quotation marks omitted).

50. 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).

51. Civil detention is impermissible without an individualized hearing before a neutral decision maker that tests the Government's justification for imprisonment. *See United States v. Salerno*, 481 U.S. 739, 750-51 (1987) (upholding civil pretrial detention of individuals charged with crimes only upon individualized findings of dangerousness or flight risk at custody hearings); *Foucha v. Lousiana*, 504 U.S. 71, 81-83 (1992) (requiring individualized finding of mental illness and dangerousness for civil commitment); *Kansas v. Hendricks*, 521, U.S. 346, 357 (1997) (upholding civil commitment of sex offenders after jury trial on lack of volitional control and dangerousness).

52. The Ninth Circuit and other district courts have held that immigration detainees are entitled to bond hearings at which the Government bears the burden to prove by clear and convincing evidence that detainees would be a flight risk or danger to the community. *See, e.g.*, *Singh*, 638 F.3d at 1204-05; *Pensamiento v. McDonald*, 315 F. Supp. 3d 684, 692 (D. Mass. 2018) (holding that due process requires the burden of proof be placed on the government in custody redetermination hearings for non-criminal aliens) (Saris, C.J.); *Alvarez Figueroa v. Mc Donald*, Civil Action No. 18-10097-PBS, 2018 U.S. Dist. LEXIS 80781, at *15-16 (D. Mass. May 14, 2018) ("The Zadvydas Court then cited to criminal pretrial detention and civil commitment cases, making it clear that one important procedural protection for preventive detention is the placement of the burden of proof of the government.") (Saris, C.J.); *Doe v. Tompkins*, Case No. 18-cv-12266-PBS, 2019 U.S. Dist. LEXIS 22616, at *4 (D. Mass. Feb 12, 2019) holding that due process requires that the burden of proving that the respondent is dangerous and is a flight risk be placed on

the government in § 1226(a) custody redetermination hearings) (Saris, C.J.); *Diaz-Ortiz v. Tompkins*, Case No. 18-cv-12600-PBS, 2019 U.S. Dist. LEXIS 14155, at *3-4 (D. Mass. Jan. 29. 2019) (same) (Saris, C.J.); *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 U.S. Dist. LEXIS 178577, at *13 (S.D.N.Y.Oct. 17, 2018) (concluded that "due process requires the Government to bear the burden of proving that detention is justified at a bond hearing under Section 1226(a)."); *Darko v. Sessions*, 342 F. Supp. 3d 429, 436 (S.D.N.Y.2018)(same; further, "the Court concludes that the government must bear the burden by clear and convincing evidence."); *Haughton v. Crawford*, 221 F. Supp. 3d 712, 713-17 (E.D. Va. 2016) ("the significant deprivation of liberty warrants the robust procedural protections afforded by requiring the government to demonstrate by clear and convincing evidence that petitioner's ongoing detention is appropriate to protect the community and ensure petitioner's appearance at future proceedings.") *Portillo v. Hott*, 322 F. Supp. 3d 698, 2018 WL 3237898, at *8 *n.9 (E.D. Va. 2018) (reaffirming Haughton as "good authority").

STATEMENT OF THE FACTS

53. Luis Bautista-Perez, (hereinafter "Petitioner") is a thirty-five-year-old citizen and native of Mexico.

54. Mr. Bautista-Perez entered without inspection to the United States on or about 2009.

55. Prior to his detention by DHS, he was living in Sterling, VA with his family.

56. Petitioner has been married since 2019 to a USC spouse, Maria Rodas Portillo.

57. Petitioner has an 11 year old USC child.

58. Petitioner is the primary financial provider in the family.

59. The petitioner also provides emotional support to his wife and child.

60. On October 12, 2025 was detained after leaving "Inti Restaurant" by ICE agents.

61. ICE officers told him that they were looking for him.

62. ICE officers ran his biometrics and concluded they had the wrong individual.

63. Nonetheless, ICE officers noted that he did not have legal status in the US and took him into custody.

64. The petitioner was placed in removal proceedings by the issuance of a Notice to Appear pursuant to 8 U.S.C. 1229a.

65. Mr. Bautista-Perez will be applying for Cancellation of Removal for Certain Non-Permanent Residents and Adjustment of Status before the Immigration Court under 8 U.S.C. 1229b(b).

66. Petitioner requested a bond hearing before an Immigration Judge, which took place on December 23, 2025, before the Immigration Court.

67. Mr. Bautista-Perez's Request for Redetermination of Custody Status was denied by the immigration judge, finding no jurisdiction to review his custody redetermination under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The Immigration Judge made an alternative holding that he would have set $5,000.00 if he had jurisdiction.

68. Without relief from this court, Mr. Bautista-Perez faces continued detention without the possibility of an individualized bond hearing.

CLAIMS FOR RELIEF

COUNT ONE

CONSTITUTIONAL CLAIM

69. Petitioner re-alleges and incorporates by reference the factual allegations made above.

70. Petitioner's detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

COUNT TWO

STATUTORY CLAIM

71. Petitioner re-alleges and incorporates by reference the factual allegations made above.

72. Petitioner's continued detention violates the Immigration and Nationality Act because Respondents lack authority to detain Petitioner.

COUNT THREE

STATUTORY CLAIM

73. Petitioner re-alleges and incorporates by reference the factual allegations made above.

74. Respondents' refusal to honor the Immigration Judge's decision is in violation of federal law.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

A. Assume jurisdiction over this matter;

B. Order Respondents to Show Cause why this Petition should not be granted within seventy-two hours;

C. Issue an Order preventing Respondents from removing Petitioner from the United States without notice and an opportunity to be heard;

D. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

E. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.

F. In the alternative, order Respondents to release Petitioner upon payment of $5,000.00 which was set by the Immigration Judge but not actionable due to lack of jurisdiction;

G. In the alternative, order Respondents to conduct a Constitutional hearing before an independent examiner where the Government bears the burden of proof to demonstrate by clear and convincing evidence why Petitioner should not be released and whether Petitioner presents a flight risk or a danger to the community.

H. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

I. Grant any further relief this Court deems just and proper.

Dated: January 13th, 2025

Respectfully Submitted,

/s/ DAVID H. SQUARE
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, LUIS BAUTISTA-PEREZ, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 13th day of January 2025.

/s/ David H. Square
David H. Square, Esq.