

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

JOSE ANGEL GARCIA BALBUENA,



Petitioner,

v.

JOEL GARCIA, Acting El Paso Field Office Director, Immigration and Customs Enforcement and Removal Operations (“ICE/ERO”); **TODD LYONS**, in his official capacity as Director of Immigration and Customs Enforcement (“ICE”); **KRISTI NOEM**, in her official capacity as the Secretary of the Department of Homeland Security (“DHS”); and **PAMELA BONDI** as the Acting Attorney General of the United States,

Respondents.

Case No. 3:26-cv-00090

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS**

**ORAL ARGUMENT
REQUESTED**

INTRODUCTION

1. On May 25, 2025, Petitioner, Mr. Jose Angel Garcia-Balbuena (“Mr. Garcia”) was present at Moss Creek Lake in Big Spring, TX with family members when, he was arrested and detained by ICE agents, without notice or cause.
2. When Mr. Garcia was at a public park, he was not violating any local, state, or federal laws.
3. Mr. Garcia was not targeted because of his personal circumstances or individualized facts. Rather, Respondents arrested Mr. Garcia without individualized suspicion or lawful justification, as required by governing statutes and the Fourth Amendment. There was no reasonable suspicion that he was in violation of the immigration laws, as he was not within close proximity of the U.S. Mexican Border. See 8 U. S. C. § 1357(a) (2018); INA § 287 (a) (2018). An ICE agent may arrest a non-citizen for being “in the United States in violation of any [immigration]

law or regulation,” but only if the agent has reason to believe that the non-citizen “is likely to escape before a warrant can be obtained.” § 1357(a)(2)(2018).

4. In fact, on the day that immigration agents, who are under the control of the Respondents, unlawfully arrested and detained Mr. Garcia in violation of his Fourth Amendment rights, his pending asylum case had been administratively closed by an Immigration Judge after a remand by the U.S. Third Circuit Court of Appeals.

5. On the day the Respondents racially targeted Mr. Garcia, he had on his person; a valid work authorization, a valid Texas Identification, and the automated system² for the Executive Office for Immigration Review (“EOIR”) would have showed that his case was administratively closed by court order. Independently, Respondents could have easily verified that his case was administratively closed. *See generally*, 8 CFR §§ 1003.18(c)(2024); and 1003.1(l)(2024) (granting immigration judges the power to manage their dockets and administratively close cases).

6. When Mr. Garcia inquired as to why he was being arrested, an ICE agent stated, “Trump wants everyone out.” See Ex. G at 37 (Affidavit of Candance M. Contreras-Garcia).

7. Nonetheless, Respondents’ power to detain remains checked by law, as this country remains governed by constitutional and statutory limits. *Cooper v. Aaron*, 358 U.S. 1, 23 (1958) (Frankfurter, J. Concurring) (cleaned up).

8. The writ of habeas corpus is the “fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action.” *Harris v. Nelson*, 394 U.S. 286, 291 (1969). “The scope and flexibility of the writ – its capacity to reach all manner of illegal detention – its ability to cut through barriers of form and procedural mazes – have always been emphasized and

² An online system that allows a person to check their case before the immigration court by inserting the Alien Number and their country of birth available at <https://acis.eoir.justice.gov/en/> (Assessed on 01/05/2025).

jealously guarded by courts and lawmakers.” *Harris v. Nelson* at 291. Hence, “the very nature of the writ demands that it be administered with the initiative and *flexibility* essential to ensure the miscarriages of justice within its reach are surfaced and corrected.” *Id.* (emphasis added).

9. As such, Mr. Garcia files this petition because the writ is meant to provide exactly the relief he seeks here: to prevent the Respondents—a whole set of immigration agencies with vast resources, who have at their disposal a punitive detention system and agents roving the streets to arrest immigrants—from setting themselves above the law in order to detain Mr. Garcia in hopes that he will give up and self deport.

10. In Respondents’ lawless pursuit of detention bed quotas,³ Respondents failed to afford Mr. Garcia’s due process rights—a bedrock of American freedom by detaining him without reasonable suspicion or probable cause, contrary to the requirements governing warrantless arrests.

11. Moreover, as noted *supra*, warrantless arrest without probable cause violates both 8 U.S.C. § 1357, which requires reason to believe the person “is likely to escape” before a warrant could be obtained, and ICE’s own nationwide policy, to which it is bound pursuant to a settlement agreement in *Castañon Nava et al. v. Dep’t of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.), which requires consideration of specific factors to determine if someone is likely to escape and documentation of these “specific particularized facts” in the I-213.⁴

³ Jennie Taer, Trump admin’s 3,000 ICE arrests per day quota is taking focus off criminals and ‘killing morale’: insiders warn, NY Post, June 17, 2025, available at <https://nypost.com/2025/06/17/us-news/trump-admins-3000-ice-arrests-per-day-quota-is-taking-focus-off-criminals-and-killing-morale-insiders/> (Assessed on 01/05/2026)(noting that the quotas are undermining the agency’s ability to focus on the really serious criminal aliens,” citing John Sandweg, a former acting ICE director under President Barack Obama).

⁴ Form I-213, entitled “Record of Deportable/Inadmissible Alien” is an “official record prepared by immigration officials when initially processing a person suspected of being in the United States without legal permission.”

12. Mr. Garcia, who entered the U.S. legally in 2008 as a child to seek asylum, has deep longstanding ties to the U.S. He graduated high school, married a U.S. citizen, had stable employment, and has never been convicted of any felonies or crimes of moral turpitude.

13. Accordingly, no reasonable ICE officer could have reasonably concluded that he was likely to flee before a warrant could be obtained. Respondents did issue an administrative warrant, but after he was detained and arrested, and Respondents did so despite that his case was administratively closed. The record reflects no lawful basis for arrest at the time it occurred.

14. Mr. Garcia files this petition to vindicate his rights, this Court should grant the instant petition for a writ of habeas corpus. Petitioner asks this Court to find that Respondents' arrest and detention are arbitrary and capricious and in violation of the law, and to immediately issue an order preventing Mr. Garcia's transfer out of this district, and order his release.

JURISDICTION

15. This case arises under the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101, *et seq.*, and the Administrative Procedures Act ("APA"), 5 U.S.C. § 701, *et seq.*

16. This Court has subject matter jurisdiction over this petition and may grant pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1331; Article I, § 9, cl. 2 of the United States Constitution (the Suspension Clause); the All-Writs Act, 28 U.S.C. § 1651; the Administrative Procedure Act, 5 U.S.C. § 701; and for injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

17. Pursuant to 28 U.S.C. § 2241, district courts have jurisdiction to hear habeas petitions by

Ovando v. Noem, Civil Action No. 1:25-cv-03183-RBJ, 2025 U.S. Dist. LEXIS 234204, at *9 n.5 (D. Colo. Nov. 25, 2025), *citing Punin v. Garland*, 108 F.4th 114, 119 (2d Cir. 2024).

noncitizens who challenge the lawfulness of their detention under federal law. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 292-95 (2018); *Maldonado v. Macias*, 150 F.Supp. 3d 788, 794 (W.D. Tex. 2015), *INS v. St. Cyr*, 533 U.S. 289, 364-65 (2001) (“The writ of habeas corpus has always been available to review the legality of executive detention.”).

18. Importantly for jurisdictional questions, Mr. Garcia is not asking this court to review an order of removal, nor, indeed, for any relief having to do with his current proceedings in immigration court. “As we have said before, §1252(b)(9) “does not present a jurisdictional bar” where those bringing suit “are not asking for review of an order of removal,” “the decision . . . to seek removal,” or “the process by which . . . removability will be determined.” *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020), *citing Jennings v. Rodriguez* at 294-5.

19. Mr. Garcia seeks only habeas relief from his current, illegal detention in the way he was arrested, while those immigration proceedings are ongoing, and for this Court to determine as a matter of law that he is entitled to be released or granted a bond hearing before a neutral arbiter. *See also, Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC at 1-2, 2025 U.S. Dist. LEXIS 188232, at *14-15 (W.D. Tex. Sep. 21, 2025)(stating in part that 8 U.S.C. § 1252(a)(5), § 1252(g), and § 1226(e) do not deprive a Habeas Court of jurisdiction when a Petitioner is challenging his detention under his right to procedural due process).

20. “[T]he [REAL ID] Act does not, however, preclude habeas review of challenges to detention that are independent of challenges to removal orders.” *Gutierrez-Soto v. Sessions*, 317 F. Supp. 3d 917, 925 (W.D. Tex. 2018).

21. The Respondents’ continued detention of Mr. Garcia constitutes such a “severe restraint[]”

on his individual liberty,” that he is “in custody in violation of the . . . laws . . . of the United States.” *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241; *see also Henderson v. Reno*, 157 F.3d 106, 122 (2d Cir. 1999), *cert. denied sub nom. Reno v. Navas*, 119 S.Ct. 1141 (1999).

VENUE

22. Venue in the Western District of Texas, El Paso Division, is proper because Mr. Garcia is presently physically detained at the ICE El Paso Service Processing Center located at 8915 Montana Ave, El Paso, TX 79925. Mr. Garcia’s immediate physical custodian is El Paso Field Office Director, Respondent Joel Garcia, also within the Western District of Texas, El Paso Division.

23. Venue is proper as the Western District of Texas, El Paso Division, is the district with the most substantial connection to the parties, witnesses, evidence, attorneys and circumstances underpinning the issues presented herein per 28 U.S.C. § 1391. *See, e.g., Laines v. Bible*, 2018 U.S. Dist. LEXIS 120608.

EXHAUSTION

24. No exhaustion requirement applies to the constitutional claims raised in this Petition because federal courts have carved out an exception to the exhaustion requirement for constitutional challenges to the immigration laws, given that the immigration courts lack jurisdiction to adjudicate such claims. *See, e.g., Haitian Refugee Ctr. v. Smith*, 676 F.2d 1023, 1033 (5th Cir. 1982)(stating in part that district court has jurisdiction to hear a “pattern or practice” claim because . . . a district court can wield its equitable powers when a wholesale, carefully orchestrated, program of constitutional violations is alleged), *overruled on other*

grounds; Rashtabadi v. INS, 23 F.3d 1562, 1567 (9th Cir. 1994); *Howell v. INS*, 72 F.3d 288, 291 (2d Cir. 1995); *Arango-Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994); and *Akinwunmi v. INS*, 194 F.3d 1340 (10th Cir. 1999).

25. "Under the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal." *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007); *see* 8 U.S.C. § 1252(d)(1) ("A court may review a final order of removal only if . . . the alien has exhausted all administrative remedies."); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 U.S. Dist. LEXIS 188232, at *16.

26. Petitioner has no other remedy at law but to seek habeas relief from this Court. Mr. Garcia has exhausted all his administrative remedies for certain claims, and administrative remedies do not exist for his Constitutional claims.

PARTIES

27. Petitioner, Jose Angel Garcia-Balbuena, is a 26-year-old asylum seeker from Mexico. Mr. Garcia is currently in the physical and legal custody of DHS, and subject to immigration court proceedings under the purview of the Department of Justice's Executive Office for Immigration Review. He is married to U.S. Citizen, Candace Michelle Contreras, and has filed an adjustment of status application that is currently pending with USCIS.

28. Respondent Pamela Bondi is named in her official capacity as the Acting Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review. Respondent is legally responsible for administering Petitioner's removal proceedings and the standards used in those proceedings.

29. 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. Respondent Noem routinely oversees the agencies within the Department of Homeland Security, including ICE, and as such he has hierarchical authority over Acting Field Office Director Joel Garcia.

30. Respondent Joel Garcia is named in his official capacity as the Acting ICE Field Office Director for El Paso within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations, and is a legal custodian of Petitioner. Respondent Joel Garcia's address is Office of Enforcement and Removal Operations, El Paso Field Office Director, 11541 Montana Avenue, Suite E, El Paso, TX 79936.

31. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement, and has authority over the actions of respondent Joel Garcia and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

FACTUAL AND LEGAL BACKGROUND

32. On August 11, 2008 at 3:00 p.m. in broad daylight, Mr. Garcia's father, Bernardo Nava Garcia along with his uncle, Antonio Garcia Nava, and his sixteen-year-old cousin, [REDACTED]

[REDACTED] were all [REDACTED] by [REDACTED]

33. On August 16, 2008, Mr. Garcia, who was 9 years-old, entered the U.S. through the port of entry in El Paso, TX to seek asylum. He was accompanied by his mother, Olga Balbuena Torres, [REDACTED], and his brother, Cesar Jonathan Garcia Balbuena, A. [REDACTED] and two older brothers who were treated as adults, separated, and given individual cases. See Ex. A.

34. Upon entry, immigration agents treated all of them as arriving aliens and sent them from El Paso, TX to the Berks County Family Shelter in York, Pennsylvania. All of them were granted a “credible fear of persecution or torture,” and placed in full INA § 240 proceedings. See 8 U.S.C. § 1225(b)(1)(B)(i)-(ii) (mandating credible fear interviews and stating that the alien shall be detained for further consideration of the asylum application). On the same day, they were served with a Notices to Appear (“NTAs”). **Ex. B**

35. On February 11, 2009, the Immigration Judge in York, Pennsylvania denied their asylum case, and they appealed to the Board of Immigration Appeals (BIA). **Ex. C.** [BIA Decision].

36. On June 15, 2009, the Board of Immigration Appeals dismissed their appeal and they filed a stay and a petition for review before the Third Circuit Court of Appeals. **Ex. D.** [Order of Supervision].

37. On August 12, 2009, Mr. Garcia and his family were released from ICE custody under an Order of Supervision. **Ex. D.** Notwithstanding that ICE released them under an order of supervision, as arriving aliens, ICE granted them the “functional equivalent” of “humanitarian parole.” ICE only has the power to release an arriving alien under their parole authority. *See, i.e., In Matter of O-*, 16 I. & N. Dec. 344, 349 (BIA 1977)(wherein the Board of Immigration Appeals recognized that evidence of the intent of the government to exercise its parole authority for 126 non-Vietnamese- non-citizens citizens was “conclusive”).*See also Jennings v. Rodriguez*, supra, at 299-300 (stating that the only power that DHS has to release an arriving alien subject to 8 U.S.C. § 1225(b)(2)(A), is the parole authority provided by INA § 212(d)(5)(A) of the INA, 8 U.S.C. § 1182(d)(5)(A)).

38. On February 03, 2015, the U.S. Third Circuit Court of Appeals, by mutual agreement of the parties, remanded the case back to the Immigration Court for the preparation of a new decision. **Ex. C [BIA Decision]**.

39. On March 30, 2022, by mutual agreement of the parties, Mr. Garcia's case was administratively closed by an Immigration Judge at the El Paso Non-Detained Immigration Court. **Ex. E [Order and motion as to administrative closure]**.

40. From August 12, 2009 until May 25, 2025, over 15 years, Mr. Garcia had been living his life in the U.S. without incident, he graduated high school, had gainful employment, and had his own apartment with his then common law U.S. citizen spouse in Midland, TX.

41. On May 25, 2025, but prior to a decision on the Third Circuit remand, without notice or warning, he was arrested by ICE agents because they needed to arrest at least 3,000 persons a day in violation of the Immigration and Nationality Act ("INA") and its regulations, the Administrative Procedures Act ("APA"), and the U.S. Constitution's Fourth Amendment and Due Process guarantees. **Ex. F [Copy of work authorization and administrative warrant issued after his arrest]**.

42. Because Petitioner first sought asylum at a port of entry, he is considered an "arriving alien." 8 C.F.R. § 1001.1(q). As an "arriving alien," Mr. Garcia is not entitled to a custody redetermination hearing before an immigration judge ("IJ") under current regulations. 8 C.F.R. § 1003.19(h)(2)(i)(B). Consequently, the only means for release for Mr. Garcia is through a grant of parole by ICE or a grant of habeas from this Court. 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. §§ 1.1(q), 208.30(e)-(f), 212.5, and 235.3.

43. On June 24, 2025, he formally married his then common law spouse, Candace Michelle Contreras at the detention center because Respondents refused to release him on parole despite

that he showed evidence that he and his spouse were already living together before he was illegally arrested. **Ex. G [copy of parole request with marriage evidence and affidavit of spouse].**

44. On August 26, 2025, his citizen spouse filed an adjustment of status application with U.S. Citizenship and Immigration Services (USCIS). The regulations at 8 C.F.R. § 245.2(a)(1) states that USCIS has “exclusive” jurisdiction over an adjustment application filed by an “arriving alien,” with a few exceptions not applicable here. See 8 C.F.R. § 1245.2(a)(1). **Ex. H [USCIS receipts for an adjustment of status application].**

45. Accordingly, the BIA and the Immigration Judge do not have jurisdiction over his adjustment application because he is deemed an “arriving alien” who is in removal proceedings. *See, Matter of Yauri*, 25 I. & N. Dec. 103, 106-7 (BIA 2009)(wherein the Board stated that USCIS has exclusive jurisdiction to adjudicate an arriving alien's application for adjustment of status under the regulations and agrees that it retains jurisdiction to adjudicate the application even where an unexecuted administratively final order of removal remains outstanding).

46. Likewise, the Fifth Circuit, in which this case arises, has held that by regulation, an Immigration Judge lacks jurisdiction over any adjustment of status application of an arriving alien, except in the case of an arriving alien who leaves the United States and returns under a grant of advance parole to pursue a previously filed application. *Hernandez v. Sessions*, 713 F. App'x 339, 340, *unpublished*, (5th Cir. 2018).

47. Due process protects a noncitizen's liberty interest in the adjudication of applications for relief made available under the immigration laws. *See Arevalo v. Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) (recognizing protected interests in the “right to seek relief” even when there is no “right to the relief itself”). Petitioner has a protected due process interest in his ability to apply

for adjustment of status without interference.

48. On May 29, 2025, Mr. Garcia filed his first parole request through his immigration counsel on the basis of his illegal arrest. However, despite strong family ties in the United States and eligibility for multiple forms of relief, he was denied parole but not formally. He was informed through immigration counsel, that under this administration parole will rarely be granted and that they had no discretion because only headquarters can decide.

49. On August 2, 2025, Mr. Garcia filed his second parole request on the basis of his eligibility to file an application to register permanent residence or adjust status. To date, ICE has not formally responded in writing to his parole request. ICE has only acknowledged receipt of the request and has issued no substantive decision.

50. On September 8, 2025, Mr. Garcia filed, through immigration counsel, a follow up to the parole request and sent copies of the USCIS receipts of his adjustment of status application with a request that if ICE was not going to release him then they had to take him to his biometric appointment scheduled for September 16, 2025. Initially, ICE stated that they would take him to his appointment, but then in an about face, ICE stated that they would only send the fingerprints directly to USCIS. **Ex. I [email exchange as to whether ICE was going to take Petitioner to his appointment].**

51. Mr. Garcia is now waiting for his interview and is worried that ICE will refuse to take him when that date arrives.

52. Unless habeas or immediate injunctive relief is granted, this husband of a U.S. citizen who was separated from his spouse by Respondents, faces indefinite detention, losing the opportunity to attend his interview for his adjustment of status application, and to meaningfully prepare his case for humanitarian relief under the extreme duress of separation from his spouse and family.

This will only increase the likelihood that he will be removed to Mexico without being reunified with his spouse, or the ability to adjust his status inside the U.S., in violation of his Constitutional right to family integrity.

53. Finally, it does not appear that the Respondents considered the reciprocal constitutional rights of Ms. Garcia and his spouse to family integrity. While not dispositive, it weighs heavily on the harm caused by the prolonged detention of this husband, and separation of him from his spouse. The Supreme Court has long recognized a Due Process right to family integrity.⁵

54. The Fifth Circuit has acknowledged that “many aspects of family integrity possess constitutional stature.” *See Hodorowski v. Ray*, 844 F.2d 1210, 1217 (5th Cir. 1988). The Fifth Circuit later clarified that while it found that there is a constitutional right to family integrity, its contours may remain unclear in certain cases. *See Morris v. Dearborne*, 181 F.3d 657 (5th Cir. 1999).

55. Pursuant to this Court’s inherent powers in habeas corpus proceedings, Ms. Garcia respectfully requests this Court order his immediate release from custody because he has a liberty interest in his freedom from detention after his release from custody for over 15 years, and the Respondents violated his Fourth Amendment Rights, and his substantial and procedural Due Process, as applied to him.

56. The Respondents do not have discretion to violate the Constitution. *Gutierrez-Soto v. Sessions*, at 925. “[T]his Court joins those courts that have found that an individual who has been

⁵ The Supreme Court has explained: Without a doubt, [liberty] denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S. Ct. 625, 626 (1923).

living in the United States outside parole and is later apprehended is detained under section 1226. *Martinez v. Marich*, No. 25-CV-1110-LJV, 2025 U.S. Dist. LEXIS 268379, at *31 (W.D.N.Y. Dec. 31, 2025).

FIRST CAUSE OF ACTION

Violation of Right to Due Process Pursuant to the Fifth Amendment

57. Petitioner alleges and incorporates by reference Paragraphs 1 through 56, above. In *Bridges v. Wixon*, our U.S. Supreme Court elegantly stated in part, "[O]nce an alien lawfully enters and resides in this country he becomes invested with the rights guaranteed by the Constitution to all people within our borders. Such rights include those protected by the Fourth and the Fifth Amendments and by the due process clause of the Fourteenth Amendment." 326 U.S. 135, 161 (1945). *See also, Wong Wing v. United States*, 163 U.S. 228, 238 (1896) ("It must be concluded that all persons within the territory of the United States are entitled to the protection by [the Fifth] [A]mendment[] . . .

58. Petitioner's continued prolonged detention under 8 U.S.C. § 1225(b)(2)(A)(2018) for more than seven months, without a custody hearing before a neutral arbiter violates his right to due process under the Fifth Amendment to the United States Constitution. "It is well established that the Fifth Amendment entitles aliens to due process of law." *Demore v. Hyung Joon Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "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 678, 690

(2001); *see also id.* at 718 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention.”).⁶

59. Due process therefore requires “adequate procedural protections” to ensure that the government’s asserted justification for its conduct infringing on protected interests “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* at 690 (internal quotation marks omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

60. Other than as punishment for a crime, due process permits the government to take away liberty only “in certain special and narrow nonpunitive circumstances . . . where a special justification . . . outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (quotations omitted). Such special justification exists only where a restraint on liberty bears a “reasonable relation” to permissible purposes. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *see also Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Zadvydas*, 533 U.S. at 690. In the immigration context, those purposes are “ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community.” *Zadvydas*, 533 U.S. at 690 (quotations omitted).

61. Those substantive limitations on detention are closely intertwined with procedural due process protections. *Foucha*, 504 U.S. 78-80. Noncitizens have a right to adequate procedures to determine whether their detention in fact serves the purposes of ensuring their appearance or

⁶ (“A statute permitting indefinite detention of an alien would raise a serious constitutional problem.”) *Wekesa v. United States Atty.*, No. 22-10260, 2022 U.S. App. LEXIS 32359, at *4 (5th Cir. Nov. 22, 2022), unpublished, James L. Dennis, Circuit Judge, dissenting, *citing Zadvydas* at 693.

protecting the community. *Id.* at 79; *Zadvydas*, 533 U.S. 692; *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 949 (9th Cir. 2008). Where laws and regulations fail to provide such procedures, the habeas court must assess whether the noncitizen's immigration detention is reasonably related to the purposes of ensuring his appearance in immigration court or protecting the community. *Zadvydas*, 533 U.S. at 699.

62. In *Zadvydas*, the U.S. Supreme Court found that six months is a presumptively reasonable period during which ICE may detain aliens in order to effectuate their removal. *Id.* at 702. "Once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701. In *Clark v. Martinez*, 543 U.S. 371 (2005), the Supreme Court held that its ruling in *Zadvydas* applies equally to inadmissible aliens. *Id.* at 386. Therefore, detention under § 1225(b)(2)(A) is subject to a reasonable time limitation. *Maldonado*, 150 F. Supp. 3d at 805.

63. The Due Process Clause of the Fifth Amendment requires that any deprivation of Mr. Garcia's liberty be narrowly tailored to serve a compelling government interest. Although ICE has an interest in detaining Mr. Garcia to effectuate his removal, it can't do so in an unconstitutional manner. *Gutierrez-Soto v. Sessions*, at 925.

64. In *Maldonado*, detainment of twenty-six months under § 1225(b)(2)(A) was found to be unreasonable regardless of the reasonableness standard used. *Id.* at 809-10. Here, as in *Maldonado*, the Petitioner was deemed an "arriving alien" because he presented himself at the port of entry to seek asylum. He further received a positive credible fear finding and therefore was no longer subject to expedited removal proceedings. *Id.* at 810.

65. Based on these facts in *Maldonado*, the court found that the petitioner's detention was unreasonable because he had been held in "immigration detention for more than two years, having committed no crime in his attempt to seek asylum in this country, and without any opportunity for an individualized review of his detention by an immigration judge." *Id.* at 811.

66. In this case, Mr. Garcia, has been in the United States since 2008, or for over 17 years. As noted, on August 12, 2009, he was released on parole [Order of Supervision] and was living in the U.S. without incident, until he was arrested, and detained in an arbitrary manner, without any notice of the basis for Petitioner's arrest and continued detention, and not based on a rational and individualized determination of whether Petitioner should be detained based on the individual facts and circumstances pertaining to whether Petitioner was a flight risk or unlawfully present in the United States, or a danger to the community.

67. As such, Mr. Garcia's mandatory detention is unreasonable. *Maldonado* held that an individualized bond hearing was the appropriate remedy in such a case to provide a safeguard against indefinite detention. *Id.* at 812. Respondents have exceeded their authority to detain Mr. Garcia, and an individualized bond hearing is justified on the facts of this case.

68. Mr. Garcia had been released under parole and had been allowed to live unimpeded in the United States for over 15 years, was allowed to work, to live with his family, and to assimilate into the community and establish a life here.

69. The Fifth Amendment to the U.S. Constitution provides: "No person shall...be deprived of life, liberty, or property, without due process of law...." *See Wong Wing v. U.S.*, 163 U.S. 228, at 238 ("These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any difference of race, of color, or nationality...").

70. Mr. Garcia has a liberty interest in his freedom from detention and he should be given a meaningful opportunity to be released and to adjust his status without interference from ICE. *See Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (Once an alien gains admission to our country and begins to develop the ties... his constitutional status changes).

71. Thus, Mr. Garcia's detention violates the Due Process Clause of the U.S. Constitution as applied to his specific facts.

SECOND CAUSE OF ACTION

Mr. Garcia's detention violates the INA and applicable regulations

72. Mr. Garcia re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

73. Mr. Garcia's detention violates the INA and its regulations, in that he passed his credible fear interview, the Third Circuit remanded his case, and he has established that he is eligible to adjust his status to that of a Legal Permanent Resident; meanwhile, the Respondents have utterly failed to provide him with any meaningful opportunity to present argument or evidence in favor of his release, nor did they make any individualized determination that he poses a flight risk or danger.

THIRD CAUSE OF ACTION

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)
Violation of 8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.8(c)(2)(i)
Warrantless Arrest Without Probable Cause of Immigration Violation

74. Mr. Garcia's re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

75. Under the Administrative Procedures Act (APA), a court shall "hold unlawful and set aside agency action" that is "not in accordance with law;" "contrary to constitutional right;" "in

excess of statutory jurisdiction, authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).

76. 8 U.S.C. § 1357(a)(2) permits an immigration officer to conduct a warrantless arrest only if that officer has “reason to believe” that an individual is in the United States in violation of the immigration laws. A “reason to believe” is equivalent to “the constitutional requirement of probable cause.” *Au Yi Lau v. United States Immigration & Naturalization Serv.*, 144 U.S. App. D.C. 147, 445 F.2d 217, 222 (1971) (stating that both aliens and citizens enjoy Fourth Amendment protection). *Id.* at 223.

77. 8 C.F.R. § 287.8(b)(2) requires that before detaining an individual for questioning, an immigration officer must have “a reasonable suspicion, based on specific articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense against the United States or is an alien illegally in the United States.” See also, *United States v. Quintanilla-Chavez*, No. SA-25-CR-388-XR, 2025 U.S. Dist. LEXIS 210411, at *31-32 (W.D. Tex. Oct. 20, 2025).

78. Respondents’ warrantless arrest of Mr. Garcia, based on no information beyond his race is “final agency action” that is “in excess of statutory jurisdiction, authority, or limitations” under 8 U.S.C. § 1357(a)(2) and federal regulations. 5 U.S.C. §§ 704, 706(2)(C).

79. Respondents’ detention of Petitioner, without any reasonable suspicion of a qualifying offense, violates the APA and Respondents’ authority under 8 C.F.R. § 287.8(b)(2).

80. Under the APA, “final agency action for which there is no other adequate remedy in a court [is] subject to judicial review.” 5 U.S.C. § 704. The reviewing court “shall...hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” or “unsupported by substantial

evidence.” 5 U.S.C. §§ 706(2)(A), (E). Thus, Mr. Garcia’s detention under the facts alleged here is and continues to be arbitrary and capricious under the APA.

81. Separate from the APA, Respondents’ warrantless arrest of Mr. Garcia without probable cause that Petitioner had committed an immigration violation is ultra vires.

82. Further, DHS is actively obstructing Mr. Garcia’s ability to obtain Lawful Permanent Resident status by preventing him from completing his biometrics as required by USCIS; and attending a lawful permanent residency interview.

83. Finally, Mr. Garcia does not seek monetary damages, thus for the purposes of the APA, § 702 waives the government’s sovereign immunity because his claim is only for equitable relief—release from prolonged confinement.

FOURTH CAUSE OF ACTION

Violation of the Fourth Amendment of the United States Constitution Unreasonable Seizure

84. Petitioner realleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

85. Respondents had no basis to detain Mr. Garcia and inquire about his immigration status other than his race and apparent ethnicity. The absence of any individualized, articulable facts supports the inference that race or apparent ethnicity impermissibly informed the stop and arrest.

86. The ICE agents demanded their identification right after the game warden had checked to make sure their family’s jet skis were registered, and they were. These ICE agents did not show an arrest warrant or identify themselves as to what agency they were from, nor did they state what crime was committed, if any, when they asked for their identifications.

87. When Mr. Garcia inquired as to why he was being arrested, despite presenting proof of his employment authorization and state identification, ICE agents informed him that “Trumps wants everyone.”

88. The Fourth Amendment provides that “[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures.” U.S. CONST. AMEND. IV.⁷

89. Immigration detention is a form of civil confinement that “constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 4253 (1979).⁶⁹.

90. The Supreme Court has recognized that the Fourth Amendment is violated by prolonged detention solely for the purposes of investigating immigration status. See *Arizona v. United States*, 132 S. Ct. 2492, 2509 (2012)(stating that “Detaining individuals solely to verify their immigration status would raise constitutional concerns.”).

91. Under the Immigration and Nationality Act (“INA”) § 287(a)(2) only allows immigration officials to make a warrantless arrest if they have “reason to believe” that the person is likely to escape before a warrant could be obtained. See *De La Paz v. Coy*, 786 F.3d 367, 376 (5th Cir. Tex. 2015)(stating that an “arrest shall be made [by ICE Agents] only when the designated immigration officer has reason to believe that the person to be arrested has committed an offense against the United States or is an alien illegally in the United States.”).

92. The *De La Paz* Court further stated,. . .” even if an agent has reasonable belief, before making an arrest, there must also be “a likelihood of the person escaping before a warrant can be obtained for his arrest”), citing to 8 U.S.C. § 1357(a)(2)(5).

93. Reasonable suspicion for an immigration stop cannot be based “on broad profiles

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which cast suspicion on entire categories of people without any individualized suspicion of the particular person to be stopped.” *United States v. Rodriguez Sanchez*, 23 F.3d 1488, 1492 (9th Cir. 1994). Rather, reasonable suspicion must be “particularized and objective,” *United States v. Arvizu*, 534 U.S. 266, 273 (2002).

94. Except at the border and its functional equivalents, the Fourth Amendment to the U.S. Constitution prohibits Respondents from conducting a detention stop to question a person without reasonable suspicion that a person is a noncitizen unlawfully in the United States.

95. Likewise, the Fourth Amendment prohibits Respondents from making an arrest without probable cause to believe that a person is a noncitizen unlawfully in the United States.

96. Race or apparent ethnicity, standing alone, cannot form the basis for reasonable suspicion. *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975). Because probable cause is a more demanding standard than reasonable suspicion, race or apparent ethnicity, standing alone, is also necessarily insufficient to form the basis for probable cause.

97. Thus, the Fourth Amendment prohibits the Respondents from targeting persons on the sole basis of their brown skin or because they look “Mexican.” See *Hernandez v. Texas*, 347 U.S. 475, 476 (1954) (identifying Mexicans as a suspect class and reversing criminal conviction of defendant of Mexican descent). Such racially motivated detentions and deportations are unconstitutional.

98. [There is nothing] . . . vaguely suspicious about the presence of persons who appear to be of Latin origin in New Mexico where over one-third of the population is Hispanic.” *United States v. Orona-Sanchez*, 648 F.2d 1039, 1042 (5th Cir. 1981); *United States v. Rubio-Hernandez*, 39 F. Supp. 2d 808, 836 (W.D. Tex. 1999) (stating that “given the percentage of Hispanic people that make up the population of [West Texas],” Latin American origin alone was not enough to demonstrate an individual was undocumented or concealing unauthorized

immigrants); *United States v. Zertuche-Tobias*, 952 F. Supp. 803, 821, n. 54 (S.D. Tex. 1996) (declining to rely on Latino ethnicity in a stop).⁸

99. Respondents had no basis to detain Mr. Garcia and inquire about his immigration status other than his race and apparent ethnicity. No other salient factors existed to suggest that Petitioner might not be a citizen of the United States. Because Respondents only detained Petitioner because of his race, Respondents did not have reasonable suspicion, and the detention violated the Fourth Amendment.

100. ICE is bound not only by statute and due process, but also by its national policy adopted pursuant to settlement agreement in *Castañon Nava et al. v. Dep't of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.). Under this policy, ICE must consider a delineated list of factors before making an arrest, including (a) the officer's ability to determine the individual's identity; (b) knowledge of the individual's prior escapes or evasions of immigration authorities; (c) the individual's attempts to flee to avoid being discovered by immigration; and (d) the individual's ties to the community, such as a family, home, or employment. Settlement Agreement, *Castañon Nava et al. v. Dep't of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.), available at: https://immigrantjustice.org/sites/default/files/content-type/page/documents/2025-01/Nava_Settlement_ICE_Warrantless_Arrest-Vehicle_Stop_Policy_2021.pdf (Assessed on 01/14/2026).

⁸ See also, *United States v. Chavez-Villareal*, 3 F.3d 124, 127 (5th Cir. 1993) (“[W]e accord no weight to Chavez-Villareal’s failure to look at the patrol cars and very little his Hispanic appearance; his license plates indicate that he was from a state with a substantial Hispanic population...the stop herein violated the Fourth Amendment.”).

101. Respondents' detention and interrogation of Mr. Garcia without reasonable suspicion and his subsequent arrest of without probable cause violate the Fourth Amendment to the U.S. Constitution.

102. At the time that Mr. Garcia was seized at Moss Creek Lake, at no time did the ICE agents produce a warrant, explain why he was being questioned and was not allowed to go, or provide any documents of any kind.

103. Upon information and belief, the ICE agents did not provide their names and badge numbers or advise that they were immigration officers authorized to make immigration arrests.

104. At the time that Mr. Garcia was seized at Moss Creek Lake, ICE agents did not ask Mr. Garcia any questions about his family, employment, or community ties. Furthermore, the ICE agents did not conduct an individualized assessment of whether Mr. Garcia was a flight risk.

104. At the time that Mr. Garcia was seized at Moss Creek Lake, the ICE agents failed to conduct an individualized assessment of whether Mr. Garcia was a danger to the community.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Order Petitioner's release from custody so that he may be reunited with his spouse;
3. Issue a Writ of Habeas Corpus ordering Petitioner's release from immigration detention pending final resolution of this habeas proceeding;
4. In the alternative, issue a Writ of Habeas Corpus and order Petitioner's release within 3 business days unless Respondents schedule a hearing before a neutral immigration judge to provide Ms. Garcia a constitutionally adequate process to challenge his detention;
5. Issue a declaration that Petitioner's ongoing detention violates the Due Process Clause, the INA, and the APA;

6. Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. §2412, or other statutes;
7. Grant such further relief as the Court deems just and proper.

Dated: January 19, 2026

Respectfully submitted,

/S/ Eduardo Beckett
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition and reviewed his corroborating documentation. On the basis of those discussions, on information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: January 19, 2026

/S/ Eduardo Beckett

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above-entitled Verified Habeas Petition was filed electronically with the Clerk of the Court on this **19th day of January, 2026**, using the CM/ECF system, which office will, in turn, send notification to the following:

1. United States Attorney's Office for the Western District of Texas, El Paso Division:
AUSA, Attorney for Respondents. By serving the AUSA it is notifying the following:

Joel Garcia Acting ICE Field Office Director, El Paso
11541 Montana Ave., Suite E.
El Paso, TX 79925

Kristi Noem, Secretary of the Department of Homeland Security
2707 Martin Luther King Jr. Ave. SE,
Washington D.C. 20528-0525

Todd Lyons, Acting Director of ICE
ICE Headquarters
500 12th St. SW,
Washington, D.C. 20024

Pamela Bondi, Acting Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

I further certify that on January 20, 2026, I will serve the above Respondents by U.S. Priority Mail with tracking.

/S/ Eduardo Beckett
Counsel for Petitioner