

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

ELICLESIO SOARES PEREIRA,

Petitioner,

v.

RAYMOND ADAMS — in his official capacity as Field
Office Director, El Paso Field Office, U.S. Immigration &
Customs Enforcement;

KRISTI NOEM, in her official capacity as Secretary of the
Department of Homeland
Security; and

TODD LYONS, in his official
capacity as Acting Director and Senior
Official Performing the Duties of the
Director of U.S. Immigration and Customs Enforcement;

Respondents.

EP 26CV0114

Civil Action No.:

PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241

DHS# 

INTRODUCTION

1. Petitioner Eliclesio Soares Pereira brings this Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 challenging his unlawful civil immigration detention by the Department of Homeland Security (“DHS”).
2. Petitioner is currently detained at El Paso Camp East Montana in El Paso, Texas.
3. DHS lacks statutory authority to detain Petitioner because it previously arrested, processed, and released him pursuant to INA § 236, as evidenced by Form I-220A (Order of Release on Recognizance). Having exercised discretionary authority under § 236, DHS cannot later re-detain Petitioner under INA § 235(b) absent new facts or statutory authorization.
4. Petitioner’s current detention is therefore ultra vires, arbitrary, and in violation of the Immigration and Nationality Act, the Administrative Procedure Act, and the Fifth Amendment’s Due Process Clause.

JURISDICTION

5. Petitioner is in the physical custody of Respondents and is currently detained at the El Paso Camp East Montana in El Paso, Texas
6. This Court has jurisdiction over this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, which authorizes federal courts to review the legality of a noncitizen's detention. Jurisdiction also lies under 28 U.S.C. § 1331, as this action presents federal questions arising under the Constitution and laws of the United States. The Suspension Clause of the Constitution, U.S. Const. art. I, § 9, cl. 2, protects Petitioner's right to seek habeas corpus relief. This Court further possesses authority under the All Writs Act, 28 U.S.C. § 1651, and the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., to grant appropriate declaratory and injunctive relief.
7. Federal district courts have long exercised jurisdiction over habeas corpus petitions brought by noncitizens challenging the lawfulness and constitutionality of their immigration detention. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018).
8. Petitioner's continued detention by Respondents constitutes a severe restraint on his individual liberty, rendering him "in custody in violation of the Constitution or laws ... of the United States" within the meaning of 28 U.S.C. § 2241(c)(3). See *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).
9. No prior petition for a writ of habeas corpus has been filed in any court challenging Petitioner's detention.

VENUE

10. Venue is proper in the District of Texas. Pursuant to 28 U.S.C. § 2241(d), a petition for a writ of habeas corpus may be filed in the district in which the petitioner is in custody.

Venue is also proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to Petitioner's claims occurred within this District.

11. As of January 16, 2026, Petitioner is detained at the El Paso Camp East Montana in El Paso, Texas. *See Exhibit A* (ICE Online Detainee Locator confirming custody at El Paso, Texas Correctional Facility).
12. Venue is proper in this District because Petitioner is currently detained within this District, and the unlawful detention decisions and custody determinations challenged in this Petition were made and are being carried out here.

REQUIREMENTS OF 28 U.S.C. § 2243

13. This Court is required to resolve this Petition promptly pursuant to 28 U.S.C. § 2243, which mandates that a writ of habeas corpus be addressed “forthwith” and that the Court “summarily hear and determine the facts, and dispose of the matter as law and justice require.”
14. Petitioner challenges the legal authority for his continued civil immigration detention, not disputed factual issues requiring prolonged development. Where detention lacks statutory authorization, habeas relief is appropriate without delay. *See Zadvydas v. Davis*, 533 U.S. 678, 688 (2001).
15. Continued detention under an incorrect statutory framework constitutes an ongoing deprivation of liberty in violation of federal law and the Constitution. Each additional day of unlawful confinement results in irreparable harm.
16. Because DHS has already exercised discretionary authority under INA § 236, and because no alternative statutory basis authorizes Petitioner's current detention, this Court should grant habeas relief without further delay.

PARTIES

17. Petitioner, Eliclesio Soares Pereira, is a noncitizen residing in Burnsville, Minnesota. He has been in ICE custody since January 12, 2026, and is currently detained at El Paso Camp East Montana in El Paso, Texas.
18. Respondent Raymond Adams is sued in his official capacity as Field Office Director of U.S. Immigration and Customs Enforcement (ICE), El Paso Field Office. He is a legal custodian of Petitioner and is responsible for detention decisions, transfers, and release authority within this District.
19. Respondent Kristi Noem is sued in her official capacity as Secretary of the U.S. Department of Homeland Security. She is responsible for administering and enforcing the Immigration and Nationality Act and oversees ICE, the agency directly responsible for Petitioner's detention.
20. Respondent Todd Lyons is sued in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement. He has nationwide authority over ICE detention policies and the power to order Petitioner's release.
21. Each Respondent is a proper party because each exercises legal authority over Petitioner's detention, custody classification, or ability to order release. See *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004); *Lee v. Wetzel*, 244 F.3d 370, 373–75 (5th Cir. 2001); *Rosales v. Bureau of Immigration & Customs Enforcement*, 426 F.3d 733, 735–36 (5th Cir. 2005)

EXHAUSTION OF ADMINISTRATIVE REMEDIES

22. Petitioner has no adequate or available administrative remedies to exhaust.

23. Petitioner challenges DHS's statutory authority to detain him, not a discretionary bond determination. Immigration Judges lack authority to adjudicate the legality of DHS's custody classification once DHS asserts detention under INA § 235(b).
24. Any attempt to seek bond before the Immigration Court would be futile, as Immigration Judges lack jurisdiction to correct DHS's ultra vires re-detention decision or to order release where DHS asserts mandatory detention.
25. Exhaustion is therefore excused because:
 - a. the agency lacks authority to grant effective relief;
 - b. further proceedings would be futile; and
 - c. Petitioner challenges the constitutionality and legality of his detention, not discretionary relief.
26. Habeas corpus under 28 U.S.C. § 2241 is the sole and appropriate mechanism to remedy Petitioner's unlawful detention. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018).
27. Therefore, a writ of habeas corpus is the sole avenue to vindicate Petitioner's constitutional, statutory, and regulatory rights and to restore his liberty

STATEMENT OF FACTS

28. Petitioner entered the United States without inspection on or about July 24, 2021.
29. Shortly after entry, DHS arrested Petitioner and released him pursuant to Form I-220A, expressly documenting that he was detained and released under INA § 236. See **Exhibit B** (Form I-220A).
30. The I-220A reflects DHS's discretionary custody determination and confirms that Petitioner was placed into removal proceedings and released under § 236, not detained under § 235(b).

31. Petitioner complied with all conditions of release and resided peacefully in the community for more than four years, establishing strong family, economic, and community ties in Minnesota.
32. On or about January 12, 2026, Petitioner appeared for a scheduled ICE check-in and was re-arrested without new allegations of danger, flight risk, or changed circumstances.
33. DHS has since detained Petitioner at El Paso Camp East Montana, asserting detention authority inconsistent with its prior § 236 determination.
34. Petitioner has no criminal history, poses no danger to the community, and has consistently complied with all immigration reporting requirements. Since his release from DHS custody following entry, Petitioner's only interaction with law enforcement was a routine traffic stop, which did not result in any arrest or court appearance.
35. Petitioner's detention has caused severe hardship to his family. His wife, Daniele da Rocha Silva, is currently undergoing cancer treatment and depends on Petitioner for daily care, emotional support, and financial stability.

CLAIM FOR RELIEF COUNT I:

**VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT (ULTRA
VIRES DETENTION)**

36. Petitioner realleges all prior paragraphs.
37. DHS exercised discretionary detention authority under INA § 236 when it arrested, processed, and released Petitioner on Form I-220A.
38. Once DHS made that determination, § 235(b) detention authority was extinguished as a matter of law.
39. DHS lacks statutory authority to re-detain a § 236 releasee years later absent new facts or statutory triggers.

40. Federal courts have consistently held that DHS may not reclassify or re-detain noncitizens under § 235(b) after releasing them under § 236 without violating the INA.
41. Petitioner's detention therefore exceeds DHS's statutory authority and must be vacated.

COUNT II:

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

42. DHS's decision to detain Petitioner is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).
43. DHS has failed to articulate any rational basis for asserting detention authority under INA § 235(b) after it previously arrested, processed, and released Petitioner pursuant to INA § 236.
44. DHS has not identified any intervening facts, changed circumstances, or individualized findings that would justify abandoning its prior custody determination or support continued detention.
45. Moreover, DHS has failed to explain why less restrictive alternatives to detention—such as release under supervision, bond, or recognizance—are insufficient to achieve the government's legitimate civil detention purposes.
46. The agency's silence on these critical issues confirms that Petitioner's detention is not the product of reasoned decision-making, but rather of an unlawful categorical practice.
47. DHS's reliance on *Matter of Q. Li* and *Matter of Yajure Hurtado* does not authorize indefinite detention, retroactive custody reclassification, or the abandonment of individualized analysis required by the Immigration and Nationality Act.

48. Those decisions do not expand DHS's statutory detention authority and cannot override the limits imposed by Congress.

49. By treating Petitioner's prior § 236 release as legally irrelevant and detaining him without an individualized, reasoned explanation, DHS has adopted a blanket detention approach that substitutes categorical rules for case-specific analysis. Such action violates the core requirements of the Administrative Procedure Act and must be set aside.

COUNT III

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

TO THE UNITED STATES CONSTITUTION

(SUBSTANTIVE AND PROCEDURAL DUE PROCESS)

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

51. The Due Process Clause of the Fifth Amendment protects all persons within the United States from deprivation of liberty without due process of law. Civil immigration detention is constitutionally permissible only when it bears a reasonable relationship to its regulatory purposes and is accompanied by adequate procedural safeguards.

52. Petitioner has a substantial liberty interest at stake. He has resided in the United States for more than 4 years, his family depend on him financially and emotionally, his wife is going over a cancer treatment and needs his support, and maintains deep family, community, and economic ties in Minnesota. His continued detention imposes severe and ongoing restraints on his liberty and disrupts a long-established family unit and livelihood.

53. Petitioner does not present a danger to the community. Petitioner's longstanding residence and stable family relationships further rebut any assertion that his detention is necessary to protect public safety.
54. Despite these facts, Respondents continue to detain Petitioner without an individualized and constitutionally adequate custody determination.
55. Respondents' actions violate substantive due process because continued detention under these circumstances is arbitrary and excessive in relation to any legitimate governmental purpose. Detaining a long-term resident with strong community ties, no finding of dangerousness, or flight risk is not reasonably related to ensuring appearance or protecting the community.
56. Accordingly, Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment. Habeas relief is warranted to remedy this ongoing constitutional violation.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Issue a Writ of Habeas Corpus ordering the immediate release of Petitioner from Respondents unlawful custody;
- c. In the alternative, grant a Writ of Habeas Corpus ordering an immediate bond hearing to ensure Petitioner's detention bears a reasonable relation to the government's interests;
- d. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- e. Grant any other and further relief that this Court deems just and proper.

Dated: January 19, 2026

Respectfully Submitted,

Eliclesio Soares Pereira
through counsel

/s/ Luana M. Biagini
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1999 N. University Drive, Suite 214
Coral Springs, FL 33071
857-206-9801
luana@biaginilaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this date, January 20, 2026, I electronically filed the foregoing First Amended Writ of Habeas Corpus, with the Clerk of the Court using the CM/ECF system. Notice of this filing was served on all counsel of record, including the Office of the United States Attorney, via the Court's CM/ECF system.

Respectfully Submitted,

/s/ Luana M. Biagini
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EXHIBIT A

1/19/26, 4:44 PM

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 Official Website of the Department of Homeland Security



Report

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Facility Page

Detention Information For:

ELICLESIO SOARES PEREIRA

Country of Birth: Brazil

A-Number: 

Current Detention Facility:

ERO EL PASO CAMP EAST MONTANA

6920 Digital Road

NA

El Paso, TX 79936

Visitor Information: (915) 208-0980

[MORE INFORMATION >](#)

ERO Office Information

Family members and legal representatives may be able to obtain additional information about this individual's case by contacting this ERO office:

ERO - El Paso, TX SPC Sub-Office

Phone Number: (915) 225-0700

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EXHIBIT B

U.S. Department of Homeland Security

Order of Release on Recognizance

 File No. [REDACTED]
 Date: July 24, 2021
 Event No. [REDACTED]
Name: ELICLESIO SOARES PEREIRA

You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions:

☒ You must report for any hearing or interview as directed by the Department of Homeland Security or the Executive Office for Immigration Review.

☒ You must surrender for removal from the United States if so ordered.

☐ You must report in (writing) (person) to _____

(Name and Title of Case Officer)

at _____

on _____

at _____

(Location of DHS Office)

(Day of each week as mandated)

(Time)

If you are allowed to report in writing, the report must contain your name, alien registration number, current address, place of employment, and other pertinent information as required by the officer listed above.

☒ You must not change your place of residence without first securing written permission from the immigration officer listed above.

☒ You must not violate any local, State, or Federal laws or ordinances.

☒ You must assist the Department of Homeland Security in obtaining any necessary travel documents.

☐ Other: _____

☐ See attached sheet containing other specified conditions. (Continue on separate sheet if required)

NOTICE: Failure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by the Department of Homeland Security.

 (Signature of DHS Official)
 ROGER PRINDLE
 ACTING WATCH COMMANDER

(Printed Name and Title of Official)

Alien's Acknowledgment of Conditions of Release on Recognizance

I hereby acknowledge that I have (read) (had interpreted and explained to me in the _____ language) and understand the conditions of my release as set forth in this order. I further understand that if I do not comply with these conditions, the Department of Homeland Security may revoke my release without further notice.

(Signature of Immigration Officer Serving Order)

(Signature of Alien)

(Date)

Cancellation of Order

I hereby cancel this order of release because: ☐ The alien failed to comply with the conditions of release.

☐ The alien was taken into custody for removal.

(Signature of Immigration Officer Cancelling Order)

(Date)

Form I-238A (Rev. 04/01/03) N

Notice of Release on Recognizance

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

ATD ENROLLMENT - NOTICE TO ALIEN

Name	Field Office	A Number
SAARES PEREIRA, Eli-Isacio	3ND	

Your release is contingent upon your enrollment and successful participation in an Alternatives to Detention (ATD) program as designated by the U.S. Department of Homeland Security. As part of the ATD program, you will be subject to electronic monitoring and may be subject to a curfew. Failure to comply with the requirements of the ATD program will result in a redetermination of your release conditions or your arrest and detention.

If fitted with a U.S. Immigration and Customs Enforcement GPS monitoring device, do not tamper with or remove the device. Under federal law, it is a crime to willfully damage or attempt to damage property of the United States. **The unauthorized removal of the GPS monitoring device will result in damage to property of the United States.** Damaging or attempting to damage the GPS monitoring device or any of its associated equipment (including, but not limited to, the charging station, batteries, and power cords) may result in your arrest, detention, and prosecution under 18 U.S.C. § 1361 and/or 18 U.S.C. § 841, each punishable by a fine, up to ten years' imprisonment, or both.

RECORD OF SERVICE

Served On: (Alien's Signature)	Date:
	7/25/11
By signing I acknowledge that this form was provided to me in a language I understand or was read to me in a language I understand. I further acknowledge that tampering with, damaging, and/or removing the GPS Device, or any of its associated equipment, without permission may result in damage to federal property for which I may be criminally prosecuted.	
Served By: (Print Name and Title of Officer)	Location of Service
DEWAND DO	335P CRU
Officer's Signature	Date:
	7/25/11

ICE Form 1524 (2-00)

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