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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Abel Antonio Vargas Aguilar,

Petitioner,

v.

John Mattos, NSDC Warden; Kerri Ann Quihuis, Field Office Director, Detention and Removal; Michael Bernacke, Field Director, West Valley City Office of ICE ERO; Todd Lyons, ICE Acting Director; Kristi Noem DHS Secretary; Pam Bondi, U.S. Attorney General,

Respondents.

Case No. 2:26-cv-00426-RFB-DJA

First Amended Petition §2241

INTRODUCTION

This petition challenges Mr. Aguilar's continued immigration detention without a lawful or meaningful bond hearing. Although Mr. Aguilar has lived in the United States for more than two decades and was arrested by ICE in the interior of the country—not at the border—he remains detained under a mandatory detention framework that does not apply to him. When Mr. Aguilar sought bond, the Immigration Judge denied relief after concluding that the court lacked jurisdiction to consider release. As a result, Mr. Aguilar has never received a meaningful individualized custody determination required by the Immigration and Nationality Act or the Due Process Clause of the Fifth Amendment. Habeas relief is therefore warranted.

JURISDICTION AND VENUE

This Court has jurisdiction pursuant to 28 U.S.C. §2241 (granting general habeas authority to district courts); Art. 1 § 9, cl. 2 of the U.S. Constitution (the "Suspension Clause"); 28 U.S.C. §1331 (federal question jurisdiction); and 28 U.S.C. § 2201, 2202 (Declaratory Judgment Act).

Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. *See e.g. Zadvydas v. Davis*, 533 U.S. 678 (2001). Federal courts also have federal question jurisdiction, through the APA to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA claims are cognizable in habeas. 5 U.S.C. § 703. The APA affords a right of review to a person who is "adversely affected or aggrieved by agency action." 5 U.S.C. § 702. Mr. Aguilar's continued detention violates his constitutional due process rights, constitutes arbitrary and capricious agency action, and is an abuse of discretion.

Venue is proper in this district pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Aguilar is detained within this district at Nevada Southern Detention Center.

Accordingly, Mr. Aguilar's habeas petition is properly before this Court.

PARTIES

Abel Antonio Vargas Aguilar is currently detained in ICE custody at the Nevada Southern Detention Center in Pahrump, Nevada.

John Mattos is the warden of Nevada Southern Detention Center. Mattos, in his official capacity, is the immediate custodian of Mr. Aguilar.

Michael Bernacke is the Field Director of the West Valley City Office of Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations, which has jurisdiction of enforcement and removal operations over detention facilities in Nevada, including Nevada Southern Detention Center where Mr. Aguilar is detained. Bernacke, in his official capacity, is a legal custodian of Mr. Aguilar.

Todd Lyons is the Acting Director of Immigration and Customs Enforcement, which is responsible for administering and enforcing immigration laws, including the detention and removal of immigrants. Lyons, in his official capacity, is a legal custodian of Mr. Aguilar.

Kristi Noem is the Secretary of the Department of Homeland Security (DHS), which oversees ICE. Noem, in her official capacity, is the ultimate legal custodian of Mr. Aguilar.

Pam Bondi is the Attorney General of the United States. She oversees the immigration court system, which is housed within the Executive Office for Immigration Review (EOIR) and includes all immigration courts and the Board of Immigration Appeals (BIA). She is named in her official capacity.

PROCEDURAL HISTORY

On February 17, 2026, Mr. Aguilar filed a pro se petition for writ of habeas corpus under 28 U.S.C § 2241. (ECF No. 1-1.) This Court appointed the Federal Public Defenders Office to represent Mr. Aguilar on February 18, 2026, and ordered undersigned counsel to file an Amended Petition on behalf of Mr. Aguilar by February 25, 2026. (ECF No. 4 at 1.) At that time, this Court also issued an order to show cause why the writ should not be granted and ordered Federal Respondents to file a return certifying the true cause of detention within three days after the filing of the instant Amended Petition. (ECF No. 4 at 2.)[1] This timely Amended Petition follows.

STATEMENT OF FACTS[2]

Mr. Aguilar has lived in the United States for 22 years. (ECF No. 1-1 at 6.) He was arrested by ICE on October 2, 2025, and ordered removed on November 5, 2025. (ECF NO. 1-1 at 4.) He appealed the removal order on November 17, 2025, and the appeal remains pending. (Id. at 5.)

On February 5, 2026, an Immigration Judge denied bond. In its order the IJ determined that Mr. Aguilar is a danger and a flight risk and that the court lacked jurisdiction to consider bond under *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). (P.Ex. 1.)

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[1] The appointment order also requires the parties to indicate whether they are amenable to having this matter decided on the papers. (ECF No. 4 at 2.) Petitioner consents to this Court ruling on papers and is willing to waive oral argument unless this Court believes relief is not warranted, in which case Petitioner respectfully requests the opportunity to be heard.

[2] All statements are made on information and belief unless otherwise cited to the record.

Ground One: Petitioner's detention without a bond hearing violates the Immigration and Nationality Act and the Fifth Amendment Due Process Clause.

As this Court recognized in its Order to Show Cause, this case falls squarely within this Court's decision in *Escobar Salgado v. Mattos*, No. 2:25-CV-01872-RFB-EJY, 2025 WL 3205356 (D. Nev. Nov. 17, 2025).

Mr. Aguilar has lived in the United States for twenty-two years. He was arrested by ICE on October 2, 2025—more than two decades after his entry—and not at or near the border. He was ordered removed on November 5, 2025, and timely appealed that removal order on November 17, 2025. His appeal remains pending.

Like the petitioners in *Escobar Salgado*, Mr. Aguilar was not apprehended at the threshold of entry, was not seeking admission at a port of entry, and was not being inspected by an "inspecting officer" within the meaning of 8 U.S.C. § 1225. See 8 U.S.C. §§ 1225(a)(3), (b)(1), (b)(2), (d). As this Court explained, "the notion that an ICE officer conducting removal operations within the continental United States, far from any port of entry, is engaging in 'Inspection of Applicants for Admission' as contemplated in § 1225(b) contradicts the plain meaning of the text when placed in context of the overall Section and its headings." *Escobar Salgado*, 2025 WL 3205356, at *14.*

This distinction is critical because noncitizens who have established substantial connections in this country possess greater due process protections than individuals stopped at the threshold of entry. *Id.* at *16* (quoting *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020)). Having resided in the United States for twenty-two years, Mr. Aguilar plainly falls within the former category.

Accordingly, mandatory detention under § 1225(b) is unlawful as applied to Mr. Aguilar. His detention authority, if any, arises under the discretionary

detention framework of 8 U.S.C. § 1226(a), which guarantees access to a meaningful bond hearing.

Mr. Aguilar, however, has never received such a hearing. On February 5, 2026, the Immigration Judge denied bond while simultaneously concluding that the court lacked jurisdiction to consider release under *Matter of Yajure-Hurtado*. The Immigration Judge expressly found that Mr. Aguilar "was not admitted to the United States and the Court lacks jurisdiction pursuant to *Matter of Yajure-Hurtado*." (P.Ex. 1.) Once the court determined it lacked authority to release Mr. Aguilar, it could not meaningfully exercise discretionary custody review.

A true custody redetermination under § 1226(a) requires the adjudicator to decide whether detention is necessary or whether release conditions are sufficient. Here, the Immigration Judge concluded that release was legally unavailable. Any accompanying references to dangerousness or flight risk therefore do not convert the proceeding into a merits bond hearing. In practical effect, detention was predetermined because the court believed it lacked power to order release at all.

Due process requires more than the appearance of review. A proceeding in which the adjudicator concludes that it lacks jurisdiction to grant relief cannot constitute a genuine opportunity for release and therefore fails to satisfy both § 1226(a) and the Fifth Amendment. *See Escobar Salgado*, 2025 WL 3205356, at 14–16.

The jurisdictional ruling also renders administrative review illusory. Because the Immigration Judge determined that no bond authority existed, Mr. Aguilar was deprived not only of a meaningful custody determination but also of any meaningful opportunity to challenge continued detention through the ordinary bond appeal process.

Accordingly, Mr. Aguilar has never received a constitutionally adequate merits bond hearing. Because his detention arises, if at all, under § 1226(a), he is

entitled to a genuine custody redetermination before an immigration judge empowered to exercise discretion over release.

PRAYER FOR RELIEF

Accordingly, Petitioner Abel Antonio Vargas Aguilar respectfully requests that this Court:

1. **Grant the Petition for Writ of Habeas Corpus**;
2. **Declare** that Petitioner's continued detention without a constitutionally adequate bond hearing violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment;
3. **Order Respondents to provide Petitioner with a prompt, individualized bond hearing** before an immigration judge with jurisdiction to consider release under 8 U.S.C. § 1226(a), at which Respondents bear the burden of justifying continued detention;
4. **Alternatively, order Petitioner's immediate release** under reasonable conditions of supervision if such a hearing is not provided within a time certain set by this Court; and
5. **Grant** such other and further relief as the Court deems just and proper.

Dated February 25, 2026.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Margaret Lambrose
Margaret Lambrose
Assistant Federal Public Defender

Declaration Under Penalty Of Perjury

I declare under penalty of perjury under the laws of the United States of America and the State of Nevada that the facts alleged in this petition are true and correct to the best of counsel's knowledge, information, and belief.

Dated February 25, 2026.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Margaret Lambrose
Margaret Lambrose
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on February 25, 2026. I personally served a true and correct copy of the foregoing First Amended § 2241 Petition by CM/ECF to the following individuals:

Ashlee Hesman Struck Love Acedo, PLC 3100 West Ray Road, Suite 300 Chandler, AZ 85226 Email: ahesman@strucklove.com	Sigal Chattah First Assistant, US Attorney District of Nevada 501 Las Vegas Blvd, Ste #1100 Las Vegas, NV 89101 Email: Sigal.Chattah@usdoj.gov
Summer Allegra Johnson US Attorney's Office, District of Nevada 501 Las Vegas Blvd. South Las Vegas, NV 89101 Email: summer.johnson@usdoj.gov	Pamela Bondi Attorney General U.S. Department of Justice 950 Pennsylvania Ave, NW, Washington, DC, 20530
Virginia Tomova Assistant United States Attorney 501 Las Vegas Blvd. South Ste #1100 Las Vegas, NV 89101 Email: Virginia.Tomova@usdoj.gov	

I further certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third party commercial carrier for delivery within three calendar days, to the following person:

Abel Antonio Vargas Aguilar A1814 Nevada Southern Detention Center 2190 East Mesquite Ave Pahrump, NV 89060	John Mattos, Warden Nevada Southern Detention Center 2190 E Mesquite Avenue Pahrump, NV 89060
Kerri Ann Quihuis Director, ICE Las Vegas Field Office 501 South Las Vegas Blvd, Ste 1000 Las Vegas, NV 89101	Kristi Noem Secretary of the Department of Homeland Security 245 Murray Lane SW, Washington, DC 20528

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/s/ Victoria Lenzi
An Employee of the
Federal Public Defender