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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

EDUARDO GREGORIO SILVA NELO Petitioner, v. **Juan Baltazar,** Warden, GEO Group, Inc. **Robert Guadian,** Director of Denver Field Office, U.S. Immigration and Customs Enforcement; **Markwayne Mullin**, Acting Secretary of the U.S. Department of Homeland Security; **Todd Lyons**, Acting Director of U.S. Immigration and Customs Enforcement; and **Pamela Bondi,** Attorney General of the United States, in their official capacities, Respondents.	Case No. 1:26-cv-1290 **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** [redacted]

INTRODUCTION

1. Petitioner, Eduardo Silva Nelo, an LGBTQAI+ individual who came to the United States to seek asylum, submitted his asylum application, and complied with all directives to appear in immigration court, was later detained by Immigration and Customs Enforcement

despite no change in his compliance or case status before the immigration court, was granted asylum and a subsequent bond by an Aurora Immigration Judge at the GEO Group, Inc detention facility who found that the petitioner was not a danger to the community nor a flight risk, petitions this Court pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2241, 5 U.S.C. § 551 *et seq.,* 28 U.S.C. §§ 2201 *et seq.,* and the All Writs Act, 28 U.S.C. § 1651 to issue a writ of habeas corpus to review the lawfulness of his detention by Immigration and Custom Enforcement ("ICE"), which is a division of the Department of Homeland Security of the U.S. government.

2. ICE has detained this Petitioner since June 4, 2025.

3. Despite the Petitioner being granted asylum while detained and despite a grant of bond for Petitioner by an immigration judge who found that he is not a danger to the public, nor a flight risk, ICE continues to detain Petitioner, who is otherwise eligible for release.

4. The Department of Homeland Security appealed Petitioners' grant of bond and immediately stayed the Judge's bond order, by filing form EOIR-43, which requires no articulation of a factual or legal justification for the invocation of the "automatic stay" pursuant to 8 C.F.R. § l003.19(i)(2), nor any showing of likelihood of success on the bond appeal. Four district courts have held that the "automatic stay" regulation violates due process. *Zavala v. Ridge*, 310 F.Supp.2d 1071 (N.D. Cal. 2004); *Ashley v. Ridge*, 288 F.Supp.2d 662 (D.N.J. 2003); *Uritsky v. Ridge*, 286 F.Supp.2d 842 (E.D. Mich. 2003); *Bezmen v. Ashcroft*, 245 F.Supp.2d 446 (D.Conn. 2003). The regulation burdens a significant liberty interest while not being reasonably related to a legitimate governmental objective and deprives aliens of a meaningful pre-deprivation hearing. Additionally, it contravenes the pre-removal detention scheme found in the Immigration and Nationality Act. By filing an automatic stay, ICE overrode an

individualized finding by an Immigration Judge, subjecting Mr. Silva Nelo to mandatory detention without asserting any basis that was not already considered by the Judge during the Petitioner's bond hearing. The automatic stay regulation runs afoul of constitutional due process by insulating agency bond decisions from timely review by an independent adjudicator.

5. By invoking the automatic stay, ICE subjected Mr. Silva Nelo to prolonged detention without basis and without timely independent review of the agency's decision. The regulation runs afoul of constitutional due process by nullifying the order of a neutral magistrate and insulating the agency's decision to continue detention from prompt review by an independent adjudicator. According, Petitioner seeks a writ of *habeas corpus* ordering his release as consistent with the Immigration Judge's decision.

6. The Department of Homeland Security states on their own Form I-286 Notice of Custody Determination that the Petitioner is detained under INA §236 and thus the immigration judge does have jurisdiction over bond. Exhibits Pages 77-78.

7. Accordingly, to vindicate Petitioner's constitutional and statutory rights, this Court should grant the instant petition for a writ of habeas corpus. Absent an order from this Court, Petitioner will suffer continued unlawful and prolonged detention.

8. Petitioner respectfully requests that the Court order his immediate release.

9. In support of this petition, Petitioner states the following:

JURISDICTION

10. This action arises under the Constitution of the United States and the

Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

11. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). The federal district courts have jurisdiction to review petitions for habeas corpus challenging an alien's indefinite confinement and conditions of detention. *See Clark v. Martinez*, 543 U.S. 371, 385-86 (2005) (concluding that even aliens not admitted to the United States, including parolees, are entitled to a custody determination). *See also* Joint Explanatory Statement of the Committee of Conference, H.R. Cong. Rep. No 109-72 at 175, 151 Cong. Rec. H2836, 2873 (2005) ("[REAL ID Act] section 106 will not preclude habeas review over challenges to detention that are independent of challenges to removal orders.")

12. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

13. Venue is proper because Petitioner is detained at GEO Group ICE Contract Facility in Aurora, Colorado, which is within the jurisdiction of this District. *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) ("The plain language of the habeas statute thus confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies only in one district: the district of confinement.").

REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28

U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

15. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

16. Petitioner is a 38-year-old citizen of Venezuela. Petitioner is currently detained at GEO Group ICE Contract Detention Facility in Aurora, Colorado. He is in the custody, and under the direct control, of Respondents and their agents.

17. Respondent Juan Baltazar is the Warden of the GEO Group ICE Contract Detention Facility, and he is the immediate physical custodian of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Baltazar is a legal custodian of Petitioner.

18. Respondent Robert Guardian is sued in his official capacity as the Director of the Denver Field Office of U.S. Immigration and Customs Enforcement. Respondent Guardian is a legal custodian of Petitioner and has authority to release him.

19. Respondents Markwayne Mullin and Todd Lyons are sued in their official capacities as the Acting Secretary of the U.S. Department of Homeland Security (DHS) and Acting Director of U.S. Immigration and Customs Enforcement. In these capacities, Respondents Mullin and Lyons are responsible for the implementation and enforcement of the Immigration

and Nationality Act and Respondent Mullin oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondents Mullin and Lyons are legal custodians of Petitioner.

20. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

I. Petitioner's Entry and Placement into Removal Proceedings under INA §240

21. On October 4, 2023, Petitioner crossed the southern border of the United States without inspection to seek asylum and was apprehended and detained by United States Custom and Border Protection (CBP) shortly after his entry pursuant to INA §236. Notice to Appear, Exbibits Pages 3-9, 77-78.

22. Petitioner was placed into expedited removal proceedings and was given a reasonable fear screening by a government official at the border in which the official found that he had not demonstrated a reasonable fear of return to Venezuela. IJ Order Vacating USCIS Fear Denial, Exhibits Pages 10-13.

23. Petitioner requested an immigration judge review of the official's determination, in which the immigration judge found that the official was incorrect, and that the respondent did in fact have a reasonable fear of return to Venezuela. *Id.*

24. The immigration judge vacated the official's finding and placed Petitioner into removal proceedings under INA §240. *Id.*

II. Petitioner's Release from Detention

25. Petitioner was subsequently released from detention on humanitarian parole by ICE pursuant to INA §212(d)(5) with a Notice to Appear in immigration court and traveled to Denver, Colorado to reside. Interim Notice Authorizing Parole, Exhibits Page 14.

26. Petitioner filed an affirmative application for asylum with USCIS with the assistance of the Colorado Asylum Center on February 13, 2025, as his Notice to Appear had yet been filed with EOIR.

III. Respondents' Detention and Deportation Policies

27. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order ("EO") setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The "Protecting the American People Against Invasion" EO instructs the DHS Secretary "to take all appropriate action to enable" ICE to prioritize civil immigration enforcement procedures including through the use of mass detention.

28. In March 2025, President Donald Trump filed an executive order invoking the Alien Enemies Act, taking aim at Venezuelan immigrants which he broadly accused of being gang members.[1]

29. In late May 2025, Respondent Secretary Noem and White House Deputy Chief of Staff Stephen Miller met with ICE leadership, setting a new arrest quota of 3,000 arrests per day and reportedly threatening job consequences if officials failed to meet arrest quotas.[2]

30. Following the directive from Respondent Noem and Miller, ICE agents were instructed in an e-mail to "turn the creativity knob up to 11" and aggressively "push the envelope" in arrests, including by pursuing "collaterals"—individuals who by definition would not have warrants.[3]

31. The overriding message, communicated by and to Respondents, is that agents and officers carrying out immigration operations on the ground must prioritize arrest numbers, regardless of the law. As one ICE official put it earlier this year, all that matters is "numbers, pure numbers, [q]uantity over quality."[4]

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[1] Ximena Bustillo, Federal judge blocks Trump's plan to target 'alien enemies' for deportation. National Public Radio, March 15, 2025. Available online at: https://www.npr.org/2025/03/15/nx-s1-5246028/trump-alien-enemies-act-tren-de-aragua-deportation

[2] Elizabeth Findell, et al., The White House Marching Orders That Sparked the L.A. Migrant Crackdown, The Wall Street Journal (June 9, 2025), https://www.wsj.com/us-news/protests-losangeles-immigrants-trump-f5089877; Julia Ainsley, et al., A sweeping new ICE operation shows how Trump's focus on immigration is reshaping federal law enforcement, NBC News (June 4, 2025), https://www.nbcnews.com/politics/justicedepartment/ice-operation-trump-focusimmigration-reshape-federal-lawenforcement-rcna193494; Brittany Gibson & Stef W. Kight, Scoop: Stephen Miller, Noem tell ICE to supercharge immigration arrests, Axios (May 28, 2025), available at https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller.

[3] https://www.theguardian.com/us-news/2025/jun/04/immigrationofficials-increased-detentions-collateral-arrests

[4] 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, https://nypost.com/2025/06/17/usnews/trump-admins-

32. On June 15, 2025, President Trump ordered ICE officers to "do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History."[5]

IV. Petitioner's Re-Detention

33. On June 4, 2025, Petitioner was detained by Immigration and Customs Enforcement (ICE) at an apartment building in Denver, while they were allegedly responding to a law enforcement call in collaboration with law enforcement agencies. I-213 Record of Deportable/Inadmissible Alien, Exhibits Pages 15-19.

34. Petitioner was not accused of, nor charged with, any crime, but was rather encountered by ICE and found to be a Venezuelan national and was thus detained. *Id.*

35. Petitioner was subsequently transferred to the GEO Group ICE Contract Detention Facility in Aurora, Colorado where he has been detained since pursuant to INA §236. *Id.*, 77-78.

V. Petitioner's Grant of Relief from Removal

3000-ice-arrests-per-day-quota-is-taking-focus-off-criminals-and-killingmorale-insiders/, https://perma.cc/DB9R-MJUC (last visited Oct. 15, 2025) ("The Trump administration's mandate to arrest 3,000 illegal migrants per day is forcing ICE agents to deprioritize going after dangerous criminals and targets with deportation orders, insiders warn. Instead, federal immigration officers are spending more time rounding up people off the streets, sources said. 'All that matters is numbers, pure numbers. Quantity over quality,' one Immigrations and Customs Enforcement insider told The Post.").

[5] 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, https://nypost.com/2025/06/17/usnews/trump-admins-3000-ice-arrests-per-day-quota-is-taking-focus-off-criminals-and-killingmorale-insiders/, https://perma.cc/DB9R-MJUC (last visited Oct. 15, 2025) ("The Trump administration's mandate to arrest 3,000 illegal migrants per day is forcing ICE agents to deprioritize going after dangerous criminals and targets with deportation orders, insiders warn. Instead, federal immigration officers are spending more time rounding up people off the streets, sources said. 'All that matters is numbers, pure numbers. Quantity over quality,' one Immigrations and Customs Enforcement insider told The Post.").

36. Petitioner resubmitted his asylum application with EOIR while in the custody of Respondent.

37. The presiding IJ granted the Petitioner asylum on November 22, 2025. Order Granting Asylum, Exhibits Pages 20-35.

38. The Department of Homeland Security appealed the grant of asylum on December 18, 2025.

39. As of March 13, 2026, **nearly three months** after the Department of Homeland Security's filing of the appeal, there is no briefing schedule from the Board of Immigration Appeals.

40. There is no indication that a briefing schedule is forthcoming in the near future.

VI. Petitioner's Bond Grant

41. Petitioner requested a bond hearing due to changed circumstances in his case after being granted asylum and a bond hearing was held on January 30, 2026. Exhibits Pages 36-63.

42. The immigration judge found that the Petitioner was not a flight risk, nor a danger to the community, and had been granted asylum and set a bond of $3,000. Order Granting Bond, Exhibits Pages 64-66.

43. The Department of Homeland Security appealed the grant of bond and immediately stayed the Judge's bond order by filing form EOIR-43. Exhibits Pages 67-71.

44. The immigration judge subsequently issued a written order denying bond, citing the official position of the U.S. Department of Justice that she did not have jurisdiction over bond in Petitioners' case because he entered without inspection pursuant to *Matter of Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025). Exhibits Pages 72-73.

45. After the U.S. District Court of the Central District of California issued an order vacating *Matter of Yajure Hurtado* in *Lazaro Maldonado Bautista v. Ernesto Santacruz Jr*, 5:25-cv-01873, (C.D. Cal.), the immigration judge reconsidered Petitioner's bond *sua sponte* and renewed her grant of a bond in the amount of $3,000. Exhibits Pages 74-75.

46. The Department of Homeland Security appealed the grant of bond. Exhibits Page 76.

47. Petitioner has been detained for nine months, four of which have been after being granted relief from removal in the form of a grant of asylum.

48. Petitioner was previously released under a grant of parole by ICE and there was no change to his case other than the filing of his asylum application prior to his detention in June 2025.

49. The only change in material facts that has occurred relevant to the respondents' decision to detain the Petitioner is the change of executive administration and Department of Homeland Security secretary in January 2025.

50. Since January 2025, the Department of Homeland Security now appeals nearly every grant of relief and every bond granted before the court, thus leading to the conclusion that their actions are punitive and political in nature, and not based on an individualized risk assessment or case assessment.

LEGAL FRAMEWORK

51. The following regulations law out the legal framework applicable to this case:

52. 8 C.F.R. § 1.2 defines an "arriving alien" as "an applicant for admission coming or attempted to come into the United States as a port-of-entry…" Id. Accordingly, an alien who seeks asylum at a port of entry is an "arriving alien".

53. 8 C.F.R. §1003.19 outlines an immigration judge's authority to make determinations regarding custody and bond for certain detained non-citizens.

54. Under 8 C.F.R. §1003.19, an immigration judge has authority to make determinations regarding custody and bond for non-citizens who entered without inspection and are not subject to mandatory detention under 8 U.S.C. §1226(c) for certain crimes.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Substantive Due Process

55. The allegations in the above paragraphs are realleged and incorporated herein.

56. Petitioners' continued detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

57. Respondents' continued detention of Petitioner violates Mr. Silva Nelo's right to be free of excessive and prolonged detention, as guaranteed by the Due Process Clause of the Fifth Amendment to the United States Constitution. Mr. Silva Nelo's continued detention pursuant to 8 C.F.R. § 1003.19(i)(2) is not reasonably related to a legitimate governmental objective, is arbitrary, and lacks adequate procedural safeguards. *See Zadvydas v. Davis,* 533 U.S. 678 (2001); *Foucha v. Louisiana,* 504 U.S. 71 (1992); *United States v. Salerno,* 481 U.S. 739 (1987).

58. The Department of Homeland Security has construed the language of the statute unlawfully, inconsistent with over two decades of practice and violates the Petitioner's substantive due process right to liberty.

59. Respondents' continued detention has become so prolonged that it is no longer reasonably related to its purpose of effective removal and therefore violates the Due Process Clause of the Fifth Amendment to the United States Constitution. Petitioner's actual removal is also not likely in the reasonably foreseeable future since continued litigation of Petitioner's removal is likely to subject Petitioner to detention for well over another year.

COUNT TWO
Violation of Fifth Amendment Right to Procedural Due Process

60. Respondents' continued detention of Mr. Silva Nelo pursuant to 8 C.F.R. § 1003.19(i)(2) deprived Mr. Silva Nelo of adequate and meaningful procedures guaranteed by the Due Process Clause of the Fifth Amendment to the United States Constitution. Respondents' application of § 1003.19(i)(2) to Mr. Silva Nelo has deprived him of access to an impartial adjudicator and the right to be heard at a meaningful time and in a meaningful manner before a deprivation of liberty. *See Mathews v. Eldridge,* 424 U.S. 319 (1976).

61. Petitioner was additionally denied a pre-deprivation hearing prior to his detention and therefore denied the right to demonstrate he was not a flight risk or a danger to the community prior to his detention despite no change in material facts in violation of his right to procedural due process.

62. Petitioner has been and continues to be prejudiced by the Respondents' violation of the Immigration and Nationality Act. Declaratory and Injunctive relief are therefore appropriate.

COUNT THREE
Violation of Statute and Implementing Regulations

63. The allegations in the above paragraphs are realleged and incorporated herein.

64. Respondents' continued detention of Petitioner pursuant to 8 C.F.R. §1003.19(i)(2) in contravention of the Immigration Judge's decision is arbitrary and capricious and contrary to the Immigration and Nationality Act. 8 U.S.C. §1226(a); 8 C.F.R. 236.1.

65. Petitioner has been and continues to be prejudiced by the Respondents' violation of the Immigration and Nationality Act. Declaratory and Injunctive relief are therefore appropriate.

COUNT FOUR
Right Against Unreasonable Seizure

66. The allegations in the above paragraphs are realleged and incorporated herein.

67. The arbitrary re-detention of Petitioner violates his right against unreasonable seizure.

COUNT FIVE
Administrative Procedures Act

68. The allegations in the above paragraphs are realleged and incorporated herein.

69. Respondents' refusal to honor the Immigration Judge's bond decision is in violation of federal regulations.

70. The radical change in policy by the Department of Homeland Security is a violation of the Administrative Procedures Act.

71. The radical change in judicial interpretation of bond eligibility for those who entered without inspection after two decades is a violation of the Administrative Procedures Act.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) Order the Respondents not to transfer the Petitioner or move him out of the Aurora ICE Detention Facility so that he can maintain access to counsel;

(4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1226(a), 8 C.F.R. § 1003.19, and the Administrative Procedures Act;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;

(6) Declare that 8 C.F.R. § 1003.19(i)(2) violates Due Process;

(7) Declare that 8 C.F.R. § 1003.19(i)(2) is *ultra vires* to 8 U.S.C. § 1226(a), INA § 236(a);

(8) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(9) Grant any further relief this Court deems just and proper.

Respectfully submitted,

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Counsel for Petitioner

Dated: March 27, 2026

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Eduardo Silva Nelo, 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 27th day of March 2026.

/s/ Christina A. Brown
Christina A. Brown

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2026, I filed the foregoing electronically through the CM/ECF system which caused all parties or counsel to be served by electronic means. I will serve a physical copy of the foregoing Petition, All Exhibits, and a copy of the Civil Cover Sheet to all parties and counsel within 72 hours of filing by certified mail and email unless otherwise ordered by the court at the following addresses:

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