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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Rudy Alfredo Perez Rojas,

Petitioner,

v.

Christopher D. McGregor, Acting Phoenix Field Office Director of Enforcement and Removal Operations; Markwayne Mullin, Secretary, U.S. Department of Homeland Security; Todd Blanche, Acting U.S. Attorney General; and, Eric Rokosky, Warden of the Eloy Detention Center.

Respondents.

Case No.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Rudy Alfredo Perez Rojas brings this petition for a writ of habeas corpus to seek his immediate release from detention based on his unlawful arrest and continued detention.

2. On February 23, 2026, this Court granted Petitioner's previous Petition for Writ of Habeas Corpus. *Rojas v. Unknown Party et al.*, 2:26-cv-00877. The court ordered that Petitioner be provided a bond redetermination hearing since his detention is governed by 8 U.S.C. § 1226, not § 1225.

3. Petitioner received a bond redetermination hearing on February 26, 2026, at which time the Immigration Judge denied bond because Petitioner "failed to meet his burden of proving he is not a flight risk if released on bond." Exhibit D.

4. Petitioner contends that the February 26, 2026 bond hearing was not constitutionally valid since the Court placed the burden on Petitioner to establish that he was not a flight risk.

5. At the February 26, 2026 hearing, DHS provided no evidence or argument that Petitioner was a flight risk.

6. After apprehending Petitioner on October 30, 2025, DHS placed Petitioner in removal proceedings pursuant to 8 U.S.C. § 1229a. Exhibit A. DHS charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection.

7. Petitioner has resided in the United States for over twenty-five years.

8. Petitioner is the father to four (4) United States citizen children, ages 24, 22, 16 and 9. Exhibit C.

9. Petitioner has no criminal history. Exhibit B.

10. Petitioner was apprehended at a gas station by ICE officers who did not have an arrest warrant for Petitioner. Exhibit B. On October 30, 2025, ICE agents were at a QuikTrip gas station conducting record checks of vehicles and people in the immediate vicinity. *Id.* Agents conducted a records check on Petitioner's vehicle which revealed that the vehicle he was driving was registered to Rudy Alfredo Perez Rojas, DOB: [redacted]. *Id.* The agents then conducted record checks of Rudy Perez through the following immigration databases: TECS, PCQS, NCIC, CLAIMS, CIS2, EARM, AFI and UPAX, and could not verify his immigration status. *Id.* ICE agents then conducted a vehicle stop which resulted in Petitioner being taken into ICE custody. *Id.*

11. On December 4, 2025, and January 2, 2026, the Immigration Judge denied Petitioner's Motion for Bond Redetermination finding no jurisdiction pursuant to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The court held that Petitioner was detained pursuant to 8 U.S.C. §1225. Exhibit D.

12. On February 23, 2026, this Court found that Petitioner's detention is governed by 8 U.S.C. § 1226 not § 1225.

13. 8 U.S.C. 1226(a) is silent as to what burden of proof applies in bond hearings and who bears that burden." *Hernandez-Lara v. Lyons*, 10 F.4th 19, 26 (1st Cir. 2021). The burden of proof used by IJs in bond hearings comes from the standard set forth in a separate statute, 8 C.F.R. § 236.1(c)(8), which the BIA ruled was reasonable to use in bond hearings as well. In Re *Guerra*, 24 I. & N. Dec. at 40. But this Court is not required to defer to the BIA's interpretation of a statute, because the BIA is an administrative agency. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). In fact, the Court "must exercise [its] independent judgment in deciding

whether an agency has acted within its statutory authority, as the [Administrative Procedure Act] requires." *Id.* Therefore, the Court must independently review the IJ bond proceedings and whether the burden of proof the IJ used comported with due process.

14. A majority of district courts and the First, Second, and Ninth Circuits hold the Government must bear the burden of proof to justify a noncitizen's detention pending removal proceedings. See *Hernandez-Lara v. Immigr. & Customs Enf't, Acting Dir.*, No. 19-cv-394-LM, 2019 WL 3340697, at *3 (D.N.H. July 25, 2019); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 39 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842, 855–57 (2d Cir. 2020); *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011).

15. Moreover, Since DHS initially detained Petitioner pursuant to 8 U.S.C. §1225 there was never any initial flight risk or danger analysis done prior to his actual detention. Under traditional § 1226 detention DHS policy requires an analysis of danger and flight risk before any detention is made. If the decision is made to detain, only then is the matter sent to an Immigration Judge for a bond redetermination. Under that scheme it may make sense for the noncitizen to bear the burden however, in this matter, Petitioner never received an initial determination or a fair redetermination.

16. Release is the customary remedy in habeas proceedings. *See* 28 U.S.C. § 2243 (the habeas should shall "dispose of the matter as law and justice require."); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (finding "that the traditional function of the writ is to secure release from illegal custody").

17. In the alternative, the habeas court can hold its own custody hearing and determine whether the government can prove by clear and convincing evidence that Petitioner must remain in custody, or whether he may be released on recognizance, an appropriate bond in

light of his ability to pay, or supervised release. This is a more efficient and effective remedy than ordering an immigration judge to conduct a hearing, which has led to additional enforcement proceedings and delays before the unlawful detention in this case is remedied. *See L.G.M. v. LaRocco*, 788 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025) (ordering a bond hearing held by the habeas court, as this would be more efficient than delegating the task to the agency and ensure proper constitutional oversight); *Flores-Powell v. Chadbourne*, 677 F.Supp.2d 474-78 (D. Mass 2010) (granting petition and discussing at length habeas court's equitable power, which includes power to hold its own bail hearing); *see also Santos v. Lowe*, No. 1:18-CV-1553, 2020 WL 4530728, at *4 (M.D. Pa. Aug. 6, 2020) (finding that habeas court-ordered bond hearing was not individualized and did not comport with due process, and granting motion to enforce to hold the court's own bond determination); *Ramirez v. Watkins*, No. 10-cv-126, 2010 WL 6269226, at *19-20 (S.D. Tex. Nov. 3, 2010), *rep. and rec not reached,* (S.D. Tex. Dec. 8, 2010) (dismissing case as moot) (recommending the habeas court conduct its own bail inquiry, as it would be more efficient, ensure supervision over any compliance issues, and avoid further proceedings).

18. A bond hearing by an immigration judge (IJ) is not the most appropriate or efficient use of this court's equitable authority. Recent actions by ICE attorneys and immigration judges during and after habeas court-ordered bond hearings have necessitated enforcement proceedings across the country, creating significant extra work for the court and the parties while petitioners' unlawful detention continues.

19. In the last year, DHS has frequently appealed the IJ's grant of bond to the Board of Immigration Appeals (BIA) and invoked the "automatic stay" regulation, 8 C.F.R. § 1003.19(i)(2). This stay, which keeps the petitioner detained despite an IJ bond grant, was rarely invoked in prior years but has now become common. Dozens of habeas courts have ruled that the

automatic stay violates due process and have had to order Respondents to allow a petitioner to post his bond. *See, e.g.*, *Otilio B.F. v. Andrews*, No. 1:25-cv-01398, 2025 WL 3152480, at *11 (E.D. Cal. Nov. 11, 2025) (finding the automatic stay likely violates due process); *M.P.L. v. Arteta*, No. 25-cv-5307, 2025 WL 3288354, at *7 (S.D.N.Y. Nov. 25, 2025) (same, noting that "at least 50 district court decisions across the United States in the last 6 months alone" have found that DHS's use of the automatic stay provision violates or likely violates due process), and collecting cases at n.6); *Guasco v. McShane*, No. 1:25-cv-1650, 2025 WL 3270201, at *2 (M.D. Pa. Nov. 24, 2025) (noting that other habeas courts have "assailed the Government's practice of acting both as the prosecution and the judge in making a unilateral and unreviewed decision as to detention")(internal citation omitted).

20. Many cases have presented the same DHS actions or immigration judge resistance to implementing the court's order. *See Diahn,* 2026 WL 84576, at *2 (explaining that petitioners had filed two motions to enforce, first when DHS invoked the automatic stay after the IJ granted bond, and second when DHS withdrew the stay but placed a painful ankle monitor on the petitioner that the IJ had not ordered); *M.P.L.*, 2025 WL 3288354, at *1 (granting motion to enforce where DHS invoked automatic stay after habeas court-ordered bond hearing); *J.M.P. v. Arteta*, No. 25-cv-4987, 2025 WL 2984913, at *2 (S.D.N.Y. Oct. 23, 2025) (finding DHS's use of multiple "one-sided" stay mechanisms to prevent release after habeas-court ordered bond hearing violated due process, and granting motion to enforce); *O.F.C. v. Almodovar*, No. 25-cv-9816, 2026 WL 74262, at *16 (S.D.N.Y. Jan. 9, 2026) (expressing concern that at oral argument, government counsel refused to guarantee that in a court-ordered bond hearing, DHS would not invoke the automatic stay or argue that the IJ lacked jurisdiction to set bond; either action "would render the Court's intended relief illusory"); *Pedroso de Oliveira v. Freden*, No. 6:25-CV-6663

2025 WL 3554686, at *1 (W.D.N.Y. Dec. 11, 2025) (granting motion to enforce where "the IJ wholly failed to follow the Court's directions to require Respondents to bear the clear and convincing evidence burden of proof at the bond hearing, nor did the IJ even attempt to consider alternatives to detention."); *Mathon v. Searls*, 623 F. Supp. 3d 203, 208 (W.D.N.Y. 2022) (granting motion to enforce and ordering immediate release after the IJ did not hold DHS to his habeas court-ordered burden of proof or properly consider alternatives to detention, and thus "failed to provide him with the bond hearing to which he was constitutionally entitled").

21. To avoid another wasteful round of enforcement proceedings – or even two – while unlawful detention continues, this court should grant release or, alternatively, hold any bond hearing itself.

JURISDICTION

22. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Eloy Detention Center, Eloy, Arizona.

23. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

24. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

25. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the District of Arizona, the judicial district in which Petitioner currently is detained.

26. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Arizona.

REQUIREMENTS OF 28 U.S.C. § 2243

27. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

28. Petitioner Rudy Alfredo Perez Rojas is a citizen of Guatemala who has been in immigration detention since October 30, 2025. After Petitioner was arrested, ICE did not set bond, and Petitioner requested review of his custody by an IJ. On December 4, 2025, and January 2, 2026, Petitioner was denied bond by an IJ at the Eloy Immigration Court because he was deemed an "applicant for admission." Petitioner's prior Petition for a Writ of Habeas Corpus was granted on February 23, 2026. On February 26, 2026, the IJ denied bond since he failed to meet his burden of proving that he is not a flight risk. Petitioner has resided in the United States for over 25 years.

29. Respondent Christopher D. McGregor is the Acting Director of the Phoenix Field Office of ICE's Enforcement and Removal Operations division. As such, the Acting Field Office Director is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. Mr. McGregor is sued in his official capacity.

30. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

31. Respondent Todd Blanche is the Acting Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

32. Respondent Eric Rokosky is employed by CoreCivic as Warden of the Eloy Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

CLAIM FOR RELIEF

Violation of Fifth Amendment Right to Due Process Procedural Due Process

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

34. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693; *accord Flores*, 507 U.S. at 306

35. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

36. While the government has discretion to detain individuals under 8 U.S.C. § 1226(a), this discretion is not "unlimited" and must comport with constitutional due process. *See Zadvydas*, 533 U.S. at 698.

37. Petitioner's detention is unlawful and arbitrary where the Immigration Judge did not apply an individualized determination as to whether he was a flight risk unlikely to appear for immigration court, but solely relied on a removal order rendered in violation of his due process. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

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

c. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner;

d. Alternatively, conduct its own custody hearing within seven days;

e. Declare that Petitioner's detention as a "flight risk" violates the Due Process Clause of the Fifth Amendment.

f. 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

g. Grant any other and further relief that this Court deems just and proper.

DATED this 16th day of April, 2026.

s/ Rebecca McCarthy
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