UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION
CIVIL No. 5:26-cv-04135

Elias Arita Bueso, Petitioner v. BOBBY THOMPSON, in his official capacity, as Warden of South Texas Ice Processing Center; BRET BRADFORD, in his official capacity as the Field Office Director of ICE Enforcement and Removal Operations Houston Field Office; MARKWAYNE MULLIN, in his official capacity as Secretary of the Department of Homeland Security; TODD BLANCHE, in his official capacity as acting United States Attorney General Respondents.	§	**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C §2241**

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

Petitioner has been detained by Immigration and Customs Enforcement (ICE) for one month and twelve days without any individualized determination that he presents a flight risk or danger to the community. He seeks immediate release or, at minimum, a hearing before a neutral decision-maker. ICE previously processed Petitioner upon his entry into the U.S. under 8 U.S.C. §1226(a), during which he maintained perfect compliance for seven years—appearing for 100% of check-ins and court hearings, maintaining stable employment and residence, and incurring zero violations of any kind. He was detained solely due to a change in government policy, with no change in his individual circumstances.

This case does not challenge the Fifth Circuit's recent decision in Buenrostro-Mendez v. Bondi, No. 25-20496 (5th Cir. Feb. 6, 2026), which held that certain noncitizens are subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A). Rather, it challenges the constitutional application of that statute to Petitioner's specific circumstances.

The Fifth Circuit recognized that constitutional questions about prolonged detention under §1225(b)(2)(A) were "wholly speculative" at the time of its decision. Buenrostro-Mendez, slip op. at 21. Petitioner's one month and twelve day detention, following seven years of perfect compliance with ICE's release requirements, makes these concerns concrete. The Constitution does not permit indefinite detention without individualized review, regardless of statutory classification.

II. JURISDICTION AND AUTHORITY

1. Jurisdiction lies under 28 U.S.C. §2241 and 28 U.S.C. §1331.

2. The Fifth Circuit recognizes habeas jurisdiction over challenges to the fact and legality of immigration detention, including constitutional claims. See Zadvydas v. Davis, 533 U.S. 678 (2001); Pierre v. United States, 525 F.2d 933 (5th Cir. 1976).

3. This Court has authority to issue a TRO to halt ongoing constitutional violations. See Opulent Life Church v. City of Holly Springs, 697 F.3d 279, 295 (5th Cir. 2012).

III. STATEMENT OF FACTS

1. Background and Family Ties

4. Petitioner is forty-three years old and has resided in the United States for seven years, since November 25, 2018.

5. Petitioner and his family live at [redacted]

6. Petitioner does not have any criminal convictions.

2. Re-Detention Under §1225(b)(2)(A)

7. On May 17, 2026 ICE apprehended Petitioner and took him into custody.

8. ICE now asserts authority to detain Petitioner under 8 U.S.C. §1225(b)(2)(A), claiming he is an "applicant for admission" subject to mandatory detention.

9. ICE has provided no explanation for its decision to detain Petitioner after seven years of complying with societal expectations, other than changed "policy."

10. Petitioner has been continuously detained at South Texas Ice Processing Center since May 17, 2026—a total of one month and twelve days to date. (*see* attached, Exhibit A: Ice Locator)

3. Current Removal Proceedings and Likelihood of Relief

11. Petitioner's removal proceedings took place before the Pearsall Immigration Court.

12. There is currently no hearing information avaialable for the Respondent. (*see* attached, Exhibit B: Automated Case Information).

13. Petitioner has applied for asylum, withholding of removal, and protection under the convention against torture.

4. Harm from Continued Detention

14. Petitioner's continued detention causes severe and irreparable harm.

15. **Economic Harm:** Loss of employment and income; unable to pay rent and facing eviction; along with other financial consequences.

16. **Familial Harm:** Petitioner's detention has disrupted his upward mobility and strained his personal stability.

17. Petitioner has no way to provide basic needs for himself and his children;

18. **Inability to Defend Against Removal:** Petitioner is unable to gather documentary evidence for his relief application while in custody; he has limited access to his attorney while in ICE custody; he cannot locate witnesses or obtain declarations needed to defend his case.

19. Each day of continued detention exacerbates these harms.

IV. CLAIM FOR RELIEF

VIOLATION OF FIFTH AMENDMENT DUE PROCESS

20. Petitioner incorporates all preceding paragraphs.

21. The Fifth Amendment to the United States Constitution guarantees that no person shall be deprived of life, liberty, or property without due process of law.

22. This guarantee extends to all persons within the United States, including noncitizens in removal proceedings. Zadvydas v. Davis, 533 U.S. 678, 693 (2001) ("Once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all persons within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent."); Reno v. Flores, 507 U.S. 292, 306 (1993).

23. Petitioner's detention violates both substantive and procedural due process in multiple, reinforcing ways.

A. Substantive Due Process: Indefinite Detention Without Individualized Determination

24. The Supreme Court has held that indefinite or prolonged civil detention raises "serious constitutional concerns." Zadvydas, 533 U.S. at 690.

25. To avoid these concerns, the Supreme Court has "read an implicit limitation" into immigration detention statutes requiring individualized determinations and temporal limits. Id. at 689.

26. The Supreme Court identified six months as a "presumptively reasonable period" for immigration detention. Id. at 701.

27. While Petitioner has been detained for one month and twelve days he faces indefinite detention with no end in sight:

a. Section 1225(b)(2)(A) contains no temporal limitation whatsoever;

b. The statute provides for detention "pending a proceeding under section 1229a," which could

last months or years;

c. Petitioner's removal proceedings have no definite conclusion date and could last months or over a year for the adjudication and appellate process to conclude;

d. Cases involving applications for relief and appeal to the Board of Immigration Appeals routinely take 9–24+ months to resolve;

e. ICE has provided no timeline for completion of proceedings or release from detention.

28. Even though Petitioner has been detained for "only" one month and twelve days the trajectory of his case makes clear he will be detained far beyond the six-month presumptively reasonable period absent intervention by this Court.

29. Unlike the post-deportation/removal order detention at issue in Zadvydas, Petitioner's detention is even more troubling because:

a. He is detained during, not after, removal proceedings, when he is actively pursuing relief;

b. The proceedings themselves could last indefinitely;

c. He has had no hearing whatsoever to determine the necessity of detention; and

d. He faces categorical detention based on a recently-changed legal classification, not individualized facts.

30. Respondents have made no individualized determination that Petitioner's continued detention is necessary to prevent flight or danger to the community, which are the only constitutionally permissible bases for preventive civil detention. United States v. Salerno, 481 U.S. 739, 748 (1987).

31. To the contrary, all evidence demonstrates Petitioner poses neither risk:

a. ICE itself previously determined that Petitioner warranted release under §1226(a);

b. Petitioner appeared for 100% of ICE check-ins and all immigration court hearings;

c. Petitioner maintained stable employment and residence throughout;

d. Petitioner had zero violations of any condition and no criminal convictions;

e. Petitioner voluntarily appeared at the very check-in where ICE detained him, demonstrating continued willingness to comply.

32. Petitioner's detention is purely categorical, based solely on his legal classification as an "applicant for admission"—not on any individualized finding that he personally requires detention.

33. This categorical, indefinite detention without individualized determination violates substantive due process.

B. Procedural Due Process: Complete Deprivation of Hearing

34. The Fifth Amendment requires meaningful procedural protections before deprivation of physical liberty—one of the most fundamental interests protected by the Constitution.

35. Under Mathews v. Eldridge, 424 U.S. 319, 335 (1976), courts apply a three-part balancing test to determine what process is due: (1) the private interest affected by government action; (2) the risk of erroneous deprivation through procedures used and the probable value of additional safeguards; and (3) the government's interest, including the fiscal and administrative burdens of additional procedures.

36. Applying the Mathews balancing test here, the constitutional scales tip overwhelmingly in favor of providing Petitioner a hearing.

37. **First Factor: Private Interest.** Petitioner's private interest is among the most fundamental protected by the Constitution—physical liberty and the ability to provide for himself:

a. Petitioner faces ongoing detention;

b. He has lost his livelihood and ability to support himself;

c. He cannot provide basic necessities for himself;

d. His detention prevents him from effectively defending against removal;

e. Each day of detention causes harms that cannot be remedied through monetary compensation.

38. **Second Factor: Risk of Erroneous Deprivation.** The risk of erroneous deprivation here is not merely substantial—it is 100%:

a. Respondents have made zero individualized determination about Petitioner;

b. The detention is purely categorical based on manner of entry seven years ago;

c. No decision-maker has considered Petitioner's individual circumstances, ties, compliance history, or lack of flight risk;

d. Additional procedural safeguards—a hearing before a neutral decision-maker—would dramatically reduce this risk at minimal cost;

e. Such hearings occur routinely under §1226(a) for similarly situated individuals and impose minimal burden on the system.

39. **Third Factor: Government Interest.** The government's interests are preventing flight and protecting public safety. However:

a. These interests are not served by detaining someone who has proven through years of law-abiding conduct that he will appear and poses no danger;

b. A hearing would impose minimal administrative burden, as ICE routinely conducts such hearings under §1226(a);

c. The government's interest in uniform application of §1225(b)(2)(A) does not outweigh fundamental liberty interests.

40. The Mathews balancing test overwhelmingly favors providing Petitioner a hearing before a neutral decision-maker with authority to order release upon a showing that he is not a flight risk

or danger.

41. At minimum, due process requires:

a. Notice of the reasons for continued detention;

b. An opportunity to present evidence that Petitioner is neither a flight risk nor a danger to the community;

c. A hearing before a neutral decision-maker (not ICE, which is the prosecuting/detaining authority); and

d. Authority in that decision-maker to order release on bond or conditions if Petitioner meets his burden.

42. Respondents have provided none of these procedural protections. Petitioner has received no hearing, no opportunity to present evidence of his ties and compliance, and no review by any neutral arbiter.

43. This complete deprivation of process violates the Fifth Amendment.

C. Equal Protection: Arbitrary Classification

44. The Fifth Amendment's due process clause incorporates equal protection principles applicable to federal government action. Bolling v. Sharpe, 347 U.S. 497, 499 (1954).

45. Equal protection requires that the government treat similarly situated individuals alike, absent a rational basis for differential treatment.

46. Respondents treat Petitioner—who entered the United States without inspection seven years ago—fundamentally differently from a noncitizen who entered lawfully but overstayed a visa for many years.

47. These two individuals are identically situated in all relevant respects:

a. Both are present in the United States without lawful status;

b. Both are subject to removal proceedings;

c. Both have identical equities (length of presence, U.S. citizen family, employment, community ties);

d. Both present identical levels of flight risk and danger (or lack thereof); and

e. Both may be eligible for the same forms of relief from removal.

48. Yet the government treats them completely differently:

a. The visa overstay is detained under §1226(a) and receives a bond hearing before an immigration judge;

b. At that hearing, the judge makes an individualized determination of flight risk and danger;

c. If the noncitizen proves he is not a flight risk or danger, the judge may order release on bond;

d. In contrast, Petitioner receives mandatory detention under §1225(b)(2)(A) with no hearing and no possibility of release on bond.

49. This differential treatment is based solely on the manner of entry many years ago—a factor that bears no rational relationship to the government's stated interests in preventing flight and protecting public safety.

50. Indeed, the manner of entry seven years ago tells us nothing about current flight risk or danger, which is why ICE conducts individualized assessments when deciding whether to detain or release under §1226(a).

51. The government's asserted interest in "equal treatment" of noncitizens at the border and in the interior cannot justify this arbitrary classification:

a. First, that interest relates to uniformity in removal proceedings (covered by §1225(a)(1)'s definition of "applicant for admission"), not detention;

b. Second, even if relevant to detention, it does not explain why long-term residents should be

treated identically to recent border crossers; and

c. Third, it does not explain why the manner of entry seven years ago should control over a current, proven lack of flight risk.

52. This classification violates equal protection because it treats identically situated individuals differently based on an arbitrary factor unrelated to any legitimate government interest.

D. Arbitrary and Capricious Government Action: Reversal of Prior Release Decision

53. The Due Process Clause prohibits arbitrary government action. County of Sacramento v. Lewis, 523 U.S. 833, 845–46 (1998) (due process protects against "the exercise of power without any reasonable justification in the service of a legitimate governmental objective").

54. Respondents' decision to detain Petitioner under a different statutory authority, based solely on policy change rather than any change in his individual circumstances, constitutes arbitrary government action.

55. Petitioner reasonably relied on ICE's determination:

a. He complied with every condition ICE imposed;

b. He appeared for every required check-in, knowing ICE could detain him if he failed to appear;

c. He appeared for every court hearing;

d. He maintained employment and stable residence;

e. He cooperated fully with ICE and the immigration court; and

f. He organized his life and his family's life around the conditions ICE imposed.

56. Now, despite Petitioner's perfect compliance and despite no change whatsoever in his individual circumstances, ICE has reversed course—re-detaining Petitioner when he voluntarily appeared for a routine check-in and switching the statutory basis from §1226(a) to §1225(b)(2)(A) solely due to a policy change following Buenrostro-Mendez.

57. Allowing agencies to switch legal theories mid-proceeding, after a person's good-faith reliance and compliance, is the epitome of arbitrary action:

a. It penalizes compliance rather than rewarding it;

b. It punishes someone for the government's own change of mind;

c. It makes a mockery of supervised release programs if compliance provides no protection;

d. It defeats reasonable reliance on government representations; and

e. It fails to serve any legitimate government interest, as Petitioner's individual circumstances have not changed.

58. While the government generally cannot be estopped from changing legal positions, courts recognize an exception for "affirmative misconduct." Heckler v. Community Health Servs., 467 U.S. 51, 60 (1984).

59. All three elements of affirmative misconduct are satisfied here:

a. ICE's prior actions constituted an affirmative representation that Petitioner would remain eligible for supervised release absent changed individual circumstances;

b. Petitioner reasonably relied by maintaining perfect compliance for seven years, organizing his life around the conditions, and continuing to appear voluntarily; and

c. Allowing detention under a different statutory authority, despite perfect compliance and no change in individual circumstances, works a manifest injustice.

60. This arbitrary reversal violates fundamental due process principles of fairness and reasonable reliance on government action.

E. As-Applied Constitutional Challenge

61. Even if §1225(b)(2)(A) could be constitutionally applied to some individuals in some circumstances, its application to Petitioner violates the Constitution.

62. Petitioner presents the precise scenario where mandatory detention without a hearing cannot be constitutionally sustained:

a. Long-term U.S. resident (seven years) with deep community and family ties;

b. Government previously made an affirmative determination that Petitioner warranted release under §1226(a);

c. Proven track record of compliance with all applicable laws, eliminating any individualized flight risk or danger concern;

d. Indefinite detention with no timeline for completion of proceedings;

e. Strong case for relief from removal through seeking asylum under 8 U.S.C. §1158;

f. Severe, irreparable harm from continued detention; and

g. Detention based solely on a policy change, not individual facts.

63. The Fifth Circuit in Buenrostro-Mendez acknowledged that constitutional concerns about §1225(b)(2)(A) were "wholly speculative" at the time. Slip op. at 21.

64. Petitioner's case makes these concerns concrete, not speculative. This is precisely the type of as-applied challenge the Fifth Circuit did not address and could not foreclose.

65. For all these reasons, Petitioner's continued detention violates the Fifth Amendment's guarantee of due process and equal protection.

V. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Declare that Petitioner's continued detention violates the Fifth Amendment to the United States Constitution;

b. Issue a Writ of Habeas Corpus ordering Petitioner's immediate release from custody, subject to reasonable conditions of supervision including GPS monitoring, regular ICE check-ins, surrender

of travel documents, and/or reasonable bond;

c. Alternatively, order Respondents to provide Petitioner with an individualized hearing before a neutral decision-maker within seven (7) days, at which Petitioner may demonstrate he is neither a flight risk nor a danger to the community, and at which the decision-maker has authority to order release on bond or conditions of supervision;

d. Enjoin Respondents from continuing to detain Petitioner in violation of his constitutional rights;

e. Order a stay of removal proceedings pending resolution of this petition;

f. Award costs and attorney's fees pursuant to 28 U.S.C. §2412 and other applicable law; and

g. Grant such other and further relief as the Court deems just and proper.

VI. VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,
/s/ Matthew Mendez
Matthew Mendez
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CERTIFICATE OF SERVICE

On July 1, 2026, Counsel for Plaintiff served a copy of the attached Petition via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the Respondent, Bobby Thompson, in his Official Capacity as Warden of the South Texas Ice Processing Center at the Immigration and Customs Enforcement ("ICE") South Texas Ice Processing Center, located at 566 Veterans Dr, Pearsall, TX 78601

/s/ Matthew Mendez — July 1, 2026
Matthew Mendez — Date
Attorney for Petitioner

CERTIFICATE OF SERVICE

On July 1, 2026, Counsel for Plaintiff served a copy of the attached Petition via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the Respondent, Bret Bradford, in his Official Capacity as Field Office Director, of ICE Enforcement and Removal Operations Houston Field Office, at (1) Office of the Field Office Director, Enforcement and Removal Operations, Houston Field Office, 126 Northpoint Dr, #2020, Houston, TX 77060.

/s/ Matthew Mendez — July 1, 2026
Matthew Mendez — Date
Attorney for Petitioner

CERTIFICATE OF SERVICE

On July 1, 2026, Counsel for Plaintiff served a copy of the attached Petition via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the Respondent, Markwayne Mullin, in his Official Capacity as Director of U.S. Department of Homeland Security, at (1) Office of General Counsel, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0485, Washington, D.C. 20530.

/s/ Matthew Mendez — July 1, 2026
Matthew Mendez — Date
Attorney for Petitioner

CERTIFICATE OF SERVICE

On July 1, 2026, Counsel for Plaintiff served a copy of the attached Petition via email, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the Respondent, Todd Blanche, in his Official Capacity as Attorney General of the United States, at USATXW.CivilNotice@usdoj.gov.

/s/ Matthew Mendez — July 1, 2026
Matthew Mendez — Date
Attorney for Petitioner