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

Josue Arturo Martinez-Azeas,
A No. [redacted]
Petitioner,

v.

Mary De Anda-Ybarra, El Paso Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"); **David J. Venturella,** in his official capacity as Director of Immigration and Customs Enforcement ("ICE"); **Markwayne Mullin,** in his official capacity as the acting Secretary of the Department of Homeland Security ("DHS"); and **Todd Blanche,** as the Attorney General of the United States,

Respondents.

Case No. 3:26-cv-2174

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. On July 14, 2026, 19-year-old Guatemalan derivative asylum seeker, Petitioner, Mr. Josue Arturo Martinez-Azeas ("Petitioner or Mr. Martinez"), who lives in Santa Fe, New Mexico, presented himself to Immigration and Customs Enforcement ("ICE") officers at the El Paso Processing Center at 8915 Montana, El Paso, TX 79925.

2. By operation of law, Petitioner is considered a minor derivative child that can claim asylum on his mother's asylum application because he was and is unmarried and under 21 years-old when his mother filed for asylum. See 8 U.S.C. § 1158(b)(3)(A)-(B). See also the Child Status Protection Act that freezes his age. 8 USC 1158(b)(3)(B), INA § 208(b)(3)(B).

3. Prior to the July 14, 2026 in-person ICE appointment, his mother had received a letter for her and her children to come in person for a routine check that mandated that she and her children come to El Paso from Santa Fe, New Mexico for an in-person interview.

4. Petitioner and his family have never missed any of their ICE appointments and have always cooperated and complied with any and all ICE instructions. They do not have any criminal history or warrants.

5. On the date of their appointment, ICE detained and arrested Petitioner without cause or explanation despite that his derivative asylum claim is pending before the Board of Immigration Appeals.

6. Petitioner was not targeted because of his personal circumstances or individualized facts. Rather, Respondents arrested Mr. Martinez on a pretext to fill their bed-quotas without notice and an opportunity to be heard.

7. Mr. Martinez was not in violation of the immigration laws, as his mother's case is pending before the Board of Immigration Appeals and he is granted an automatic stay. Regulations such as the automatic stay provision embodied in 8 C.F.R. § 1003.6 (2018) safeguard non-citizens' rights to due process by ensuring that they are not deported until a final order of removal has been entered after the non-citizen has received a full and fair opportunity to be heard.

8. Nonetheless, Respondents' power to detain remains checked by law, as this country remains governed by constitutional and statutory limits. *Cooper v. Aaron, 358 U.S. 1, 23* (1958) (Frankfurter, J. Concurring) (cleaned up).

9. The writ of habeas corpus is the "fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." *Harris v. Nelson*, 394 U.S. 286, 291 (1969).

10. "The scope and flexibility of the writ – its capacity to reach all manner of illegal detention – its ability to cut through barriers of form and procedural mazes – have always been emphasized and jealously guarded by courts and lawmakers." *Id.* Hence, "the very nature of the writ demands that it be administered with the initiative and *flexibility* essential to ensure the miscarriages of justice within its reach are surfaced and corrected." *Id.* (emphasis added).

11. As such, Mr. Martinez files this petition because the writ is meant to provide exactly the relief he seeks here: to prevent the Respondents—a whole set of immigration agencies with vast resources, who have at their disposal a punitive detention system and agents roving the streets to arrest immigrants—from setting themselves above the law in order to detain Mr. Martinez in hopes that he will give up and self deport.

12. In Respondents' lawless pursuit of detention bed quotas,[3] Respondents failed to afford Mr. Martinez's due process rights—a bedrock of American freedom by detaining him without reasonable notice and an impartial adjudicator as to what, if, anything he did wrong.

13. Mr. Martinez entered the United States with his mother and siblings through Sasabe, Arizona without inspection to seek asylum and he is not a threat to the national security of this nation.

14. Mr. Martinez files this petition to vindicate his rights, this Court should grant the instant

[3] 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, available at https://nypost.com/2025/06/17/us-news/trump-admins-3000-ice-arrests-per-day-quota-is-taking-focus-off-criminals-and-killing-morale-insiders/ (Assessed on 01/05/2026)(noting that the quotas are undermining the agency's ability to focus on the really serious criminal aliens," citing John Sandweg, a former acting ICE director under President Barack Obama).

petition for a writ of habeas corpus. Petitioner asks this Court to find that Respondents' arrest and detention are in violation of his due process rights as applied to his facts, and to immediately issue an order preventing Mr. Martinez's transfer out of this district and order his release.

JURISDICTION

15. This case arises under Article III of the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101, *et seq.*

16. This Court has subject matter jurisdiction over this petition and may grant pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1331; Article I, § 9, cl. 2 of the United States Constitution (the Suspension Clause); the All-Writs Act, 28 U.S.C. § 1651;and for injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

17. Pursuant to 28 U.S.C. § 2241, district courts have jurisdiction to hear habeas petitions by noncitizens who challenge the lawfulness of their detention under federal law. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 292-95 (2018); *Maldonado v. Macias*, 150 F.Supp. 3d 788, 794 (W.D. Tex. 2015), *INS v. St. Cyr*, 533 U.S. 289, 364-65 (2001) ("The writ of habeas corpus has always been available to review the legality of executive detention.").

18. Importantly for jurisdictional purposes, Mr. Martinez is not asking this court to review an order of removal, nor, indeed, for any relief having to do with his current proceedings before the Board of Immigration Appeals. "As we have said before, §1252(b)(9) "does not present a jurisdictional bar" where those bringing suit "are not asking for review of an order of removal," "the decision . . . to seek removal," or "the process by which . . . removability will be determined." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020), *citing Jennings v. Rodriguez* at 294-5.

19. Mr. Martinez only seeks habeas relief from his current, illegal detention and arrest in the way he was arrested, while his immigration proceedings are ongoing, and for this Court to determine as a matter of law that he is entitled to be released. *See also*, *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC at 1-2, 2025 U.S. Dist. LEXIS 188232, at *14-15 (W.D. Tex. Sep. 21, 2025)(stating in part that 8 U.S.C. § 1252(a)(5), § 1252(g), and § 1226(e) do not deprive a Habeas Court of jurisdiction when a Petitioner is challenging his detention under his right to procedural due process).

20. "[T]he [REAL ID] Act does not, however, preclude habeas review of challenges to detention that are independent of challenges to removal orders." *Gutierrez-Soto v. Sessions*, 317 F. Supp. 3d 917, 925 (W.D. Tex. 2018).

21. The Respondents' continued detention of Mr. Martinez constitutes such a "severe restraint[]" on his individual liberty," that he is "in custody in violation of the . . . laws . . . of the United States." *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241; *see also Henderson v. Reno*, 157 F.3d 106, 122 (2d Cir. 1999), *cert. denied sub nom. Reno v. Navas*, 119 S.Ct. 1141 (1999).

VENUE

22. Venue in the Western District of Texas, El Paso Division, is proper because Mr. Martinez is presently physically detained at the ICE El Paso Service Processing Center located at 8915 Montana Ave, El Paso, TX 79925. Mr. Martinez's immediate physical custodian is the El Paso Field Office Director, Respondent Mary De Anda-Ybarra, also within the Western District of Texas, El Paso Division.

23. Venue is proper as the Western District of Texas, El Paso Division, is the district with the

most substantial connection to the parties, witnesses, evidence, attorneys and circumstances underpinning the issues presented herein per 28 U.S.C. § 1391. *See, e.g., Laines v. Bible*, 2018 U.S. Dist. LEXIS 120608.

EXHAUSTION

24. No exhaustion requirement applies to the constitutional claims raised in this Petition because federal courts have carved out an exception to the exhaustion requirement for constitutional challenges to the immigration laws, given that the immigration courts lack jurisdiction to adjudicate such claims. *See, e.g., Haitian Refugee Ctr. v. Smith,* 676 F.2d 1023, 1033 (5th Cir. 1982)(stating in part that district court has jurisdiction to hear a "pattern or practice" claim because … a district court can wield its equitable powers when a wholesale, carefully orchestrated, program of constitutional violations is alleged), *overruled on other grounds; Rashtabadi v. INS*, 23 F.3d 1562, 1567 (9th Cir. 1994); *Howell v. INS*, 72 F.3d 288, 291 (2d Cir. 1995); *Arango–Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994); and *Akinwunmi v. INS*, 194 F.3d 1340 (10th Cir. 1999).

25. "Under the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal." *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007); *see* 8 U.S.C. § 1252(d)(1) ("A court may review a final order of removal only if . . . the alien has exhausted all administrative remedies."); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 U.S. Dist. LEXIS 188232, at *16.

26. Petitioner has no other remedy at law but to seek habeas relief from this Court. Mr. Martinez has exhausted all his administrative remedies for certain claims, and administrative remedies do not exist for his Constitutional claims.

PARTIES

27. Petitioner, Mr. Martinez, is a 19 year-old asylum seeker from Guatemala. Mr. Martinez is currently in the physical and legal custody of DHS, and subject to immigration court proceedings under the purview of the Department of Justice's Executive Office for Immigration Review.

28. Respondent Mary De Anda-Ybarra is named in her official capacity as the ICE Field Office Director for El Paso within the United States Department of Homeland Security. In this capacity, she is responsible for the administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Petitioner. Respondent Mary De Anda-Ybarra's address is Office of Enforcement and Removal Operations, El Paso Field Office Director, 11541 E. Montana Ave., Suite E., El Paso, TX 79936.

29. Respondent David J. Venturella is the Acting Director of U.S. Immigration and Customs Enforcement and has authority over the actions of Respondent Mary De Anda-Ybarra and ICE in general. Respondent Venturella is a legal custodian of Petitioner.

30. Respondent Markwayne Mullin is named in his official capacity as Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, he is responsible for the administration of the immigration laws. Respondent Mullin routinely oversees the agencies within the Department of Homeland Security, including ICE, and as such he has hierarchical authority over Field Office Director Mary De Anda-Ybarra.

31. Respondent Todd Blanche is named in his official capacity as the Attorney General of the United States. In this capacity, he is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review. Respondent Blanche is legally responsible for administering Petitioner's removal proceedings and the standards used in those proceedings.

FACTUAL AND LEGAL BACKGROUND

32. On October 12, 2023, Mr. Martinez and his family entered the United States after they fled Guatemala on the basis of credible death threats. See Ex. A. They were released from custody on their own recognizance. Ex. B.

33. On May 07, 2025, Petitioner's mother's asylum application was denied. See Ex. C.

34. On June 06, 2025, a timely appeal was filed before the Board of Immigration Appeals and is currently pending. See Ex. D.

35. On May 22, 2026, Mr. Martinez graduated from Capital High School in Santa Fe New Mexico. See Ex. E. Subsequently, he enrolled at the Santa Fe Community College.

36. On July 14, 2026, Mr. Martinez and his family attended their in-person ICE appointment at the El Paso Processing Center in El Paso, TX.

37. On the same date, without warning or cause, Petitioner was detained and arrested at the in-person ICE appointment despite that he has no criminal history and had just graduated from high school and was attending the Santa Fe Community College. See Ex. F.

38. Since Mr. Martinez entered the United States without inspection to seek asylum he is being treated as an applicant for admission with no right to a bond hearing. This is so despite that when he initially entered the United States he was released from custody and placed in full INA § 240 proceedings and has lived in the United States here without incident.

39. The Respondents believe that they have limitless power to arrest and detain immigrants under 8 U.S.C. § 1225(b)(2)(A), the mandatory detention statute, and that this statute grants them this unlimited power that cannot be challenged. See *Buenrostro-Mendez v. Bondi*, 166 F.4th 494

(5th Cir. 2026),[5] wherein a Fifth Circuit panel did not reach the due process question, as it only analyzed its holding to the statutory interpretation of 8 U.S.C. § 1225(b)(2)(A) and held that the statute mandates detention during immigration proceedings. See also, *Rodriguez v. Ortega*, where the government argued that there is a lack of statutory procedural rights for release from detention for aliens subject to Section 1225(b)(2)(A). 180 F.4th 702, 716 (5th Cir. 2026).

40. However, a panel in *Rodriguez v. Ortega*, held that habeas Petitioners held under § 1225(b)(2)(A) who entered without inspection and lived in the United States for some time have a due process right to an individualized bond hearing after 90 days in ICE detention. *Id.* at 727-28 (Graves, J., concurring) (Noncitizens like Petitioners who are held under § 1225(b)(2)(A) should have their constitutional right vindicated as quickly as possible, and 90 days is an excessively long period of unexplained confinement. *Id.* at 729.

41. On July 10, 2026, the Fifth Circuit ordered *en banc* rehearing of the case on its own motion and vacated the panel opinion, vacating the panel mandate. See *Rodriguez v. Ortega 2026 U.S.* App. LEXIS 20321, 2026 WL 2014647 (5th Cir. July 10, 2026).

42. On July 21, 2026, the Fifth Circuit granted the Government's motion for a stay of the underlying district courts' judgments pending the full rehearing by the Fifth Circuit. *See Rodriguez v. Ortega*, No. 26-50183, 2026 U.S. App. LEXIS 21959, 2026 WL 2104747, at *1 (5th Cir. July 21, 2026) (Stay Order).

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[5] The Second, Sixth, Seventh, Ninth, Tenth, and Eleventh Circuits have all rejected DHS's interpretation of the mandatory statute without bond, *see Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026), *petition for cert. filed*, No. 26-104 (U.S. July 24, 2026); *Lopez-Campos v. Raycraft*, 175 F.4th 713 (6th Cir. 2026), *petition for cert. filed*, No. 25-1415 (U.S. June 22, 2026); *Cirrus Rojas v. Olson*, __ F.4th __, 2026 U.S. App. LEXIS 22875 (7th Cir. July 30, 2026); *Rodriguez Vazquez v. Bostock*, __ F.4th __, 2026 U.S. App. LEXIS 22798 (9th Cir. July 30, 2026); *Santillan Quiroz v. Mullin*, 180 F.4th 1226 (10th Cir. 2026); *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, 175 F.4th 1258 (11th Cir. 2026).

43. As several habeas district courts have noted, the Fifth Circuit's published order granting a stay contains no reasoning or instruction with regard to the scope of the stay. *See i.e., Rodriguez v. Blanche*, No. EP-26-CV-01769-DCG, 2026 U.S. Dist. LEXIS 173736, at *21-22 (W.D. Tex. Aug. 3, 2026)(stating that the Fifth Circuit's stay order in *Rodriguez v. Ortega* cannot be read so broadly to conclude that all habeas cases that involve a § 1225(b)(2)(A) detainee must come to a complete halt); *Perozo-Mata v. Blanche*, No. 4:26-CV-05679, 2026 U.S. Dist. LEXIS 171321, at *7 (S.D. Tex. July 27, 2026)(The Fifth Circuit's published order granting a stay contained no reasoning or instruction with regard to the scope of the stay). "The Court will not speculate as to the Fifth Circuit's unstated intentions and will not deny relief that it deems meritorious solely because the individual district court judgments in *Sosnava Rodriguez* and consolidated cases were stayed, "*Id;* and *Milan v. Warden, Joe Corley Processing Ctr.*, No. 4:26-2001, 2026 U.S. Dist. LEXIS 160959 (S.D. Tex. July 21, 2026) (ordering release and rejecting government request to stay case pending en banc review in Sosnava Rodriguez "because the rehearing will take an unknown amount of time, and because the petitioner's injury from continued detention is ongoing").

44. From October 12, 2023, until July 14, 2026, over 2.9 years, Mr. Martinez had been living his life in the U.S. without incident, he graduated high school, was a model student, enrolled in community college, and has never committed any crimes. See Ex. G, letters from teachers.

45. On July 14, 2026, without notice or warning, he was re-detained by ICE agents because they needed to arrest at least 3,000 persons a day in violation of his Due Process guarantees. ICE did not conduct an individualized assessment nor did they give Mr. Martinez any notice or meaningful opportunity to be heard on why he should not have been re-detained.

46. Because Petitioner entered without inspection, he is considered an "applicant for admission" and or an "arriving alien" and is not entitled to a custody redetermination hearing before an immigration judge ("IJ') under current regulations. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 (BIA 2025)(holding that an "applicant for admission" is not entitled to a custody redetermination hearing before an immigration judge ("IJ') under the current interpretation of the statute and case law). *See also* 8 C.F.R. § 1003.19(h)(2)(i)(B). Consequently, the only means for release for Mr. Martinez is grant of habeas from this Court.

47. Unless habeas or immediate injunctive relief is granted, Mr. Martinez, a recent high school graduate who was released by the government for several years inside the United States, was separated from his immediate family without notice or cause, and there was no change in his personal circumstances that justified his recent re-detention.

48. Pursuant to this Court's inherent powers in habeas corpus proceedings, Mr. Martinez respectfully requests this Court order his immediate release from custody because he has a liberty interest in his freedom from detention after his release from custody in 2023. Respondents have violated his procedural Due Process rights, as applied to him by re-detaining him without cause.

49. The Respondents do not have discretion to violate the Constitution. *Gutierrez-Soto v. Sessions*, at 925.

50. In *Lopez-Arevelo v. Ripa*, a re-detention habeas case, the Honorable Judge Cardone noted in relevant part that Lopez-Arevelo was challenging his ongoing detention on constitutional grounds, as a violation of due process—not on statutory interpretation grounds, as in the Administrative Procedure Act. 801 F. Supp. 3d 668, 681 (W.D. Tex. 2025)(citing Amended Petition at ¶¶ 68-79).

51. Accordingly, Judge Cardone held that she need not consider whether the agency's new mandatory detention policies reflect a proper reading of the INA because the main issue is whether those policies have been applied to Lopez-Arevelo in an unconstitutional manner. *Id.*

52. As is *Lopez-Arevelo*, here too, is Mr. Martinez is making an as applied challenge under procedural due process despite the fact that 8 U.S.C. § 1225(b)(2)(A) mandates his detention.

FIRST CAUSE OF ACTION

Violation of Right to Due Process Pursuant to the Fifth Amendment

53. Petitioner alleges and incorporates Paragraphs 1 through 52, above. In *Bridges v. Wixon*, our U.S. Supreme Court elegantly stated in part, "[O]nce an alien lawfully enters and resides in this country he becomes invested with the rights guaranteed by the Constitution to all people within our borders. Such rights include those protected by the Fourth and the Fifth Amendments and by the due process clause of the Fourteenth Amendment." 326 U.S. 135, 161 (1945). *See also, Wong Wing v. United States*, 163 U.S. 228, 238 (1896) ("It must be concluded that all persons within the territory of the United States are entitled to the protection by [the Fifth] [A]mendment[] . . .

54. Petitioner's re-detention under 8 U.S.C. § 1225(b)(2)(A)(2018) after being already released for several years without notice and an opportunity to challenge his custody before a neutral arbiter violates his right to due process under the Fifth Amendment to the United States Constitution. "It is well established that the Fifth Amendment entitles aliens to due process of law." *Demore v. Hyung Joon Kim*, 538 U.S. 510, 523 (2003) (*quoting Reno v. Flores,* 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas* 533 U.S. at 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) ("Liberty

under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention.").[6]

55. Due process therefore requires "adequate procedural protections" to ensure that the government's asserted justification for its conduct infringing on protected interests "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* at 690 (internal quotation marks omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

56. Other than as punishment for a crime, due process permits the government to take away liberty only "in certain special and narrow nonpunitive circumstances . . . where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (quotations omitted). Such special justification exists only where a restraint on liberty bears a "reasonable relation" to permissible purposes. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *see also Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Zadvydas*, 533 U.S. at 690. In the immigration context, those purposes are "ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community." *Zadvydas*, 533 U.S. at 690 (quotations omitted).

57. Those substantive limitations on detention are closely intertwined with procedural due process protections. *Foucha*, 504 U.S. 78-80. Noncitizens have a right to adequate procedures to determine whether their detention in fact serves the purposes of ensuring their appearance or

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[6] ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem.") *Wekesa v. United States Atty.*, No. 22-10260, 2022 U.S. App. LEXIS 32359, at *4 (5th Cir. Nov. 22, 2022), unpublished, James L. Dennis, Circuit Judge, dissenting, *citing Zadvydas* at 693.

protecting the community. *Id.* at 79; *Zadvydas*, 533 U.S. 692; *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 949 (9th Cir. 2008). Where laws and regulations fail to provide such procedures, the habeas court must assess whether the noncitizen's immigration detention is reasonably related to the purposes of ensuring his appearance in immigration court or protecting the community. *Zadvydas*, 533 U.S. at 699.

58. In *Zadvydas*, the U.S. Supreme Court found that six months is a presumptively reasonable period during which ICE may detain aliens in order to effectuate their removal. *Id.* at 702. "Once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701. In *Clark v. Martinez*, 543 U.S. 371 (2005), the Supreme Court held that its ruling in *Zadvydas* applies equally to inadmissible aliens. *Id.* at 386. Therefore, detention under § 1225(b)(2)(A) is subject to a reasonable time limitation. *Maldonado*, 150 F. Supp. 3d at 805.

59. Mr. Martinez established a liberty interest when, with the permission of the Department of Homeland Security ("DHS"), he was allowed to establish a life in the United States because for 2.9 years he was able to live in New Mexico with his immediate family, he graduated from high school, attended community college, and was studying to be a mechanic.

60. By re-detaining Mr. Martinez, it has infringed on his core liberty interest that he exercised for at least 2.9 years. The Respondents re-detained Mr. Martinez in an arbitrary manner, without any notice of the basis for his arrest and continued detention, and not based on a rational and individualized determination of whether he should be detained based on the individual facts and circumstances pertaining to whether he was a flight risk or unlawfully present in the United States, or a danger to the community.

61. As such, Mr. Martinez's mandatory detention under § 1225(b)(2)(A) is unreasonable as applied to him. Respondents have exceeded their authority to detain Mr. Martinez, and a habeas order seeking his immediate release is justified on the facts of this case.

62. The Fifth Amendment to the U.S. Constitution provides: "No person shall…be deprived of life, liberty, or property, without due process of law…." *See Wong Wing v. U.S.*, 163 228, at 238 ("These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any difference of race, of color, or nationality…).

63. Thus, Mr. Martinez 's detention violates the Due Process Clause of the U.S. Constitution as applied to his specific facts. For example, he was released for 2.9 years into the community because he posed no threat of flight risk or a danger to the community. Presently, ICE has no mechanisms or any procedures in place before deciding to re-detain Mr. Martinez. The pending BIA appeal automatically protects him from deportation. "The right to prior notice and a hearing is central to the Constitution's command of due process," as it "ensure[s] abstract fair play to the individual" and "minimizes substantively unfair or mistaken deprivations." *Oumar v. Warden, Cent. La. ICE Processing Ctr.*, No. 26-cv-1885, 2026 U.S. Dist. LEXIS 167955, at *8-9 (W.D. La. July 28, 2026), *citing U.S. v. James Daniel Good Real Prop.*, 510 U.S. 43, 53, 114 S. Ct. 492, 126 L. Ed. 2d 490 (1993).

64. "It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." *Fuentes v. Shevin*, 407 U.S. 67, 80, 92 S. Ct. 1983, 1994 (1972). Here, Respondents deprived Mr. Martinez of any meaningful notice and opportunity to argue against being re-detained. There are no pre-detention procedures and he had no reason to believe that he would be arrested and detained.

65. Finally, in *Gomez-Gonzalez v. Vergara*, a habeas case, the facts were similar in that the Petitioner was arrested without cause, and the Honorable Senior Judge David Alan Ezra, San Antonio Division, held that ordering a bond would force the Immigration Judge to do what he believes he lacks authority to do so under *Matter of Yajure Hurtado*, supra, (BIA 2025). *Id.* at 225. Accordingly, Judge Ezra ordered release, and Mr. Martinez respectfully requests the same relief be granted to him. As argued above, the Respondents do not have discretion to violate the Constitution. *See Gutierrez-Soto v. Sessions*, at 925. *See also Oumar v. Warden, Cent. La. ICE Processing Ctr., supra*, at *4 (W.D. La. July 28, 2026) (ordering release, and noting that because the panel decision is no longer binding precedent, release as a remedy is not foreclosed before 90 days of detention have elapsed).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;

2. Order Petitioner's release from custody so that he may be reunited with his mother and siblings;

3. Issue a Writ of Habeas Corpus ordering Petitioner's release from immigration detention pending final resolution of this habeas proceeding;

4. In the alternative, issue a Writ of Habeas Corpus and order Petitioner's release within 3 business days;

5. Issue a declaration that Petitioner's ongoing detention violates the Due Process Clause as applied to him;

6. Grant such further relief as the Court deems just and proper;

7. Petitioner does not seek attorney's fees and only seeks equitable and injunctive relief.

Dated: August 19, 2026

Respectfully submitted,

/s/ Eduardo Beckett
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition and reviewed his corroborating documentation. On the basis of those discussions, on information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: August 19, 2026

/s/ Eduardo Beckett

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above-entitled Verified Habeas Petition was filed electronically with the Clerk of the Court on August 19, 2026, using the CM/ECF system, which office will, in turn, send notification to the following who are registered CM/ECF users:

- United States Attorney's Office for the Western District of Texas, El Paso Division: AUSA, Attorney for Respondents (Business address is United States Attorney's Office, 700 E. San Antonio, Suite 200, El Paso, Texas 79901. **By serving the AUSA it is notifying the following Federal Respondents:**

Mary De Anda-Ybarra, ICE Field Office Director,
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
11541 E. Montana Ave., Suite E., El Paso, TX 79901

Markwayne Mullin, Secretary of the Department of Homeland Security
2707 Martin Luther King Jr. Ave. SE,
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David J. Venturella , Acting Director of ICE
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/S/ Eduardo Beckett
Counsel for Petitioner