

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

ANDERSON ALBERTO SEVILLANO
PIRAQUENO,

Petitioner,

v

TODD M. LYONS, Acting Director,
U.S. Immigration and Customs Enforcement,

PAMELA BONDI, Attorney General,

RUSSELL HOTT, Field Office Director,
Immigration and Customs Enforcement,
Washington Field Office,

Respondents.

Civ. Action No. _____

**PETITION FOR WRIT OF HABEAS CORPUS
AND COMPLAINT FOR DECLARATORY RELIEF**

1 Petitioner Anderson Alberto Sevillano Piraqueno came to the United States fleeing persecution on account of a protected ground in his native Venezuela. He entered the United States on October 10, 2022 near El Paso, Texas and was paroled under 8 U.S.C. § 212(d)(5) for approximately 60 days and was allowed to enter the United States and move to Washington, DC in order to file an asylum application. Petitioner was served with a Notice to Appear pursuant to 8 U.S.C. § 1229a, but that Notice to Appear was never filed in any immigration court, and accordingly removal proceedings never commenced against Petitioner. Accordingly, Petitioner timely filed an asylum application with U.S. Citizenship and Immigration Services (USCIS) and dutifully attended all of his check-in appointments with federal immigration authorities while awaiting a court date. Over 2 years later, while leaving his home in Arlington, Virginia,

Respondents took Petitioner into detention without any notice and charged him with illegal entry under 8 U.S.C. § 1325 out of the Western District of Texas based on Petitioner's entry into the United States in October 2022. After being released from criminal custody on his own recognizance, ICE lured Petitioner back to their office and re-arrested him, and are now holding him in their custody. Petitioner had no criminal history other than the Section 1325 charge, nor noncompliance with his immigration case. Petitioner is now being held in detention by Respondents, without access to a bond hearing, in violation of the statute, regulations, and the Fifth Amendment to the Constitution of the United States

JURISDICTION AND VENUE

2. This action arises under the Immigration and Nationality Act of 1952 ("INA"), as amended, 8 U.S.C. § 1101 *et seq*, and the Due Process Clause of the Fifth Amendment to the United States Constitution. This Court has jurisdiction pursuant to Art. I, § 9, cl. 2 of the United States Constitution; 28 U.S.C. § 2241 (general grant of habeas authority to the district courts); 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. §§2201, 2202 (Declaratory Judgment Act); and 28 U.S.C. § 1651 (All Writs Act).

3. Venue is proper under 28 U.S.C. § 1391(e)(1)(A), (B) because Respondent Hott, who has a principal place of business in Fairfax, Va, is the ICE official with immediate legal custody of Petitioner, and Petitioner is currently held in ICE custody within the territorial jurisdiction of this District.

PARTIES

4. Petitioner Anderson Alberto Sevillano Piraqueno is a native and citizen of Venezuela who was lawfully paroled into the United States, and has a pending application for asylum.

5. Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement, the agency currently detaining Petitioner. He is the individual who issued an order to detain individuals like Petitioner, and also has legal custody over Petitioner. He is sued in his official capacity.

6. Pamela Bondi is the Attorney General of the United States. The Immigration Judge who would conduct Petitioner's bond hearing and determine whether he is eligible to be released on bond does so as her designee. She is sued in her official capacity.

7. Russell Hott is the Field Office Director of the Washington Field Office of U.S. Immigration and Customs Enforcement, located in Fairfax, Va. He is the immediate custodian who is currently holding Petitioner in legal and physical custody. He is sued in his official capacity.

FACTUAL ALLEGATIONS

8. Petitioner is a native and citizen of Venezuela. He fled his country in 2018, fleeing persecution on account of a protected ground.

9. Petitioner entered the United States without inspection, crossing the U.S.-Mexico border on or about October 10, 2022. He was detained by federal immigration authorities on the same day after he entered the United States and issued a Notice to Appear, 8 U.S.C. § 1229.

10. Upon information and belief, the Notice to Appear charged Petitioner with being an "arriving alien," 8 U.S.C. § 1225(b)(A)(B)(ii); 8 C.F.R. § 1003.19(h)(2)(i)(B). This charge was factually incorrect. Petitioner was not an arriving alien, having crossed the border without inspection.¹

¹ Immigration judges, who serve as designees of Respondent Bondi, do not have jurisdiction to release "arriving aliens" on bond. 8 U.S.C. § 1225(b)(A)(B)(ii); 8 C.F.R. § 1003.19(h)(2)(i)(B). But immigration judges also generally do not "look behind" the designation of a noncitizen on the face of a Notice to Appear. In other words, a noncitizen who is falsely designated as an "arriving alien" cannot seek to convince an immigration judge to award them bond; their only remedy is through habeas corpus.

11. Thereafter, on October 13, 2022, U.S. Customs and Border Protection (CBP) paroled Petitioner into the United States pursuant to 8 U.S.C. § 212(d)(5). *See* Ex. A (parole document). Petitioner contends that by so doing, CBP ratified Petitioner's entry into the United States for all legal purposes.

12. Petitioner thereupon moved to Washington, DC.

13. Inexplicably, ICE never filed the Notice to Appear charging document with any immigration court.

14. Since ICE never filed the Notice to Appear charging document with the immigration court, the immigration court never opened a case in his name, and Petitioner was unable to file his asylum application with the immigration court. Accordingly, on May 22, 2023—five months before the legal deadline, *see* 8 U.S.C. § 1158(a)(2)(B)—Petitioner properly filed an asylum application with U.S. Citizenship and Immigration Services (“USCIS”), which has jurisdiction to accept asylum applications filed by individuals who are not before the immigration court. *See* Ex. B (I-589 receipt notice).

15. Petitioner later moved from Washington, DC and established a life in Virginia, lawfully working a job pursuant to an employment authorization document that USCIS properly issued him on January 3, 2024. *See* Ex. C (Employment Authorization Document approval notice).

16. Petitioner attended his ICE check-in appointments, never failing to comply with his supervision schedule. Petitioner has no criminal arrests or convictions, other than related to his entry into the United States, and did not disobey any orders from immigration authorities. Petitioner had been given no reason to believe that he would be taken into custody, since he was in full compliance with his immigration case.

17. On March 17, 2025, Petitioner left his home to walk to his place of employment

To his surprise, federal officials arrested Petitioner pursuant to a judicial arrest warrant signed by the Western District of Texas, and brought him before the U.S. District Court for the Eastern District of Virginia, charging him with misdemeanor illegal entry pursuant to 8 U.S.C. § 1325. *United States v. Sevillano-Piraqueno*, Case No. 1:25-mj-187 (Davis, M.J.) This charge is inconsistent with Petitioner's designation as an "arriving alien,"² and by bringing such charges, the U S government acknowledged its factual and legal position that Petitioner is not an arriving alien, and is estopped from contending otherwise for the purposes of this litigation.

18. During Petitioner's detention hearing on his Section 1325 charge before this Court, the government did not seek detention, in recognition of the minor nature of the charge and the lack of any reason to believe that Petitioner was a danger to the community or a flight risk. On March 20, 2025, this Court released Petitioner on his own recognizance, setting various terms and conditions of release, including that he may not apply for a new Venezuelan passport; that he appear at any scheduled proceedings on his Section 1325 charge in the Southern District of Texas; and that he may not leave the Washington, D.C. metropolitan area, other than to travel to said proceedings *See id* , Dkt. No. 6. If Petitioner violates any one of those provisions, this Court can revoke his release and take him back into criminal custody. Petitioner was also ordered to report back to pretrial services at the Eastern District of Virginia within two days of release.

19. Pursuant to this Court's order of release on recognizance, Petitioner was released from the Alexandria Detention Center on the evening of March 20, 2025. But Respondents would not leave well enough alone: they sent their ICE officers *back* to Respondent's house, this time

² The term "arriving alien" is defined at 8 C.F.R. § 1001.1(q), and inarguably does not apply to Respondent, who was detained after illegally entering the United States in the interior of the country. There is no good-faith interpretation of that regulatory definition that could possibly encompass an individual who was first arrested by immigration authorities in the interior of the United States, after entering the United States illegally. Official ICE policy guidance that instructs ICE officers how to execute Notices to Appear clarifies that such individual is not an arriving alien.

without any judicial warrant whatsoever, to intimidate Petitioner and his family.

20 On March 26, 2025, in a ploy to bring Petitioner into custody, Respondents issued Petitioner a Call-in Letter containing “need to issue an updated document” as the reason for appointment. See Ex D (Call-in Letter) When Petitioner reported to ICE’s Washington Field Office as requested, he was promptly re-arrested

21 At the moment in time that this habeas petition is being filed, Petitioner is being held in the custody of ICE officers from ICE’s Washington Field Office (located in Chantilly, Va.), under the direct supervision of Respondent Hott, within the territorial jurisdiction of this Court.

22. If ICE transfers Petitioner to a detention center outside of Virginia or the Western District of Texas, this will cause Petitioner to have involuntarily violated this Court’s conditions of release. If ICE does not produce Petitioner for his criminal hearing at the Western District of Texas, this will cause Petitioner to have involuntarily violated this Court’s conditions of release

23. Petitioner has exhausted all administrative remedies.

**FIRST CLAIM FOR RELIEF:
Declaratory Judgment**

24. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-23

25. Petitioner requests a declaration from this Court that he is not an “arriving alien ”

**SECOND CLAIM FOR RELIEF:
No-bond detention in violation of 8 U.S.C. § 1226(a)**

26. Petitioner re-alleges and incorporate by reference the preceding paragraphs 1-23.

27. Since Petitioner is not an “arriving alien,” and has no disqualifying criminal arrests or convictions, he is entitled to a bond redetermination by an immigration judge pursuant to 8 U.S.C. § 1226(a).

28. Upon information and belief, Respondent Bondi and her designees will not give Petitioner a bond redetermination because of ICE’s designation of Petitioner as an arriving alien

29. Respondents' actions, as set forth herein, violate Petitioner's statutory right to a bond redetermination hearing in front of an immigration judge.

**THIRD CLAIM FOR RELIEF:
Detention and re-detention in violation of due process**

30. Petitioners re-allege and incorporate by reference the preceding paragraphs 1-23.

31. Immigration detention is civil, not criminal, in nature. There are only two permissible reasons for immigration detention: to avoid flight risk, and to avoid danger to the community.

32. Petitioner has been lawfully paroled into the United States and allowed to develop ties to the community. Petitioner has lawfully and timely filed an application for asylum in the United States, and has lawfully obtained employment authorization in the United States and is lawfully employed in the United States. He is therefore a "person" within the meaning of the Due Process Clause of the Fifth Amendment to the U.S. Constitution

33. Petitioner has a liberty interest in his freedom from physical restraint. He is a valuable employee of a U.S. business, has two minor children, and is the primary breadwinner for his family.

34. Respondents' actions in re-detaining Petitioner without any individualized determination that he needs to be detained for reasons of flight risk or danger to the community, and for no individualized reason other than to meet an arbitrary policy, deprives Petitioner of his liberty rights without due process of law.

35. Respondents' actions in detaining Petitioner without a bond hearing before a neutral and detached magistrate deprives Petitioner of his liberty rights without due process of law

PRAYER FOR RELIEF

36. WHEREFORE, Petitioners respectfully request that this Court assume jurisdiction

over this matter and enter an order.

- a) Enjoin Petitioner's transfer outside of this judicial district pending this litigation;
- b) Declare that Petitioner is not an "arriving alien";
- c) Declare that Respondents' actions, as set forth herein, violate Petitioner's due process rights;
- d) Declare that Respondents may properly detain Petitioner, if at all, only pursuant to 8 U.S.C. § 1226(a);
- e) Grant the writ of habeas corpus and order Respondents to release Petitioner forthwith, subject to his previous terms of supervision;
- f) In the alternative, order Respondent Bondi and her designees to conduct a bond redetermination hearing of Petitioner's detention pursuant to 8 U.S.C. § 1226(a) within 7 days;
- g) Order Respondents to reimburse Petitioners' costs of suit and reasonable attorneys' fees incurred in relation to this petition, under the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- h) Grant any other relief that this Court deems just and proper

Respectfully submitted,

Date: March 27, 2025

//s// Simon Sandoval-Moshenberg
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Certificate of Service

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants. I furthermore will send a copy by certified U.S. mail, return receipt requested, to:

Civil Process Clerk
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2100 Jamieson Ave
Alexandria, VA 22314

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U.S. Immigration and Customs Enforcement
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Respectfully submitted,

Date. March 27, 2025

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