

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION**

Jose Roberto Ortiz-Rivera,

Petitioner,

v.

TODD LYONS, Acting Director,
U.S. Immigrations and Customs
Enforcement, KRISTI NOEM, U.S. Secretary
of Homeland Security, BRIAN S. ACUNA,
Acting New Orleans ICE Field Office Director,
SHAD RICE, Warden, Alexandria Staging Facility,

Respondents.

Case No. 1:25-cv-1148

**EMERGENCY PETITION FOR
WRIT OF HABEAS CORPUS**

INTRODUCTION

1. This case is not about the right of the United States government to determine whether a person may be deported from the country.
2. This case is not about whether the Petitioner, Jose Roberto Ortiz-Rivera, has a pathway to legal status in the United States.
3. Those questions, of course, must be determined by an Immigration Court.
4. But by the same token, the questions must actually be determined by an immigration court, not by unilateral action of Immigration and Customs Enforcement (“ICE”).
5. By bringing this case, Petitioner is asking for nothing more than the right to present his case to an appropriate immigration court rather than being deported before receiving the process that he is owed.

6. Petitioner Ortiz-Rivera is a national of El Salvador. He was detained by federal immigration agents on or about July 24, 2025 without a warrant and without any removal proceedings having been initiated.
2. A Notice to Appear (“NTA”) issued shortly thereafter and Mr. Ortiz-Rivera was placed in removal proceedings.
3. Those removal proceedings began with a Master Calendar Hearing, which happened on August 7, 2025. At that hearing, dates were set for filing and for the next hearing. The government gave no indication that Petitioner’s case would proceed in any way other than through the full merits proceedings to which he was entitled.
4. Two days later, on Saturday, August 9, 2025, the Petitioner was flown to Louisiana and was told that he was to be deported the following day, Sunday, August 10, 2025.
5. Respondents may, of course, proceed with removal proceedings against Mr. Ortiz-Rivera as they see fit without any interference from this Court pursuant to this petition, but without this Court’s intervention, Respondents may deport Mr. Ortiz-Rivera without allowing the process to play out, in violation of Mr. Ortiz-River’s rights. *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 118 (2020) (explaining that a writ of habeas corpus does not disturb immigration court proceedings). Without this Court’s intervention, he will have no avenue to present his asylum case to an immigration judge and, accordingly, will have no opportunity to have the judge determine his eligibility to remain in the United States.
6. By and through undersigned counsel, Mr. Ortiz-Rivera submits this petition for a writ of habeas corpus (“Petition”) pursuant to 28 U.S.C. § 2241, the All-Writs Act, 28 U.S.C. § 1651, Article 1, Section 9 of the United States Constitution, and the Fourth and Fifth Amendments to the United States Constitution, to ensure his due process rights are upheld.

JURISDICTION

7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).
8. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging both the lawfulness and the constitutionality of their detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas*, 533 U.S. at 687.
9. 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).
10. Venue is proper because petitioner is physically present in immigration custody in Alexandria, LA, within the jurisdiction of the Western District of Louisiana. *See* 28 U.S.C. § 2241(d).
11. Venue is proper within the Alexandria Division because a substantial part of the events giving rise to the claims in this action took place in this District. Petitioner is detained by Respondents at Alexandria Staging Facility, located in Alexandria, Louisiana, which is within the Alexandria Division. *See* W.D. La. Local Civ. R. 77.3.

PARTIES

12. Mr. Ortiz-Rivera resides with his partner and two children in New Hampshire. His youngest child is a United States citizen.
13. Respondent Todd Lyons is the Acting Director for U.S. Immigration and Customs Enforcement.
14. Respondent Kristi Noem is the U.S. Secretary of Homeland Security.
15. Respondent Brian S. Acuna is the acting Field Office Director for Immigration and Customs Enforcement’s New Orleans Field Office.

16. Respondent Shad Rice is the warden of the Alexandria ICE Staging Facility in Alexandria, LA.
17. All respondents are named in their official capacities.

EXHAUSTION OF REMEDIES

18. No statutory exhaustion requirement applies to a petition challenging immigration detention under 28 U.S.C. § 2241. *See, e.g., Montano v. Texas*, 867 F.3d 540, 542 (5th Cir. 2017) (“Unlike 28 U.S.C. § 2254, Section 2241’s text does not require exhaustion.”); *Robinson v. Wade*, 686 F.2d 298, 303 n.8 (5th Cir. 1982) (“[S]ection 2241 contains no statutory requirement of exhaustion like that found in 2254(b) . . .”).
19. Mr. Ortiz-Rivera’s claims—that he is being deported without having received due process—are unrelated to any legitimate governmental purpose and therefore are not subject to any statutory requirement of administrative exhaustion, and thus, exhaustion is not a jurisdictional prerequisite. *See McCarthy v. Madigan*, 503 U.S. 140, 144 (1992).
20. To the extent that any prudential considerations might lead the Court to consider requiring exhaustion as a matter of discretion, the Supreme Court has recognized that courts should not require exhaustion where there is an “unreasonable or indefinite timeframe for administrative action.” *Id.* at 147. Exhaustion is thus not appropriate where the Petitioner “may suffer irreparable harm is unable to secure immediate judicial consideration of his claim.” *Id.* Because Mr. Ortiz-Rivera is at risk of imminent deportation without having received the due process to which he is entitled, he is at risk of irreparable harm of deportation and the accompanying separation from his family and only this Court can consider his claim.

FACTS

21. Mr. Ortiz-Rivera is a native and a citizen of El Salvador. He is a hardworking family man who has tried to navigate the complicated U.S. immigration system with little money and correspondingly little legal support. He has tried to do the right thing.
22. In 2019, Mr. Ortiz-Rivera, along with his long-term girlfriend and their young daughter, entered the United States without inspection, intending to apply for asylum. To that end, the day after he arrived, he presented himself to immigration authorities hoping to plead his case.
23. A warrant issued, but he was released on recognizance pursuant to INA § 236(a)(2)(B) and was given a Notice to Appear (“NTA”) in Immigration Court, starting removal proceedings. The NTA charged Mr. Ortiz-Rivera with removability pursuant to INA § 212(a)(6)(A)(i) on the grounds that he entered the United States without admission or parole. About a month later, a second NTA issued with the same grounds of removability. Those initial proceedings were terminated on October 5, 2023 for a deficiency in the NTA.
24. Mr. Ortiz-Rivera believed, at that time, that he was lawfully in the United States for the purposes of filing his application for asylum. He did that about a year later, in September 2024. He thought that the dismissal of his immigration court proceedings, coupled with his asylum application gave him permission to work in the United States. Although he would have been eligible to file for work authorization during the pendency of his asylum application, he did not know that he would need to affirmatively ask for that, so he never did.
25. That asylum petition was pending with U.S. Citizenship and Immigration Services when he was detained and he intends to pursue it during removal proceedings.
26. Believing himself able to work, he secured work as a roofer.

27. Against this backdrop while in northern Vermont, near the Canadian border on a roofing job Mr. Ortiz-Rivera was detained by ICE without any consideration of his flight risk or dangerousness. He was not afforded any notice or opportunity to be heard as to whether he should be detained by Respondents in light of (1) his absence of any criminal record (in sum, his lack of any perceived dangerousness); (2) the fact that he was not a flight risk (he has his long term partner and two young children waiting for him at home); and (3) immigration relief available to him in the form of his pending asylum application, which would render his removal anything but imminent. In light of these facts, the purposes for immigration detention do not apply to Mr. Ortiz-Rivera, calling into question the Respondents' ability to detain him in the first place. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (describing the limited purposes of immigration detention, which include preventing flight and danger to the community).
28. He was originally detained at the Northwestern State Correctional Facility in Swanton, Vermont. On August 8, 2025, he was moved to the Burlington, Massachusetts ICE processing facility. Within 24 hours, he was removed from that jurisdiction to Louisiana and was told that he was to be deported the following day.
29. Because Mr. Ortiz-Rivera entered the United States more than 5 years ago and was released into this country on his own recognizance, pursuant to INA § 236(a), he is entitled to full removal proceedings and is not subject to expedited removal. He is eligible for release on conditional parole or bond and requires a hearing before a final deportation order may enter.
30. No such final deportation order has entered in his case.

31. Moreover, even if Mr. Ortiz-Rivera was subject to expedited removal, he would still be entitled to a credible fear interview by an asylum officer pursuant to INA § 235(b)(1)(B). He never received such an interview.
32. Petitioner is currently in custody in the Western District of Louisiana, and one or more of the Respondents is his immediate custodian.
33. Upon information and belief, Petitioner is at risk of imminently being removed from the jurisdiction and the country.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fourth Amendment

34. Petitioner repeats and incorporates by reference the foregoing paragraphs of this petition as if fully set forth herein.
35. Petitioner was detained in violation of his constitutional right to be free from warrantless seizure.

COUNT TWO

Violation of Fifth Amendment Right to Due Process

36. Petitioner repeats and incorporates by reference the foregoing paragraphs of this petition as if fully set forth herein.
37. Upon information and belief, Respondents intend to deport Petitioner imminently and prior to having the full removal proceedings to which he is entitled, in violation of his constitutional rights to due process of law.

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;

- (2) Order that Petitioner shall not be transferred outside the United States prior to receiving the due process protections owed to him in full deportation proceedings;
- (3) Declare that Petitioner's deportation without a final order of removal violates the Due Process Clause of the Fifth Amendment;
- (4) Order that Respondents provide counsel with reasonable notice prior to moving Petitioner out of the jurisdiction;
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
- (6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/Melissa Allen Celli

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Attorneys for Petitioner

** Pro hac vice application forthcoming*

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner, and/or someone acting on his behalf, the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in this Petition are true and correct to the best of my knowledge.

Dated: August 10, 2025

/s/ Charles Andrew Perry

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