

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

EDDY ROBERTO ESPINAL ENCARNACIÓN, )

Petitioner, )

v. )

FIELD OFFICE OF DIRECTOR OF MIAMI  
ICE FIELD OFFICE, )

TODD LYONS, Acting Director U.S.  
Immigrations and Customs Enforcement, )

and KRISTI NOEM, U.S. Secretary )

of Homeland Security, )

PAMELA BONDI, U.S. Attorney General )

Respondents. )

Case No. \_\_\_\_\_

**PETITION FOR WRIT OF  
HABEAS CORPUS**

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1. Petitioner Eddy Roberto Espinal Encarnación continuously resided in Puerto Rico for approximately twenty-six (26) years prior to his detention and transfer to Florida by U.S. Immigration and Customs Enforcement ("ICE").

2. Petitioner is currently being held in ICE's custody in the Southern District of Florida.

3. On August 12, 2025, Petitioner was arrested outside his home in Puerto Rico by ICE and/or other federal agents acting on ICE's behalf.

4. On August 20, 2025, Petitioner was transferred to the South Florida Detention Facility in Ochopee, Florida.

5. On or about September 12, 2025, Petitioner was transferred to the Broward Transitional Center in Pompano Beach, Florida.

6. Petitioner is present in the United States and the Department of Homeland Security ("DHS") has alleged that Petitioner was not previously admitted or paroled into the United States.



7. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(1), including because Petitioner does not meet the criteria for Expedited Removal. *See Make the Road New York v. Noem*, No. 25-190, 2025 WL 2494908, at \*23 (D.D.C. Aug. 29, 2025).

8. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2) because, as a person already present in the United States, Petitioner is not presently “seeking admission” to the United States. *See Garcia Cortes v. Noem*, No. 1:25-CV-02677-CNS, 2025 WL 2652880, at \*3 (D. Colo. Sept. 16, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-CV-326-LM-AJ, 2025 WL 2639390, at \*8 (D.N.H. Sept. 8, 2025); *Francisco T. v. Bondi*, No. 25-CV-03219, 2025 WL 2629839, at \*4 (D. Minn. Aug. 29, 2025) (collecting cases); *Aguiriano Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at \*1, 8-13 (D. Mass. Aug. 19, 2025); *see also Poveda v. U.S. Atty. Gen.*, 692 F.3d 1168, 1179 (11th Cir. 2012); *Jean v. Nelson*, 711 F.2d 1455, 1483 (11th Cir. 1983).

9. Petitioner was not, at the time of arrest, paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A), and therefore Petitioner could not “be returned” under that provision to mandatory custody under 8 U.S.C. § 1225(b) or any other form of custody. Petitioner is not subject to mandatory detention under § 1225 for this reason as well.

10. Instead, as a person arrested inside the United States and held in civil immigration detention, Petitioner is subject to detention, if at all, pursuant to 8 U.S.C. § 1226. *See Francisco T.*, 2025 WL 2629839, at \*4 (collecting cases); *Aguiriano*, 2025 WL 2403827, at \*1, 8-13 (collecting cases).

11. Petitioner is not lawfully subject to mandatory detention under 8 U.S.C. § 1226(c), including because he has not been convicted of any crime that triggers such detention. *See Demore v. Kim*, 538 U.S. 510, 513-14, 531 (2003) (allowing mandatory detention under § 1226(c) for brief detention of persons convicted of certain crimes and who concede removability).



12. Accordingly, Petitioner is subject to detention, if at all, under 8 U.S.C. § 1226(a).

13. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon his request, receive a custody redetermination hearing (colloquially called a “bond hearing”) with strong procedural protections. *See Sopo v. U.S. Attorney General*, 825 F.3d 1199, 1220 (11th Cir. 2016), vacated on other grounds by *Sopo v. U.S. Attorney General*, 890 F.3d 952 (11th Cir. 2018); *see also Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Doe v. Tompkins*, 11 F.4th 1, 2 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 256-57 (1st Cir. 2021) (affirming class-wide declaratory judgment); *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1347 (M.D. Ga. 2020); 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

14. Petitioner requested such a bond hearing on August 28, 2025.

15. Notwithstanding, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals issued a decision which purports to require the Immigration Court to unlawfully deny a bond hearing to all persons such as Petitioner.<sup>1</sup>

16. Accordingly, Petitioner was denied a bond hearing. On September 11, 2025, an immigration judge denied his request for a bond hearing finding that she lacked jurisdiction under *Matter of Yajure Hurtado*.

17. Petitioner is being irreparably harmed by his ongoing unlawful detention without a bond hearing.

18. The Immigration Court lacks jurisdiction to adjudicate the constitutional claims raised by Petitioner, and any attempt to raise such claims would be futile. *See Diaz-Rivas v. U.S. Att’y Gen.*, 769 F. App’x 748, 765-66 (11th Cir. 2019) (Jordan, J., concurring in part and dissenting in part);

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<sup>1</sup> The BIA’s reversal and newly revised interpretation of the statute are not entitled to any deference. *See Loper Bright Ent. v. Raimondo*, 603 U.S. 369, 412-13 (2024).



*Flores Powell v. Chadbourne*, 677 F. Supp. 2d 455, 463 (D. Mass. 2010) (holding “exhaustion is excused by the BIA’s lack of authority to adjudicate constitutional questions and its prior interpretation” of the relevant statute); *Ashley v. Ridge*, 288 F.Supp.2d 662, 666–67 (D.N.J. 2003) (stating that “[t]he Immigration Court and Board of Immigration Appeals are courts of limited jurisdiction that cannot consider constitutional claims” and that, therefore, “it would undoubtedly be futile to await further administrative hearings when those proceedings cannot in any way address the constitutional claims at issue in this case”); *Matter of C-*, 20 I. & N. Dec. 529, 532 (BIA 1992) (“[I]t is settled that the immigration judge and [the BIA] lack jurisdiction to rule upon the constitutionality of the Act and the regulations.”); *see also Arango–Aradondo v. Immigration and Naturalization Serv.*, 13 F.3d 610, 614 (2nd Cir.1994) (“[T]he BIA does not have authority to adjudicate constitutional issues . . . .”)

19. There is no statutory requirement for Petitioner to exhaust administrative remedies. *See Lopez Benitez v. Francis*, No. 25 CIV. 5937, 2025 WL 2371588, at \*13 (S.D.N.Y. Aug. 13, 2025) (finding that that the petitioner “is excused from administrative exhaustion [by appealing his detention to an immigration] because he has no genuine opportunity for adequate relief and has raised a substantial constitutional question”); *Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299, at \*4 (D. Mass. July 7, 2025) (“[E]xhaustion is not require by statute in this context.”); *see also Haitian Refugee Ctr., Inc. v. Nelson*, 872 F.2d 1555, 1561 (11th Cir. 1989), *aff’d sub nom. McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479 (1991); *Harris v. Dep’t of Homeland Sec.*, 18 F. Supp. 3d 1349, 1359 (S.D. Fla. 2014), as amended (May 8, 2014).

20. Accordingly, there is no requirement for Petitioner to further exhaust administrative remedies before pursuing this Petition. *See Portela-Gonzalez v. Sec’y of the Navy*, 109 F.3d 74,



(1st Cir. 1997) (explaining that, where statutory exhaustion is not required, administrative exhaustion not required in situations of irreparable harm, futility, or predetermined outcome).

21. Any appeal from the immigration judge's denial of Petitioner's request for a bond hearing to the Board of Immigration Appeals would be predetermined by *Matter of Yajure Hurtado* and thus futile. *See Carr v. Saul*, 593 U.S. 83, 93 (2021) (recognizing the futility exception to exhaustion requirements).

16. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).

17. Venue is proper because Petitioner is detained within the Southern District of Florida.

18. Upon information and belief, Juan Agudelo is the Acting Field Office Director for the Miami U.S. Immigration and Customs Enforcement Field Office.

19. Respondent Todd Lyons is the Acting Field Office Director for U.S. Immigration and Customs Enforcement.

20. Respondent Kristi Noem is the U.S. Secretary of Homeland Security.

21. Respondent Pamela Bondi is the U.S. Attorney General.

22. All respondents are named in their official capacities. One or more of the respondents is Petitioner's immediate custodian.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

#### **Violation of 8 U.S.C. 1226(a) and Associated Regulations**

23. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

24. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

25. Petitioner has not been, and will not be, provided with a bond hearing as required by law.



26. Petitioner's continuing detention is therefore unlawful.

### **COUNT TWO**

#### **Violation of Fifth Amendment Right to Due Process (Failure to Provide Bond Hearing Under 8 U.S.C. § 1226(a))**

27. Because Petitioner is a person arrested inside the United States and is subject to detention, if at all, under 8 U.S.C. § 1226(a), the Due Process Clause of the Fifth Amendment to the United States Constitution requires that Petitioner receive a bond hearing with strong procedural protections.

28. Petitioner has not been, and will not be, provided with a bond hearing as required by law.

29. Petitioner's continuing detention is therefore unlawful.

### **COUNT THREE**

#### **Violation of Fifth Amendment Right to Due Process (Failure to Provide an Individualized Hearing for Domestic Civil Detention)**

23. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

24. The Fifth Amendment's Due Process Clause specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of law." U.S. CONST. amend. V.

25. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law"); *cf. Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020) (holding noncitizens due process rights were limited where the person was not residing in the



United States, but rather had been arrested 25 yards into U.S. territory, apparently moments after he crossed the border while he was still “on the threshold”).

26. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” protected by the Due Process Clause. *Zadvydas*, 533 U.S. 678 at (2001).

27. The Supreme Court has thus “repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection,” including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

28. Petitioner was arrested inside the United States and is being held without being provided any individualized detention hearing.

29. Petitioner’s continuing detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

**COUNT FOUR**  
**Violation of Fifth Amendment Right to Due Process**  
**(Substantive Due Process)**

23. Because Petitioner is not being provided a bond hearing, the government is not taking any steps to effectuate its substantive obligation to ensure that immigration detention bears a “reasonable relation” to the purposes of immigration detention (*i.e.*, the prevention of flight and danger to the community during the pendency of removal proceedings) and is not impermissibly punitive. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring).



24. Petitioner's detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

**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 Southern District of Florida;
- (3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (4) Declare that Petitioner's detention is unlawful.
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or, in the alternative, provide Petitioner with a bond hearing and order Petitioner's release on conditions the Court deems just and proper.
- (6) Grant any further relief this Court deems just and proper.

Respectfully submitted,  
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