

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

CARLOS HUMBERTO RODRIGUEZ RODRIGUEZ)

Petitioner,

v.

MICHAEL NESSINGER

Superintendent, Wyatt R Wyatt

Detention Facility

PATRICIA HYDE, Field Office Director,

TODD LYONS, Acting Director U.S.

Immigrations and Customs Enforcement,

and KRISTI NOEM, U.S. Secretary
of Homeland Security,

Respondents.

) Case No. 25-505

) **AMENDED**

) **PETITION FOR WRIT OF**

) **HABEAS CORPUS**

1. Petitioner Carlos Humberto Rodriguez Rodriguez resides in Massachusetts.
2. Mr. Rodriguez is a 42 old native and citizen of El Salvador, he has been present in the United States since 2005.
3. Mr. Rodriguez is the primary caretaker of his 78-year-old U.S. Citizen mother and his two U.S. Citizen, children [REDACTED] who is 5 [REDACTED] [REDACTED] who is 2. Both children were born in Boston. He is the sole financial provider for all of them and his mother has significant health issues.
4. On information belief, Mr. Rodriguez's extended presence in the United States, good moral character and the extreme hardship that would be suffered by his U.S. Citizen relatives if he were removed render him prima facia eligible for cancelation of removal for certain non-permanent residents. See, 8 U.S.C. § 1229b(b)(1).

5. Mr. Rodriguez has no known criminal record and was employed full time in construction prior to his arrest.
6. Mr. Rodriguez was arrested by U.S. Immigration and Customs Enforcement (“ICE”) and/or other federal agents acting on ICE’s behalf on or about September 24th, 2025. On information and belief, He was arrested up after being followed out of Home Depot by ICE agents. ICE claimed he matched a description of a different person that they were looking for.
7. On information and belief, Mr. Rodriguez is currently being held in ICE’s custody in the District of Rhode Island.
8. Mr. Rodriguez is present in the United States, and, the Department of Homeland Security (“DHS”) has alleged that he was not previously admitted or paroled into the United States.
9. Mr. Rodriguez cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(1), because he 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).
10. Mr. Rodriguez cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2), because, as a person already present in the United States, he is not presently “seeking admission” to the United States. *See Aguiriano v. Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *1, 8-13 (D. Mass. Aug. 19, 2025).
11. On information and belief, Mr. Rodriguez was not, at the time of arrest, paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A), and therefore he could not “be returned” under that provision to mandatory custody under 8 U.S.C. § 1225(b) or any other form of custody. Mr. Rodriguez is not subject to mandatory detention under § 1225 for this reason as well.

12. 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 Aguiriano*, 2025 WL 2403827, at *1, 8-13 (collecting cases).
13. Mr. Rodriguez is not lawfully subject to mandatory detention under 8 U.S.C. § 1226(c), because he has not been convicted or charged with 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).
14. Accordingly, Mr. Rodriguez is subject to detention, if at all, under 8 U.S.C. § 1226(a).
15. As a person detained under 8 U.S.C. § 1226(a), Mr. Rodriguez must, upon his request, receive a custody redetermination hearing (colloquially called a “bond hearing”) with procedural protections commanded by the U.S. Constitution. *See 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); 8 C.F.R. 236.1(d) & 1003.19(a)-(f).
16. Mr. Rodriguez seeks such a bond hearing.
17. However, 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.¹
18. The responsible administrative agency has therefore predetermined that Petitioner will be denied a bond hearing.

¹ 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).

19. Mr. Rodriguez is being irreparably harmed by his ongoing unlawful detention without a bond hearing. *See Aguiriano*, 2025 WL 2403827, at *6-8 (no exhaustion required because “[o]bviously, the loss of liberty is a . . . severe form of irreparable injury” (internal quotation marks omitted)); *Flores Powell v. Chadbourne*, 677 F. Supp. 2d 455, 463 (D. Mass. 2010) (declining to require administrative exhaustion, including because “[a] loss of liberty may be an irreparable harm”); *cf. Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021) (citing *Bois v. Marsh*, 801 F.2d 462, 468 (D.C. Cir. 1986), for proposition that “[e]xhaustion might not be required if [the petitioner] were challenging her incarceration . . . or the ongoing deprivation of some other liberty interest”).
20. The Immigration Court lacks jurisdiction to adjudicate the constitutional claims raised by Petitioner, when such claims have already been rejected by the Board of Immigration Appeals and any attempt to press such claims before the agency would be futile. *See Flores-Powell*, 677 F. Supp. 2d at 463 (holding “exhaustion is excused by the BIA’s lack of authority to adjudicate constitutional questions and its prior interpretation” of the relevant statute).²

² The EOIR recently issued a policy memorandum which purports to assert immigration judges and the BIA have authority to consider certain Constitutional arguments in immigration proceedings. However, the memo concedes that the EOIR cannot consider facial challenges to statutes. CONSIDERATION OF CONSTITUTIONAL ARGUMENTS IN AGENCY ADJUDICATIONS, PM-25-45, <https://www.justice.gov/eoir/media/1413276/dl?inline>. In addition, immigration judges are bound by precedent decisions of the Board of Immigration Appeals and must apply the BIA’s interpretation of relevant statutes and regulation and have no evident authority to depart from binding agency precedent based on constitutional or statutory arguments. See, 8 C.F.R. § 1003.1(g)(1) (“[D]ecisions of the Board and decisions of the Attorney General are **binding** on . . . immigration judges”)

21. There is no statutory requirement for Mr. Rodriguez to exhaust administrative remedies.
See Gomes v. Hyde, No. 25-11571, 2025 WL 1869299, at *4 (D. Mass. July 7, 2025) (“[E]xhaustion is not required by statute in this context.”).
22. Accordingly, there is no requirement for Mr. Rodriguez 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).
23. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).
24. Venue is proper because Petitioner s detained in the District of Rhode Island.
25. Michael Nessinger is the Superintendent of the Wyatt County Correctional Facility and is petitioner’s immediate custodian.
26. Respondent Patricia Hyde is the New England Field Office Director for U.S. Immigration and Customs Enforcement.
27. Respondent Todd Lyons is the Acting Director for U.S. Immigration and Customs Enforcement.
28. Respondent Kristi Noem is the U.S. Secretary of Homeland Security.
29. 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

30. Mr. Rodriguez may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

31. Under § 1226(a) and its associated regulations, Mr. Rodriguez is entitled to a bond hearing.

See 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

32. Mr. Rodriguez has not been, and will not be, provided with a bond hearing as required by law.

33. Mr. Rodriguez'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))

34. Because Mr. Rodriguez 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. *See Hernandez-Lara*, 10 F.4th at 41; *Doe*, 11 F.4th at 2; *Brito*, 22 F.4th at 256-57.

35. Mr. Rodriguez has not been, and will not be, provided with a bond hearing as required by law.

36. Mr. Rodriguez'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)

37. “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).
38. 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.
39. “[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”).
40. “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)
41. 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).

42. Mr. Rodriguez was arrested inside the United States and is being held without being provided any individualized detention hearing.

43. Mr. Rodriguez'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)

44. 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).

45. 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 District of Rhode Island;

- (3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (4) Direct the Clerk of Court to transmit the Order and this Petition to the U.S. Attorney's Office for the District of Rhode Island and deem this transmission good and sufficient service;
- (5) Declare that Petitioner's detention is unlawful;
- (6) 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 or in the alternative order Respondents to cause the Immigration Court to schedule a bond hearing within 5 business days of the date of the order and to conduct that bond under according to 8 U.S.C. 1226 (a) and First Circuit precedent.
- (7) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/Carl Hurvich/s/
Carl Hurvich, Esq.
Brooks Law Firm
10 High Street, Ste. 3
Medford, MA 02155
(617) 245-8090
Carl@BrooksLawFirm.com
RI Bar # 9740

Counsel for Petitioner

Dated: October 3rd, 2025.

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Carlos Humberto Rodriguez Rodriguez and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 3rd day of October 2025.

s/Carl Hurvich
Carl Hurvich