

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
DETROIT, MICHIGAN**

Yanier Hernandez Capote,

Petitioner,

v.

KRISTI NOEM, Secretary, U.S. Department  
of Homeland Security; TODD LYONS,  
Acting Director, U.S. Immigration and Customs  
Enforcement; KEVIN RAYCRAFT, Acting  
Field Office Director, Detroit Immigration  
and Customs Enforcement; PAM BONDI,  
U.S. Attorney General, U.S. Department of Justice,  
SIRCE E. OWEN, Acting Director of the  
Executive Office of Immigration Review, and  
ANNA C. LITTLE, Acting EOIR Chief  
Immigration Judge,

Respondents.

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**PETITION FOR  
WRIT OF HABEAS CORPUS**

Petitioner, Yanier Hernandez Capote (Yanier), through counsel respectfully requests that this Court issue a Writ of Habeas Corpus. In support, the Petitioner states:

## **I. INTRODUCTION**

1. The Petitioner, by and through undersigned counsel, hereby files this Petition for a Writ of Habeas Corpus in order to secure his release from unlawful detention. The Respondents have flipped flopped on the statutory basis for detention and release of the Petitioner. In addition, the Respondent Immigration and Customs Enforcement through one of their Assistant Chief Counsel's in Detroit have deliberately misrepresented to the Immigration Court in Detroit, the statute under which Yanier is being detained thereby subjecting him to unlawful mandatory detention with no end in sight.

2. Based on interim guidance issued by Respondent DHS in conjunction with Respondent DOJ, the Respondents now claim that persons who crossed the border are detained under INA §235. (Ex. 1 – July 8, 2025 ICE Interim Guidance)

3. The Respondents have redetained Yanier without prior notice or cause as he was attending a petition interview at the Detroit Offices of U.S. Citizenship and Immigration Services (USCIS - Detroit).

4. "The main goal of ICE detention is to make sure immigrants show up for their court dates. But the conditions revealed in the inspection reports often appear

indistinguishable from prison,” and “[a] majority of people in ICE detention have no criminal record.” Tom Dreisbach, Government’s Own Experts Found “Barbaric” and “Negligent” Conditions in ICE Detention, NPR News (Aug. 16, 2023), <https://www.npr.org/2023/08/16/1190767610/ice-detention-immigration-government-inspectors-barbaric-negligent-conditions#:~:text=In%20examining%20more%20than%20two,problems%20that%2C%20in%20some%20cases>. For detained asylum seekers, like Yanier, these prison-like conditions compound the trauma from which they fled and poses serious barriers to the tools necessary for presenting an effective asylum claim or obtaining other forms or relief such as adjustment of status to permanent resident.

5. Yanier is not challenging the execution of a removal order before this Court. He is challenging his unconstitutional challenge.

6. The Respondents’ actions are not only contrary to law and unconstitutional but have also inflicted extreme emotional distress on Yanier, his U.S. citizen wife, his U.S. citizen stepdaughters, his son, and his lawful permanent resident siblings.

## II. JURISDICTION

7. This Court has habeas corpus jurisdiction and jurisdiction over the injunctive relief pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction) 28 U.S.C. §2201, 28 U.S.C. §2241 et seq., Art. I § 9, cl. 2 of the United States Constitution (Suspension Clause), 28 U.S.C. § 1343; 28 U.S.C. §

1361; and 5 U.S.C. § 702, and common law.

8. This action arises under the Fourth and Fifth Amendments of the United States Constitution; the Immigration and Nationality Act (INA).

9. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of DHS conduct. Federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. *See e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

10. This Court has jurisdiction under the Suspension Clause to review the actions of the executive branch's enforcement of the immigration laws if those actions violate the Constitution by depriving Petitioner of due process or other constitutional rights. Compare Suspension Clause with 8 U.S.C. § 1252(g); see also *Reno v. Am.-Arab Anti Discrimination Comm.*, 525 U.S. 471, 482 (1999). The Suspension Clause protects the right to the writ of habeas corpus where, as here, no adequate or effective alternative remedy exists. *See Boumediene v. Bush*, 553 U.S. 723 (2008).

### **III. VENUE**

11. Venue lies in the Eastern District of Michigan, the judicial district in which the ICE Field Office Director is located. *See Roman v. Ashcroft*, 340 F.3d 314, 319-21 (6th Cir. 2003).

12. The Petitioner is in the custody of Respondent, Detroit Immigration and

Customs Enforcement, (ICE – Detroit) The Petitioner is under the direct control of the Respondents and their agents.

#### **IV. PARTIES**

13. Yanier Hernandez Capote is a citizen of the Cuba who is married to a U.S. citizen. He fled Cuba, a country who the U.S. recognizes has a long history of human rights abuses and is run by a Communist dictatorship that suppresses any freedom. He arrived in the United States on January 16, 2022 and has been in immigration court proceedings since March 4, 2022. He is currently detained by Respondent Immigration and Customs Enforcement Detroit in North Lakes Detention facility in Baldwin, Michigan.

14. Defendant, Kristi Noem is the Secretary of the U.S. Department of Homeland Security (DHS). She is generally charged with enforcement of the Immigration and Nationality Act and is further authorized to delegate such powers and authority to subordinate employees of the DHS and its various divisions. 8 USC §1103(a). She is being sued in her official capacity.

15. Defendant Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE) and is responsible for the administration of the detention and removal of aliens in the United States. He is being sued in his official capacity.

16. Defendant Kevin Raycraft is the Acting Director of the Detroit Field

Office of the Immigration and Customs Enforcement (ICE - Det) He is responsible for the detention and removal of aliens within the Detroit District. He is being sued in his official capacity.

17. Pam Bondi is the Attorney General of the United States. She is responsible for the enforcement of the immigration laws which include the immigration courts. She is being sued in her official capacity.

18. Sirce E. Owen is the Acting Director of the Executive Office of Immigration Review. (EOIR) His responsibilities include overseeing immigration court proceedings, appellate reviews, and administrative hearings, as well as supervising Immigration Judges and members of the Board of Immigration Appeals. He is being sued in his official capacity.

19. Anna C. Little is the Acting EOIR Chief Immigration Judge. Her responsibilities include managing the nation's immigration courts and supervising all immigration judges. She is being sued in her official capacity.

## **V. FACTS**

20. Yanier is a citizen of Cuba who fled to the United States seeking refuge and protection. He arrived in the United States on January 16, 2022, more than three years ago. After crossing the border, he presented himself to Respondent DHS one mile north of the U.S. border with Mexico. (Ex. 2 – I-831) The Respondent DHS found that Yanier was not a “threat to national security or public

safety “ and decided to release him. Respondent DHS released him the following day on an Order of Release on Recognizance (ROR) so he could apply for asylum. (Ex. 3 – Release on Recognizance)

21. Yanier filed a timely application for relief. Subsequently the Respondent filed the Notice To Appear with the immigration court in Detroit, Michigan and the immigration court sent out a hearing notice. Yanier did not attend that court date because, though he had notified ICE Det of his change of address, ICE Det failed to notify the immigration court of the Plaintiff’s new address. When Yanier discovered that he had been ordered deported because he missed that first hearing, he filed a Motion to Reopen which was granted by the Immigration Judge. He also filed a copy of his application for relief with the immigration court.

22. Yanier retained counsel and has appeared at all of the Immigration Court Hearings since that time as well as complied with all requirements that ICE has given him. Yanier has no criminal record anywhere in the world.

23. Yanier married Magela (a U.S. citizen born in Cuba) on November 18, 2024. Magela filed an I-130 Alien Relative Petition (Petition) with USCIS.

24. Yanier notified the immigration court of the marriage, and the Immigration Judge (IJ) continued the case until USCIS makes a decision on the Petition. The next status conference in Immigration Court was scheduled for April 6, 2026.

25. In the interim, USCIS scheduled Yanier and Magela for an interview on the Petition on August 12, 2025. (Ex. 4 – Petition Interview Notice) The couple

went to that interview with their immigration counsel. However, unbeknownst to them and their counsel, this was not an interview but rather a trap by USCIS and ICE – Det to detain Yanier.

26. USCIS Officer Harrison told Magela to remain in the waiting room since she was just going to interview Yanier. After asking Yanier a few questions, without saying a word to Yanier or Yanier's counsel and upon information and belief, Officer Harrison informed ICE-Det that Yanier was in the office so they could now arrest him. Two ICE-Det officers handcuffed Yanier and took him away. These officers told his counsel that Yanier was being taken to the ICE Detroit offices for processing but told counsel they would allow Yanier to call her after and did not allow her to accompany them or to meet them at the ICE – Det offices.

27. Yanier was taken to the ICE-Det offices to be processed. He requested to call his wife which they allowed him to do. At the time Magela was in counsel's office and when counsel asked Yanier if his ICE-Det officer was there he said yes but the officer told him he would not talk to his attorney.

28. Afterwards, counsel attempted to contact ICE – Det Supervisor Eric Fifer by phone to ascertain why Yanier had been detained since Yanier was in immigration court proceedings, had no criminal record and was married to a U.S. citizen. ICE-Det Officer Horkey answered the phone and told counsel that she had the wrong number though that was completely untrue because Supervisor Fifer had

provided his cellphone number to counsel previously. Counsel then asked if she could talk to Supervisor Fifer, but Officer Horkey refused to allow counsel and stated he had no knowledge of or information on Yanier.

29. Counsel did not understand why Yanier was detained since the circumstances upon which he was released had not changed. In fact, Yanier had more equities now than he had when the Respondents released him in 2022.

30. Counsel waited half an hour and called the cell number again. This time she got a message stating it was Supervisor Fifer's number and to leave a message. Supervisor Fifer did call counsel back from the same number that Officer Horkey, an hour before, had told counsel was not Supervisor Fifer's number. Supervisor Fifer explained to counsel that he did not know why Yanier was arrested and that the orders came from Headquarters in Washington, D.C. He did not tell counsel whether ICE-Det was going to deport him or not. He did not mention under what statute Yanier had been detained under and only said the orders came from headquarters. When counsel asked Supervisor Fifer about a bond to release Yanier he said she would have to contact Secretary Noem's office. Obviously, that is not possible because her office would not take a call from an immigration attorney inquiring about one particular individual in Detroit. Therefore, all administrative remedies with ICE had been exhausted.

31. Yanier is still detained by ICE – Detroit at North Lake Processing Center in Baldwin, Michigan. This ICE Processing Center is managed by GEO, a private

prison company. <https://www.geogroup.com/about-us/who-we-are/>

32. Yanier filed a Motion for Bond Reconsideration, and a hearing was held on August 29, 2025. For the first time since Yanier came to the United States from Cuba, ICE Det, through Assistant Chief Counsel Garcia (ACC Garcia) told the IJ that Yanier was being detained pursuant to 8 U.S.C. §235(b). At that hearing ACC Garcia, representing Respondent ICE, argued that the Immigration Judge had no authority to release Yanier and the IJ agreed with ACC Garcia.

33. On September 3, 2025, Yanier along with other Cuban Petitioners, filed a Petition for Writ of Habeas Corpus Case No. 2:25-cv-12782-SDK-APP. At the time of filing, Yanier believed he was being detained pursuant to INA §235 as ACC Garcia had represented to the IJ during the bond proceedings on August 29, 2025.

34. As part of the proceedings, the Respondents submitted a declaration from ICE – Det Officer Michael Pinson that an arrest warrant pursuant to INA §236 had been issued in the recent detention of Yanier. (Ex. 5 – Warrant for Arrest) This was the first time that INA §236 was mentioned as the statutory authority for Yanier’s recent detention.

35. Upon learning of this, the Petitioner and the Respondents stipulated to dismiss the Petition for Writ of Habeas Corpus Case No. 2:25 cv-12782-SDK-APP as there was no longer an issue about mandatory redetention. This stipulation was filed with the Court on September 24, 2025.

36. The following day, Yanier filed a subsequent request for a bond with the

Immigration Court in Detroit, Michigan on September 25, 2025. However, Yanier is not automatically entitled to a second bond hearing. “If an Immigration Judge or the Board of Immigration Appeals has previously ruled in bond proceedings involving an alien, a subsequent request for a bond hearing must be in writing, and the alien must show that his or her circumstances have changed materially since the last decision. In addition, the request must comply with the requirements listed in subsection (c)(1), above. 8 C.F.R. § 1003.19(e).” Immigration Court Practice Manual Chapter 9 - Detention and Bond 9.3(c)(4) found at <https://www.justice.gov/eoir/reference-materials/ic/chapter-9/3> As is stated in the Court practice manual, there must be a material change in Yanier’s circumstances. There is no provision for a second bond motion when the government, itself, misrepresents to the immigration court.

37. It has been nine (9) days since the second bond motion was filed and there has been no indication that this second bond motion will even be considered.

38. Yanier has been unlawfully detained for 53 days to date. Since the bond hearing at which he would most likely have been released, he has been detained for 36 days. An extra 36 days due to the misrepresentation of Respondent ICE’s attorney.

## **VI. APPLICABLE LAW**

39. The Court has broad, equitable authority under the habeas statute, 28

USC 2241, 2243 and the common law, to dispose of Petitioners' cases as law and justice require, based on the facts and circumstances of these cases, in order to remedy Petitioners' unlawful detention to which they can be subjected at any time.

40. The Court should exercise this authority to grant Petitioners' habeas corpus petition and to fashion any and all additional relief, necessary to effectuate Petitioner's Yanier's expeditious release from unlawful detention. In the absence of such relief, Petitioner Yanier is suffering and will continue to suffer irreparable harm.

41. The Due Process Clause provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. In this case there has been absolutely no due process of law. Consistent with the Due Process clause of the Fifth Amendment to the U.S. Constitution, ICE must release detainees where civil detention has become punitive and where release is the only remedy to prevent this impermissible punishment. Due to the circumstances of this case, the deception involved in Yanier's arrest and detention, and the misrepresentations to counsel, and the misrepresentations to the immigration court at the bond hearing, one can only surmise that Yanier's detention is punitive in nature.

42. The Fourth Amendment of the U.S. Constitution protects against unreasonable search and seizures which include the arrest of persons without probable cause. "The Fourth Amendment guarantees the right of the individual to

be secure against unreasonable arrests as well as against unreasonable search of houses and seizure of papers and effects." *Worthington v. United States*, 166 F.2d 557 (6th Cir. 1948)

43. 8 U.S.C. §1225(a)] Inspection.-- 235(a)(1) [1225(a)(1)] Aliens treated as applicants for admission.--An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this Act an applicant for admission. See also, *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (explaining that 8 U.S.C. § 1225(b)(2)'s mandatory detention scheme applies to noncitizens "seeking admission into the United States.")

44. 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. See 8 U.S.C. § 1229(a). Individuals in Section 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c)

## **VII. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

45. There is no applicable statute or rule mandates administrative exhaustion. Whether to require exhaustion is thus within the district court's "sound judicial

discretion.” *Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013) (citation omitted). *Island Creek Coal Co. v. Bryan*, 937 F.3d 738, 746 (6th Cir. 2009) The Sixth Circuit has not decided whether courts should impose administrative exhaustion in the context of a noncitizen's habeas petition for unlawful mandatory detention. But even if a court would ordinarily enforce prudential exhaustion, it may still choose to waive such exhaustion. *Lopez-Campos*, 2025 WL 2496379, (E.D. Mich. Aug. 29., 2025) at \*4. For example, when the “legal question is fit for resolution and delay means hardship,” a court may choose to decide the issues itself. *Shalala v. Ill. Council on Long Term Care ,Inc.*, 529 U.S. 1, 13 (2000) (citation omitted). A court may also excuse exhaustion if the “pursuit of administrative remedies would be a futile gesture.” *Shearson*, 725 F.3d at 594 (citation omitted).

46. In this case, there are no administrative remedies to exhaust since there are no provisions for a second bond motion unless there is a change in the person’s circumstances. And Yanier has filed another bond motion but there has been no response from any of the Respondents.

47. Given the Respondents’ actions in this case which include failure to communicate with counsel, deception and misrepresentation, there is no guarantee that Yanier will be provided with a bond hearing or even a fair bond hearing.

48. Yanier faces significant hardship should the Court refrain from deciding the issue in favor waiting to determine whether the immigration court would even

consider his second bond motion. Courts may waive exhaustion requirements when an administrative remedy is subject to “an unreasonable or indefinite timeline.” *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992).

## CAUSES OF ACTION

### FIRST CLAIM FOR RELIEF VIOLATION OF DUE PROCESS FIFTH AMENDMENT OF THE US CONSTITUTION

49. Petitioners reallege the foregoing paragraphs as if set forth fully herein.

50. The Fifth Amendment of the Constitution guarantees that civil detainees, including all immigrant detainees, may not be subjected to punishment. The federal government also violates substantive due process when it subjects civil detainees to cruel treatment and conditions of confinement that amount to punishment.

51. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001)

52. The Supreme Court has long made clear that, where the government seeks to deprive an individual of a “particularly important individual interest[],” it must bear the burden of justifying this deprivation by clear and convincing evidence.

*Addington v. Texas*, 441 U.S. 418, 424 (1979). Yanier suddenly detained without explanation. He has a significant interest at stake, and a “clear and convincing” evidence standard provides the appropriate level of procedural protection. *Id.* at 423.

53. The Respondents, without affording Yanier due process, through their actions believe that they can detain Yanier without access to request a bond from a court.

54. To comport with substantive due process, civil immigration detention must bear a reasonable relationship to its two regulatory purposes— (1) to ensure the appearance of noncitizens at future hearings and (2) to prevent danger to the community pending the completion of removal. *Zadvydas*, 533 U.S. at 690-91.

## **SECOND CLAIM FOR RELIEF VIOLATION OF FOURTH AMENDMENT**

55. Petitioner realleges the foregoing paragraphs as if set forth fully herein.

56. The Fourth Amendment protection against “unreasonable searches and seizures” is a protection against “arrest without probable cause.” *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *U.S. v. Avery*, 128 F.3d 974 (6th Cir. 1997)

57. When Yanier was arrested at USCIS Detroit, the Respondents lacked any information of changed or exigent circumstances that would justify such sudden

detention. Nothing had changed since he was released at the border by the Respondent over 3 years ago. Rather, his equities for release have increased since that time.

**THIRD CLAIM FOR RELIEF  
VIOLATION OF THE  
IMMIGRATION AND NATIONALITY ACT**

58. Petitioner realleges the foregoing paragraphs as if set forth fully herein.

59. 8 U.S.C. § 1226 mandates that a person be provided a bond redetermination hearing before an immigration court.

60. The Respondents have continuously deprived Yanier of a bond hearing to which he is entitled to under the INA.

**VIII. CONCLUSION**

THEREFORE, the Petitioners respectfully request that this Court:

- a. Issue a Writ of Habeas Corpus on the ground that the continued detention of Yanier violates the Due Process Clause and order Petitioner Yanier's immediate release;
- b. In the alternative order that Respondent EOIR hold a bond hearing within 3 days;
- c. Find that the Respondents have acted in bad faith in violating the U.S.

Constitution and the INA;

d. Award Plaintiffs their costs and reasonable attorneys' fees in this action.

e. Any other relief the Court deems appropriate.

Respectfully submitted:

s/Caridad Pastor

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