

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Mr. Enrique PORTILLA GUEVARA,



Petitioner-Plaintiff,

v.

Russel Hott, Director of Chicago, Illinois,
Office of Detention and Removal, U.S. Immigrations and
Customs Enforcement; U.S. Department of Homeland
Security;

Samuel OLSON, Acting Field Office Director of Chicago,
Illinois, Office of Detention and Removal, U.S.
Immigrations and Customs Enforcement; U.S. Department
of Homeland Security;

Todd M. LYONS, Acting Director, Immigration and
Customs Enforcement, U.S. Department of Homeland
Security;

Kristi NOEM, in her Official Capacity, Secretary, U.S.
Department of Homeland Security; and

Pam BONDI, in her Official Capacity, Attorney General of
the United States;

Respondents-Defendants.

Case No.

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

Challenge to Unlawful Incarceration
Under Color of Immigration
Detention Statutes; Request for
Declaratory and Injunctive Relief

1. Petitioner Portilla-Guevara, working in Niles, Illinois, was arrested on October 6, 2025 for civil immigration violations and is currently being held the processing center in Broadview, Illinois.

2. He was detained without reasonable suspicion, without an arrest warrant signed by a Magistrate and in violation of the immigration regulations and Due Process Clause.
3. Petitioner faces transfer outside of this judicial district and away from his family and legal representation. He also faced imminent removal from the United States, despite a pending appeal with the Board of Immigration Appeals.
4. Petitioner seeks an order from this Court that he be released from custody, and, in the interim, an order from the Court that he are not removed from this judicial district or removed from the United States, pending disposition of their petition for writ of habeas corpus.

JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. § 2241 (federal habeas statute); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201-2 (declaratory judgment); United States Constitution Article I, Section 9 (Suspension Clause).
6. Venue properly lies within the Northern District of Illinois under 28 U.S.C. § 1331, because this is a civil action in which Respondents are agencies of the United States, Petitioner is currently detained in this district, and because a substantial part of the events or omissions giving rise to this action occurred in the District.

PARTIES

7. Petitioner, Mr. Enrique Portilla Guevara, resides in Round Lake, Illinois and is currently detained at Broadview, Illinois.
8. Samuel OLSON is the Field Office Director of ICE, in Chicago, Illinois and is named in his official capacity. ICE is the component of the DHS that is responsible for detaining

and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of Petitioner.

9. Respondent Rush HOLT is the Director of ICE Officer in Chicago, Illinois and is named in his official capacity.
10. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Petitioner.
11. Respondent Kristi NOEM is the Secretary of the DHS and is named in her official capacity. DHS is the federal agency encompassing ICE, which is responsible for the administration and enforcement of the INA and all other laws relating to the immigration of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the administration and enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); see also 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal custodian of Petitioner.
12. Respondent Pam BONDI is the Attorney General of the United States and the most senior official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She has the authority to interpret the immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

FACTS

13. Petitioner entered the US on or about April 1989 without inspection. Since that time, he has never left, established steady work history and provided for his wife and three US citizen children. Petitioner is the primary provider for his family and is a dedicated to providing for his wife and children. (*See Exhibit A, Marriage Certificate and Birth Certificates of Children*).
14. On or about March 2010, Petitioner was placed in removal proceedings and during the course of those proceedings, sought relief under INA Cancellation of Removal for Certain Non-Residents under INA § 240(b)(1). Throughout the course of his proceedings, Petitioner timely filed supporting documentation.
15. During the course of proceedings, Petitioner was never detained by ICE.
16. On July 18 2022, the Court held Petitioner's merits hearing in which Petitioner provided testimony in support of his relief.
17. On April 20, 2023, the Immigration Judge denied Respondent his application for relief.
18. On May 19, 2023, Respondent, through his Immigration Counsel, filed a timely appeal with the BIA. Generally, a direct appeal of an immigration court decision ordering removal is reserved, removal is automatically stayed during the 30-day period for filing the Notice of Appeal with the BIA, and if the appeal of an immigration court decision ordering removal is timely filed, removal is stayed pending adjudication of the appeal by the BIA. 8 C.F.R. §1003.6(a). (*See Exhibit B, Filing Receipt*)
19. Petitioner's appeal continues to be pending. (*See Exhibit C, Appeal Status*).
20. On October 6, 2025, without cause or notice, Respondents unlawfully arrested Petitioner while at a job site.

21. Respondents did not have probable cause for Petitioners' arrest or a valid warrant for Petitioners' arrest.
22. Respondents did not make an individualized finding of flight risk.
23. Respondents did not identify themselves as immigration agents and did not inform Petitioner of the basis for his arrest.
24. Petitioner is now being processed for removal proceedings to be removed from the United States despite his pending appeal.
25. Petitioner now faces imminent transfer outside of this judicial district and face removal from the United States.

**CAUSES OF ACTION
COUNT ONE**

**Violation of 8 U.S.C. § 1357(a)(2):
Warrantless Arrests Without Probable Cause of Flight Risk**

26. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
27. Respondents ICE arrested Petitioner without probable cause and without warrants. Before each arrest, Respondents failed to make an individualized finding of flight risk. The failure to meet these requirements is a violation of 8 U.S.C. § 1357(a)(2).

COUNT TWO
Violation of 8 C.F.R. § 287.8(c)(2)(ii):
Warrantless Arrests Without Probable Cause of Flight Risk

28. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
29. Respondents ICE arrested Petitioner without a warrant and without "reason to believe" that they were "likely to escape before a warrant can be obtained" in violation of 8 C.F.R.

§ 287.8(c)(2)(ii). The reason to believe standard meets the probable cause standard of the Fourth Amendment. *Perez Cruz v. Barr*, 926 F.3d 1128, 1137 (9th Cir. 2019). Arrest in violation of the regulation is unlawful. See *Sanchez v. Sessions*, 904 F.3d 643, 650 (9th Cir. 2018); *Perez Cruz v. Barr*, 926 F.3d 1128, 1137 (9th Cir. 2019).

COUNT THREE
Fourth Amendment: Arrests Without Probable Cause

30. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
31. The Fourth Amendment prohibits Respondents from conducting arresting an individual for an immigration violation without probable cause.
32. Respondents ICE arrested Petitioner without probable cause that any of them was a noncitizen unlawfully in the United States.

COUNT FOUR
(Failure to Identify Officers and Basis for Arrest in Violation of 8 C.F.R. § 287.8(c)(3))

33. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
34. The regulations require arresting officers identify themselves as “an immigration officer who is authorized to execute an arrest” and “state that the person is under arrest and the reason for the arrest.” 8 C.F.R. § 287.8(c)(3).
35. Respondent ICE failed to identify themselves at the time of arrest and failed to inform Petitioners of the reasons for their arrest.

COUNT FIVE
(Violation of Due Process)

36. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.
37. 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).
38. The government’s detention of Petitioner violates his rights to due process because they have been detained without lawful authority, infringing on their fundamental right to liberty.

COUNT 5

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)
Abuse of Discretion Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)

39. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
40. Under the APA, a court shall “hold unlawful and set aside agency action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A). An action is an abuse of discretion if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

41. To survive an APA challenge, the agency must articulate “a satisfactory explanation” for its action, “including a rational connection between the facts found and the choice made.” Dep’t of Com. v. New York, 139 S. Ct. 2551, 2569 (2019) (citation omitted).
42. By categorically revoking Petitioner’s release and seeking to transfer him away from the district without consideration of his individualized facts and circumstances, Respondents have violated the APA.
43. By detaining and transferring the Petitioner categorically, Respondents have further abused their discretion because there have been no changes to his facts or circumstances since the agency made its initial custody determinations that support the revocation of his release from custody.
44. Respondents have already considered Petitioner’s facts and circumstances and determined that he was not a flight risk or danger to the community. There have been no changes to the facts that justify this revocation of his release on his own recognizance. The fact that Petitioner has already been granted release by Respondents under the same facts and circumstances shows that Respondents do not consider him, on an individualized basis, to be a danger to the community or a flight risk. Moreover, Respondents have even lessened the conditions of his release by relieving him of wearing an electronic ankle monitor device.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Declare that Petitioners are detained in violation of law;
- (3) Enjoin Respondents from transferring Petitioners outside of this judicial

district during the pendency of removal proceedings;

(4) Enjoin Respondents from removing Petitioners from the United States without the procedures for removal identified in the Immigration and Nationality Act;

(5) Order the immediate release of Petitioners pending these proceedings;

(6) Award costs and reasonable attorney fees incurred under this action under 28 U.S.C. § 2412, et. seq. (Equal Access to Justice Act); and

(7) Grant any further relief that this Court may deem fit and proper.

Dated this 7th of October, 2025

Respectfully Submitted,



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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this 7th of October, 2025 in Roselle, Illinois.



Alshari Khan, Esq.
Attorney for Petitioner