

JURISDICTION AND VENUE

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

5. Venue is proper because Petitioners are currently detained in the District of Rhode Island.

6. The claims in this matter are appropriately joined under Federal Rule of Civil Procedure 18(a) because all Petitioners' claims are made against the same Respondents.

7. The parties in this matter are appropriately joined under Federal Rule of Civil Procedure 20(a)(1)(A) because the Plaintiffs assert a right to relief jointly or severally with respect to and arising out of the same series of transactions or occurrences, namely the unlawful denial of an individualized custody determination under the correct legal standard.

PARTIES

8. Petitioner Juan Tejada Polanco ("Mr. Tejada Polanco") is a citizen of the Dominican Republic. He is currently in ICE custody at the Donald W. Wyatt Detention Facility.

9. Petitioner Freddy Quizhpi Sibri ("Mr. Quizhpi Sibri") is a citizen of Ecuador. He is currently in ICE custody at the Donald W. Wyatt Detention Facility.

10. Petitioner Rony Pineda ("Mr. Pineda") is a citizen of Guatemala. He is currently in ICE custody at the Donald W. Wyatt Detention Facility.

11. Respondent Patricia Hyde is the New England Field Office Director for ICE. She is a legal custodian of Petitioners and is named in her official capacity.

12. Respondent Michael Nessinger is the Warden of Wyatt and has physical and administrative custody over Petitioners. He is named in his official capacity.

13. Respondent Todd Lyons is the Acting Director of ICE. He is a legal custodian of

Petitioners and is named in his official capacity.

14. Respondent Kristi Noem is the U.S. Secretary of Homeland Security. She is a legal custodian of Petitioners and is named in her official capacity.

STATEMENT OF FACTS

15. Mr. Tejada Polanco is a citizen of the Dominican Republic. He is 52 years old. He entered the United States without inspection in approximately 2005. Upon information and belief, he has no criminal convictions and no pending charges. He has had no previous contact with immigration authorities.

16. Mr. Tejada Polanco was arrested in Massachusetts about two months ago by ICE. Mr. Tejada Polanco is now detained at the Donald W. Wyatt Detention Facility in Central Falls, Rhode Island. Upon information and belief, ICE arrested Mr. Tejada Polanco pursuant to its discretionary detention authority pursuant to 8 U.S.C. § 1226(a).

17. ICE placed Mr. Tejada Polanco in removal proceedings before the Chelmsford Immigration Court pursuant to 8 U.S.C. § 1229a.

18. Mr. Quizhpi Sibri is a citizen of Ecuador. He is 24 years old. He entered the United States without inspection in approximately 2019. Upon information and belief, he has no criminal convictions and no pending charges. He has had no previous contact with immigration authorities.

19. Mr. Quizhpi Sibri was arrested in Massachusetts by ICE on his way to work. Mr. Quizhpi Sibri is now detained at the Donald W. Wyatt Detention Facility in Central Falls, Rhode Island. Upon information and belief, ICE arrested Mr. Quizhpi Sibri pursuant to its discretionary detention authority pursuant to 8 U.S.C. § 1226(a).

20. ICE placed Mr. Quizhpi Sibri in removal proceedings before the Chelmsford Immigration Court pursuant to 8 U.S.C. § 1229a.

21. Mr. Pineda is a citizen of Guatemala. He is 57 years old. He entered the United States without inspection in approximately 1997. Upon information and belief, he has no criminal convictions. He has had no previous contact with immigration authorities.

22. Mr. Pineda was arrested in Rhode Island by ICE. Mr. Pineda is now detained at the Donald W. Wyatt Detention Facility in Central Falls, Rhode Island. Upon information and belief, ICE arrested Mr. Pineda pursuant to its discretionary detention authority pursuant to 8 U.S.C. § 1226(a).

23. ICE placed Mr. Pineda in removal proceedings before the Chelmsford Immigration Court pursuant to 8 U.S.C. § 1229a.

LEGAL FRAMEWORK

24. Petitioners cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(1), because Petitioners do 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).

25. Petitioners cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2), including because, someone already present in the United States, Petitioners are not currently “seeking admission” to the United States. *See Rodriguez v. Nessinger*, No. 25-cv-505-MSM-AEM, at *2 (D.R.I. Oct. 17, 2025) (McElroy, J.); *Romero v. Hyde*, __ F.3d __, No. 25-11631, 2025 WL 2403827, at *1, 8-13 (D. Mass. Aug. 19, 2025) (Murphy, J.).

26. On information and belief, Petitioners were not, at the time of arrest, paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A), and therefore Petitioners cannot “be returned” under that provision to mandatory custody under 8 U.S.C. § 1225(b) or any other form of custody. Petitioners are not subject to mandatory detention under § 1225 for this reason as well.

27. Instead, as a person arrested inside the United States and held in civil immigration detention, Petitioners are subject to detention, if at all, pursuant to 8 U.S.C. § 1226. *See Romero*, 2025 WL 2403827, at *1, 8-13 (collecting cases).

28. Petitioners not lawfully subject to mandatory detention under 8 U.S.C. § 1226(c), including because they have 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).

29. Accordingly, Petitioners are subject to detention, if at all, under 8 U.S.C. § 1226(a).

30. As someone detained under 8 U.S.C. § 1226(a), Petitioners must, upon their request, receive a custody redetermination hearing (colloquially called a “bond hearing”) with strong procedural protections. *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).

31. Petitioners request such a bond hearing to be conducted by an Immigration Judge.

32. 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 that purports to require the Immigration Court to unlawfully deny a bond hearing to all persons such as Petitioners. The *Yajure Hurtado* decision represents a dramatic change in long-standing agency interpretation and application of the Immigration and Nationality Act.¹

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). *See also* Order dated Sept. 8, 2025, *Alfredo Jose Jimenez v. FCI Berlin, Warden*, Case No. 25-cv-326-LM-AJ (D.N.H.) (Slip op. at 24, n. 9) (“the court is not persuaded by the BIA’s analysis in” *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)).

33. By issuance of the *Yajure Hurtado* decision, the responsible administrative agency has predetermined that Petitioners will be denied bond hearings.

34. Petitioners are being irreparably harmed by their ongoing unlawful detention without a bond hearing. *See Romero*, 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”).

35. The Immigration Court lacks jurisdiction to adjudicate the constitutional claims raised by Petitioners, and any attempt to raise such claims 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).

36. There is no statutory requirement for Petitioners 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 require by statute in this context.”); *Romero*, 2025 WL 2403827, at *6-8.

37. Accordingly, there is no requirement for Petitioners 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).

CLAIMS FOR RELIEF

COUNT ONE
Violation of 8 U.S.C. 1226(a) and Associated Regulations

38. Petitioners incorporate by reference the allegations of fact set forth in the preceding paragraphs.

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

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

41. Petitioners have not been, and will not be, provided with a bond hearing as required by law.

42. Petitioners' 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))

43. Petitioners incorporate by reference the allegations of fact set forth in the preceding paragraphs.

44. Because Petitioners are persons arrested inside the United States and are 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 Petitioners 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.

45. Petitioners have not been, and will not be, provided with a bond hearing as required by law.

46. Petitioners' 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)

47. Petitioners incorporate by reference the allegations of fact set forth in the preceding paragraphs.

48. “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).

49. 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.

50. “[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”).

51. “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).

52. 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).

53. Petitioners were arrested inside the United States and are being held without being provided any individualized detention hearing.

54. Petitioners' 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)

55. Petitioners incorporate by reference the allegations of fact set forth in the preceding paragraphs.

56. Because Petitioners are 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).

57. Petitioners' detention is therefore unlawful regardless of what statute might apply to purportedly authorize such detention.

PRAYER FOR RELIEF

Wherefore, Petitioners respectfully request 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) Declare that Petitioners' detention is unlawful absent a bond hearing before an Immigration Judge;
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioners immediately, or, in the alternative, provide Petitioners with a bond hearing and order Petitioners' release on conditions the Court deems just and proper;
- (5) Award Petitioners' attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law;
- (6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Carl Hurvich
Carl Hurvich

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

Pro bono counsel for Petitioners

Dated: October 23, 2025

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

I, Carl Hurvich, declare as follows:

I am an attorney admitted to practice law in the State of Rhode Island. Because many of the allegations of this Petition require a legal knowledge not possessed by Petitioners, I am making this verification on their behalf. I have read the foregoing Petition for Writ of Habeas Corpus and know the contents thereof to be true to my knowledge, information, or belief.

I certify under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 23, 2025.

/s/ Carl Hurvich
Carl Hurvich

Certificate of Service

I, Carl Hurvich, certify that on this 23rd day of October, 2025, I caused a copy of the foregoing Petition to be served on Respondents' counsel via the CM/ECF platform.

/s/ Carl Hurvich
Carl Hurvich