

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

JULIO EFRAIN CRIOLLO AYAVACA,)	
)	Case No. _____
Petitioner,)	
)	PETITION FOR WRIT OF
v.)	HABEAS CORPUS
)	
PATRICIA HYDE, Field Office Director,)	
MICHAEL KROL, HSI New England Special)	
Agent in Charge, and TODD LYONS, Acting)	
Director U.S. Immigrations and Customs)	
Enforcement, KRISTI NOEM, U.S. Secretary)	
of Homeland Security, PAM BONDI, United States)	
Attorney General, and MICHAEL NESSINGER,)	
Warden of the Donald W. Wyatt Detention Facility)	
)	
Respondents.)	
_____)	

INTRODUCTION AND ALLEGED FACTS

1. Petitioner, Julio Efrain Criollo Ayavaca, [hereinafter, “Julio”], is an Ecuadorian national who entered the United States without inspection in 1989, at 15 years old, without detection by the DHS. He has been present in the United States since his initial entry.
2. On August 14, 2025, Julio was stopped by DHS officials while driving. He was not arrested for committing any crime but was stopped by DHS officials due to his resemblance to another individual they were seeking. (Exhibit 1 and 2). He readily admitted to being present in the United States without proper documentation. He was taken into ICE custody and has been in ICE custody since that time. He is currently detained at the Wyatt Detention Facility, in Rhode Island.

3. On August 19, 2025, five days after his initial detention, he was placed in removal proceedings with the Issuance of a Notice to Appear, where DHS determined he was an alien present in the United States who has not been admitted or paroled. (Exhibit 3).
4. Shortly after the issuance of the Notice to Appear, he sought release from detention with a Bond Re-Determination request. On September 11, 2025, Immigration Judge Yul-Mi Cho denied Julio a Bond, stating that he was ineligible for release due to an incorrect interpretation of the government's custodial authority from an Administrative Court, in particular *Q. Li*, 29 I&N Dec. 66 (BIA 2025) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). (Exhibit 4).
5. Julio has been in the United States for over twenty-five years, has been arrested solely one time in 2002 for DUI. (Exhibit 5) and is the Beneficiary of a Form I-130, Petition for Immediate Family Member, filed by his United States citizen daughter. (Exhibit 6). He is also eligible to see his Legal Permanent Residency status pursuant to 8 U.S.C. § 1229b(b).
6. Accordingly, to vindicate Petitioner's constitutional rights, this Court should grant the instant petition for a writ of habeas corpus.
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), including because, as a person already present in the United States, Petitioner 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).

9. On information and belief, 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 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 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).
14. 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

15. Petitioner is being irreparably harmed by his ongoing unlawful detention. *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”).
16. The Immigration Court lacks jurisdiction to adjudicate the constitutional claims raised by Petitioner, 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).
17. There is no statutory requirement for Petitioner 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.”).
18. Accordingly, there is no requirement for Petitioner to further exhaust administrative

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 Elias Escobar v. Hyde*, 2025 WL 2823324, at *3 (D. Mass. October 3, 2025) (rejecting the BIA’s reasoning in *Matter of Yajure Hurtado* because, in part, “the decision is inconsistent with other BIA decisions and with decades of the Department of Homeland Security’s practice”; *Chogllo Chafila v. Scott*, 2025 WL 2688541, at *7-8 (D. Me. Sept. 22, 2025) (same). *See also Ayala Casun v Hyde, et al*, 1:25-cv-00427 (D.R.I. 2025) and following cases.

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).

19. Petitioner asks this Court to find that he was unlawfully detained and order his immediate release.

JURISDICTION

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

21. Venue is proper because Julio is currently detained in the state of Rhode Island.

PARTIES

22. The Petitioner, Julio Efrain Criollo Ayavaca, is a 50 year old young man who lived with his family in Norwalk, Connecticut prior to his detention by the Respondents. He is the Beneficiary of a Form I-130, Petition for Immediate Family Member, filed by his United States citizen daughter. He is also eligible to see his Legal Permanent Residency status pursuant to 8 U.S.C. § 1229b(b).

23. Respondent Patricia Hyde is the New England Field Office Director for U.S. Immigration and Customs Enforcement.

24. Respondent Michael Krol is the New England Special Agent in Charge for Homeland Security Investigations for U.S. Immigration and Customs Enforcement.

25. Respondent Todd Lyons is the Acting Director for U.S. Immigration and Customs Enforcement.

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

27. Respondent is the United States Attorney General.
28. Respondent Michael Nessinger is the Warden for the Donald W. Wyatt Detention Center where the Petitioner is currently detained.
29. All respondents are named in their official capacities.
30. On information and belief, Petitioner is currently in custody in the State of Rhode Island, and one or more of the Respondents is his immediate custodian. He has been improperly denied Bond, with the Judge finding him ineligible for Bond.

CLAIMS FOR RELIEF

**COUNT ONE
Violation of Fifth Amendment Right to Due Process**

31. On information and belief, Petitioner is currently being arrested and detained by federal agents without cause and in violation of his constitutional rights to due process of law.

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 State 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) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment.
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.
- (6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

Dated: October 31, 2025

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