

UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF MICHIGAN

FILED - GR

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CLERK OF COURT

U.S. DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

BY:JMW SCANNED BY: JL, IL-M

Natalio Barco Rivera

Petitioner

v.

Kevin Raycraft, Acting Director of **Detroit** Field Office, U.S. Immigration and Customs Enforcement;

Todd Lyons, Acting Director, U.S. Immigration and Customs Enforcement;

Kristi Noem, Secretary of the U.S. Department of Homeland Security;

Rubicela Hernandez Franco, Superintendent of North Lake Correctional Facility

Respondents

) **PETITION FOR WRIT
OF HABEAS CORPUS**

1:25-cv-1454

Paul L. Maloney- U.S. District Judge
Maarten Vermaat - Magistrate Judge

PETITION FOR WRIT OF HABEAS CORPUS

UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF MICHIGAN

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| Natalio Barco Rivera |) | PETITION FOR WRIT OF |
| Petitioner |) | HABEAS CORPUS |
| |) | |
| v. |) | |
| |) | |
| Kevin Raycraft , Acting Director of Detroit Field Office, U.S. Immigration and Customs Enforcement; |) | |
| Todd Lyons , Acting Director, U.S. Immigration and Customs Enforcement; |) | |
| Kristi Noem , Secretary of the U.S. Department of Homeland Security; |) | |
| Rubicela Hernandez Franco , Superintendent of North Lake Correctional Facility |) | |
| Respondents |) | |
| |) | |

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, **Natalio Barco Rivera**, (Mr. Rivera) is a forty-one-year-old Mexican citizen who is eligible for asylum, withholding removal under Section 208 of the Immigration and Nationality Act (INA § 208; 8 U.S.C. § 1158). In the alternative, I am eligible for cancellation of removal for Certain Nonpermanent Residents, under Section 240 of the Immigration and

Nationality Act (INA § 240A(b); 8 U.S.C. § 1229b(b)) as I am the father of four American children.

2. Mr. Rivera entered the United States without inspection through Laredo, Texas, on February 10, 2004, and was never encountered by Border Patrol.
3. He is currently held at the North Lake Correctional Facility.
4. He has no criminal background.
5. He had been living in the United States for over twenty-one years prior to my detention.
6. In order to vindicate the Petitioner's constitutional, statutory, and regulatory rights, this Honorable Court should grant this instant Petition for a Writ of Habeas Corpus to ensure his continued freedom. Petitioner humbly asks this Honorable Court to find that his detention is unlawful and to order ICE to release him.

JURISDICTION

7. This instant action is rooted in the United States Constitution and the Immigration and Nationality Act (INA).
8. This Honorable court has jurisdiction over this matter under 28 U.S.C. § 2241 (Habeas Corpus), 28 U.S.C. § 1331 (Federal Question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause)

VENUE

9. Venue is proper because the Petitioner currently detained at the North Lake Correctional Facility, 1805 W. 32nd Street, Baldwin, Michigan 49304, United States. Therefore, the Petitioner remain detained within the jurisdiction of the Western District of Michigan.

REQUIREMENTS SET FORTH ON 28 U.S. U.S.C. § 2243

10. The Honorable Court must grant this instant petition for writ of habeas corpus or issue an order to show-cause to the respondents “forthwith”, unless the petitioner is not entitled to relief, 28 U.S.C § 2243. If an order to show cause is issued, the Honorable Court must require respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed”

PARTIES AND FACTS ALLEGED

11. The Petitioner, Mr. Rivera, is currently detained at the North Lake Correctional Facility.

12.Respondent Kevin Raycraft , in his official capacity as the acting director of Detroit field office, U.S. Immigration And Customs Enforcement (ICE).

13.Respondent Todd Lyons is sued in his capacity as the Acting Director for the U.S. Immigration and Customs Enforcement (ICE).

14.Respondent Kristi Noem is sued in her capacity as the Secretary of the U.S. Department of Homeland Security (DHS).

15.14. Rubicela Hernandez Franco, Superintendent of North Lake Correctional Facility

16.All respondents are named in their official capacities.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process Clause

17.The Fifth Amendment provided that “no person shall be deprived of life, liberty, or property without due process of law”

18.“[t]he Due Process clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary or permanent” *Zadvydas v. Davis*, 533 U.S. 693 (2001)

19.My mandatory detention without consideration for release on bond or access to a bond hearing violates his due process rights.

COUNT TWO

Violation of 8 U.S.C. § 1226(a) Unlawful Denial of Release on Bond

20. Mandatory detention as set forth on 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States whom are subject to the ground of inadmissibility, most relevant, it does not apply to those who previously entered the country and have been residing in the U.S. prior to being detained by Defendants, historically, such noncitizens would be detained under § 1226(a), and therefore, eligible for release on bond.

21. Nonetheless, the Board of Immigration Appeals, under the Department of Justice, issued a decision on September 5th, 2025, binding on all Immigration Judges, thus rendering the Petitioner ineligible for release on Bond. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

COUNT THREE

Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19

Unlawful Denial of Release on Bond

22. In 1997, following enactment of IIRIRA, EOIR and the Immigration and Naturalization Service issued an interim rule interpreting its detention provisions. Under the heading “Apprehension, Custody, and Detention of

[Noncitizens]," the agencies clarified that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Thus, individuals who entered without inspection are eligible for custody redetermination hearings under 8 U.S.C. § 1226 and its implementing regulations.

23. Application of 8 U.S.C. § 1225(b)(2) to Petitioner, who is bond-eligible, unlawfully mandates his continued detention in contravention of 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT FOUR
Violation of the Administrative Procedure Act Contrary to Law and
Arbitrary and Capricious Agency Policy

24. The Administrative Procedure Act ("APA") requires that a "reviewing court shall...hold unlawful and set aside agency action, findings, and conclusions found to be...arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

25. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens physically present in the United States who are subject to grounds of inadmissibility. Critically, it does not apply to those who have

already entered the country and resided here prior to being apprehended and placed into removal proceedings. Such individuals fall under 8 U.S.C. § 1226(a), which provides for release on bond absent applicability of § 1225(b)(1), § 1226(c), or § 1231.

26. Nevertheless, the Department of Homeland Security (DHS) and the Immigration Court have applied 8 U.S.C. § 1225(b)(2) to the detainees' cases, treating them as arriving aliens subject to mandatory detention under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
27. This application is arbitrary, capricious, and contrary to law, and therefore violates the APA. See 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

Wherefore, I, respectfully requests this Court to grant the following:

- 1) Assume jurisdiction over this matter;
- 2) Issue an Order to Show Cause ordering Respondents to show cause, why this Petition should not be granted within three days;
- 3) Order that Defendants not remove Petitioner from the State of Michigan;

- 4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment as well as the relevant statute and regulations governing detention of noncitizens;
- 5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately
- 6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- 7) Grant any further relief this Court deems just and proper.

Respectfully Submitted,

Natalio Barco Rivera

Petitioner

By and through undersigned counsel.

/S/ Stephen A. Lagana

Stephen A. Lagana, Esq.
Law Offices of Stephen A. Lagana
145 Essex Street
Lawrence, MA 01840
BBO# 565811

Dated: 11/13/2025

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

I represent Petitioner, **Natalio Barco Rivera** 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.

Respectfully Submitted,

Natalio Barco Rivera

Petitioner

By and through undersigned counsel.

/S/ Stephen A. Lagana

Stephen A. Lagana, Esq.
Law Offices of Stephen A. Lagana
145 Essex Street
Lawrence, MA 01840
BBO# 565811

Dated: 11/13/2025



ORIGIN ID: B11A (878) 794-2331
LAW OFFICE OF STEPHEN A. LAGANA
LAGANA & ASSOCIATES
145 ESSEX STREET

LAWRENCE, MA 01840
UNITED STATES US

SHIP DATE: 13 NOV 25
ACT WGT: 1.00 LB
CAD: 10016742/NET4535

BILL SENDER

TO: UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
399 FEDERAL BUILDING
110 MICHIGAN ST NW
ATTN: CLERK'S OFFICE
GRAND RAPIDS MI 49503

(878) 794-2331

IN:

PC

REF: NATALIO BARCO RIVERA

DEPT:

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