

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

JOSE ESTEVAN BARRERA RODRIGUEZ

Petitioner,

v.

PATRICIA HYDE, Field Office Director of  
Enforcement and Removal Operations, Boston  
Field Office, Immigration and Customs  
Enforcement; Kristi NOEM, Secretary, U.S.  
Department of Homeland Security; U.S.  
DEPARTMENT OF HOMELAND  
SECURITY; Pamela BONDI, U.S. Attorney  
General; EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW; MICHAEL  
NESSINGER, Warden of Wyatt Detention  
Facility,

Respondents.

Case No.

**PETITION FOR WRIT OF  
HABEAS CORPUS**

**INTRODUCTION**

1. Petitioner Jose Estevan Barrera Rodriguez<sup>1</sup> (“Petitioner” or “Mr. Barrera Rodriguez”) is a 19-year-old young man who arrived in this country at the age of eighteen in March 2024, after fleeing his home country of Honduras because he believed his life was in danger. He has been working as a landscaper in New Hampshire, he has no criminal convictions, and on November 6, 2025, the U.S. Immigration and Customs Enforcement (ICE) pulled him over while he was driving, removed him from his car, and detained him without any notice or opportunity to be heard.

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<sup>1</sup> Petitioner’s name is incorrectly spelled as “Jose Esteva Barrera Rodrigues” in DHS documents.

2. Currently Petitioner is the physical custody of Respondents at the Wyatt Detention Facility in Central Falls, RI, where he is separated from his job, community and prayer group.

3. Mr. Barrera Rodriguez is charged with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

4. Mr. Barrera Rodriguez is present in the United States and, on information and belief, the Department of Homeland Security (“DHS”) has alleged or will allege that Mr. Barrera Rodriguez was not admitted or paroled into the United States and is subject to mandatory detention without a bond hearing by an Immigration Judge.

5. Mr. Barrera Rodriguez requests that the Court order him immediately released and require Respondents to hold a bond hearing before an Immigration Judge if they wish to re-detain Mr. Barrera Rodriguez.

**REQUIREMENTS OF 28 U.S.C. § 2243 FOR PROMPT PROCESS**

6. A court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) 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 court must require respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

**JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction 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).

8. Venue is proper in this District because Petitioner is being held in Central Falls, RI, which is in this District. Venue is also proper in this District because Respondents are officers and employees of the United States and no real property is at issue. 28 U.S.C. § 1391(e).

**PARTIES**

9. Petitioner Jose Esteva Barrera Rodriguez is a citizen of Honduras. He is currently detained by Respondents at the Wyatt Detention Facility in Central Falls, RI. He entered the United States without inspection on or about March 25, 2024. *See* Notice to Appear attached hereto as Exhibit 1. He was apprehended and thereafter released on an Order of Release on Recognizance pursuant to 8 U.S.C. § 1226. *See* Exhibit 2 hereto. Mr. Barrera Rodriguez thereafter timely applied for asylum. Mr. Barrera Rodriguez was arrested on a warrant pursuant to 8 U.S.C. § 1226 on November 6, 2025. *See* Exhibit 3 hereto.

10. Respondent Patricia Hyde is the Director of the Boston Field Office of ICE's Enforcement and Removal Operations division. As such, Patricia Hyde is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She is named in his official capacity.

11. Respondent Kristi Noem is the U.S. Secretary of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA) and oversees ICE, which is responsible for Petitioner's detention. She is a legal custodian of Mr. Barrera Rodriguez and is named in her official capacity.

12. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

13. Respondent Pamela Bondi is the Attorney General of the United States. She is

responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

14. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

15. Respondent Michael Nessinger is employed by the Wyatt Detention Facility as the Warden of the Wyatt Detention Facility, where Petitioner is detained. He is the physical custodian of Mr. Barrera Rodriguez and is named in his official capacity.

#### **LEGAL FRAMEWORK**

16. Respondents have detained Mr. Barrera Rodriguez based on their claim that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). However, Mr. Barrera Rodriguez 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, Mr. Barrera Rodriguez is not currently “seeking admission” to the United States. *See Romero v. Hyde*, \_\_ F.3d \_\_, No. 25-11631, 2025 WL 2403827, at \*1, 8-13 (D. Mass. Aug. 19, 2025).

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

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

19. Mr. Barrera Rodriguez 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).

20. Accordingly, Mr. Barrera Rodriguez is subject to detention, if at all, only under 8 U.S.C. § 1226(a).

21. As a person detained under 8 U.S.C. § 1226(a), Mr. Barrera Rodriguez 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). *See also Rodriguez v. Nessinger*, No. 25-cv-505-MSM-AEM, at \*2 (D.R.I. Oct. 17, 2025) (McElroy, J.)

22. 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 Mr. Barrera Rodriguez.

The *Yajure Hurtado* decision represents a dramatic change in long-standing agency interpretation and application of the Immigration and Nationality Act.<sup>2</sup>

23. By issuance of the *Yajure Hurtado* decision, the responsible administrative agency has predetermined that Mr. Barrera Rodriguez will be denied a bond hearing.

24. Mr. Barrera Rodriguez is being irreparably harmed by his 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 his incarceration . . . or the ongoing deprivation of some other liberty interest”).

25. The Immigration Court lacks jurisdiction to adjudicate the constitutional claims raised by Mr. Barrera Rodriguez, 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).

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<sup>2</sup> The BIA’s reversal and 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).

26. There is no statutory requirement for Mr. Barrera Rodriguez 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.

27. Accordingly, there is no requirement for Mr. Barrera Rodriguez 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).

28. Based on these well-established principles, this court has specifically rejected the argument that exhaustion is required in a detained noncitizen’s challenge to the BIA’s decision in *Matter of Yajure Hurtado*. *See Ayala Casun v. Hyde*, No. 25-cv-427-JJM-AEM, 2025 WL 2806769, at \*3 (D.R.I. Oct. 2, 2025); *Rodriguez v. Bondi*, No. 25-cv-406-JJM-PAS, 2025 WL 2899769, at \*4 (D.R.I. Oct. 10, 2025).

### FACTS

29. Mr. Barrera Rodriguez is a 19-year-old young man from Honduras. He fled his home country because he believed his life was in danger, and he entered the United States on March 25, 2024.

30. He was detained shortly thereafter and was issued a Notice to Appear that charges him with being an alien present in the United States who had not been admitted or paroled. *See* Exhibit 1.

31. Petitioner was released on his own recognizance pursuant to 8 U.S.C. § 1226(a). *See* Exhibit 2.

32. Mr. Barrera Rodriguez timely filed an I-589 Application for Asylum and for Withholding of Removal on December 6, 2024, and received employment authorization.

33. Mr. Barrera Rodriguez has been working as a landscaper with a company based in New Hampshire, and people in the community have provided him with stability in his new country.

34. Mr. Barrera Rodriguez recently got his driver's license and was proud to receive a pay raise from his employer.

35. On November 6, 2025, more than a year and a half after he came to the United States, Mr. Barrera Rodriguez was apprehended by ICE officials in Nashua, New Hampshire, while he was driving his car with his new license. ICE removed him from his car, transported him to Manchester, NH, then to Burlington, MA, before sending him to Wyatt Detention Center in Rhode Island, where he remains incarcerated today.

36. Mr. Barrera Rodriguez has legal work authorization and no criminal convictions.

37. On November 18, 2025, immigration counsel entered an appearance in immigration court on behalf of Mr. Barrera Rodriguez and requested bond.

38. Because ICE has charged Mr. Barrera Rodriguez as being present without admission or parole, *see* Exhibit 1, Petitioner believes the Immigration Judge will determine that she does not have jurisdiction to hold a Bond hearing in this case.

39. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his community and unable to work.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

#### **Violation of 8 U.S.C. 1226(a) and Associated Regulations**

40. Mr. Barrera Rodriguez incorporates by reference the allegations of fact set forth in the preceding paragraphs.

41. Mr. Barrera Rodriguez may be detained, if at all, only pursuant to 8 U.S.C. § 1226(a).

42. Under § 1226(a) and its associated regulations, Mr. Barrera Rodriguez is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

43. Mr. Barrera Rodriguez has not been, and will not be, provided with a bond hearing as required by law.

44. Mr. Barrera Rodriguez' 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))

45. Mr. Barrera Rodriguez incorporates by reference the allegations of fact set forth in the preceding paragraphs.

46. Because Mr. Barrera Rodriguez is a person arrested inside the United States and is 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 Mr. Barrera Rodriguez 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.

47. Mr. Barrera Rodriguez has not been, and will not be, provided with a bond hearing as required by law.

48. Numerous judges have considered the applicability of 8 U.S.C. § 1226(a) (rather than Section 1225) in these circumstances, the right of a similarly situated detainee's right to receive a bond hearing, and the soundness of the BIA's position in *Matter of Yajure Hurtado*.

These judges have found Section 1226(a) to apply, concluded that access to a bond hearing was required, and, either expressly or implicitly, held the BIA's contrary view to be incorrect and unlawful. *See Tomas Elias v. Hyde*, No. 25-cv-00540-JJM-AEM, 2025 WL 3004437, at \*3 (D.R.I. Oct. 27, 2025); *Astudillo v. Hyde*, No. 25-551-JJM-AEM (D.R.I. Oct. 30, 2025); *Rodriguez v. Nessinger*, No. 25-cv-505-MSM-AEM, at \*2 (D.R.I. Oct. 17, 2025); *Guerrero Orellana v. Moniz*, 2025 WL 2809996 (D. Mass. 2025) (collecting cases).

49. Nearly every court nationwide to have considered these issues has come to the same conclusions. *See Guerrero Orellana v. Moniz, supra*, at \*5 (collecting cases).

50. Mr. Barrera Rodriguez' 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)**

51. Mr. Barrera Rodriguez incorporates by reference the allegations of fact set forth in the preceding paragraphs.

52. "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).

53. 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.

54. "[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”).

55. “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).

56. 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).

57. Mr. Barrera Rodriguez was arrested inside the United States and is being held without being provided any individualized detention hearing.

58. Mr. Barrera Rodriguez’ 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)**

59. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

60. Because Mr. Barrera Rodriguez is 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).

61. Mr. Barrera Rodriguez’ detention is therefore unlawful regardless of what statute might apply to purportedly authorize such detention.

**PRAYER FOR RELIEF**

Wherefore, Mr. Barrera Rodriguez 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) 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 is unlawful absent a bond hearing before an Immigration Judge;
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or, in the alternative, provide Petitioner with a bond hearing and order Petitioner’s release on conditions the Court deems just and proper;
- (6) Award Petitioner’s 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;
- (7) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Amy R. Romero

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*Pro bono counsel for Petitioner*

Dated: November 19, 2025