

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

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

**INTRODUCTION AND ALLEGED FACTS**

1. Petitioner, Marwell Picado [hereinafter, “Marwell”], is a Nicaraguan national who entered the United States without inspection in 2022. *See* Exhibit 1. He was detained by immigration officials upon entry into the United States and placed in removal proceedings. *See* Exhibit 2. He was released on parole and since then has been present in the United States awaiting his immigration hearing.
2. On October 11, 2025, Marwell was arrested by the Lincoln Police and charged with assault and disorderly conduct. *See* Exhibit 3. He was detained and later released. Without Petitioner’s knowledge, a hearing was scheduled in the Rhode Island Criminal Court for November 3, 2025, for him to answer to those charges. When he failed to appear, the court

issued a warrant for his arrest. On November 10, 2025, while at the Rhode Island DMV, Immigration Customs and Enforcement (“ICE”) officers arrested him.

3. He was taken into ICE custody and has been in ICE custody since his initial detention by ICE. He is currently detained at the Wyatt Detention Facility in Rhode Island.
4. On November 21, 2025, undersigned counsel submitted a Motion for Bond Re-determination with the Chelmsford Immigration Court. The Immigration Court scheduled the Bond Re-Determination hearing for December 4, 2025. On information and belief, the Petitioner believes the Immigration Judge will determine she does not have jurisdiction to hold a Bond hearing in his case because Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b).
5. 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).
6. 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.
7. 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. Under 8 U.S.C. § 1226, Petitioner is entitled to a bond hearing unless subject to mandatory detention. 8 U.S.C. § 1226(c).
8. 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).

9. Accordingly, Petitioner is subject to detention, if at all, under 8 U.S.C. § 1226(a).
10. 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) and 8 C.F.R. § 1003.19(a)-(f).
11. Petitioner has requested such a bond hearing.
12. 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.<sup>1</sup>
13. The responsible administrative agency has therefore predetermined that Petitioner will be denied a bond hearing.
14. Petitioner is being irreparably harmed by his ongoing unlawful detention without a bond hearing. *Ayala Casun v. Hyde*, No. 25- cv-427-JJM-AEM, 2025 WL 2806769, at \*3 (D.R.I. Oct. 2, 2025) (citing *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, 2025 WL 2607924, at \*6 (D. Mass. Sept. 9, 2025)); *see also Astudillo v. Hyde*, No. 25-551-JJM-AEM, 2025 WL 3035083 (D.R.I. Oct. 30, 2025); *Tomas Elias v. Hyde*, No. 25-cv-540-

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<sup>1</sup> The BIA’s reversal and newly revised interpretation of the statute is 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”); *Choglio Chafra v. Scott*, 2025 WL 2688541, at \*7-8 (D. Me. Sept. 22, 2025) (same).

JJM-AEM, 2025 WL 3004437 (D.R.I. Oct. 27, 2025); *Rodriguez v. Nessinger*, No. 25-cv-505-MSM-AEM, 2025 U.S. Dist. LEXIS 204998 (D.R.I. Oct. 17, 2025).

15. 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 455, 463 (Mass. 2010) (holding “exhaustion is excused by the BIA’s lack of authority to adjudicate constitutional questions and its prior interpretation” of the relevant statute).
16. 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.”).
17. Accordingly, there is no requirement for Petitioner 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).
18. 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*, supra:

a court may hear unexhausted claims in circumstances in which the interests of the individual weigh heavily against requiring administrative exhaustion.” *Flores-Powell v. Chadbourne*, 677 F.Supp.2d 455,463 (D. Mass. 2010) (cleaned up). Such a circumstance “exists when substantial doubt exists about whether the agency is empowered to grant meaningful redress” as well as “when the potential decisionmaker ... can be shown to have predetermined the issue.” *Id.*

*Inlago Tocagon v. Moniz*, No. 25-12453, 2025 WL 2778023 at \*2 (D. Mass Sept. 29,

2025).

19. Accordingly, to vindicate Petitioner's constitutional rights, this Court should grant the instant petition for a writ of habeas corpus.

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

### **JURISDICTION**

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

22. Venue is proper because Marwell is currently detained in the state of Rhode Island.

### **PARTIES**

23. The Petitioner, Marwell Picado, is a 30-year-old Nicaraguan man currently detained by ICE pending removal proceedings.

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

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

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

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

28. Respondent Pamela Bondi is the United States Attorney General.

29. Respondent Michael Nessinger is the warden of the Donald W. Wyatt Detention Center, where the Petitioner is detained.

30. All respondents are named in their official capacities.

31. 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 sought bond from the Immigration Court and, on information and belief, the Immigration Judge will find she has no Jurisdiction over his request for Bond.

**CLAIMS FOR RELIEF**

**COUNT ONE**

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

1. 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) If immediate release is not considered a viable option, Order the Immigration Court to hold the November 10, 2025 Custody Redetermination Hearing under 8 U.S.C. § 1226(a), and enjoin the Court from denying Petitioner bond on the basis that he is detained pursuant to 8 U.S.C § 1225(b)(1), or under *Matter of Yajure Hurtado*, supra.
- (7) Award attorney's fees under the Equal Access to Justice Act 28 U.S.C. § 2412(d) and 5 U.S.C. § 504, if applicable; and
- (8) Grant any further relief this Court deems just and proper.

Dated: November 21, 2025

Respectfully submitted,

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