

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

VICENTE MARTINEZ-RIOS,

Petitioner,

v.

Case No. 2:25-cv-1090

Garrett RIPA, Field Office Director of Enforcement and Removal Operations, Miami, 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; Matthew MORDANT, Warden of South Florida Detention Center,

Respondents.

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EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner, VICENTE MARTINEZ-RIOS, by and through undersigned counsel and pursuant to Federal Rule of Civil Procedure 65(a) and (b), M.D. Fla. L.R. 6.01, and M.D. Fla. L.R. 6.02(b), respectfully files this motion for expedited relief seeking entry of a temporary restraining order (“TRO”) by November 26, 2025, during

the pendency of this action seeking habeas relief to ensure Petitioner is provided with an individualized bond hearing before an Immigration Judge under 8 U.S.C. § 1226(a), as required under the Fifth Amendment of the United States Constitution.

INTRODUCTION

1. Petitioner VICENTE MARTINEZ-RIOS is in the physical custody of Respondents at the South Florida Detention Center. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

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

3. Petitioner VICENTE MARTINEZ-RIOS is a citizen of Mexico who has been in immigration detention since November 18, 2025. After arresting Petitioner in Pinellas County, Florida, ICE did not set bond and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

4. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

5. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

6. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

7. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

8. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA’s detention authorities. Courts have likewise rejected *Matter of Yajure*

Hurtado, which adopts the same reading of the statute as ICE. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

9. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

10. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

11. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have

already entered and were residing in the United States at the time they were apprehended.

FACTS

12. Petitioner has resided in the United States since on or about February of 2001, and lives in Haines City, Florida.

13. On November 18, 2025, Petitioner was arrested while driving in Pinellas County, Florida for operating a motor vehicle with no valid driver's license. Since September 2, 2025 his I-130 (Petition for Alien Relative) was approved, which was filed on his behalf by his U.S. citizen wife. Because Petitioner was taken into custody, he is now unable to utilize it to move forward in processing his lawful status, due to his detention.

14. Petitioner is now detained at the South Florida Detention Center.

15. DHS placed Petitioner in removal proceedings before the Miami Krome Immigration Court, pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, inter alia, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without admission or inspection.

16. Mr. Martinez-Rios has every reason to return to the Immigration Court, as of September 2, 2025, his Petition for Alien Relative, I-130, was received and approved. (See Ex. A). Mr. Martinez-Rios has secured a custodial sponsor, that has pledged to provide support and assistance as needed throughout his immigration proceedings. Mr. Martinez-Rios is not a danger to the community. Mr. Martinez-Rios has a fixed address to stay, should he be released on a monetary bond. Mr. Martinez-Rios intends to comply with any terms of release on monetary bond. Mr. Martinez-Rios will be represented by the undersigned during these proceedings. Mr. Martinez-Rios has friends and family that have pledged to provide transportation for him. Petitioner is neither a flight risk nor a danger to the community.

17. Following Petitioner's arrest and transfer to South Florida Detention Center, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

18. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider a bond request by Petitioner.

19. 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 family and community.

20. On November 25, 2025, Petitioner filed Petition for Writ of Habeas Corpus, challenging his illegal detention.

21. Also on November 25, 2025, a similarly situated detainee, Antonio Dejes Martinez Chavez, in consequence of undersigned counsel, on November 24, 2025, filing Petition for Writ of Habeas Corpus challenging Antonio Dejes Martinez Chavez's detention at the South Florida Detention Center, was transferred outside of the Middle District of Florida, without notice to counsel, and prior to a final order being entered on his Petition for Writ of Habeas Corpus. *See Martinez Chavez v. Ripa et al*, Case No. 2:25-cv-1088.

22. Pursuant to M.D. Fla. L.R. 6.02(b), Petitioner has established by clear and convincing evidence an extraordinary circumstance not requiring notice. (*See Ex. A*).

LEGAL STANDARD

“A plaintiff seeking a preliminary injunction must establish that ... the balance of equities tips in [their] favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555

U.S. 7, 20 (2008). The Court should grant a preliminary injunction if Petitioner establishes: (1) “a substantial likelihood of success on the merits,” (2) “that the preliminary injunction is necessary to prevent irreparable injury,” (3) “that the threatened injury outweighs the harm the preliminary injunction would cause the other litigant[s],” and (4) “that the preliminary injunction would not be averse to the public interest.” *Chavez v. Fla. SP Warden*, 742 F.3d 1267, 1271 (11th Cir. 2014). The same test applies to a motion for a temporary restraining order. *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005).

ARGUMENT

I. Petitioner is Likely to Succeed on the Merits.

Following Petitioner’s arrest and transfer to South Florida Detention Center, ICE issued a custody determination to continue Petitioner’s detention without an opportunity to post bond or be released on other conditions. Pursuant to *Matter of Yajure Hurtado*, an immigration judge is unable to consider a bond request by Petitioner.

The Due Process Clause prohibits deprivations of life, liberty, and property without due process of law. U.S. Const. amend. V. It is

firmly established that these protections extend to noncitizens present in the United States. *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001) (“[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.”); *Wong Wing v. United States*, 163 U.S. 228, 238, 16 S.Ct. 977, 41 L.Ed. 140 (1896) (“It must be concluded that all persons within the territory of the United States are entitled to the protection guaranteed by [the Fifth Amendment], and that even aliens shall not ... be deprived of life, liberty, or property without due process of law.”); *Trump v. J. G. G.*, — U.S. —, 145 S. Ct. 1003, 1006, 221 L.Ed.2d 529 (2025) (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993)) (cleaned up) (“It is well established that the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.”).

“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects.” *Zadvydas*, 533 U.S. at 690, 121 S.Ct. 2491. Generally, the Due Process Clause “requires some kind of a hearing before the State deprives a person of liberty

or property.” *Zinerman v. Burch*, 494 U.S. 113, 127, 110 S.Ct. 975, 108 L.Ed.2d 100 (1990). Even individuals who face significant constraints on their liberty or over whose liberty the government wields significant discretion retain a protected interest in their liberty. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (“The fact that a decision-making process involves discretion does not prevent an individual from having a protectable liberty interest.”); *Hurd v. D.C., Gov’t*, 864 F.3d 671, 683 (D.C. Cir. 2017) (holding that re-detention after pre-parole conditional supervision requires a pre-deprivation hearing); *Gagnon v. Scarpelli*, 411 U.S. 778, 782, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972) (same, in parole context).

Applying these principles, it is clear that Mr. Martinez-Rios has a protected liberty interest in being free from official restraint. Respondent(s) are unlawfully detaining Petitioner under § 1225(b)(2), which mandates his detention, instead of under § 1226(a)’s discretionary detention scheme, where Petitioner could be eligible for release. As a result, Petitioner’s continued detention without a bond hearing is unconstitutional.

The Supreme Court recently analyzed the interplay between § 1225 and § 1226 in *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). There, the Court observed that the decision of who may enter this country and who may remain “generally begins at the Nation’s borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible.” *Jennings*, 583 U.S. at 287. As relevant here, the Court explained that § 1225 “applies primarily to aliens seeking entry into the United States.” *Id.* at 297. By contrast, § 1226 “applies to aliens already present in the United States.” *Id.* at 303. “Section 1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings.” *Id.* “Section 1226(a) also permits the Attorney General to release those aliens on bond[.]” *Id.*

Against this backdrop, every court to address the question presented here has found that an alien who is not presently seeking admission and has been in the United States for an extended time, like Mr. Martinez-Rios, is appropriately classified under § 1226(a) and not § 1225(b)(2)(A). These courts have also either ordered the alien’s release or required a bond hearing—the exact relief Mr.

Martinez-Rios seeks. *See, e.g., Pizarro Reyes*, 2025 WL 2609425; *Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025).

Mr. Martinez-Rios would be deprived of his due process protections under the Fifth Amendment if he were transferred outside of this Court's jurisdiction and subjected to removal, expedited or otherwise, without first providing Petitioner a bond hearing pursuant to Section 1226(a). Therefore, Mr. Martinez-Rios has a due process right to have his Petition for Writ of Habeas Corpus decided prior to removal proceedings. Additionally, expedited removal under 8 U.S.C. § 1225(b) does not afford him access to an Immigration Judge or courts of appeals.

Indeed, under 8 U.S.C. § 1225(b), the removal decision is delegated to immigration enforcement officials. 8 U.S.C. § 1225(b)(1)(A)(i) ("If an immigration officer determines that [a noncitizen] ... is inadmissible ..., the officer shall order the alien removed from the United States without further hearing or review"); *id.* § 1225(b)(1)(C) ("[A] removal order entered in accordance with subparagraph (A)(i) ... is not subject to administrative appeal"). In

contrast, under 8 U.S.C. § 1226, a noncitizen is entitled to procedural protections that are not afforded under the expedited removal statute. See 8 C.F.R. § 236.1 (2025) (enumerating the procedural protections).

Although the Government has a legitimate interest in the “prompt execution of removal orders,” *Hernandez-Lara v. Lyons*, 10 F.4th 19, 32 (1st Cir. 2021), “there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm,” *Nken v. Holder*, 556 U.S. 418, 436 (2009).

Because Respondent’s improperly designated Mr. Martinez-Rios’s detention as under Section 1225(b)(2), the IJ refused to provide Mr. Martinez-Rios a bond hearing, requiring his mandatory detention. As such he is seeking this Court to enjoin the Respondent’s from transferring him outside of this Court’s jurisdiction until such time as either he is released from custody; provided with an individualized bond hearing pursuant to Section 1226(a); and/or this Court enters a final order on his Petition for Writ of Habeas Corpus.

II. Respondent(s) Illegal Detention of Mr. Martinez-Rios Causes Petitioner Irreparable Harm

“It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury.” *Gayle v. Meade*, 614 F. Supp. 3d 1175, 1205 (S.D. Fla. 2020). Without interim relief to maintain the status quo, Petitioner could be deported or removed from this Court's jurisdiction, effectively foreclosing any recourse. *See, e.g., Zapeta v. Exec. Dir. of the Fla. Div. of Emergency Mgmt.*, No. 2:25-CV-00697-JLB-KCD, 2025 WL 2432501, at *3 (M.D. Fla. Aug. 22, 2025) (denying habeas petition as moot where petitioner had been deported because, “[a]s a general rule, a habeas petition presents a live case or controversy only when a petitioner is in custody”).

The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner has a fundamental interest in liberty and being free from official restraint. The government’s detention of Petitioner without a

bond determination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

Leaving Petitioner in prolonged detention at a dangerous facility where he is unable to contact counsel to communicate medical issues and other urgent problems places them at serious risk of prolonged detention, injury, and death—all of which are irreparable. *Fla. Immigrant Coal. v. Uthmeier*, No. 25-21524-CV, 2025 WL 1423357, at *12 (S.D. Fla. Apr. 29, 2025) (finding the risk of unlawful “detention” supported irreparable harm).

III. The Balance of Equities and the Public Interest Weigh Heavily in Petitioner’s Favor

Lastly, the balance of equities and public interest heavily favors Petitioner’s request for injunctive relief. Petitioner is only requesting that this Court Order that he remain within its jurisdiction until his habeas petition is decided, and/or he is released from custody. Thus, the harm to the Government is minimal. And because Mr. Martinez-Rios is detained unlawfully under § 1225(b)(2), neither equity nor the public's interest are furthered by holding him without the opportunity to seek release on bond. *See Nken v. Holder*, 556 U.S.

418, 436 (2009) (“Of course there is a public interest in preventing aliens from being wrongfully removed[.]”).

IV. The Court Should Not Require Petitioner to Provide Security Prior to the Temporary Restraining Order

Federal Rule of Civil Procedure 65(c) provides that “[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damage sustained by any party found to have been wrongfully enjoined or restrained.” Decisions regarding the security required to be posted in connection with the issuance of preliminary relief “are entrusted to the discretion of the district court,” including the discretion to “elect to require no security at all.” *Transcon. Gas Pipe Line Co., LLC v. 6.04 Acres*, 910 F.3d 1130, 1171 (11th Cir. 2018) (quoting *Corrigan Dispatch Co. v. Casa Guzman, S. A.*, 569 F.2d 300, 303 (5th Cir. 1978)). District courts exercise this discretion to require no security in cases brought by indigent, detained, and/or incarcerated people, those seeking to exercise their constitutional rights, and in cases that benefit the public interest. *See, e.g. Campos v. I.N.S.*, 70 F. Supp. 2d 1296, 1310 (S.D. Fla. 1998); *Complete Angler, LLC v. City of Clearwater, Fla.*, 607

F. Supp. 2d 1326 (M.D. Fla. 2009); Wright & Miller, Fed. Practice & Proc. § 2954.

This court should do so here.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court temporarily enjoin the Respondent(s) from the following:

- a. denying Mr. Martinez-Rios release on bond on the basis that he is subject to mandatory detention pursuant to 8 U.S.C § 1225(b)(2);
- b. continuing to detain Mr. Martinez-Rios unless he is provided with an individualized bond hearing before an Immigration Judge under 8 U.S.C. § 1226(a) within three (3) days;
- c. transferring or relocating Mr. Martinez-Rios outside the jurisdiction of the Middle District of Florida pending a ruling on the habeas petition; and
- d. Grant any other and further relief that this Court deems just and proper.

DATED this 26th day of November, 2025.

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I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send notice of electronic filing to all counsel in this case on November 26, 2025.

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