

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 25-cv-00614-DCG

MARIO LOPEZ FLORES,

Petitioner,

v.

MARY DE ANDA-YBARRA, in her official capacity as Field Office Director, U.S. Immigration and Customs Enforcement, El Paso Office.

Respondent.

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

The petitioner, Mario Lopez Flores (“Petitioner”), submits this Amended Petition for Writ of Habeas Corpus, by and through undersigned counsel, and alleges as follows:

INTRODUCTION

1. In Kafkaesque fashion, the government has unlawfully and punitively detaining Petitioner for over a month and a half without advising him of the grounds of his detention.

2. Petitioner is a Lawful Permanent Resident of the United States for nearly nine (9) years who was detained by immigration authorities on October 16, 2025, after returning from a trip to Brazil. Respondent has detained him continuously since that date without issuing a notice to appear in immigration court.

3. Under the circumstances, the respondent’s use of civil immigration detention for purposes not contemplated by any statute that provides a justification for civil detention, and without a criminal conviction by jury trial has become punitive and completely untethered to any statutory anchorage.

4. Thus, the Court should issue a writ of habeas corpus ordering that the petitioner be immediately released from respondent's custody.

5. The petitioner respectfully requests that this Court issue a writ of habeas corpus and order the petitioner's release from custody, with appropriate conditions of supervision if necessary. Alternatively, the petitioner requests that this Court conduct or order an Immigration Judge to conduct an individualized bond hearing.

6. The petitioner has no other recourse than to petition this Court for a writ of habeas corpus, especially in light of the punitive and otherwise illegal conditions he has faced at detention facilities over the course of more than a month and a half of confinement.

PARTIES

7. The petitioner, Mario Lopez Flores, is currently detained by the respondents at a detention facility at ERO El Paso Camp East Montana, El Paso, Texas. The petitioner is under the direct control of Respondent.

8. The respondent Mary de Anda-Ybarra, Field Office Director, El Paso Field Office Office, U.S. Immigration and Customs Enforcement is sued in her official capacity. In this capacity, the Field Office Director has jurisdiction over the detention facility in which the petitioner is held, is authorized to release the petitioner, and is a legal custodian of the petitioner.

JURISDICTION

9. This action arises under the Constitution of the United States of America, 28 U. S. C. § 2241 *et seq.* (habeas corpus), the Immigration and Nationality Act (INA), 8 U. S. C. § 1101 *et seq.*, Title 8 of the Code of Federal Regulations, and the Administrative Procedure Act (APA), 5 U. S. C. §§ 555(b), 701, *et seq.*

10. The Court has jurisdiction over this case under 28 U. S. C. § 2241 (habeas corpus),

and § 1331 (federal question).

11. The Court may grant relief pursuant to the U.S. Const., art. I, § 9, cl. 2 (Suspension Clause), 28 U. S. C. § 1651 (All Writs Act), 28 U. S. C. §§ 2201–02 (declaratory relief), 28 U. S. C. § 2241 (habeas corpus), and 5 U. S. C. §§ 701 et seq. (Administrative Procedure Act).

VENUE

12. Under the immediate custodian rule, venue is proper in this district under 28 U. S. C. §§ 1391(e)(1) & 2241 because: (1) “a substantial part of the events or omissions giving rise to the claim occurred” in this district; and (2) this is the district where the “the custodian can be reached by service of process.” *Rasul v. Bush*, 542 U. S. 466, 478–79 (2004).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

13. No exhaustion is required for the petitioner’s habeas claim because “Section 2241 itself does not impose an exhaustion requirement,” *see Santiago-Lugo v. Warden*, 785 F. 3d 467, 474 (CA11 2015),” and because “a petitioner need not exhaust his administrative remedies ‘where the administrative remedy will not provide relief commensurate with the claim,’” *Boz v. United States*, 248 F. 3d 1299, 1300 (CA11 2001), abrogated on other grounds recognized by *Santiago-Lugo*, 785 F. 3d, at 474–75 n. 5 (citation omitted).

14. No statute, regulation, or other legal source with binding authority exists to provide the remedy that the petitioner’s habeas claims seek to remedy and Petitioner has already twice requested release through the immigration court, to no avail.

15. Further, “[b]ecause the BIA does not have the power to decide constitutional claims—like the validity of a federal statute— . . . certain due process claims need not be administratively exhausted.” *See Warsame v. U.S. Att’y Gen.*, 796 Fed. Appx. 993, 1006 (CA11 2020); accord *Haitian Refugee Ctr., Inc. v. Nelson*, 872 F. 2d 1555, 1561 (CA11 1989), *aff’d sub*

nom. *McNary v. Haitian Refugee Ctr., Inc.*, 498 U. S. 479 (1991) (exhaustion had “no bearing” where petitioner sought to make a constitutional challenge to procedures adopted by the INS).

16. The petitioner urgently seeks and is entitled to habeas relief because he has no meaningful opportunity to challenge the constitutionality of his detention through any available administrative process. See *Boumediene v. Bush*, 553 U. S. 723, 783 (2008).

FACTUAL BACKGROUND

17. Petitioner, Mario Lopez Flores, is a twenty-six year old, originally from Cuba, who he has been a Lawful Permanent Resident (LPR) of the United States for approximately nine (9) years. See Exh. “A,” Petitioner’s LPR Card.

18. Petitioner has all of his immediate family in the United States, including his parents, his brother, and his fiancée.

19. Upon information, knowledge, and belief, Petitioner has no criminal history in the United States, Cuba (which he left as a minor child), or elsewhere, other than traffic citations.

20. On August 17, 2025, Mr. Lopez went to the Bahamas. Upon his return, Customs and Border Protection (CBP) stopped a boat upon which he was a passenger at or near the Haulover inlet, Florida, and, finding no wrongdoing, ultimately inspected and admitted him into the United States. His passport and Legal Permanent Residence card were returned to him. Petitioner was admitted and released without any restrictions.

21. On October 16, 2025, Petitioner returned to the Miami International Airport after a trip to Brazil. Immigration authorities decided to detain him instead of allowing him to enter the United States and reunite with his family. He has been continuously detained since that time.

22. For several weeks, he was detained at the Everglades Detention Facility, also

known as “Alligator Alcatraz,” a facility strongly condemned by Amnesty International¹ for human rights violations, including torture and inhumane conditions, *inter alia*. He was subsequently transferred to the ERO-El Paso Camp in El Paso, Texas, where he was detained at the time his habeas petition was filed on December 3, 2025. [ECF No. 1].

23. Respondent has issued no charging document explaining the basis for Petitioner’s detention and immigration authorities’ refusal to permit his entry into the United States.

24. Petitioner’s immigration attorney requested a hearing, *see Matter of Joseph*, 22 I&N Dec. 79 (BIA 1999), before the immigration court about whether he was subject to mandatory detention on October 22, 2025. See Exhibit “B,” *Petitioner’s Matter of Joseph Hearing Request*.

25. The IJ denied release stating that Petitioner is an “arriving alien” and that he lacked jurisdiction. See Exhibit “C,” *IJ Order/Denial dated October 31, 2025*.

26. Petitioner’s immigration attorney requested his release on a motion for custody re-determination. See Exh. “D,” *Petitioner’s Custody Redetermination Motion dated November 25, 2025*.

27. His bond was denied a couple of days ago, citing to an inapposite Board of Immigration Appeals case regarding the Visa Waiver program, because no Notice to Appear had yet been filed. See Exh. “E,” *IJ Bond Order/Denial dated December 2, 2025*.

28. In the past several weeks, Petitioner’s immigration attorney has made repeated inquiries to contacts at Immigration and Customs Enforcement regarding issuance of a notice to appear, but no action has been taken. See Exh. “F,” *Immigration Attorney Email Correspondence with ICE*.

¹ <https://www.amnestyusa.org/wp-content/uploads/2025/12/Torture-and-Enforced-Disappearances-in-the-Sunshine-State-Human-Rights-Violations-at-Alligator-Alcatraz-and-Krome-in-Florida.pdf>

STATUTORY FRAMEWORK

29. 8 U.S.C. §1101(a)(13)(C) governs when a returning Lawful Permanent Resident can be subjected to mandatory detention as someone seeking admission. There are only six possible grounds for treating a returning LPR as an arriving alien, i.e., someone “seeking an admission”:

“An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien.

- (i) has abandoned or relinquished that status,
- (ii) has been absent from the United States for a continuous period in excess of 180 days,
- (iii) has engaged in illegal activity after having departed the United States;
- (iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings;
- (v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title, or
- (vi) is attempting to enter at a time or place other than as designated by immigration officers, or has not been admitted to the United States after inspection and authorization of an immigration officer.”

30. The basis for Petitioner’s detention is completely opaque. The government has offered none. But if the government were to assert that Petitioner is subject to detention under 8 U.S.C. §1225(b)(2), it should be noted that this detention statute cannot apply unless the government ultimately asserts some basis under 8 U.S.C. §1101(a)(13)(C) *supra*. 8 U.S.C. §1225(b)(2)(A) holds that “[s]ubject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.” (emphasis added.) If the term “seeking admission” is ambiguous in other contexts, *see Alvarez Puga v. Miami ICE Field Office Director*, No. 25-cv-24535-CA (S.D.Fla October 15, 2025) at *10, it is not so in the case of returning LPRs because 8

U.S.C. §1101(a)(13)(C) and 8 U.S.C. §1225(b)(2)(A) form a closed loop. 1101(a)(13)(C) strictly limits when a returning LPR can be considered to be “seeking admission”, and none of the six exceptions apply here. Therefore, Petitioner cannot be considered to be seeking an admission or an arriving alien. *See De Fuentes v. Gonzales*, 462 F.3d 498, 501 (5th Cir. 2006) (explaining how 1101(a)(13)(C) simple six categories wholly replaced common law doctrine regarding treatment of returning LPRS as arriving aliens.) As noted by Petitioner’s immigration counsel, the government is also failing to follow its own regulations: 8 C.F.R. §1003.14 (allowing bond hearings prior to issuance of a Notice to Appear) and 8 C.F.R. §287.3(2) (requiring issuance of a notice to appear within 48 hours of detention). His detention is also a clear violation of his due process rights as an LPR. He should immediately be released or, in the alternative, provided a prompt individualized bond hearing.

CLAIMS FOR RELIEF

COUNT I:

Unlawful Use of Civil Immigration Detention for Punitive Purposes

31. Civil detention becomes punitive when it is being used for purposes that are not contemplated within the special statutory justification authorizing its use. *See Bell v. Wolfish*, 441 U.S. 520, 539 (1979) (“Thus, if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to ‘punishment.’ Conversely, if a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees.”) (citations and footnotes omitted); *In re Grand Jury Proc.*, 877 F.2d 849, 850 (CA11 1989) (“Civil contempt is a coercive device imposed to secure compliance with a court order and

if the circumstances illustrate that the sanction will not compel compliance, it becomes punishment and violates due process.”) (citation omitted); *Lynch v. Baxley*, 744 F. 2d 1452, 1463 (CA11 1984) (“A court must decide whether the restriction is imposed to punish or whether it is simply an incident of legitimate governmental purpose. . . . Absent an express intent to punish, that determination will turn on whether the restriction appears excessive in relation to the alternative purpose assigned to it. . . . If a restriction is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court may infer that the purpose of the government action is punishment.”) (citations omitted); *United States v. Vasquez-Escobar*, 30 F. Supp. 2d 1364, 1365 (M.D. Fla. 1998) (ruling that improper use of civil immigration detention was unconstitutionally punitive).

32. Respondent is unlawfully and punitively using civil detention without any relationship to a detention framework in immigration law. *See* 8 U.S.C. §1101(a)(13)(C). 8 U.S.C. §1225(b)(2)(A) 1225(b)(2)(A) (statute governing detention of some inspection-stage applicants for admission requires referral to immigration court); 8 U.S.C. 1226(a) (statute governing detention of those arrested “pending removal proceedings.”) Because no statute governs detention without pending or completed removal proceedings, his continued detention is impermissible.

33. Therefore, the petitioner is entitled to a writ of habeas corpus ordering that he be immediately released from respondent’s custody.

COUNT II:

Violation of the Immigration and Nationality Act; No Authority to Detain

34. 8 U.S.C. §1225(b)(2)(A), a mandatory detention statute, cannot apply unless the government ultimately asserts some basis under 8 U.S.C. §1101(a)(13)(C) based on alleged criminal activity, pending removal proceedings, unlawful entry, or abandonment of status.

35. 8 U.S.C. §1101(a)(13)(C) and 8 U.S.C. §1225(b)(2)(A) form a closed loop.

1101(a)(13)(C) strictly limits when a returning LPR can be considered to be seeking admission, and none of the six grounds apply here.

36. Therefore, Petitioner's designation as an arriving alien without prospect for bond is unlawful as a violation of the Immigration and Nationality Act.

COUNT III
Violation of *Accardi* Doctrine; No Authority to Detain

37. Respondent has detained Petitioner for more than a month and a half without bringing a charging document, in violation of binding federal regulations. *See* 8 C.F.R. §287.3(d) (requiring a decision on whether to issue of a notice to appear within 48 hours of detention).

38. Respondent has also incorrectly denied bond on the basis of the non-issuance of a charging document, notwithstanding a federal regulation that authorizes such hearings. *See* 8 C.F.R. §1003.14 (expressly providing for bond hearings prior to issuance of a Notice to Appear).

39. Under the *Accardi* doctrine, agencies must follow their own binding regulations, particularly when those regulations protect individual liberty interests. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

40. Respondent should be compelled to issue a Notice to Appear or release Petitioner.

41. Petitioner is entitled to a bond hearing before commencement of removal proceedings pursuant to federal regulations.

42. Petitioner's detention is ultra vires and must be vacated. The unlawful detention violates federal regulations and the *Accardi* doctrine.

COUNT IV
Unlawful Detention in Violation of Due Process

43. The petitioner's continued civil immigration detention, without an individualized determination by a neutral decisionmaker as to whether that detention should continue, is in

violation of constitutional due process.

44. Therefore, the petitioner is entitled to a writ of habeas corpus granting him a bond hearing conducted either by the Court, or by the Immigration Judge.

45. The Due Process Clause's guarantee to substantive due process prohibits the government from infringing upon certain "fundamental" liberty interests, "unless the infringement is narrowly tailored to support a compelling government interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993). It applies to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

46. 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*, 533 U.S. at 690.

47. Furthermore, under the framework of *Mathews v. Eldridge*, 424 U.S. 319 (1976), categorically denying Petitioner bond based upon the erroneous interpretation of the immigration statutes violates Petitioner's right to procedural due process, and poses an extreme risk of erroneous deprivation of his freedom and threatens his fundamental liberty interest.

PRAYER FOR RELIEF

WHEREFORE, the petitioner prays that the Court grant the following relief:

- (a) Assume jurisdiction over this matter;
- (b) Set this matter for expedited consideration pursuant to 28 U.S.C. § 1657;
- (c) Order respondent to show cause why the writ should not be granted within three days, and allowing the petitioner three days to file a traverse, and, if necessary, set a hearing

on this petition within five days of the submission of the return, pursuant to 28 U. S. C. § 2243;

- (d) Order respondent to refrain from transferring the petitioner out of the jurisdiction of this Court during the pendency of this proceeding and while the petitioner remains in the respondent's custody;
- (e) Grant the petitioner a writ of habeas corpus ordering his immediate release from the respondents' custody because that custody has become unconstitutionally punitive;
- (f) Alternatively, grant the petitioner a writ of habeas corpus ordering that the petitioner be afforded bond hearing conducted either by the Court, or by the Immigration Judge;
- (g) Award Petitioner attorneys' fees and costs under the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. § 2412, and on any other basis justified under law; and
- (h) Grant any other and further relief that the Court deems just and proper.

Dated: December 4, 2025

/s/ Daniela Fletes

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