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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

-----X  
Daniel PORTILLO RIVERA,  
Petitioner/Plaintiff,

- against -

CIVIL ACTION No.  
SA-25-CV-1688-OLG

Pamela BONDI, Attorney General of the United States;  
Director, Karnes County Immigration Processing Center;  
Field Office Director, San Antonio Field Office, Immigration  
and Customs Enforcement; United States Department of  
Homeland Security, Immigration and Customs Enforcement;

Respondents/Defendants.

-----X  
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF  
AND PETITION FOR WRIT OF HABEAS CORPUS

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF  
AND PETITION FOR WRIT OF HABEAS CORPUS

PETITIONER/PLAINTIFF Daniel Portillo Rivera (henceforth "Petitioner" or "Mr. Portillo Rivera"), has been detained by DHS-ICE ERO since July 17, 2025. Mr. Portillo Rivera challenges his continued detention at the Karnes County Immigration Processing Center in Karnes City, Texas as illegal and unconstitutional, in violation of the laws of the United States.

There are no circumstances to justify the continuing detention of Daniel Portillo Rivera under the law. Mr. Portillo Rivera has no criminal record, has no order of removal and has immediately available relief by adjustment of status as an immediate relative under 8 U.S.C. Section 1255(a) through a pending Form I-485 application as the beneficiary of an approved spouse petition by his United States citizen wife, with no grounds of inadmissibility.

The continued detention of Daniel Portillo Rivera is unconstitutional under the Due Process clause of the Fifth Amendment, as it violates both his procedural and substantive due process rights. The federal district courts have jurisdiction to hear habeas corpus claims by


noncitizens challenging the lawfulness or constitutionality of their detention by DHS. See Demore v. Kim, 538 U.S. 510, 516-7; Zadvydas v. Davis, 533 U.S. 678, 687 (2001).

The government may not deprive a person of life, liberty or property without due process of law. U.S. Constitution, Amendment 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, supra at 690. Mr. Portillo Rivera has a fundamental interest in liberty and being free from official restraint. The government’s sudden detention of the petitioner, without pre-deprivation notice or an opportunity to be heard, and without a hearing before a neutral adjudicator to determine whether he is a flight risk or a danger, is illegal and unconstitutional and violates his rights to substantive and procedural due process of law.

Daniel Portillo Rivera is being unlawfully detained by DHS ICE ERO without being given the opportunity to challenge his continued detention and request custody redetermination under the provisions of 8 U.S.C. Section 1226(a), discretionary detention. He is entitled by law to an individualized hearing, in accordance with Matter of Joseph, 22 I&N Dec. 799 (BIA 1999), and 8 C.F.R. Section 1003.19(h)(2)(ii), to show an Immigration Judge that he is not properly included within the category of aliens not eligible for release on bond, and that the Immigration Judge has jurisdiction to redetermine his custody and to set conditions for his release from detention, including the payment of a reasonable bond or the placement of an ankle monitor or any other conditions of release from detention.

The federal regulations at 8 C.F.R. Section 1003.19(h)(2)(ii) allow a detained noncitizen to seek a determination from the Immigration Judge that he is not properly included within any of the categories of aliens listed within subparagraphs ( C ), ( D ) and ( E ) of 8 C.F.R. Section 1003.19(h)(2)(i), for which an immigration judge may not redetermine conditions of custody.

Daniel Portillo Rivera is not within subparagraph (C), “aliens described in INA Section 237(a)(4), “Security and related grounds.” He is not within subparagraph (D), “aliens in removal proceedings subject to INA Section 236(c)(1),” mandatory detention, or within subparagraph (E), “aliens in deportation proceedings.” In addition, Daniel Portillo Rivera is not within subparagraph (A), “aliens in exclusion proceedings,” nor is he within subparagraph (B), “arriving aliens in removal proceedings.” Wherefore, an Immigration Judge may under the regulations redetermine conditions of his custody and grant him release upon payment of an affordable bond.


Daniel Portillo Rivera, A  is a native and citizen of El Salvador who came here in 2013 while fleeing gang violence in his home country and was granted parole into the United States. In 2018, there was an in absentia order of removal against him, but that has since been reopened and rescinded. He is the beneficiary of an approved I-130 spouse petition filed by his United States citizen wife Jacqueline Osorio Portillo, and is eligible for lawful permanent resident status under 8 U.S.C. Section 1255 as an immediate relative. He has no criminal record, no order of removal, and no statutory or discretionary factors that would preclude a grant of lawful permanent residency. His continued detention is illegal and unconstitutional.

#### JURISDICTION AND VENUE

1. This action arises under the Constitution, the Immigration & Nationality Act of 1990, as amended (“INA”), 8 U.S.C. §1101 et seq., and the Administrative Procedure Act (“APA”), 5 U.S.C. §701 et seq. This Court has habeas jurisdiction pursuant to 28 U.S.C. §2241, Art. 1, §9, Cl. 2 of the United States Constitution (the “Suspension Clause”); and the common law. This Court may also exercise jurisdiction pursuant to 28 U.S.C. §1331 and may grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §2201 et seq., and the All Writs Act, 28 U.S.C. §1651.

2. On May 11, 2005, Congress passed the REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231. The REAL ID Act divested federal district courts of jurisdiction to review final orders of deportation, exclusion and/or removal. However, federal district courts still retain jurisdiction through habeas corpus over the detention of aliens.
3. Daniel Portillo Rivera is challenging the legality and constitutionality of his continued detention by DHS-ICE and is requesting that the federal district court grant this request for release from custody on bond, or on any other condition of release, such as electronic monitoring in lieu of incarceration.
4. Venue lies in the United States District Court for the Western District of Texas, the judicial district of confinement, as the petitioner is physically being held in custody at the Karnes County Immigration Processing Center located in Karnes City, Texas. This is in accordance with the decision of the United States Supreme Court in Rumsfeld v. Padilla, 124 S.Ct. 2711, 2725 (2004) (“Whenever a §2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement”).

#### PARTIES

1. Petitioner Daniel Portillo Rivera, A , is a citizen of El Salvador detained since 7/17/2025 at the Karnes County Immigration Processing Center by DHS-ICE.
2. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. The Attorney General has powers under 8 U.S.C. §1103(g) to take necessary actions related to immigration and naturalization: including, but not restricted to, authority over the detention and removal of aliens.

3. Respondent Director, Karnes County Immigration Processing Center is sued in his/her official capacity. The Director has chief executive authority over the administration of the Karnes County Immigration Processing Center, and in this capacity, has direct responsibility over the confinement of Daniel Portillo Rivera.
4. Respondent Field Office Director, San Antonio Field Office, Immigration and Customs Enforcement, is sued in his/her official capacity. In this capacity, the Field Office Director has responsibility for determining at which detention facility the petitioner will be held, deciding whether petitioner can be paroled from custody or on any other condition of supervised release, administering the enforcement and administration of the immigration laws, and is empowered to carry out an order of removal against petitioner.
5. Respondent Department of Homeland Security Immigration and Customs Enforcement (“DHS-ICE”) is the agency responsible for enforcing the Immigration and Nationality Act of 1990, as amended, (“INA”) and all other current statutes, laws and regulations which affect the rights and benefits of noncitizens.

**STATEMENT OF FACTS**

6. Daniel Portillo Rivera was born in El Salvador on [REDACTED] 1992. He came to the United States in May 2013 while fleeing gang violence in his home country. There was an order of removal in absentia entered against him in 2018 which has since been reopened and rescinded. Mr. Portillo Rivera has been scheduled for a master calendar hearing in removal proceedings before the Honorable Michael Hayden on Tuesday, January 6, 2026. He will be seeking relief from removal through his United States citizen wife, Jacqueline Osorio Portillo, date of marriage 05/15/2019, and his United States citizen son, [REDACTED], date of birth [REDACTED].

7. Daniel Portillo Rivera has an approved I-130 spouse petition and a pending I-485 adjustment application, and is eligible to adjust his status under 8 U.S.C. Section 1255 as he was paroled into the United States. His son Jacob has severe autism and is nonverbal, receiving therapy and special services, so Mr. Portillo Rivera is also eligible for relief through an EOIR-42B application for cancellation of removal for nonpermanent residents under 8 U.S.C. Section 1229b(b)(1), based on the exceptional and extremely unusual hardship to his United States citizen spouse and child. He is not a danger to the community (no criminal record) and is not a flight risk.

#### **EXHAUSTION OF REMEDIES**

8. Petitioner Daniel Portillo Rivera has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.
9. Petitioner is under the discretionary detention provisions of 8U.S.C. §1226(a) rather than the mandatory detention provisions of 8 U.S.C. §1226(c)(1). See Mapp v. Reno, 241 F.3d 221, 228 (2nd Cir. 2001). The federal district court therefore retains authority to grant his release on bond or on any other conditions of supervised release.
10. The correct forum in which to bring this petition for a writ of habeas corpus, challenging his continued detention in federal custody, is in the federal district court.
11. The facts upon which this petition is based are derived from petitioner's personal knowledge and from the records and decisions of the Department of Homeland Security and the Immigration Court.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, petitioner prays that this Honorable Court grant the following relief:

Assume jurisdiction over this matter;

Issue a writ of habeas corpus, directed to the respondents, requiring them to show cause why the petitioner should not be discharged from the restraint of liberty now imposed on him by the respondents;


Find that this court has inherent authority to grant bail to habeas petitioners challenging the legality and constitutionality of their continued detention by DHS-ICE ERO;

Grant release of petitioner from custody upon payment of reasonable bond or on other conditions, to be determined by this court; and

Grant any other and further relief that this Honorable Court deems just and proper.

Respectfully submitted,  
DANIEL PORTILLO RIVERA  
By his attorney:

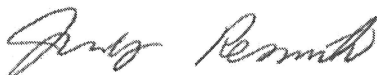
Dated: 12/15/2025

Signed:   
s/ Judy Resnick  
\_\_\_\_\_  
JUDY S. RESNICK, ESQ.  
Attorney for Petitioner  
2906 Bailey Court  
Far Rockaway, NY 11691  
Tel. (917) 971-1207  
E-mail: resnickjudys@gmail.com

**VERIFICATION OF COMPLAINT**

I, Judy S. Resnick, Esq., state under penalty of perjury that I am the attorney for the petitioner Daniel Portillo Rivera in the foregoing petition, and declare the facts alleged here to be true, except those made on information and belief, which I believe to be true, and further state that the sources of my information and belief are documents and information provided to me by the petitioner and his associates and family members.

Far Rockaway, NY  
Dated: 12/15/2025

Signed:   
s/ Judy Resnick  
\_\_\_\_\_  
JUDY S. RESNICK, ESQ.  
Attorney for Petitioner  
2906 Bailey Court  
Far Rockaway NY 11691  
Tel. (917) 971-1207  
E-mail: resnickjudys @ gmail.com

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served via Certified Mail / Return Receipt to:

Hon. Justin R. Simmons, Office of the United States Attorney, Western District Texas, 601 NW Loop 410, Suite 600, San Antonio, TX 78216;

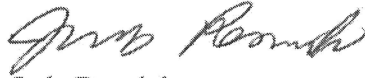
Hon. Pamela Bondi, Attorney General of the United States, U.S. Dept. of Justice, Civil Division, 950 Pennsylvania Avenue, Washington, DC 20530;

Director, Karnes County Immigration Processing Center, 409 FM 1144, Karnes City, TX 78118;

Field Office Director, San Antonio Field Office, DHS-ICE, 1777 NE Loop 410, Floor 15, San Antonio, TX 78217;

U.S. Dept of Homeland Security, Immigration and Customs Enforcement, 500 12 Street SW, Washington, DC 20536; upon the date given below.

Date: 12/15/2025

Signature:  s/ Judy Resnick

JUDY S. RESNICK, ESQ.

Attorney for Petitioner

2906 Bailey Court

Far Rockaway, NY 11691

Tel (917) 971-1207

E-mail: resnickjudys@gmail.com

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

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Respondents/Defendants.

-----X

TEMPORARY RESTRAINING ORDER

This matter is before the Court for a Temporary Restraining Order brought by petitioner Daniel Portillo Rivera, in connection with a petition for a Writ of Habeas Corpus accompanying opinion, it is on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_:

ORDERED, that a Temporary Restraining Order be issued forthwith, barring and enjoining the respondents/defendants, their agents and subordinates from the following actions: enforcing removal of the petitioner from the United States of America; moving him from the jurisdiction of the United States District Court for the Western District of Texas; until a full and complete hearing on the merits of his petition, and any extensions and continuances thereof, and any appeal therefrom has been entertained and exhausted.

\_\_\_\_\_  
Honorable United States District Judge

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

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Respondents/Defendants.

-----X  
ORDER TO SHOW CAUSE

Good cause appearing therefore, and upon reading the Verified Petition for Writ of Habeas Corpus, and the accompanying attachments brought before this Court by petitioner's attorney, Judy S. Resnick, Esq., IT IS HEREBY

ORDERED that respondents/defendants appear before the undersigned Judge of the United States District Court for the Western District of Texas at 262 West Nueva Street, San Antonio, Texas, 78207 on the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_ at \_\_\_\_\_ AM/PM, to Show Cause why a Writ of Habeas Corpus should not issue herein; and it is further

ORDERED that pending further review of this case, any transfer of petitioner Daniel Portillo Rivera is hereby stayed; and it is further

ORDERED that service of this Order to Show Cause and supporting papers upon the respondents or their authorized representatives, within three days of this date, be deemed good and sufficient service; and it is further

ORDERED that any responsive pleadings to the petition, together with any supporting affidavits, defenses or motions, if any, shall be in writing, filed with this Court, and served by hand or overnight mail upon petitioner's attorney, and that any reply filed by petitioner shall be filed with this Court and served by hand or overnight mail upon the Office of the United States Attorney for the Western District of Texas.

DONE AND ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

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Honorable  
United States District Judge

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

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Petitioner/Plaintiff,

- against -

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Director, Karnes County Immigration Processing Center;  
Field Office Director, San Antonio Field Office, Immigration  
and Customs Enforcement; United States Department of  
Homeland Security, Immigration and Customs Enforcement;**

**Respondents/Defendants.**

-----X

This matter is before the Honorable Court on petition for a Writ of Habeas Corpus brought by Daniel Portillo Rivera. Upon consideration of the submissions of the parties, and upon the oral argument on \_\_\_\_\_ by Judy S. Resnick, Esq. for the petitioner, and by \_\_\_\_\_ for the respondents, and for the reasons stated in the accompanying opinion, it is on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_:

ORDERED, that a Writ of Habeas Corpus be issued forthwith; and it is further

ORDERED, that the respondents/defendants, upon payment of bond or any other reasonable condition of release, release the petitioner immediately from DHS-ICE custody into DHS-ICE supervision; and it is further

ORDERED, that the petitioner within 30 days of this order submit to this Court an application for fees and other expenses, and that respondents pay petitioner reasonable costs and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412.

\_\_\_\_\_  
Honorable United States District Judge