

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

JOSE H. GONZALEZ,

CASE NO.

Petitioner,

JUDGE:

v.

MAGISTRATE JUDGE:

GARRETT J. **RIPA**, Field Office Director, United States Immigration and Customs Enforcement Miami Field Office, Enforcement and Removal Operations; **KEVIN GUTHRIE**, Director, Florida Division of Emergency Management, **UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT**, **DAREN K. MARGOLIN**, Director, Executive Office for Immigration Review, **KRISTI NOEM**, Secretary, United States Department of Homeland Security; **PAMELA J. BONDI**, Attorney General of the United States; **TODD M. LYONS**, Acting Director, United States Immigration and Customs Enforcement.

Respondents.

**PETITION FOR WRIT OF HABEAS CORPUS
AND ORDER TO SHOW CAUSE**

COMES NOW the Petitioner (“Petitioner”), JOSE H. GONZALEZ, by and through his undersigned counsel, and petitions this Honorable Court to issue a writ of *habeas corpus* to remedy his unlawful detention by United States Immigration and Customs Enforcement (“ICE”) and in support thereof respectfully alleges as follows:

CUSTODY

1. Upon information and belief, Petitioner is in the custody of Respondent GARRETT J. RIPA at ICE’s Florida Soft South Side a/k/a “Alligator Alcatraz,” located in at 54575 Tamiami Trail East, Ochopee, Collier County, Florida 34141.

2. Petitioner has been detained by Respondents since approximately December 10, 2025 without bond.

JURISDICTION AND VENUE


3. This action arises under the Constitution of the United States, the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*

4. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question) and Article I, Section 9, Clause 2 of the U.S. Constitution (“Suspension Clause”), as Petitioner is currently in custody under color of the authority of the United States in violation of the Constitution, laws, or treaties of the United States.

5. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, and the All Writs Act, 28 U.S.C. § 1651.

6. Venue for the complaint for injunctive relief is proper under 28 U.S.C. § 1391(e), as Respondents are officers or employees of the United States. Venue for the habeas action is proper under 28 U.S.C. §§ 2241 *et seq.*, as Respondents exercise control over Petitioner's custody.

PARTIES

7. Petitioner is a citizen and national of Mexico and has been assigned Alien Registration Number  by the Respondents. He is a resident of Palm Beach County, Florida.

8. Suit is brought against Respondent GARRETT J. RIPA in his official capacity as the Field Office Director of the ICE office in Miami, Florida which controls Alligator Alcatraz in Ochopee, Florida. In that capacity, he is the legal custodian of the Petitioner and has the power or ability to produce or release the Petitioner if directed to do so by this Court. *See Masingene v. Martin*, 424 F.Supp.3d 1289 (S.D. Fla. 2020); *C.M. v. Noem*, 796 F.Supp.3d 1198 (S.D. Fla. 2025).

9. Suit is brought against Respondent KEVIN GUTHRIE, in his official capacity as Executive Director of the Florida Division of Emergency Management

(FDEM) which controls Alligator Alcatraz in Ochopee, Florida. In that capacity he controls Alligator Alcatraz and is a custodian of Petitioner.

10. Suit is brought against Respondent UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) as it is the agency responsible for administration of the Immigration and Nationality Act (INA), 8 U.S.C. §1101 *et. seq.*, including, but not limited to, the detention and removal of aliens from the United States. ICE is a component of the United States Department of Homeland Security.

11. Suit is brought against Respondent DAREN K. MARGOLIN in his official capacity as Director of the Executive Office For Immigration Review (EOIR). In this capacity he has the ultimate responsibility for overseeing the operation of the immigration courts and the Board of Immigration Appeals, including bond proceedings.

12. Suit is brought against Respondent KRISTI NOEM in her official capacity as the Secretary of the Department of Homeland Security. In that capacity, she has responsibility for the administration and enforcement of immigration laws.

13. Suit is brought against Respondent PAMELA J. BONDI in her official capacity as the Attorney General of the United States. In that capacity she has responsibility for the administration and enforcement of immigration laws and delegates this responsibility to the Executive Office for Immigration Review

(“EOIR”), which is subject to her control and direction. Respondent BONDI is legally responsible for administering the Petitioner’s removal proceedings.

14. Suit is brought against Respondent TODD M. LYONS in his official capacity as the Acting Director of ICE, an agency of the Department of Homeland Security. In that capacity he is responsible for the administration of ICE and the implementation of the immigration laws of the United States.

REQUIREMENTS OF 28 U.S.C. § 2243


15. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC 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).

16. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

17. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs courts to give petitions for habeas corpus ‘special, preferential consideration to insure expeditious hearing and determination.’” *Yong v. INS*, 208

F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted). The Ninth Circuit warned against any action creating the perception “that courts are more concerned with efficient trial management than with the vindication of constitutional rights.” *Id.*

STATEMENT OF THE FACTS

18. Petitioner is a 53-year-old male citizen and national of Mexico and has been assigned file number  by the Respondents. He resides in Palm Beach County, Florida. He is was encountered by ICE on or about December 10, 2025 and upon information and belief is presently detained by ICE at Alligator Alcatraz.

19. Upon information and belief, Petitioner entered the United States without being inspected by an immigration officer in 2012.

20. Upon information and belief, Petitioner has an Application for Asylum and for Withholding of Removal (Form I-589) pending with United States Citizen and Immigration Services (USCIS).

21. Upon information and belief, Petitioner has been issued an Employment Authorization Document (EAD) by USCIS which continues to be valid and authorizes him to work in the United States.

22. Respondents have not served upon the Petitioner, nor filed with the Immigration Court, a Notice to Appear to commence removal proceedings.

23. When and if Petitioner is placed in removal proceedings he will be eligible for *inter alia* Asylum pursuant INA § 208, 8 U.S.C. § 1229b(b)(1), and Withholding of Removal pursuant to INA § 241(b)(3), 8 U.S.C. § 1231(b)(3).

24. Petitioner has been at liberty in the United States for over 13 years prior to his detention.

25. Petitioner has no criminal history, is not a danger to the community, and is not a flight risk. Petitioner has been gainfully employed and upon release will return to his long term job.

26. While in the United States, Petitioner has worked to support himself in the hospitality industry. Petitioner has long standing employment as a maître d' at a well-known and respected restaurant in Palm Beach, Florida.

27. Petitioner's removal from the United States is not reasonably foreseeable in the immediate future.

28. Accordingly, to vindicate Petitioner's statutory, constitutional and regulatory rights, this Court should grant the instant petition for a writ of habeas corpus to ensure his continued freedom. Petitioner asks this Court to find that the physical detention of the Petitioner is unlawful and order ICE to release him.

LEGAL FRAMEWORK

29. The Immigration and Nationality Act ("INA") prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

30. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge (“IJ”). *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention until their removal proceedings are concluded. *See* 8 U.S.C. § 1226(c).

31. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals “seeking admission” referred to under § 1225(b)(2).

32. Third, the INA also provides for detention of noncitizens who have received a final order of removal from the United States. *See* 8 U.S.C. § 1231(a)-(b).

33. Petitioner’s case concerns the important distinctions between § 1226(a) and § 1225(b)(2). Those provisions were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

34. Following the enactment of the IIRIRA, the Executive Office for Immigration Review (“EOIR”) drafted regulations explaining that, in general,

people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination”).

35. Thus, in the decades that followed, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an IJ, unless their criminal history rendered them ineligible. That practice was consistent with decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

36. In recent months, Defendants adopted an entirely new interpretation of the statute, concluding that all noncitizens who entered the United States without admission or parole are considered applicants for admission, and are therefore

ineligible for bond hearings before an Immigration Judge under 8 U.S.C. § 1225(b)(2)(A). Around the same time, ICE “in coordination with the Department of Justice” announced a corresponding policy that rejected the well-established understanding of the statutory and regulatory framework and reversed decades of practice. That policy claims that all persons who entered the United States without inspection shall now be deemed to be subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, the section of law under which they were previously released and affects those who have resided in the United States for years.

37. Cementing the policy and making it binding on all IJs, the Board of Immigration Appeals (“BIA”) recently issued a precedent decision: *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In *Hurtado*, the BIA found that any noncitizen who is present in the United States without having been inspected and admitted is subject to detention under 8 U.S.C. § 1225(b)(2), not § 1226(a).

38. ICE and the DOJ have adopted this new and unprecedented position even though federal courts have rejected this exact conclusion. *See Hernandez-Lopez v. Hardin*, No. 2:25-CV-830-KCD-NPM; 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025); *Paxtor Alvarez v. Ripa*, No. 2:25-cv-964-KCD-NPM (M.D. Fla. Nov. 13, 2025); *Castillo-Castro*, No. 2:25-cv-01045-KCD-DNF (M.D. Fla. Dec. 10, 2025) *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Gomes v. Hyde*, 2025

WL 1869299, at *8 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, ___ F.Supp.3d ___; 2025 WL 2084238, at *9 (D. Mass. July 24, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025).

39. The Western District of Washington has also agreed. In the Tacoma, Washington, immigration court, IJs previously stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, reasoning such people are subject to mandatory detention under § 1225(b)(2)(A). There, in granting preliminary injunctive relief, the U.S. District Court for the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F.Supp.3d 1239 (W.D. Wash. 2025)

40. DHS's and DOJ's interpretation defies the Immigration and Nationality Act. As the *Sampiao* and *Rodriguez Vazquez* courts explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like the Petitioner.

41. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal

hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

42. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Just this year, Congress enacted subparagraph (E) in the Laken Riley Act to exclude certain noncitizens who entered without inspection from § 1226(a)’s default bond provision. Subparagraph (E)’s reference to persons inadmissible under § 1182(6)(A), i.e., persons inadmissible for entering without inspection, makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). 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.

43. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who very 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); *see also Diaz Martinez*, 2025 WL

2084238, at *8 (“[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.” (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958))). 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).

44. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were detained.

IRREPARABLE INJURY

45. Petitioner has suffered, is suffering, and will continue to suffer irreparable injury unless equitable relief is ordered by this Honorable Court. Respondents’ conduct is depriving Petitioner of his liberty without providing him due process of law. The deprivation of his liberty is, in and of itself, irreparable harm.

46. Pursuant to 28 U.S.C § 2243, this Court can order the Respondents to file a response within three days, unless they can show cause for additional time. (“The writ or order to show cause shall be directed to the person having custody of

the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days is allowed.”).

CLAIMS FOR RELIEF

COUNT I **(VIOLATION OF THE FIFTH AMENDMENT** **DUE PROCESS CLAUSE)**

47. Petitioner repeats and realleges each of the allegations in paragraphs 1 through 46 as if the same were incorporated herein in full.

48. The Fifth Amendment provides that no person shall “be deprived of life, liberty, or property without due process of law.”

49. “Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Moreover, “[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.” *Id.* at 693.

50. Respondents’ mandatory detention of Petitioner without consideration for release on bond or access to a bond hearing violates his due process rights.

51. Because Petitioner was detained without any determination that she poses a danger or flight risk, and because she in fact poses no danger or flight risk, her detention violates due process.

52. Petitioner has been forced to retain undersigned counsel to pursue the instant action and is indebted for a reasonable attorney's fee.

COUNT II
(VIOLATION OF 8 U.S.C. § 1226(A)
UNLAWFUL DENIAL OF RELEASE ON BOND)

53. Petitioner repeats and re-alleges each of the allegations in paragraphs 1 through 46 as if the same were incorporated herein in full.

54. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being detained by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

55. Nonetheless, the Department of Justice has issued a decision binding on all IJs, rendering Petitioner ineligible for a bond hearing. Given the clear language in the *Hurtado* decision, there is no question that an IJ will find he or she does not have jurisdiction to consider Petitioner for release on bond.

56. As a result of Respondents actions, Petitioner suffered damages including, but not limited to, violation of his constitutional rights, loss of liberty, monetary damages, emotional distress and physical pain and suffering.

57. Petitioner has been forced to retain undersigned counsel to pursue the instant action and is indebted for a reasonable attorney's fee.

COUNT III
(VIOLATION OF BOND REGULATIONS AND
UNLAWFUL DENIAL OF RELEASE ON BOND)

58. Petitioner repeats and re-alleges each of the allegations in paragraphs 1 through 46 as if the same were incorporated herein in full.

59. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

60. The application of 1225(b)(2) to Petitioner, who should be bond eligible, unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

61. Petitioner has been forced to retain undersigned counsel to pursue the instant action and is indebted for a reasonable attorney's fee.

COUNT IV
(VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT)

62. Petitioner repeats and re-alleges each of the allegations in paragraphs 1 through 46 as if the same were incorporated herein in full.

63. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

64. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Defendants. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

65. Nonetheless, the DHS and the Immigration Court will apply § 1225(b)(2) to Petitioner.

66. The application of that section to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

67. Petitioner has been forced to retain undersigned counsel to pursue the instant action and is indebted for a reasonable attorney's fee.

RELIEF REQUESTED

WHEREFORE, Petitioner, JOSE H. GONZALEZ, prays that this Honorable Court grant him the following relief:

1. Accept jurisdiction over this action.
2. Immediately issue an order directing Respondents to show cause why the writ should not be granted.
3. Issue a writ of *habeas corpus*, directed to Respondents, ordering Petitioner's immediate release from custody.
4. Order that Petitioner shall not be transferred outside the Middle District of Florida.
5. Order Respondents to provide this Honorable Court and counsel for the Petitioner with at least three days' notice prior any attempt to remove the Petitioner from the United States.
6. Order Petitioner's release on conditions the Court deems just and proper pending adjudication of this petition.
7. Declare as unlawful and unconstitutional Respondents' conduct because it violates Petitioner's substantive due process rights under the Due Process Clause of the Fifth Amendment of the United States Constitution.

8. Declare as unlawful and unconstitutional Respondents' conduct because it violates Petitioner's procedural due process rights under the Due Process Clause of the Fifth Amendment of the United States Constitution.

9. Award Petitioner his suit money, costs and attorney's fees incurred as a result of bringing this action.

10. Grant such further relief as Petitioner may request and/or this Honorable Court deems just and proper under the circumstances.

Respectfully submitted,

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VERIFICATION

Pursuant to 28 U.S.C. § 2242 I am submitting this verification on behalf of the Petitioner because I am the Petitioner’s attorney and I have discussed with the Petitioner’s family the facts and events described in this Petition. Based on those discussions, I hereby verify that the statements made in this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

By: s/ Jeffrey A. Devore
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