

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

FRANYER FERNANDEZ SIRA

Petitioner,

v.

MARY DE ANDA YBARRA Field Office  
Director of Enforcement and Removal  
Operations, El Paso Field Office, Immigration  
and Customs Enforcement; Kristi NOEM,  
Secretary, U.S. Department of Homeland  
Security; Pamela BONDI, U.S. Attorney  
General

Respondents.

Case No. 3:25-cv-666

**PETITION FOR WRIT OF  
HABEAS CORPUS**

## INTRODUCTION

1. Petitioner FRANYER FERNANDEZ SIRA (“Petitioner” or “Mr. FRANYER FERNANDEZ SIRA”) is in the physical custody of Respondents at the ERO El Paso Camp East Montana in El Paso, Texas. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (“EOIR”) of the Department of Justice (DOJ) have erroneously concluded Petitioner is subject to mandatory detention.
2. Petitioner is charged with, *inter alia* 212 (a) (7) (A) (i) (I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under Section 1181 (a) of document is required under the regulations issued by the Attorney General under Section 1181(a) of the title. (Exhibit 1).
3. On information and belief, based on this allegation in petitioner’s removal proceedings, DHS has denied Petitioner release from immigration custody.
4. Petitioner was previously detained and paroled into the country on May 11, 2023, when he arrived in the United States. (Exhibit 2). Petitioner was subsequently re-detained by DHS without notice or an opportunity be heard.

5. Accordingly, Petitioner seeks an order prohibiting Respondents from transferring Petitioner outside of the state of Texas, holding that to do so would be a violation of the Due Process Clause of the Fifth Amendment to the United States Constitution and also an Order to Show Cause requiring that the Petitioner be released.

#### **JURISDICTION**

6. Petitioner is in the physical custody of Respondents. Petitioner is detained at the ERO El Paso Camp East Montana in El Paso, Texas.

7. This Court has the jurisdiction under 28 U.S.C § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

8. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgement Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

#### **VENUE**

9. Pursuant to *Braden v. 30<sup>th</sup> Judicial Circuit Court of Kentucky*, 410 U.S 484, 493 500 (1973), venue lies in the United States District Court for the Western District of Texas, the judicial district in which Petitioner currently is detained.

10. Venue is also properly in the Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Texas.

#### **REQUIREMENTS OF 28 U.S.C. § 2243**

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

show cause is issued, the Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

12. Habeas corpus is “perhaps the most important writ known to the constitutional law...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). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains in and receives prompt action from him within the four corners of the *application*.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

#### **PARTIES**

13. Petitioner FRANYER FERNANDEZ SIRA is a citizen of VENEZUELA who has been in immigration detention since December 4, 2025. On information and belief, Petitioner is currently detained at the ERO El Paso Camp East Montana in El Paso, Texas., under the direct control of Respondents and their agents.

14. Respondent MARY DE ANDA YBARRA is the Director of the El Paso Field Office of ICE’s Enforcement and Removal Operations division. As such, Respondent DE ANA YBARRA is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. She is named in her official capacity.

15. Respondent KRISTI NOEM is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

16. Respondent PAMELA BONDI is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

### **LEGAL FRAMEWORK**

#### **A. Respondent's Revocation of Parole Was Contrary to Statute and Regulation and Violates the APA**

17. Once paroled into the United States, under the statute, a noncitizen may not be "returned to the custody from which he was paroled" unless in the Secretary's opinion, "the purposes of such parole . . . have been served." 8 U.S.C. § 1182(d)(5)(A).

18. Revocation of parole is also governed by regulations. 8 C.F.R. 212.5(e). Those regulations require written notice. Those regulations further require that to terminate parole, either the purposes of the parole have been accomplished, or that an individual decision has been made that neither a humanitarian reason nor public benefit warrants continued parole.

19. Thus, "both common sense and the words of the statute require parole revocation to be analyzed on a case-by-case basis and that a decision to revoke parole must attend to the reasons an individual noncitizen received parole." *Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, 2025 U.S. Dist. LEXIS 135986, at \*29 (W.D.N.Y. July 16, 2025) (internal citations, brackets, and quotation marks omitted).

20. Respondents, in failing to make a determination that the purpose of petitioner's parole had been accomplished, violated the statutory and regulatory provisions of 8 U.S.C. § 1182(d)(5)(A) and 8 C.F.R. § 212.5(e). *Orellana v. Francis*, No. 25-CV-04212 (OEM), 2025 U.S. Dist. LEXIS 196589, at \*9 (E.D.N.Y. Oct. 3, 2025).

21. In this context, the parole of a noncitizen is in the 'public benefit' when that noncitizen is neither a flight risk nor a danger to the community. *See, Mons v. McAleenan*, 2019 U.S. Dist. LEXIS 151174, 2019 WL 4225322, at \*2 (D.D.C. Sept. 5, 2019). In other words, it is *not* in the public interest to re-detain parolees who are not flight risks or dangers to the community. No analysis of Petitioner's parole or the reasons it was granted occurred here and his re-detention is not in the public interest and Respondents violated the INA and the APA.

#### **Petitioner's Re-Detention Violates the Fifth Amendment**

22. Individuals who have been conditionally released from detention have a protected interest in their "continued liberty." *Herrera v. Tate*, No. H-25-3364, 2025 U.S. Dist. LEXIS 189999, at \*31 (S.D. Tex. Sep. 26, 2025) (quoting *Young v. Harper*, 520 U.S. 143, 147, (1997)).

23. Petitioner's re-detention, two years after being paroled into the United States from an initial detention, was without prior notice, a showing of changed circumstances, or a meaningful opportunity to object, and therefore he was not afforded the procedural requirements of the Fifth Amendment. *See, e.g., Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 U.S. Dist. LEXIS 156344, at \*36 (D. Ariz. Aug. 11, 2025); *Rosales-Garcia v. Holland*, 322 F.3d 386, 409 (6th Cir. 2003) ("Excludable aliens—like all aliens—are clearly protected by the Due Process Clauses of the Fifth and Fourteenth Amendments."), *citing Yick Wo v. Hopkins*, 118 U.S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 (1886).

24. The government therefore does not have the authority to arrest a noncitizen who has been granted parole without properly terminating that parole. *Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, 2025 U.S. Dist. LEXIS 135986, at \*26 (W.D.N.Y. July 16, 2025); *Y-Z-L-H v. Bostock*, 2025 U.S. Dist. LEXIS 130216, 2025 WL 1898025, at \*13 (D. Or. July 9, 2025), or unless there is some other valid reason to arrest him.

25. Due process then “requires a hearing before an immigration judge before re-detention. *Mejia v. Woosley*, Civil Action No. 4:25-cv-82-RGJ, 2025 U.S. Dist. LEXIS 203256, at \*11 (W.D. Ky. Oct. 15, 2025) (internal citation and internal quotation marks omitted).

### **FACTS**

38. Petitioner is 26 years old and a native of Venezuela. Petitioner has resided in the United States since 2023 and lives in Illinois. The petitioner was detained by the respondents on May 7, 2023. (Exhibit 2). The petitioner was paroled and released on May 11, 2023. (Exhibit 2).

39. On or about December 4, 2025, petitioner was re-detained by the respondents.

40. Petitioner is neither a flight risk nor a danger to the community.

41. Petitioner has pending application for asylum with United States Citizenship and Immigration Services. (Exhibit 3).

### **CLAIMS FOR RELIEF**

#### **COUNT I**

##### **Violation of the INA**

42. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

43. Petitioner’s re-detention without notice and without an individualized determination regarding his parole status violates the INA and the APA.

#### **COUNT II**

##### **Violation of Due Process**

44. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

45. 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, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

46. Petitioner has a fundamental interest in liberty and being free from official restraint.

47. Petitioner’s re-detention without pre-arrest hearing violates his right to due process.

#### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- c. Declare that transfer of Petitioner outside of the jurisdiction of the United States and the state of Texas violates the Due Process Clause of the Fifth Amendment, and 8 U.S.C. § 1229a(b)(4)(A), 8 U.S.C. §1362, 8 C.F.R. §292.5, 8 C.F.R. § 1292.1, and 8 C.F.R. § 1003.61.
- d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner Immediately and provide notice and a hearing before an immigration judge prior to re-detaining petitioner ; and
- e. Grant any other and further relief that this Court deems just and proper.

Dated: December 15, 2025

Respectfully submitted,  
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**VERIFICATION PURSUANT 28 U.S.C. § 2242**

I represent Petitioner, FRANYER FERNANDEZ SIRA and I submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 15<sup>h</sup> of December, 2025

/s/Alush Kola  
*Attorney for the Petitioner*