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THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON

Mario Cruz Bernabe,

Petitioner,

vs.

) Case No. 2:25-cv-02709-TMC
) File No. 
)
) **AMENDED PETITION FOR**
) **HABEAS CORPUS**
)
)
) **ORAL ARGUMENT**
) **REQUESTED**
)
) Expedited hearing requested
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)
)
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PAMELA BONDI, United States Attorney General;
KRISTI NOEM, Secretary of U.S. Department of
Homeland Security;
TODD LYONS, Acting Director, U.S. Immigration and
Customs Enforcement;
LAURA HERMOSILLA, Field Office Director, ICE
Seattle Field Office;
BRUCE SCOTT, Warden, Northwest ICE Processing
Center;

AMENDED PETITION FOR HABEAS CORPUS

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(CASE NO. 2:25-cv-02709-TMC)

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Respondents.

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Petitioner seeks to Amend Their Petition for habeas corpus to include the proper Respondents as this case was transferred from the Oregon District Court to the Washington Western District Court, thus the respondents and Jurisdiction have changed. Additionally, Petitioner Seeks a judgment based on his membership in the Rodriguez Vazquez Class, granting habeas based on this membership as an alternative bond has been issued.

PARTIES

1. Petitioner Mario Cruz Bernabe is a non-citizen who is currently detained at the Northwest ICE Processing Center in Tacoma, Washington.
2. Respondent Pamela Bondi is the Attorney General of the United States. She is sued in her official capacity.
3. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (“DHS”). She is the cabinet-level secretary responsible for all immigration enforcement in the United States. She is sued in her official capacity.
4. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (“ICE”). He is the head of the federal agency responsible for all immigration enforcement in the United States. He is sued in his official capacity.

5. Respondent LAURA HERMOSILLA is the Field Office Director of the Immigration and Customs Enforcement (“ICE”) Seattle Field Office and is responsible for overseeing ICE operations pertaining to noncitizens within its territorial jurisdiction, including detentions, enforcement, and removal operations. She is the immediate legal custodian of the petitioner for purposes of a federal habeas petition. She is sued in her official capacity.

6. Respondent Bruce Scott is the Warden of the Northwest ICE Processing Center, the privately-operated immigration detention center where the petitioner is being detained. He is the immediate physical custodian of the petitioner, and he is sued in his official capacity.

JURISDICTION

7. This Court has jurisdiction over this matter under 18 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1651 (All Writs Act).

8. Further, this Court has jurisdiction under the Suspension Clause of Article I, § 9, cl. 2, of the U.S. Constitution. *See INS v. St. Cyr*, 533 U.S. 289 (2001).

9. No other Petitions, appeals, or motions regarding habeas corpus have been filed with any other court.

Venue in the Western District of Washington is appropriate under 28 U.S.C. § 1391(e)(1) because the petitioner is detained in this judicial district.

Venue is further appropriate under 28 U.S.C. § 1391(e)(1) because the Respondents live, work, and/or operate within this judicial district and because the actions which gave rise to this petition took place in Tacoma, Washington, which falls within this judicial district.

HABEAS CORPUS REQUIREMENTS UNDER 28 U.S.C. § 2243

1. Pursuant to 28 U.S.C. § 2243, a court entertaining an application for a writ of habeas

corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

2. 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.

3. The person to whom the writ or order is directed shall make a return certifying the true cause of the detention. When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

4. Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained. The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

5. The return and all suggestions made against it may be amended, by leave of court, before or after being filed. The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

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LEGAL REQUIREMENTS FOR STOPS AND ARRESTS

10. The Fourth Amendment protects “[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures.” U.S. Const. amend. IV.

11. Immigration detention is a form of civil confinement that “constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979).

12. “Except at the border and its functional equivalents,” immigration agents may stop individuals in public only after identifying “specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion” of a violation of immigration law. *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975).

13. Reasonable suspicion for an immigration stop cannot be based “on broad profiles which cast suspicion on entire categories of people without any individualized suspicion of the particular person to be stopped.” *United States v. Rodriguez Sanchez*, 23 F.3d 1488, 1492 (9th Cir. 1994). Rather, reasonable suspicion must be “particularized and objective,” *United States v. Arvizu*, 534 U.S. 266, 273 (2002), meaning the officer has reasonable suspicion as to “the particular person being stopped.” *United States v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th Cir. 2000) (en banc).

14. Immigration officers may arrest an individual without a warrant in limited circumstances. See *Arizona v. United States*, 567 U.S. 387, 407–08 (2012) (noting strong Congressional preference, as expressed in INA, for immigration arrests to be based on warrants).

15. The INA permits warrantless arrest if an immigration officer has reason to believe that a noncitizen (1) is in the United States in violation of the immigration laws and (2) “is likely to escape before a warrant can be obtained for his arrest”. 8 U.S.C. § 1357(a)(2); accord 8 C.F.R. § 287.8(c)(2)(i)-(ii). An officer “has reason to believe” when they have the equivalent of “the constitutional requirement of probable cause.” *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980).

16. The Fifth Amendment right to remain silent may be properly invoked during a civil immigration arrest. See *Kastigar v. United States*, 406 U.S. 441, 444-45 (1972) (The privilege against self-incrimination “can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory . . . This Court has been zealous to safeguard the values which underlie the privilege.”).

17. An immigration officer may not establish probable cause on the basis of a noncitizen’s silence pursuant to his Fifth Amendment rights. See *Hurd v. Terhune*, 619 F.3d 1080, 1088 (9th Cir. 2010) (affirming “the fundamental principle that a suspect’s silence in the face of questioning cannot be used as evidence against him at trial”).

18. If an immigration officer makes a warrantless arrest, at the time of an arrest and “as soon as it is practical and safe to do so,” immigration officers must identify themselves as immigration officers authorized to make arrests, inform the person arrested that they are under arrest, and state the reason for the arrest. 8 C.F.R. § 287.8(c)(2)(iii).

19. The noncitizen must then “be taken without unnecessary delay for examination before

an officer of the Service having authority to examine [noncitizens] as to their right to enter or remain in the United States.” 8 U.S.C. § 1357(a)(2).

20. Within 48 hours of an immigration arrest (or within a reasonable time in the case of emergency or extraordinary circumstances), an immigration official must make an initial custody determination to decide whether the noncitizen should remain in custody or be released. 8 U.S.C. § 1226(a); 8 C.F.R. § 287.3(d). These procedures are essential to protect the arrested person’s Fourth and Fifth Amendment rights.

FACTUAL ALLEGATIONS

21. On January 20, 2025, the president of the United States issued several executive actions relating to immigration, including “Protecting the American People Against Invasion,” an executive order (EO) setting out a series of interior immigration enforcement actions. The present administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation.

22. The “Protecting the American People Against Invasion” EO instructs the DHS Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures including through the use of mass detention.

23. In late May 2025, respondent KRISTI NOEM and White House Deputy Chief of Staff Stephen Miller met with ICE leadership and set a arrest quota of 3,000 per day and reportedly threatening job consequences if officials failed to meet arrest quotas.¹

¹ Julia Ainsley, et al., A sweeping new ICE operation shows how Trump’s focus on immigration is reshaping federal law enforcement, NBC News (June 4, 2025), <https://www.nbcnews.com/politics/justicedepartment/ice->

24. On May 28, 2025 Deputy Chief of Staff Miller confirmed that “[u]nder President Trump’s leadership, we are looking to set a goal of a minimum of 3,000 arrests for ICE every day, and President Trump is going to keep pushing to get that number up higher each and every single day.”²

25. Following the directive from Noem and Miller, ICE agents were instructed in an email to “turn the creativity knob up to 11” and aggressively “push the envelope” in arrests, including by pursuing “collaterals.” One email is reported to have said: “If it involves handcuffs on wrists, it’s probably worth pursuing.”⁴

CIRCUMSTANCES OF PETITIONER'S CASE

26. On information and belief Petitioner entered the U.S. in the early 2000, he was not detained upon his entry. Petitioner has been in the U.S. since he was seventeen years old. He has a long-term partner, who has DACA status, with whom he has two U.S. citizen children. His Children are nineteen and seventeen years old. His seventeen year old daughter has special needs and requires a learning plan at school. Petitioner has no criminal record. Petitioner has not left the U.S. since his entry in the early 2000s. Petitioner owns his own landscaping business and was on his way to work in his landscaping truck when he was stopped by ICE. Petitioner’s partner was notified of the arrest by a good Samaritan who dropped off a note on her door. Petitioner does not seem to have his phone in his

operation-trump-focus-immigrationreshape-federal-lawenforcement-rcna193494 (last visited Nov 26, 2025); Brittany Gibson & Stef W. Kight, Scoop: Stephen Miller, Noem tell ICE to supercharge immigration arrests, Axios (May 28, 2025), available at <https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller> (last visited Nov. 26, 2025)

² Hannity, Sean, “Stephen Miller says the admin wants to create the strongest immigration system in US History”, FOX NEWS (May 28, 2025), <https://www.foxnews.com/video/6373591405112> (last visited Nov. 26, 2025).

⁴Olivares, José, “US immigration officers ordered to arrest more people even without warrants,” The Guardian (Jun 4, 2025) <https://www.theguardian.com/us-news/2025/jun/04/immigration-officials-increased-detentions-collateral-arrests>

possession and his truck was abandoned where he was arrested.

27. If placed into removal proceedings Petitioner would be eligible for cancelation of removal as he has been present continuously for more than 10 years, has no criminal history and is the main financial supporter of his family including his two U.S. citizen children, one of whom has special needs.

FIRST CLAIM FOR RELIEF

Seizure with no probable cause

28. Except at the border and its functional equivalents, the Fourth Amendment prohibits respondents from stopping a person without reasonable suspicion to question as to whether he or she is unlawfully in the United States. The Fourth Amendment bars respondents from making an arrest without probable cause to believe that a person is a noncitizen unlawfully in the United States.

29. “A person’s mere propinquity to others independently suspected of [unlawful] activity does not, without more, give rise to probable cause to search [or seize] that person.” *Perez Cruz v. Barr*, 926 F.3d 1128, 1138 (9th Cir. 2019) (quotation omitted). “‘Reasonable suspicion’ is no different.” *Id.*

30. Respondents’ stop of Petitioner without reasonable suspicion, and arrest of without probable cause, violates the Fourth Amendment to the U.S. Constitution.

SECOND CLAIM FOR RELIEF

Seizure based solely on race

31. Race or apparent ethnicity, standing alone, cannot form the basis for reasonable suspicion. *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975). Because probable cause is a higher standard than reasonable suspicion, race or apparent

ethnicity, standing alone, is also necessarily insufficient to form the basis for probable cause.

32. Respondents had no basis to detain Petitioner and inquire about his immigration status other than his race and apparent ethnicity. Likewise, Respondents had no basis to arrest Petitioner other than his race and apparent ethnicity. This was violation of the Fourth Amendment.

THIRD CLAIM FOR RELIEF

Violation of Fifth Amendment Right to Due Process

33. The Due Process Clause of the Fifth Amendment prohibits the government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

34. Due process requires that government action be rational and non-arbitrary. See *United States v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). Due process also requires notice and “the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

35. Here, Petitioner has been stopped, arrested, and detained in an arbitrary manner, without any notice of the basis for his arrest and continued detention, and not based on a rational and individualized determination of whether he should be detained based on individual facts and circumstances pertaining to whether she was a flight risk or danger to the community.

36. Respondents’ stop, arrest, and continued detention of petitioner are violations of his due process rights under the Fifth Amendment to the U.S. Constitution.

FORTH CLAIM FOR RELIEF

Unlawful Detainment Pursuant to Mandatory Detention Policies

1. Petitioner is charged with having entered the United States without admission or parole at an unknown time and an unknown place years ago. See 8 U.S.C. § 1182(a)(6)(A)(i). Based on this allegation, DHS and EOIR deem Petitioner subject to mandatory detention as “applicants for admission” who are “seeking admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.
2. DHS and EOIR each have nationwide policies mandating the detention of all persons who entered without admission or parole, regardless of whether that person was apprehended upon arrival. Most recently, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals (BIA) held that all persons who have entered the United States without admission or parole are now subject to mandatory detention under § 1225(b)(2)(A).
3. Petitioner is seeking bond, and will categorically be denied bond under DHS’s and EOIR’s nationwide policy of denying bond to persons like Petitioners.
4. In a certified class action pending before this Court, this Court has already declared Respondents’ bond denial policy likely unlawful. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025). A motion for summary judgment is pending in that case. However, because of the limitations on injunctive relief at 8 U.S.C. § 1252(f)(1), Petitioner—who is a member of the Bond Denial Class in *Rodriguez Vazquez*—includes this request for relief in this case to seek relief in their individual capacity and to ensure that he receives benefit of any declaratory relief that may be issued in *Rodriguez Vazquez*, should Defendants fail to implement such relief with respect to him.

5. Petitioners' detention based on § 1225(b)(2) violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioners, who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. Indeed, § 1226(a) expressly applies to people who, like Petitioners, are charged as inadmissible for having entered the United States without admission or parole.
6. Respondents' new legal interpretation is also plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioners.

Wherefore, Petitioner Seeks the Following Relief:

- a. Assume jurisdiction in this matter;
- b. Issue an Order of habeas corpus where the IJ denied bond under § 1225(b)(2) but set a bond amount in the alternative. Petitioner seeks an order requiring DHS to immediately release him once an alternative bond is posted. At which point Petitioner agrees to dismiss all remaining claims.
- c. Award petitioner reasonable attorneys fees and costs under the Equal Access to Justice Act and any other statute applicable to this matter.

In the alternative:

- a. Retain the Temporary Removal Order currently in place.
- b. Issue an order to show cause why this petitioner should not be granted within (3) days.
- c. Declare that petitioner's stop and arrest without reasonable suspicion, and petitioner's continued detention, violates applicable regulations, the APA, the INA, and the Fourth and Fifth Amendments to the Constitution of the United States.

- d. Issue a writ of habeas corpus ordering respondents to release petitioner from custody.
- e. Award petitioner reasonable attorneys fees and costs under the Equal Access to Justice Act and any other statute applicable to this matter.

Dated this 20 day of January 2026

/s/Alicia Vial Beesley

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