



**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS**

Jose Rivera Tovar,

Petitioner,

v.

Pamela Bondi,

Attorney General of the United States;

Kristi Noem,

Secretary of the Department of Homeland Security;

Todd M. Lyons,

Acting Director of U.S. Immigration and Customs Enforcement;

Mary De Anda-Ybarra,

ICE Field Office Director, El Paso, TX;

Respondents.

Case No.: 3:25-cv-751

**PETITION FOR WRIT OF HABEAS CORPUS**

**(28 U.S.C. § 2241)**

## INTRODUCTION

Petitioner Jose Rivera Tovar (Mr. Rivera) respectfully petitions this Court for a Writ of Habeas Corpus under 28 U.S.C. § 2241, challenging his unlawful and prolonged immigration detention by U.S. Immigration and Customs Enforcement (“ICE”). Mr. Rivera has resided in the United States for ten years and entered the United States in May of 2015. He has no criminal history, and he has a United States citizen child who currently resides in Chicago, Illinois where he himself also resides. Prio to his arrest, Mr. Rivera was living at [REDACTED] in Prospect Heights, Illinois zip code 60070. The duration of his presence in the United States and the existence of a U.S citizen child make him prima facie eligible for Cancellation of Removal under INA § 240A(b). Apart from his family, Mr. Rivera has also maintained employment. Prior to his detention, he was working as a cook.

Despite his longstanding residence, clean record, and deep ties with Illinois, ICE conducted a raid in the Chicago area and detained Mr. Rivera without a judicial warrant and without any individualized determination of danger or flight risk. He has now been detained for over a month.

Immigration Judges in this jurisdiction have increasingly issued blanket denials of bond to noncitizens who entered without inspection, relying on the decision in *Matter of Yajure Hurtado*, which many courts—including those within the Seventh Circuit—have recognized as contrary to the statutory text and constitutionally problematic.

In addition, Mr. Rivera has a medical condition in which he is nearly blind in one of his eyes. He requires special contact lenses and medicine obtained through a medical condition. He is required to do the physician recommended treatment on a monthly basis. If he does not, his physician warned that it could result in his condition worsening and eventually causing complete blindness in the eye. Mr. Rivera has not had access to his prescription since his arrest.

An alien number of [REDACTED] had been issued to Mr. Rivera and a Notice to Appear (NTA) had also been created. The notice to appear is the form that commences removal proceedings before the immigration court. However this NTA is defective as it has also not been signed. A court date has also reportedly been created for Mr. Rivera. Counsel had visited the ICE office in Chicago in person to inquire about any potential court dates. The officer for ICE confirmed that a date of January 21<sup>st</sup> 2025 had been set, but it is unlikely that there will be any hearing conducted on that day.

Many detainees have had false court dates set where they are simply given dates but are not brought before an immigration judge. Because this upcoming date has no judge assigned and because it is set in Detroit, where the respondent is neither from or currently being detained in, it is highly likely that it will not be an actual hearing, especially when the Immigration court electronic system still reports that his case is not on any docket.

Habeas corpus is appropriate and necessary to remedy his unlawful custody.

## **JURISDICTION AND VENUE**

This Court has jurisdiction under 28 U.S.C. § 2241, 28 U.S.C. § 1331, and 5 U.S.C. § 702. Venue is proper under 28 U.S.C. § 1391(e) because the events giving rise to this petition occurred in the Western District of Texas, and Petitioner is detained within this District. It should be noted however that petitioner's residence is in the Chicago area, within the northern district of Illinois.

## **PARTIES**

**Petitioner:** Jose Rivera Tovar, a native and citizen of Mexico who has resided in the United States for ten years.

**Respondents:** The federal agencies and officials responsible for Petitioner's arrest, detention, and potential transfer in both their official and individual capacities.

## **FACTUAL BACKGROUND**

1. Mr. Rivera has been continuously present in the United States for ten years.
2. He has one United States citizen child who is currently a minor.
3. He is eligible for the process of cancellation of removal through the immigration court
5. He has no criminal history.
6. ICE arrested Mr. Rivera during an immigration raid conducted in the Chicago area, without a warrant and without individualized suspicion.
7. He has now been detained for more than a month.
8. He is ineligible for bond due to the widespread and improper reliance on Matter of Yajure Hurtado by Immigration Judges in this jurisdiction, who have treated it as creating categorical ineligibility for bond for individuals who entered without inspection.
9. Mr. Rivera poses no flight risk or danger and has deep ties to the community.

## **CLAIMS FOR RELIEF**

LEGAL CLAIMS

COUNT I

Detention Without Process / Fifth Amendment Due Process

United States Court of Appeals for the Fifth Circuit has consistently held that civil immigration detention requires statutory and procedural grounding, and that detention outside the INA's framework violates due process.

In *Zadvydas v. Davis*, 533 U.S. 678, 690–92 (2001) The government may not detain noncitizens without clear statutory authorization and meaningful process. Civil detention that becomes arbitrary violates the Fifth Amendment.

*Santos v. Warden, FCI Oakdale*, 965 F.3d 203, 210–11 (5th Cir. 2020) held that Immigration detention must be authorized by statute and tethered to removal proceedings, and due process requires detention to be non-punitive and procedurally justified.

*Pierre-Paul v. Barr*, 930 F.3d 684, 693–94 (5th Cir. 2019) states that while upholding § 1226(c) in limited circumstances, the Fifth Circuit reaffirmed that detention must fall squarely within statutory authority.

## COUNT II

### DETENTION WITHOUT STATUTORY AUTHORITY (Pre-NTA Detention)

The underlying statutes are the following;

- 8 U.S.C. § 1226(a) — detention “pending a decision on whether the alien is to be removed”
- 8 U.S.C. § 1229(a) — removal proceedings commence only upon service of an NTA
- 8 C.F.R. § 1003.14(a) — jurisdiction vests when the NTA is filed with the immigration court

The Fifth Circuit has repeatedly emphasized that § 1226 detention presupposes ongoing removal proceedings.

#### Fifth Circuit – Key Authority

*Banos v. Asher*, 388 F.3d 1189, 1191–92 (5th Cir. 2004)

- DHS detention authority exists only where removal proceedings are pending.
- Custody outside the INA's structure is ultra vires.

*Garcia v. Taylor*, 40 F.3d 299, 303 (5th Cir. 1994)

- Immigration detention authority is strictly limited to that granted by Congress.
- Courts must order release when detention exceeds statutory authority.

District Courts in the Fifth Circuit (Texas)

Mendoza v. Barr, 391 F. Supp. 3d 725, 734–35 (W.D. Tex. 2019)

- § 1226(a) detention requires active removal proceedings.
- Detention without a properly initiated case exceeds DHS authority.

Castillo v. Barr, 441 F. Supp. 3d 626, 640 (S.D. Tex. 2020)

- ICE custody is unlawful when it is divorced from formal removal proceedings.

COUNT III

Violation of the Right to Apply for Relief / Interference with Statutory Rights

Reno v. Flores, 507 U.S. 292, 306 (1993) which states the government may not administer immigration detention in a way that nullifies statutory rights.

Abdel-Muhti v. Ashcroft, 314 F.3d 281, 286 (5th Cir. 2002) - DHS actions that effectively foreclose access to relief raise serious due-process concerns.

Ponce-Osorio v. Johnson, 824 F.3d 502, 506–07 (5th Cir. 2016) - Noncitizens must have a meaningful opportunity to pursue relief authorized by Congress.

Texas District Court Authority

In Ortega v. ICE Field Office Director, 737 F. Supp. 2d 435, 442–43 (W.D. Tex. 2010) it was held that ICE may not detain or transfer individuals in a manner that undermines access to immigration relief.

Also Santos-Alvarado v. Barr, 467 F. Supp. 3d 676, 688 (S.D. Tex. 2020) found that transfers or detention practices that short-circuit relief eligibility violate due process.

#### REQUEST FOR RELIEF

Petitioner respectfully requests that this Court:

1. Issue a Writ of Habeas Corpus directing Respondents to release Mr. Rivera immediately from ICE custody;
2. Enjoin Respondents from transferring him outside the Western District of Texas pending judicial review;
3. Declare that his arrest and detention were unlawful;

4. Grant any further relief the Court deems just and proper.

Respectfully Submitted,



Brandon Carter  
Counsel for Petitioner  
GPLLC  
1010 Lake St., Suite 200  
Oak Park, IL 60301  
708-801-8159  
BCarter@globalperiphery.com

In the Matter of: **JOSE RIVERA TOVAR**

**CERTIFICATE OF SERVICE**

I, Brandon Carter, certify that on this 29<sup>th</sup> day of December 2025, I caused a true and correct copy of the foregoing Petition for Writ of Habeas Corpus to be served via USPS priority mail and the CM/ECF system upon all Respondents.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
525 Magoffin Ave. Suite 105  
El Paso, TX 79901

Signature



12/29/2025