

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Marco Antonio Rivera-Ramirez,

Petitioner,

v.

Sylvester M. Ortega, Acting Field Office
Director of Enforcement and Removal
Operations, San Antonio Field Office,
Immigration and Customs Enforcement
("ICE/EOR"); Todd Lyons, Acting Director of
Immigration Customs and Enforcement
("ICE"); Kristi Noem, Secretary, U.S.
Department of Homeland Security; U.S.
DEPARTMENT OF HOMELAND
SECURITY; Pamela Bondi, U.S. Attorney
General; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; Bobby Thompson,
Warden of South Texas ICE Processing Center,

Respondents.

Case No. 5:26-cv-00136

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS AND REQUEST
FOR TEMPORARY RESTRAINING
ORDER**

Expedited Hearing Requested

1. Petitioner Marco Antonio Rivera-Ramirez brings this petition for a writ of habeas corpus seeking release or a bond hearing under the Immigration and Nationality Act ("INA") Section 1226, the Fifth Amendment of the United States Constitution, as well as enforcement of his rights as a member of the Bond Eligible Class certified in *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.). Petitioner is in the physical custody of Respondents at the South Texas ICE Processing Center. He is unlawfully detained because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have refused to release him or grant an individualized bond hearing required by both federal law, this Court's precedent, and the final judgment issued for a class of which he is a member.

2. Mr. Rivera has been continuously physically present in the United States for over 19 years and has resided in Maryland during that time. Mr. Rivera last entered the United States in approximately 2006. Petitioner has never been convicted of a crime.

3. After apprehending Petitioner on August 26, 2025, DHS charged Petitioner as someone who entered the United States without inspection. Petitioner has been in custody since his initial detention. Petitioner is pursuing cancellation of removal pursuant to 8 U.S.C. § 1129b(b)(1) and 8 C.F.R. § 240.20. DHS not provided any indication that Mr. Rivera's removal has been ordered. On December 30, 2025, Petitioner requested a bond hearing from the Pearsall Immigration Court. Ex. 1. On January 7, 2026, Petitioner was summarily denied bond without hearing. Ex. 2. The Immigration Judge ("IJ") found Petitioner was held under § 1225(b) as an "applicant for admission." *Id.* As a result, the IJ determined they lacked authority to hear bond such requests, and that "[t]he decision by the court in Bautista ... does not vacate, stay or enjoin the Board's decision in Yajure Hurtado." *Id.*

LEGAL FRAMEWORK

4. This Court has decisively determined the impropriety of using § 1225 to detain individuals who have long resided in the United States and that as a result, habeas petitioners like Mr. Rivera are entitled immediate release. In a recent precedential decision in the Western District of Texas, this Court determined that "§ 1225 applies to recent entries and § 1226 applies to noncitizens already residing in the United States" such as Mr. Rivera, who has continuously resided in the United States for over 19 years. *See Guzman v. Bondi*, --- F.Supp.3d ---, No. 1:25-CV-2055-RP, 2025 WL 3724465, at *5 (W.D. Tex. Dec. 23, 2025) (hereinafter *Guzman*); *see also Rodriguez Lara v. Bondi*, No. SA-25-CA-01581-XR, 2025 WL 3654263, at *3 (W.D. Tex. Dec. 16, 2025) ("[C]ourts all over the country have generally rejected Respondents' broad

interpretation of Section 1225(b)(2) This court does the same.”). The Court based its holding on the INA’s “text, the statute’s history, congressional intent, and the consistent past application of the statute.” *Guzman*, 2025 WL 3724465, at *6.

5. Similarly, this Court has joined the chorus of federal courts rejecting the Board of Immigration Appeals (“BIA”) decision in *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) as unpersuasive support for detention of long-time residents under § 1225, upon which the IJ here relied upon to deny a bond hearing. *See, e.g., Guzman*, 2025 WL 3724465, at *5 (string citing cases) (“District courts across the country have been weighing [BIA’s *Yajure Hurtado* decision]. Repeatedly, they have found that DHS and BIA’s construction of the INA is incorrect and that petitioners who have long resided in the United States but are being held under § 1225 are entitled to relief.”).

6. “Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvyda v. Davis*, 533 U.S. 678, 690 (2001) (citation omitted).

7. The recognized governmental interest justifying civil immigration detention are twofold: (1) “preventing flight” – for the purpose of ensuring a noncitizen is present for immigration proceedings and, where ordered, removal – and (2) “protecting the community.” *Id.* at 690. As applied to any individual in custody, when immigration detention does not serve one of these purposes, it is unconstitutionally arbitrary. *Lopez-Arevelo v. Ripa*, --- F.Supp.3d ---, No. EP-25-CV-337-KC, 2025 WL 2691828, at *12 (W.D. Tex. Sept. 22, 2025) (“[T]he Court finds that detaining [petitioner] without any individualized assessment of his flight risk and dangerousness deprives him of his constitutional right to procedural due process under the Fifth Amendment of the United States Constitution.”). The IJ did not rely upon either purpose to

continue Mr. Rivera's detention, but rather summarily denied his release under § 1225(b) and *Yajure Hurtado*. Ex. 2.

8. Furthermore, in *Bautista*, the plaintiffs, on behalf of a class, challenged DHS's use of § 1225(b) to detain immigrants, instead of the statutorily proper § 1226. *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). On November 20, 2025, the district court granted partial summary judgment for individual plaintiffs. *Id.* at *11. On December 18, 2025, the *Bautista* court clarified that the summary judgement constituted "final judgement" with respect to all class members. *Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3678485, at *1 (C.D. Cal. Dec. 18, 2025). The *Bautista* court granted declaratory relief stating Bond Eligible Class Members **"are not subject to mandatory detention under § 1225(b)(2), and are entitled to consideration for release on bond by immigration officers."** *Id.* (emphasis added).

9. In its holding, the *Bautista* court reconsidered and expanded its initial holding because "Respondents have counseled noncompliance with the Court's orders" and thus the Bond Eligible Class face "irreparable harm" in continued unlawful detention. *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3713982, at *7 (C.D. Cal. Dec. 18, 2025). The court also confirmed that "*Yajure-Hurtado*, 19 I&N. Dec. 26, which contradicts the Court's reasoning is no longer controlling." *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3713987, at *12 (C.D. Cal. Dec. 18, 2025).

10. Respondents have not been granted a stay from the holding in the aforementioned *Bautista* orders, despite their appeal to the Ninth Circuit. *Bautista v. Noem*, No. 25-7958 (9th Cir. issued Dec. 19, 2025) (order assigning docket number). Thus, because this class action

declaratory judgement is final and not stayed, it remains binding upon Respondents across the country. 8 U.S.C. § 2201(a).

11. Petitioner Rivera is a member of the Bond Eligible Class in *Bautista*, 2025 WL 3713987, at *32, because he:

- a. was apprehended by immigration authorities on August 26, 2025;
- b. does not have lawful status in the United States and is currently detained at the South Texas ICE Processing Center;
- c. most recently entered the United States without inspection over 19 years ago and was not apprehended upon arrival; and
- d. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

12. Nevertheless, Respondents continue to defy *Bautista*'s final judgment and subject Petitioner to unlawful detention despite his clear entitlement to release or a bond hearing as a Bond Eligible Class member.

13. Because Respondents are detaining Petitioner contrary to this Court's own rulings and the declaratory judgment issued in *Bautista*, the Court should accordingly order that Respondents must immediately release Petitioner. This Court has ordered the same relief under similar circumstances. *Guzman*, 2025 WL 3724465, at *6.

14. Alternatively, the Court should order Petitioner's release unless Respondents provide an individualized bond hearing under 8 U.S.C. § 1226(a) within one business day to determine a reasonable bond.

JURISDICTION

15. Petitioner is in the physical custody of Respondents. Petitioner is detained at the South Texas ICE Processing Center, in Pearsall, Texas within Frio County.

16. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

17. The Due Process Clause of the Fifth Amendment to the U.S. Constitution forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend V.

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

VENUE

19. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), and Local Rule CV-3(b)(3), venue lies in the United States District Court for the Western District of Texas, San Antonio Division, the judicial district in which Petitioner currently is detained.

20. Venue is also properly in this 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 United States District Court for the Western District of Texas.

REQUIREMENTS OF 28 U.S.C. § 2243

21. The writ of habeas corpus extends to cases where a person is “in custody under or by color of the authority of the United States,” or when a person “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(1), (3).

22. The Court should grant the petition for writ of habeas corpus “forthwith,” as the legal issues have already been resolved by this Court and for class members in *Bautista* that remain binding legal orders to Respondents.

23. 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).

PARTIES

24. Petitioner Marco Antonio Rivera-Ramirez is a citizen of Mexico who has been in immigration detention since August 26, 2025. After Petitioner was arrested in Washington D.C., he was transferred to the South Texas Immigration Processing Center. ICE did not set bond.

25. Respondent Sylvester M Ortega is the Acting Director of the San Antonio Field Office of ICE’s Enforcement and Removal Operations division, which has responsibility for the South Texas Immigration Processing Center. As such, Acting Director Ortega is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He is named in his official capacity.

26. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent Sylvester Ortega and ICE in general. Respondent Lyons is a legal custodian of Petitioner. He is sued in his official capacity.

27. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the 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.

28. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

29. 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.

30. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

31. Respondent Bobby Thompson is employed as Warden of the South Texas ICE Processing Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

CLAIMS FOR RELIEF

COUNT ONE

Violation of the INA

32. Petitioner restates and realleges all paragraphs as fully set forth herein.

33. Individuals in immigration detention have the right to challenge the legality of their detention.

34. Petitioner most recently entered the United States over 19 years ago; is currently detained at the South Texas ICE Processing Center; has been denied an individualized bond hearing; and an IJ has determined that Petitioner is detained under § 1225(b)(2).

35. Respondents have directed IJs not to follow Court orders that require individualized bond hearings, making administrative recourse futile. *Bautista v. Santacruz*, 2025 WL 3713982, at *7.

36. Because Petitioner is not “seeking admission,” petitioner is not lawfully detained under § 1225(b)(2) and Petitioner is entitled to immediate release. *See* U.S. CONST. art. I § 9, cl. 2 (Suspension Clause); 28 U.S.C. § 2241(c)(3).

COUNT TWO
Violation of Fifth Amendment Right to Due Process
Procedural Due Process

37. Petitioner restates and realleges all paragraphs as fully set forth herein.

38. Petitioner is in custody “under or by color of the authority of the United States” and in custody “in violation of laws . . . of the United States.” 28 U.S.C. § 2241(c).

39. The Due Process Clause of the Fifth Amendment of the U.S. Constitution forbids the government from depriving any person of liberty 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 Due Process Clause protects. *Zadvydas*, 533 U.S. at 690.

40. Due process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693.

41. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

42. While the right to release may be conditioned based on factual findings, the right to a bond hearing on the merits is statutorily guaranteed by § 1226. Denial of Mr. Rivera’s right

to a bond hearing by unlawfully categorizing him as subject to § 1225 constitutes “irreparable harm.” *Bautista*, 2025 WL 3713982, at *7.

COUNT THREE
Request for Relief Pursuant to *Bautista*

43. Petitioner restates and realleges all paragraphs as fully set forth herein.

44. As a member of the Bond Eligible Class in *Bautista*, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

45. The order granting final judgment in *Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.

46. The order granting class certification in *Bautista* further orders that Bond Eligible Class members “are not subject to mandatory detention under § 1225(b)(2), and are entitled to consideration for release on bond by immigration officers.”

47. Respondents are parties to *Bautista* and bound by the Court’s declaratory judgment. 28 U.S.C. § 2201(a); *Bautista*, 2025 WL 3678485, at *1.

48. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b), Respondents violate Petitioner’s statutory rights under the INA and the Court’s judgment in *Bautista*. *Id.*

PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under chapter 153 (habeas corpus) of Title 28;
- c. Grant a writ of habeas corpus requiring that Respondents immediately release Petitioner from custody;
- d. Enter a temporary restraining order preventing Respondents from deporting Mr. Rivera to Mexico, or any other country;

- e. Grant a preliminary and permanent injunctive relief enjoining Respondents from future detention of Mr. Rivera;
- f. Provide declaratory relief that the BIA decision in *Yajure Hurtado* lacks all legal effect in Mr. Rivera's case;
- g. Require that Respondents provide notice to the undersigned counsel, at the email address herein, prior to Petitioner's release, including the time and location of his release;
- h. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within one business day; and
- i. Grant any other and further relief that this Court deems just and proper.

DATED this 13 day of January, 2025.

Respectfully submitted,

/s/ Henry W. Legg

Henry W. Legg

TX Bar No. 24116661

STEPTOE LLP

717 Texas Ave # 2800

Houston, TX 77002

Tel. 713 221 2350

wlegg@steptoe.com

Jonathan Drimmer
DC Bar No. 450287
Pro Hac Vice Forthcoming
Lindsay Arrieta
DC Bar No. 1510687
Pro Hac Vice Forthcoming
Joe Bower
DC Bar No. 1766028
Pro Hac Vice Forthcoming
Brynn Drury
MD Bar No. 2511201068
Pro Hac Vice Forthcoming
Erin Rausch
DC Bar No. 90040181
Pro Hac Vice Forthcoming
STEPTOE LLP
1330 Connecticut Ave, NW
Washington, DC 20036
Tel. 202 429 6490
jdrimmer@steptoe.com
larrieta@steptoe.com
jbower@steptoe.com
bdrury@steptoe.com
erausch@steptoe.com

Attorneys for Petitioner

VERIFICATION

I declare under penalty of perjury that the facts set forth in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

Date: January 13, 2026

/s/ Joe Bower