UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

Jose Alfredo Giron Bautista,

Petitioner,

v. Case No.:

Kristi Noem, Secretary of the Department of Homeland Security; **Pamela Bondi,** Attorney General of the U.S.; **Todd M. Lyons,** Acting Director U.S. Immigration and Customs Enforcement; **Garrett Ripa**, ICE ERO Miami Field Office Director; **Kevin Guthrie**, Executive Director of the Florida Division of Emergency Management,

Respondents.
_____/

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. §2241 AND FOR IMMEDIATE RELEASE OR, IN THE ALTERNATIVE, A PROMPT INDIVIDUALIZED BOND HEARING

To the Honorable Judge of Said Court:

I. INTRODUCTION

1. Petitioner, Jose Alfredo Giron Bautista ("Mr. Giron Bautista"), seeks a writ of habeas corpus to remedy his unlawful detention by the Respondents.

2. Mr. Giron Bautista, a 39-year-old Mexican national, first entered the United States ("US") over 20 years ago and has been living here since then. Despite having no prior significant criminal history, he was detained in January 2026, by Respondents and transferred to Florida Soft Side South Detention Center ("the detention center"), run by the State of Florida Division of Emergency Management ("FL Emergency Mgmt.") and under the supervision/control of the US Department of Homeland Security ("DHS" or "the Department") and the US Immigration and Customs Enforcement ("ICE").

3. Federal law does not authorize state agencies to hold immigration detainees during the removal process.

4. Mr. Giron Bautista was denied the right to due process under the Fifth Amendment to the US Constitution. Respondents are unlawfully detaining Mr. Giron Bautista without providing a legal justification for his ongoing detention and without providing him with a bond hearing.

5. Mr. Giron Bautista respectfully requests that this Honorable Court order Respondents to show cause why the writ should not be granted within three days and, if necessary, set a hearing on this Petition within five days of the return, pursuant to 28 U.S.C. § 2243.

6. Mr. Giron Bautista further respectfully requests that this Honorable Court grant him a writ of habeas corpus, ordering Respondents to release him immediately.

II. PARTIES

7. Petitioner, Jose Alfredo Giron Bautista, is a 39-year-old native and citizen of Mexico who first entered the US more than 20 years ago. He is being detained without a bond by Respondents at the detention center in Florida.

8. Respondent, Kristi Noem, is the Secretary of DHS, which is responsible for the administration of ICE, a subunit of DHS, and the implementation and enforcement of the immigration laws. As such, Ms. Noem is the ultimate legal custodian of Mr. Giron Bautista. This Respondent is being sued in her official capacity.

9. Respondent, Pamela Bondi, is the Attorney General of the United States and head of the Department of Justice, which encompasses the Board of Immigration Appeals ("BIA"), the Executive Office for Immigration Review ("EOIR"), and the Immigration Courts. Ms. Bondi shares responsibility for implementation and enforcement of the immigration laws with Respondent Noem. As such, Ms. Bondi is a legal custodian of Mr. Giron Bautista. This Respondent is being sued in her official capacity.

10. Respondent, Todd M. Lyons, is the Acting Director of ICE. He is responsible for the administration of ICE and the implementation and enforcement of the immigration laws, including noncitizen detention. As such, he is a legal custodian of Mr. Giron Bautista. This Respondent is being sued in his official capacity.

11. Respondent, Garrett Ripa, is the ICE Field Office Director for the Miami Field Office. The Miami Field Office is responsible for the detention of noncitizens in Florida and at the detention center where Mr. Giron Bautista is being detained. This Respondent also effects operational, legal, and factual control over the detention center and, as such, is a legal custodian of Mr. Giron Bautista. This Respondent is being sued in his official capacity.

12. Respondent, Kevin Guthrie, is the Executive Director of FL Emergency Mgmt., which manages the detention center where Mr. Giron Bautista is being detained. As such, he is a legal custodian of Mr. Giron Bautista. This Respondent is being sued in his official capacity.

III. JURISDICTION AND VENUE

13. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201-02 (declaratory relief), and Art. I, Sec. 9, Cl. 2 of the United States Constitution (Suspension Clause), as Mr. Giron Bautista is presently in custody under, or by color of, the authority of the US and challenges his custody as in violation of the Constitution, laws, or treaties of the US.

14. The federal district courts have jurisdiction under Section 2241 to hear habeas claims by individuals challenging the lawfulness of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. 510 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Supreme Court upheld the federal courts' jurisdiction to review such claims in *Jennings v. Rodriguez*, 583 U.S. 281, 291-295 (2018).

15. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. §§ 1391 and 2241(d) because Mr. Giron Bautista is detained at the detention center in or near Ochopee, Florida,

within the court's jurisdiction.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. Mr. Giron Bautista has no administrative remedies available to him and his only remedy is by way of this judicial action.

17. Mr. Giron Bautista is detained by Respondents pursuant to immigration custody. He has no adequate administrative remedy to obtain a bond hearing in light of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), a recent precedential decision of the BIA which determined immigration judges ("IJs") lack jurisdiction to consider bond for individuals present in the US without admission under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). Exhaustion is therefore futile and not required. *See* 28 U.S.C. § 2241; *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992).

18. Further, no statutory exhaustion requirements apply to Mr. Giron Bautista's claim of unlawful detention. This petition raises a constitutional law issue, and the administrative agency will not address the constitutional issue. Likewise, the agency is unable to strike down its own regulation as in violation of the statute. *See Matter of G-K-*, 26 I&N Dec. 88 (BIA 2013)

V. LEGAL FRAMEWORK

19. Noncitizens who enter the US are entitled to due process under the Fifth Amendment to the US Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

20. 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).

21. Immigration detention should not be used as a punishment and should only be used when, under an individualized process, a determination is made that the noncitizen is a flight risk because he is unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. at 690.

22. The Immigration and Nationality Act ("INA") distinguishes between detention of applicants for admission under 8 U.S.C. § 1225 and detention of other noncitizens under 8 U.S.C. § 1226.

23. Noncitizens subject to detention under 8 U.S.C. § 1226 are generally eligible for release on bond issued by an IJ, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention under 8 U.S.C. § 1226(c).

24. Noncitizens subject to expedited removal or recent arrivals seeking admission into the country are subject to detention under 8 U.S.C. § 1225 and are not eligible for release on bond issued by an IJ.

25. The Supreme Court analyzed the interplay between § 1225 and § 1226 in *Jennings v. Rodriguez,* 583 US 281 (2018). The Court explained that § 1225 "applies primarily to aliens seeking entry into the United States." *Id.* at 297. By contrast, § 1226 "applies to aliens already present in the United States." *Id.* at 303.

26. 8 U.S.C. § 1225(b)(2) mandates detention of applicants for admission "if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to admission." (Emphasis added.) Admission is defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 USC 1101(a)(13)(A).

27. 8 U.S.C. § 1225(b)(2) uses the term "seeking admission," therefore limiting its application to individuals actively attempting to enter the US.

28. This distinction between § 1225 and § 1226 is also supported by the legislative history. During the amendments to the INA in 1996, Congress acknowledged that noncitizens present in the US have more substantial due process rights than new arrivals. *See* H.R. Rep. 104-469, p. 1, at 163-166. The federal regulations that followed stated that despite being applicants for

admission, non-citizens present in the US without having been admitted or paroled would be eligible for bond and bond redetermination. *Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10323 (Mar. 6, 1997).

29. In the decades since the enactment of the amendments to the INA, most people who entered without inspection and were thereafter detained 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.

30. Recent amendments to 8 U.S.C. § 1226 further support this distinction. In January 2025, Congress passed the Laken Riley Act ("LRA") which added another category of non-citizens who are not eligible to be released on bond under 8 U.S.C. § 1226(a) – non-citizens who are inadmissible, including for *being present in the US without being admitted or paroled*, and who have been arrested for, charged with, or convicted of certain additional crimes not previously included. This specific exception, along with the ones already in the statute, leaves inadmissible non-citizens, including those who are inadmissible because they are present without being admitted or paroled, but who have not been arrested for, charged with, or convicted of certain crimes, subject to the discretionary provisions of 8 U.S.C. § 1226(a).

31. Under 8 U.S.C. § 101(a)(13)(A), admission means "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." But 8 U.S.C. § 101(a)(13)(B) expressly provides that a noncitizen "who is paroled under section 212(d)(5) shall not be considered to have been admitted." Likewise, 8 U.S.C. § 1182(d)(5)(A) makes clear that parole authorizes physical entry only, does not constitute admission, and preserves the alien's existing legal posture. Thus, while parole permits entry, it does not render the noncitizen an "applicant for admission" within the meaning of 8 U.S.C. § 1225.

32. In *Matter of Arrabally & Yerrabelly*, 25 I&N Dec. 771 (BIA 2012), the BIA held that

travel on advance parole is not a "departure" for purposes of inadmissibility under 8 U.S.C. § 212(a)(9)(B). The reasoning of *Arrabally* is critical here. The BIA explained that advance parole travel is fundamentally different from a departure followed by a new entry because parole is authorized in advance by DHS, preserves continuity of presence, and does not trigger the legal consequences associated with leaving and reentering the United States. If advance parole travel is not a departure, DHS cannot logically or legally treat the return as a new "arrival" for purposes of § 1225 mandatory detention.

33. Courts and DHS alike recognize that parole-based reentry satisfies the "inspected and paroled" requirement of 8 U.S.C. § 1255(a) for adjustment of status, while not constituting an admission. *See Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). But critically, satisfying 8 U.S.C. § 1255(a) does not erase an entry without inspection for all purposes, nor does it transform the noncitizen into an "arriving alien" under § 1225. Rather, parole preserves the noncitizen's preexisting procedural posture unless Congress clearly provides otherwise. Congress has not done so. Nothing in the INA states that advance parole converts a noncitizen who first entered without inspection into an applicant for admission subject to § 1225 detention. To the contrary, § 1225 applies to those "seeking admission," not to individuals returning pursuant to prior DHS authorization.

34. Against this backdrop and ignoring the case law, the plain text of the statute, and the legislative history, the BIA in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), held that all individuals present without admission are applicants for admission under § 1225(a)(1) and subject to mandatory detention under § 1225(b)(2)(A), thereby foreclosing IJ bond jurisdiction.

35. Given that the BIA in *Yajure Hurtado* eliminated IJ bond jurisdiction for individuals such as Mr. Giron Bautista, the agency is categorically incapable of providing a constitutionally adequate hearing. Under Eleventh Circuit principles, where the agency offers no process, the habeas

court must step in. *See Oyedeji v. Ashcroft*, 332 F. Supp. 2d 747, 754-55 (M.D. Pa. 2004) (relied upon by Eleventh Circuit courts) (habeas court ordered release because no constitutional procedures were available to justify continued detention.) Thus, this Court may: order immediate release, or order an individualized bond hearing conducted by a neutral arbiter with the government bearing the burden. Because no such neutral decisionmaker exists within the agency, immediate release is the constitutionally appropriate remedy.[1]

VI. FACTS AND PROCEDURAL HISTORY

36. Mr. Giron Bautista entered the US in or around 2001, over 20 years ago. He has lived in the country since then and has three young children who are US citizen.

37. In or around 2013, Mr. Giron Bautista obtained Deferred Action for Childhood Arrivals ("DACA"). Shortly thereafter, he was also granted travel authorization as a DACA recipient. He traveled out of the country and re-entered, using the DACA travel documents, in or around 2014. He has not left the country since then.

38. Mr. Giron Bautista was detained on or around January 2, 2026, and transferred to the detention center, where he remains under Respondents' custody.

39. Mr. Giron Bautista challenges Respondent's constitutional and statutory authority to detain him, with or without a bond, where Respondents have presented no legal justification for his ongoing detention.

40. Respondents have provided no meaningful procedures and deprived Mr. Giron Bautista of procedural and substantive due process, and acted contrary to established law in an

[1] Furthermore, Mr. Giron Bautista is a member of the recently certified class in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 U.S. Dist. LEXIS 262265 (C.D. Cal. Dec. 18, 2025). The Court in *Maldonado Bautista* entered Final Judgment declaring class members are (1) detained pursuant to 8 U.S.C. § 1226(a), (2) not subject to mandatory detention, and (3) entitled to consideration for release on bond by immigration officers and, if not released, to a custody redetermination hearing before an IJ. However, Respondents are refusing to provide bond hearings to class members.

arbitrary and capricious manner. *See Jennings,* 583 U.S. at 291-298; *Id.* at 355-356 (Breyer, J., dissenting); *Zadvydas*, 533 U.S. at 688 (Explaining the court's authority to consider a habeas challenge to detention that is without statutory authority notwithstanding Congress' attempt to limit judicial review in immigration matters).

VII. CAUSES OF ACTION

Count 1: Unlawful Restraint/Detention in Violation of Constitutional Due Process

41. Mr. Giron Bautista incorporates by reference the allegations set forth in the preceding paragraphs.

42. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty 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*, 533 U.S. at 693.

43. Civil immigration detention violates due process if it is not reasonably related to its purpose. *See Zadvydas*, 533 U.S. at 690 (*citing Jackson v. Indiana*, 406 U.S. 715, 738 (1972)); *Demore*, 538 U.S. at 513. As categorical detention becomes increasingly prolonged, a sufficiently strong special justification is required to outweigh the significant deprivation of liberty. *Zadvydas*, 533 U.S. at 690-91.

44. Civil detention also violates due process unless it is accompanied by strong procedural protections to guard against the erroneous deprivation of liberty. *Id.* at 690-91; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). To justify Mr. Giron Bautista's ongoing detention, due process requires that the government provide a legal justification for his ongoing detention. *United States v. Salerno*, 481 U.S. 739, 750, 752 (1987); *Svetlana Doe, et al., v. Noem, et al.*, No. 25-cv-10495 (D. Mass. April 14, 2025).

45. In *Sopo v. U.S. Attorney General*, 825 F.3d 1199, 1217–18 (11th Cir. 2016), vacated

on other grounds, the Eleventh Circuit held that prolonged detention without an individualized finding of danger or flight risk raises serious due process concerns. While *Sopo* was vacated after the petitioner was removed, Eleventh Circuit panels and district courts continue to rely on its analytical framework, which explains that detention becomes unconstitutional when the government "provides no individualized justification" for continuing to detain a noncitizen.

46. Mr. Giron Bautista has not been afforded the necessary procedural safeguards to guarantee against the erroneous deprivation of his liberty. This is particularly true as Mr. Giron Bautista's period of detention grows and where the government provides no legal justification for his ongoing detention.

47. Respondents have provided no individualized showing whatsoever that Mr. Giron Bautista is dangerous or a flight risk. Mr. Giron Bautista has lived in the US for over 20 years, has three young U.S.-citizen children, and has no criminal history that would render him ineligible for bond. He is ready and willing to appear in removal proceedings and is prima facie eligible for cancellation of removal.

48. Under these circumstances, Mr. Giron Bautista's detention without any evidence of danger or flight risk is impermissible and violates both substantive and procedural due process. Detention must be individualized and justified. Because Respondents have not carried—even minimally—their burden to justify detention, Mr. Giron Bautista must be released.

Count 2: Unlawful Restraint/Detention in Violation of Statutory Authority and Arbitrary Detention

49. Mr. Giron Bautista incorporates by reference the allegations set forth in the preceding paragraphs.

50. The mandatory detention provision of 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the US 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 country

prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under 8 U.S.C. § 1226(a).

51. The application of 8 U.S.C. §§ 1225(b)(2) to Mr. Giron Bautista, who is not a noncitizen seeking admission into the US, unlawfully mandates his continued detention and violates the INA.

52. Mr. Giron Bautista, a noncitizen who first entered the country over 20 years ago and is not currently seeking admission, is subject to detention under 8 U.S.C. § 1226(a) and thus eligible to be released on bond issued by an IJ.

Count 3: Violation of the Administrative Procedure Act

53. Mr. Giron Bautista incorporates by reference the allegations set forth in the preceding paragraphs.

54. Under the Administrative Procedure Act ("APA"), a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

55. An action is an abuse of discretion and a violation of the APA if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Homebuilders v. Defs. Of Wildlife,* 551 U.S. 644, 658 (2007)(quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983)).

56. Detaining Mr. Giron Bautista under 8 U.S.C. § 1225(b)(2)(A) detention without a bond hearing exceeds statutory authority and is arbitrary and capricious. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 852 (2018) (reserving constitutional questions); *Demore v. Kim*, 538 U.S. 510, 530–31 (2003) (upholding brief, not indefinite, detention).

57. By categorically denying bond hearings to all applicants for admission, including Mr.

Giron Bautista, Respondents violated the APA.

VIII. PRAYER FOR RELIEF

WHEREFORE, Mr. Giron Bautista prays that this Court grant the following relief:

1. Accept jurisdiction and maintain continuing jurisdiction of this action;

2. Order Respondents to show cause why the writ should not be granted within three days, and, if necessary, set a hearing on this Petition within five days of the return, pursuant to 28 U.S.C. § 2243;

3. Issue a writ of habeas corpus ordering Respondents to immediately release Mr. Giron Bautista from their custody;

4. In the alternative, Order Respondents to provide, within seven days, an individualized bond hearing before a neutral decisionmaker at which government bears the burden to justify detention by clear and convincing evidence and to consider alternatives to detention;

5. Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Mr. Giron Bautista;

6. Enjoin Respondents from transferring Mr. Giron Bautista outside the jurisdiction of the Court pending resolution of this matter;

7. Declare that Mr. Giron Bautista's detention violates the Due Process Clause of the Fifth Amendment;

8. Declare that Mr. Giron Bautista's detention violates the Immigration and Nationality Act;

9. Declare that Mr. Giron Bautista's detention violates the Administrative Procedures Act;

10. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice

Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

11. Grant such further relief as this Court deems just and proper.

Respectfully submitted on this 15th day of January, 2026.

/s/Evelyn J. Pabon Figueroa/s/
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Verification by Someone Acting on the Petitioner's Behalf Pursuant to 28 USC § 2242

I, Evelyn J. Pabon Figueroa, hereby declare under penalty of perjury that the facts alleged in the foregoing Petition for Writ of Habeas Corpus are true and correct, to the best of my knowledge.

Dated: January 15, 2026

/s/Evelyn J. Pabon Figueroa
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