

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

NORBERTO BENITEZ HERNANDEZ,

CASE NO.

Petitioner,

JUDGE:

v.

ASSISTANT DIRECTOR, U.S. Department of Homeland Security (“DHS”) Immigration and Customs Enforcement (“ICE”) Enforcement and Removal Operations (“ERO”) Miami Field Office; and DIRECTOR, U.S. DHS ICE ERO Miami Field Office;

MAGISTRATE JUDGE

Respondents.

**VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

COMES NOW the Petitioner, NORBERTO BENITEZ HERNANDEZ, by and through undersigned counsel, and hereby brings this Petition and sues Respondents and alleges as follows:

I. INTRODUCTION

1. The Petitioner is a citizen and national of Mexico. *See* Exh. 1 (Passport).
2. The Petitioner is in Respondents’ physical custody at the DHS ICE ERO Krome Service Processing Center, an immigration detention center under Respondents’ and their agents’ direct control within this district in Miami, Florida. *See* ICE Online Detainee Locator Search Results at Exh. 2.
3. The Petitioner respectfully requests *inter alia* that: (1) this Honorable Court issue an Order to Show Cause (“OSC”) within three days pursuant to 28 U.S.C. § 2243; (2) declare that Respondents have violated the Immigration and Nationality Act (“INA”); (3) declare that Respondents have violated the Petitioner’s Fifth Amendment Due Process Rights; (4) grant a Writ

of Habeas Corpus and order Respondents to release him from custody, or, enter an order requiring that Respondents afford the Petitioner an individualized bond hearing consistent with 8 U.S.C. § 1226(a); and (5) order other relief as described herein.

4. This action arises under the United States Constitution and the INA, 8 U.S.C. §§ 1101 *et seq.*, as the Petitioner challenges detention as a violation of: the Due Process Clause of the Fifth Amendment of the U.S. Constitution; the INA and regulations thereunder; and the Administrative Procedure Act (“APA”).

5. In addition, this Honorable Court has jurisdiction over this complaint under: 28 U.S.C. § 2241 (power to grant Writ of Habeas Corpus); the All Writs Act, 28 U.S.C. § 1651; 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1346 (United States Defendant); and APA, 5 U.S.C. § 555(b), 5 U.S.C. § 702 (APA waiver of sovereign immunity), 5 U.S.C. § 704 (no other adequate remedy), and 5 U.S.C. § 706 (compel agency action unlawfully withheld or unreasonably delayed).

6. This Honorable Court may grant relief pursuant to 28 U.S.C. § 2241 and the All Writs Act, 28 U.S.C. § 1651.


II. VENUE

7. Venue is proper in this district under 28 U.S.C. § 1391(b), 28 U.S.C. § 1391(e)(1) (United States defendant resides in this district), 28 U.S.C. § 1391(e)(2) (cause of action arose in this district), and 28 U.S.C. § 1391(e)(4) (plaintiff resides in this district and no real property is at issue).

8. The Petitioner is in Respondents’ physical custody within this district at the Krome North Service Processing Center, an immigration detention center under the direct control of Respondents and their agents. *See* 28 U.S.C. § 2241(a) (providing for habeas petitions “within

[courts'] respective jurisdictions"); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) ("The plain language of the habeas statute [...] confirms the general rule that for core habeas petitions challenging physical confinement, jurisdiction lies in only one district: the district of confinement").

III. PARTIES

9. Petitioner NORBERTO BENITEZ HERNANDEZ is citizen and national of Mexico who is in Respondents' physical custody; Respondents have assigned him Alien Registration No. 

10. The Petitioner brings a suit against the Respondent DHS ICE ERO Miami Field Office Assistant Director. In this official capacity, he is responsible for the Krome North Service Processing Center and he is a legal custodian of the Petitioner

11. The Petitioner brings a suit against the Respondent DHS ICE ERO Miami Field Office Director. In this official capacity, he is responsible for the ICE Field Office with administrative jurisdiction over the Petitioner and he is a legal custodian of the Petitioner.

IV. CUSTODY

12. The Petitioner is in Respondents' physical custody within this district at the Krome North Service Processing Center, an immigration detention center in Miami, Florida, under the direct control of Respondents and their agents. *See* 28 U.S.C. § 2241(c) (civil habeas statute applies to individuals who are "in custody").

V. STATEMENT OF THE FACTS

13. The Petitioner was born on  in Mexico. *See* Exh. 1 (Passport).

14. In a Motion for Bond and Custody Redetermination dated December 30, 2025, the Petitioner, through his counsel in removal and custody redetermination (bond) proceedings before

the EOIR, noted that he has resided in the United States since he entered the United States approximately 22 years ago without inspection. *See* Exh. 3 (copy of Motion).

15. In a Notice to Appear (“NTA”) (DHS Form I-862), a DHS officer alleged *inter alia* that the Petitioner is “an alien present in the United States who has not been admitted or paroled” and the officer charged the Petitioner with removability pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) “in that [he is] an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General” and pursuant to § 1182(a)(7)(A)(i)(I) as an immigrant who, at the time of application for admission, is not in possession of any documentation. *See* Exh. 4 (NTA).

16. On or about December 30, 2025, the Petitioner, through his counsel, filed his Bond Motion with the Krome Immigration Court. *See* Exh. 3.

17. On or about January 08, 2026, an Immigration Judge (“IJ”) entered an order taking “NO ACTION” on the bond motion. The IJ presumably took no action on the motion because of to the Board of Immigration Appeals (“BIA”) decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which found that IJs lack authority to hear bond requests or grant bond to detainees who had entered the United States without inspection. *See* copy of Order at Exh. 5; *Matter of Yajure Hurtado*, 29 I&N Dec. at 228.

VI. LEGAL BACKGROUND

A. Habeas Corpus Petition Rights

18. The right to file a habeas corpus petition pursuant to 28 U.S.C. § 2241 provides “a means of reviewing the legality of Executive detention.” *Rasul v. Bush*, 542 U.S. 466, 474 (2004) (quoting *INS v. St. Cyr*, 533 U.S. 289, 301 (2001)).

19. Congress provided that district courts have the power to grant a writ of habeas corpus to a person who is in custody in violation of the Constitution or laws of the United States. *See* 28 U.S.C. § 2241(c)(3).

20. The Supreme Court has noted that habeas corpus review has historically played an important role in immigration cases:

Before and after the enactment in 1875 of the first statute regulating immigration, 18 Stat. 477, [...] [habeas corpus] jurisdiction was regularly invoked on behalf of noncitizens, particularly in the immigration context. [...] In case after case, courts answered questions of law in habeas corpus proceedings brought by aliens challenging Executive interpretations of the immigration laws.

St. Cyr, 533 U.S. at 305-06.

21. “At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.” *Id.* at 301.

B. Detention Under the INA

22. Within the INA, 8 U.S.C. § 1225 governs inspection, detention, and removal of applicants for admission.

23. The INA defines applicants for admission as aliens “present in the United States who ha[ve] not been admitted” or those “arriv[ing] in the United States.” 8 U.S.C. § 1225.

24. Applicants for admission “must be inspected by immigration officers to ensure that they may be admitted into the country consistent with U.S. immigration law.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

25. “U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under [8 U.S.C.] §§ 1225(b)(1) and (b)(2).” *Id.* at 289.

26. “Section 1225(b)(1) applies to all aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack valid documentation.” *Id.*

27. Such aliens are generally subject to expedited removal proceedings “without further hearing or review” unless the alien expresses “an intention to apply for asylum” or a fear of persecution, which requires referral for a credible fear interview. *Id.* at § 1225(b)(1).

28. Additionally, “[s]ection 1225(b)(2) is broader” and “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Jennings*, 583 U.S. at 287.

29. Aliens subject to § 1225(b)(2) are detained for removal proceedings “if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted” into the country. 8 U.S.C. § 1225(b)(2)(A).

30. Detention under § 1225(b)(2) is mandatory. *See id.*

31. Alternatively, the INA “also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings.” *Jennings*, 583 U.S. at 289.

32. Section 1226(a) provides that when an alien has been “arrested and detained pending a decision on whether the alien is to be removed from the United States,” the Attorney General may either continue to detain an individual or release the individual on bond or conditional release. 8 U.S.C. §1226(a).

33. “Federal regulations provide that aliens detained under [section] 1226(a) receive bond hearings at the outset of detention.” *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

34. In a decision filed last month within the Southern District of Florida, Judge Jacqueline Becerra noted that “[t]he question of whether section 1225(b)(2) or section 1226(a) governs Petitioner’s detention is a question of statutory interpretation squarely within the Court’s jurisdiction.” *Ardon-Quiroz v. Assistant Field Dir.*, Case No. 25-cv-25290-JB, 2025 WL 3451645,

at *6 (S.D. Fla. Dec. 1, 2025) (citing *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *3 (E.D. Mich. Sept. 9, 2025)).

35. Judge Becerra noted in *Ardon-Quiroz* that, like in the instant matter, the DHS agencies “proceeded under section 1226” and “did not classify [the petitioner] as an ‘arriving alien’”; “[i]nstead, the NTAs charged [the petitioner] as someone ‘present in the United States who has not been admitted or paroled’ and “[t]his classification places him squarely within section 1226.” *Id.* at *6 (citations omitted).

36. Section 1226 “creates a default rule” that “applies to aliens already present in the United States.” *Jennings*, 583 U.S. at 303.

37. Judge Becerra noted that “[t]he inclusion of a ‘catchall’ provision in section 1226, particularly following the more specific provision in section 1225, is ‘likely no coincidence, but rather a way for Congress to capture noncitizens who fall outside of the specified categories.’” *Ardon-Quiroz*, 2025 WL 2609425, at *7 (citing *Pizarro Reyes*, 2025 WL 2609425, at *5).

38. Judge Becerra further found that none of the following provisions stripped the Court of jurisdiction to consider the petition: (i) 8 U.S.C. § 1252(c)(3), (ii) § 1252(g), (iii) § 1252(a)(5), and (iv) § 1252(b)(9). *Ardon-Quiroz*, 2025 WL 2609425, at *2.

39. Moreover, Judge Becerra found that considering the BIA’s decision in *Matter of Yajure Hurtado*, exhaustion is not required because an appeal would be futile. *Ardon-Quiroz*, 2025 WL 2609425, at *5.

40. In another recent decision, a District Court Judge in the Eastern District of Pennsylvania noted that the Government acknowledged as follows in the opening brief opposing a challenge to *Matter of Yajure*:

Rios-Porras' petition concerns whether an alien who is present in the United States without admission is properly subject to mandatory detention (*i.e.*, detention without the prospect of release on bond) during the pendency of his administrative

removal proceedings pursuant to 8 U.S.C. § 1225(b)(2), and the Court's jurisdiction to consider a petition for release. This legal question has been considered by numerous courts in the wake of the [BIA] decision in *Matter of Yajure Hurtado* [...]. **Nearly all of the resulting decisions have rejected the government's position, including numerous decisions from this District.**

Rios Porras v. O'Neill, No. CV 25-6801, 2025 WL 3708900, at *1 (E.D. Pa. Dec. 22, 2025) (emphasis in original).

41. To date, numerous decisions within the Southern District of Florida have also rejected the government's reliance on *Matter of Yajure Hurtado*. See, e.g., *Merino v. Ripa*, No. 25-23845-CIV, 2025 WL 2941609, at *1 (S.D. Fla. Oct. 15, 2025); *Puga v. Assistant Field Off. Dir., Krome N. Serv. Processing Ctr.*, No. 25-24535-CIV, 2025 WL 2938369, at *1 (S.D. Fla. Oct. 15, 2025); *Boffill v. Field Off. Dir.*, No. 25-CV-25179-JB, 2025 WL 3246868, at *1 (S.D. Fla. Nov. 20, 2025); *Ardon-Quiroz*, 2025 WL 2609425, at *1; see also *Ceballo v. Parra*, Case No.: 25-cv-25271-JB, 2025 WL 3481908, at *1 (without mentioning *Matter of Yajure Hurtado*, finding basis for current detention to be 8 U.S.C. § 1226 rather than § 1225(b)(1)).

42. On November 20, 2025, a District Court judge for the Central District of California granted partial summary judgment for four petitioners who brought a challenge to the policy in *Matter of Yajure Hurtado*, holding that the government's policy is inconsistent with the plain language of the INA and that petitioners are properly subject to § 1226(a). See *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). Five days later, on November 25, 2025, the Court certified a nationwide class of individuals who are being subject to the government's new no bond policy—the Bond Eligible Class—and expressly “extend[ed] the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.” *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (emphasis added).

43. The district court certified the following Bond Eligible Class:

All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Maldonado Bautista, 2025 WL 3288403, at *9; *see also* Exh. 3 and Exh. 4 (Bond Motion and NTA showing the Petitioner meets the requirements for qualification as a member of the *Maldonado Bautista* Bond Eligible Class).

C. Due Process Constitutional Rights

44. The Due Process Clause of the Fifth Amendment provides that “[n]o person [...] [shall be] deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V.

45. “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 [of the Fifth Amendment] protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

46. Immigration detention must always “bear [...] a reasonable relation to the purpose for which the individual was committed.” *Demore v. Kim*, 538 U.S. 510, 527 (2003).

47. “[T]he Due Process Clause [of the Fifth Amendment] applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693-94 (citing *Wong Wing v. U.S.*, 163 U.S. 228 (1896)).

48. “Detention during deportation proceedings [i]s a constitutionally valid aspect of the deportation process [...] [and] the Due Process Clause does not require [the government] to employ the least burdensome means to accomplish its goal,” but civil detention of noncitizens is not without limits. *Demore*, 538 U.S. at 523, 528.

49. Due process cases recognize a broad liberty interest in deportation and removal proceedings. *See Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (deportation “visits a great hardship on the individual and deprives him of the right to stay and live and work in the land of freedom”).

50. To determine whether a civil detention violates a detainee’s due process rights, courts apply the three-part test that the Supreme Court set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

51. Procedural due process “imposes constraints on government decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.” *Id.* at 332.

52. Once a petitioner has identified a protected liberty or property interest, the Court must determine whether the respondents have provided constitutionally sufficient process. *See id.* at 332-33.

53. In making this determination, the Court balances (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.* at 335.

54. “[R]edetention pursuant to the wrong statute violate[s] due process.” *Barco Mercado v. Francis*, Case No. 25-cv-6582 (LAK), --- F. Supp. 3d ---, 2025 WL 3295903, at *12 (S.D.N.Y. Nov. 26, 2025).

D. The APA

55. Federal agencies must comply with the APA when crafting and enforcing decisions, regulations, and legislative rules. 5 U.S.C. § 553.

56. Courts have authority to review and invalidate final agency actions that are not in accordance with the law, exceed agency authority, lack substantial evidence, or are arbitrary and capricious. 5 U.S.C. § 706.

57. Under the APA, this Honorable Court has authorization to compel agency action that has been unreasonably delayed. 5 U.S.C. § 706(1).

58. An agency must “conclude a matter presented to it [...] within a reasonable time.” 5 U.S.C. § 555(b).

59. “A person suffering legal wrong because of agency action [...] is entitled to judicial review thereof.” 5 U.S.C. § 702. Agency action includes the failure to act. *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 62 (2004).

VII. CLAIMS FOR RELIEF

COUNT I

INA AND APA VIOLATION

60. Petitioner BENITEZ HERNANDEZ repeats and re-alleges paragraphs 1 through 59 as though fully set forth herein.

61. Respondents have violated the INA and APA in applying the mandatory detention statute at 8 U.S.C. § 1225(b)(2) to the Petitioner.

62. Respondents must consider the Petitioner’s Bond Motion pursuant to the discretionary detention provision at 8 U.S.C. § 1226(a)

63. Respondents are parties to *Maldonado Bautista* and bound by the Court’s declaratory judgment, which has the full “force and effect of a final judgment.” 28 U.S.C. § 2201.

64. By denying the Petitioner a bond hearing under 8 U.S.C. § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate the Petitioner’s statutory rights under the INA and the Court’s judgment in *Maldonado Bautista*.

COUNT II

FIFTH AMENDMENT VIOLATION

65. Petitioner BENITEZ HERNANDEZ repeats and re-alleges paragraphs 1 through 59 as though fully set forth herein

66. Respondents have failed to provide the Petitioner with due process pursuant to the Fifth Amendment.

67. Due process requires that Respondents provide Petitioner with a prompt and constitutionally adequate bond hearing before an IJ with jurisdiction under 8 U.S.C. § 1226(a).

68. Respondents' decision to subject the Petitioner and others like him to mandatory detention affords the Petitioner no due process. *See Barco Mercado*, 2025 WL 3295903, at *12.

VIII. RELIEF REQUESTED

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

1. Accept jurisdiction over this action.
2. Issue an Order to Show Cause pursuant to 8 U.S.C. § 2243 directing Respondents to file a return in three days of the Order directing Respondents to show cause why the Court should not grant a Writ of Habeas Corpus.
3. Issue a Writ of Habeas Corpus requiring Respondents to produce the Petitioner, or, alternatively, to conduct a bond hearing pursuant to 8 U.S.C. § 1226(a).
4. Declare that Respondents have violated the INA.
5. Declare that Respondents' detention of the Petitioner violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution.

6. Award Petitioner BENITEZ HERNANDEZ reasonable costs and attorney fees for bringing this action.

7. Grant such further relief as Pctitioner BENITEZ HERNANDEZ may request and/or this Honorable Court deems just and proper under the circumstances.

Respectfully submitted this 16th day of January, 2026,

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VERIFICATION

Pursuant to 28 U.S.C. § 2242, undersigned counsel certifies under penalty of perjury that I am submitting this verification because I am one of the Petitioner's attorneys and I have discussed the facts within this Petition with Gene S. Devore, Esq., the Petitioner's counsel in removal and bond proceedings before Respondents. Pursuant to these discussions, I have reviewed the foregoing petition and that, to the best of my knowledge, the facts therein are true and accurate and the attachments to the petition are true and correct copies of the originals.

Respectfully submitted this 16th day of January, 2026,

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