UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

FRANCISCO RODRIGUEZ MARTINEZ Petitioner, v. CHRIS BRACKETT, Warden, Strafford Detention Facility DAVID WESLING, Acting Field Office Director, MICHAEL KROL, HSI New England Special Agent in Charge DEPARTMENT OF HOMELAND SECURITY, TODD LYONS, Acting Director U.S. Immigrations and Customs Enforcement, KRISTI L NOEM, U.S. Secretary of Homeland Security, and PAMELA BONDI, U.S. Attorney General Respondents.	Case No. **PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner Francisco Rodriguez Martinez ("Petitioner") is a national and citizen of El Salvador, who resided in Weymouth, Massachusetts before his detention. Petitioner entered the United States without inspection in about March 2022 after fleeing El Salvador because of physical assaults and death threats he received in El Salvador because of [redacted]. He intends to file an application for asylum in the United States.

2. On or around December 9, 2025, the Plaintiff was apprehended by U.S. Immigration and Customs Enforcement ("ICE") inside the United States during a random ICE stop. He was briefly held in the ICE Boston Field Office in Burlington, Massachusetts before being

transferred to the Strafford County Detention Facility in Dover, NH, where he remains detained. Upon information and belief, Petitioner has no criminal convictions, no history of immigration violations other than his single entry without inspection, and he has lived quietly and peaceably since his arrival.

3. On January 15, 2026, the Executive Office of Immigration Review ("EOIR") held a hearing on the Respondent's request for bond. EOIR denied the request for bond that the Respondent is subject to mandatory detention under the holding of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals ("Board") issued a decision which purports to require the Immigration Court to unlawfully deny a meaningful bond hearing to all persons like Petitioner, who entered the U.S. without inspection and admission.[1] This, however, is in direct violation under 8 U.S.C. § 1226(a) and *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) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment). On December 19, 2025, the United States District Court for the District of Massachusetts entered partial final judgment in favor of Guerrero Orellana and the certified class and issued declaratory judgment that class members are not subject to detention under 8 U.S.C. § 1225(b)(2) and are instead detained under 8 U.S.C. § 1226(a), with access to consideration for release on bond and/or conditions. *Guerrero Orellana v. Moniz*, No. 25-cv-12664-PBS (D. Mass. Dec. 19, 2025) (Partial Final Judgment).

[1] The Board's reversal and newly revised interpretation of the statute are not entitled to any deference by this Court. *See Loper Bright Ent. v. Raimondo*, 603 U.S. 369, 412-13 (2024).

4. Accordingly, to vindicate Petitioner's constitutional rights, this Court should grant the instant petition for a Writ of Habeas Corpus. This petition is filed pursuant to 28 U.S.C. § 2241 to challenge his ongoing unlawful civil immigration detention and to prevent his transfer from the District of New Hampshire before this Court can review his claims.
5. Petitioner asks this Court to find that he was unlawfully detained and to order his release.

REQUIREMENTS OF 28 U.S.C. § 2243

6. The Court should grant the petition for writ of habeas corpus "forthwith," as the legal issues have already been resolved for class members in *Maldonado Bautista* and *Guerrero Orellana*.
7. 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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

JURISDICTION AND VENUE

8. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).
9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act.
10. Venue is proper in the District of New Hampshire because Petitioner is currently detained at the Strafford Detention Facility, Central Falls, RI within this District, and Respondent Michael Nessinger, the Warden of the Strafford Detention Facility, is his immediate custodian.

PARTIES

11. Petitioner Francisco Rodriguez Martinez , a native and citizen of El Salvador, is presently detained in ICE custody at Strafford County Correctional Facility located at 266 County Farm Road, Dover, New Hampshire. Prior to detention, he resided in Everett, Massachusetts.
12. Respondent Chris Brackett is the Superintendent/Warden of Strafford County Correctional Facility and Petitioner's immediate custodian.
13. Respondent David Wesling is the Acting Field Office Director for ICE ERO Boston, and is responsible for the custody and detention decisions for individuals detained within the District.
14. Respondent Michael Krol is the New England Special Agent in Charge for Homeland Security Investigations for U.S. Immigration and Customs Enforcement.
15. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement.
16. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.
17. Respondent Kristi Noem is the Secretary of the Department of Homeland Security and Respondent Pamela Bondi is the U.S. Attorney General.
18. All respondents are sued in their official capacities.

FACTUAL BACKGROUND

19. Petitioner is a El Salvadorian national who entered the United States in March 2022 after fleeing his home country due to violence and threats he suffered based on [redacted]

[redacted]

20. Since arriving in the United States, Petitioner has resided primarily in Massachusetts, working at Foodland Distribution LLC a/k/a New England Market to support himself. . He has no criminal history and lives a quiet and peaceful life.
21. Petitioner is presently represented by counsel in Boston, Massachusetts.
22. Upon information and belief, in December 2025 the Petitioner was arrested during a random stop by ICE.
23. Following his arrest, ICE briefly held Petitioner at the ICE Boston Field Office in Burlington, Massachusetts before transferring Petitioner to the Strafford County Facility in New Hampshire, placing him squarely within this Court's jurisdiction under 28 U.S.C. § 2241.
24. Petitioner was arrested inside the United States, not at or near the border, making him subject, if at all, to detention under 8 U.S.C. § 1226(a). The federal courts in the 1st circuit, has repeatedly held that individuals in materially identical circumstances are entitled to a bond hearing under § 1226(a). *See Tomas Elias v. Hyde*, *Rodriguez v. Nessinger*, and the *Lopez-Lopera v. Nessinger* (granting habeas; ordering release and bond hearing).
25. Petitioner has never been subject to expedited removal, has never been considered an "arriving alien" under § 1225(b), and has never been paroled. He therefore cannot be lawfully classified under § 1225(b), a point repeatedly affirmed in New Hampshire habeas cases involving interior arrests. Petitioner is present in the United States, and, on information and belief, the Department of Homeland Security ("DHS") has alleged or will allege that Petitioner was not previously admitted or paroled into the United States.
26. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(1), because Petitioner does not meet the criteria for Expedited Removal. *See Make the Road New York v. Noem*, No. 25-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025).

27. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2), including because, as a person already present in the United States, Petitioner is not presently "seeking admission" to the United States. *See Aguiriano v. Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *1, 8-13 (D. Mass. Aug. 19, 2025).

28. On information and belief, Petitioner was not, at the time of arrest, paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A), and therefore Petitioner could not "be returned" under that provision to mandatory custody under 8 U.S.C. § 1225(b) or any other form of custody. The Petitioner is not subject to mandatory detention under § 1225 for this reason as well.

29. Instead, as a person arrested inside the United States and held in civil immigration detention, Petitioner is subject to detention, if at all, pursuant to 8 U.S.C. § 1226. *See Aguiriano*, 2025 WL 2403827, at *1, 8-13 (collecting cases).

30. Petitioner is not lawfully subject to mandatory detention under 8 U.S.C. § 1226(c), including because he has not been convicted of any crime that triggers such detention. *See Demore v. Kim*, 538 U.S. 510, 513-14, 531 (2003) (allowing mandatory detention under § 1226(c) for brief detention of persons convicted of certain crimes and who concede removability).

31. Accordingly, Petitioner is subject to detention, if at all, under 8 U.S.C. § 1226(a).

32. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon his request, receive a custody redetermination hearing (colloquially called a "bond hearing") with strong procedural protections. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Doe v. Tompkins*, 11 F.4th 1, 2 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 256-57 (1st Cir. 2021) (affirming class-wide declaratory judgment); 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

33. On November 20, 2025, the United States District Court for the Central District of California granted partial summary judgment on behalf of individual plaintiffs, and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *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) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment). On December 19, 2025, the United States District Court for the District of Massachusetts entered partial final judgment in favor of Guerrero Orellana and the certified class and issued declaratory judgment that class members are not subject to detention under 8 U.S.C. § 1225(b)(2) and are instead detained under 8 U.S.C. § 1226(a), with access to consideration for release on bond and/or conditions. *Guerrero Orellana v. Moniz*, No. 25-cv-12664-PBS (D. Mass. Dec. 19, 2025) (Partial Final Judgment).

34. The declaratory judgments hold that the relevant class members are detained under 8 U.S.C. § 1226(a) and thus may not be denied consideration for release on bond (or other conditions of release) by being treated as subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11; *Guerrero Orellana*, No. 25-cv-12664-PBS (D. Mass. Dec. 19, 2025) (Partial Final Judgment).

35. Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court, and the Department of Homeland Security (DHS), have blatantly refused to abide by

the declaratory relief in *Maldonado Bautista* and *Guerrero Orellana* and have unlawfully ordered that Petitioner be unlawfully detained.

36. Petitioner is a member of the Bond Eligible Class in *Maldonado Bautista* and is also a member of the certified class in *Guerrero Orellana v. Moniz*, as he:

    a. was arrested or detained in Massachusetts, or is detained in a geographical area over which, as of September 22, 2025, an Immigration Court located in Massachusetts is the administrative control court, or is otherwise subject to the jurisdiction of an Immigration Court located in Massachusetts; does not have lawful status in the United States. He was detained by immigration authorities on January 7, 2026, when he appeared for his asylum interview at the USCIS Field Office in Boston, Massachusetts;

    b. entered the United States without inspection and was not apprehended upon arrival; and, for Petitioner's most recent entry into the United States, the government has not alleged that Petitioner was admitted into the United States and has not alleged that Petitioner was paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A) at the time of entry or after continuous detention upon arrival; and

    c. is not in any Expedited Removal process under 8 U.S.C. § 1225(b)(1), does not have an Expedited Removal order under 8 U.S.C. § 1225(b)(1), and is not currently in proceedings before an immigration judge due to having been found to have a credible fear of persecution under 8 U.S.C. § 1225(b)(1)(B)(ii); is not detained under 8 U.S.C. § 1226(c) or § 1231; and is not a person whose most recent arrest occurred at the border while they were arriving in the United States and has been continuously detained thereafter.

37. Petitioner is being irreparably harmed by his ongoing unlawful detention without a bond hearing. *See Aguiriano*, 2025 WL 2403827, at *6-8 (no exhaustion required because "[o]bviously, the loss of liberty is a . . . severe form of irreparable injury" (internal quotation marks omitted)); *Flores Powell v. Chadbourne*, 677 F. Supp. 2d 455, 463 (D. Mass. 2010) (declining to require administrative exhaustion, including because "[a] loss of liberty may be an irreparable harm"); *cf. Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021) (citing *Bois v. Marsh*, 801 F.2d 462 468 (D.C. Cir. 1986), for proposition that "'[e]xhaustion might not be required if [the petitioner] were challenging her incarceration . . . or the ongoing deprivation of some other liberty interest'").

38. The Immigration Court lacks jurisdiction to adjudicate the constitutional claims raised by Petitioner, and any attempt to raise such claims would be futile. *See Flores-Powell*, 677 F. Supp. 2d at 463 (holding "exhaustion is excused by the B[oard]'s lack of authority to adjudicate constitutional questions and its prior interpretation" of the relevant statute).

39. There is no statutory requirement for Petitioner to exhaust administrative remedies. *See Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299, at *4 (D. Mass. July 7, 2025) ("[E]xhaustion is not required by statute in this context.").

40. Accordingly, there is no requirement for Petitioner to further exhaust administrative remedies before pursuing this Petition. *See Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74, (1st Cir. 1997) (explaining that, where statutory exhaustion is not required, administrative exhaustion not required in situations of irreparable harm, futility, or predetermined outcome).

41. During the arrest, upon information and belief, ICE did not present a warrant or service of a Form I-862, Notice to Appear. ICE has provided no procedural mechanism through which Petitioner can challenge his custody.

42. Petitioner has substantial ties to the United States, including family in Massachusetts. He has maintained stable residence and complied with all known immigration obligations. His immigration counsels are based in Boston, MA.

43. Notwithstanding these facts, ICE continues to detain Petitioner without providing access to an individualized custody determination (bond) hearing, or any meaningful process. As in *Lopez-Lopera*, this Court should order his immediate release to Massachusetts, prevent his further transfer, and require that ICE provide a prompt § 1226(a) bond hearing. Further, on information and belief, ICE may imminently transfer Petitioner out of this District, which would deprive this Court of the ability to adjudicate his constitutional claims.

CLAIMS FOR RELIEF

COUNT ONE
Violation of 8 U.S.C. 1226(a) and Associated Regulations

44. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

45. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d), 1003.19(a)-(f).

46. Petitioner has not been, and will not be, provided with a meaningful bond hearing as required by law.

47. Petitioner's continuing detention is therefore unlawful.

COUNT TWO
Violation of Fifth Amendment Right to Due Process
(Failure to Provide Bond Hearing Under 8 U.S.C. § 1226(a))

48. Because Petitioner is a person arrested inside the United States and is subject to detention, if at all, under 8 U.S.C. § 1226(a), the Due Process Clause of the Fifth Amendment to the United States Constitution requires that Petitioner receive a bond hearing with strong procedural protections. *See Hernandez-Lara*, 10 F.4th at 41; *Doe*, 11 F.4th at 2; *Brito*, 22 F.4th at 256-57.

49. Petitioner has not been, and will not be, provided with a bond hearing as required by law.

50. Petitioner's continuing detention is therefore unlawful.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) **Order that Petitioner shall not be transferred outside this District;**

(3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three (3) days.

(4) Declare that Petitioner's detention is unlawful.

(5) **Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or, in the alternative, provide Petitioner with a bond hearing and order Petitioner's release on conditions the Court deems just and proper**;

(6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

(7) Grant any further relief this Court deems just and proper.

Respectfully submitted,

Dated: January 20, 2026

/s/ Amy B. McGarry

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I, Amy B. McGarry, declare as follows:

I am an attorney admitted to practice law in the State of New Hampshire. Because many of the allegations of this Petition require a legal knowledge not possessed by Petitioner, I am making this

verification on their behalf. I have read the foregoing Petition for Writ of Habeas Corpus and know the contents thereof to be true to my knowledge, information, or belief. I certify under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 20, 2026. /s/ *Amy B. McGarry*

Amy McGarry, Esq.