

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

Emerson S. Ramirez Perez,

Petitioner,

v.

Case No. 2:26-cv-108

Warden, Florida Soft Side South Detention
Center;

Kristi Noem, *in her official capacity as*
Secretary, U.S. Department of Homeland
Security;

Pamela Bondi, *in her official capacity as* U.S.
Attorney General;

Respondents.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner, Emerson S. Ramirez Perez, has been unlawfully detained by Respondents since January 5, 2026, and is currently detained at the Florida Soft Side South detention facility.

2. Petitioner entered the United States as a minor in February of 2024, Respondents designated him as an unaccompanied alien child (UAC), under the William Wilberforce Trafficking Victims Protection and Reauthorization Act (TVPRA), placed him in the custody of the U.S. Department of Health and Human Services (HHS), and later released him to a sponsor.

3. Petitioner's detention is still governed by the TVPRA, which continues to apply after "a minor [...] reaches 18 years of age and is transferred to the custody of [Respondent] Secretary of Homeland Security," and requires that Respondents place Petitioner in the "least restrictive setting available." 8 U.S.C. § 1232(c)(2)(B).

4. Petitioner is being detained unlawfully by Respondents because the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) and the Department of Justice (DOJ), through the Executive Office of Immigration Review (EOIR), have concluded that noncitizens like Petitioner are subject to mandatory detention under 8 U.S.C. §1225.

5. In addition, Petitioner's detention without the ability to be released on bond violates the plain language of the Immigration and Nationality Act (INA) and is contrary to decades of agency practice. The mandatory detention provisions of Section 1225 of the INA do not apply to individuals like Petitioner who previously entered and are now residing in the

United States. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond.

6. Petitioner's detention without a pre-deprivation hearing or a bond hearing also violates his Fifth Amendment Due Process rights. Petitioner has a significant liberty interest in remaining out of custody; without a bond hearing he faces a significant risk of erroneous deprivation of his liberty; and the detention without bond of non-citizens like Petitioner, who is not a danger or flight risk, does not serve a legitimate government purpose.

7. Accordingly, the Petitioner seeks a writ of habeas corpus ordering: (a) immediate release or, at minimum, a prompt individualized custody hearing before an immigration judge under 8 U.S.C. §1226(a), at which the government bears the burden to justify the Petitioner's continued detention by clear and convincing evidence; and (b) a declaration that § 1225, as applied by current agency practice, does not apply to former UACs absent a material change in their circumstances consistent with the permanent injunction granted in *Ramirez v. U.S. Immigration & Customs Enforcement*, 568 F.Supp.3d 10 (D. D.C. 2021) and the TVPRA, as well as constitutional and statutory protections.

JURISDICTION & VENUE

8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the ICE Detention Facility at Florida Soft Side South, located at 54575 Tamiami Trl E, Ochopee, Florida. *See* ICE Detainee Locator Search Results from January 21, 2026, attached hereto as **Exhibit 1**. He is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

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

10. 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.

11. Venue is 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 Petitioner is detained at the Florida Soft Side South detention center in Ochopee, Florida, within this judicial district.

PARTIES

12. Petitioner Emerson S. Ramirez Perez is a citizen and national of Guatemala, who entered the United States through the southern border on or about February of 2024. Respondents detained Petitioner following a traffic stop in West Palm Beach, FL on January 5, 2026.

13. 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.

14. 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.

15. Respondent Warden of the Florida Soft Side South has immediate physical custody of Petitioner where he is being detained, and is being sued in their official capacity.

PRUDENTIAL EXHAUSTION

16. “Where Congress specifically mandates, exhaustion is required.” *McCarthy v. Madigan*, 503 U.S. 140 (1992). Conversely, only “the []prudential doctrine of exhaustion controls” where “a statute does not textually require exhaustion” *Taylor v. U.S. Treasury Dep’t*, 127 F.3d 470, 475 (5th Cir. 1997).

17. No statute applicable to Petitioner’s claims requires administrative exhaustion, thus Petitioner has no statutory obligation requiring him to exhaust other administrative remedies prior to filing this petition.

18. It would be futile for Petitioner to seek a custody redetermination hearing before an Immigration Judge (IJ), because a recent BIA decision held that anyone, like Petitioner, who has entered the U.S. without being admitted is now considered an “applicant for admission” who is “seeking admission” and therefore subject to mandatory detention under § 1225(b). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *see also Garcia v. Noem*, No. 2:25-CV-00879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025).

REQUIREMENTS OF 28 U.S.C. § 2243

19. 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).

20. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If

an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

STATEMENT OF FACTS

21. Petitioner was born in Guatemala and entered the United States through the southern border as a minor child, unaccompanied by family members on or about February of 2024 and has resided here ever since.

22. Respondents designated Petitioner as a UAC when he entered in 2024, detained him under the TVPRA and then transferred him to the U.S. Department of Health and Human Services’ Office of Refugee Resettlement (ORR). The ORR later released Petitioner to the custody of a sponsor in West Palm Beach, Florida in March of 2024. *See* Petitioner’s Verification of Release from HHS/ORR, attached hereto as **Exhibit 2**.

23. After turning 18, Petitioner filed an affirmative application for Asylum, Withholding of Removal and protection under the Convention Against Torture (“CAT”), with the U.S. Citizenship and Immigration Service (USCIS). *See* USCIS receipt of Petitioner’s I-589 Application, attached hereto as **Exhibit 3**.

24. Petitioner has a current employment authorization document issued by DHS, and he lives and works in West Palm Beach, Florida as a roofer.

25. On January 5, 2026 Petitioner was detained following a traffic stop in Palm Beach County, Florida. Petitioner was later transferred to the Florida Soft Side South detention facility in Ochopee, Florida, where he is currently detained. *See* **Exhibit 1**.

26. Petitioner has not received a Notice to Appear or any charging document from Respondents explaining why he is being detained. There are no hearings scheduled for Petitioner in immigration court.

27. DHS' new policy of mandatory detention and *Matter of Yajure Hurtado* effectively precludes any request for a bond redetermination by an IJ and makes it futile.

28. As a result, Petitioner remains in detention. Without relief from this Court, he faces the prospect of months, or even years, in immigration custody, separated from his family and his community.

29. Petitioner has had no material change in his circumstances since he was released by the ORR in 2024 that would make him a danger or a flight risk.

30. Petitioner has not been accused or convicted of any crimes that would render him ineligible for release on bond under 8 U.S.C. § 1226(c).

LEGAL ARGUMENT

A. Detention under the TVPRA

31. The statute that governs the detention of unaccompanied minors encountered at the border, the Trafficking Victims Protection and Reauthorization Act, does not mandate detention. 8 U.S.C. § 1232(c)(2)(A). Instead, the TVPRA provides that the government shall place UACs "in the least restrictive setting." *Id.* This protection continues after the "minor [...] reaches 18 years of age." 8 U.S.C. § 1232(c)(2)(B).

32. Noncitizens, like Petitioner, who turn 18 after being designated a UAC, are still entitled to the protections of the TVPRA, and Respondents "shall consider placement in the least restrictive setting available after taking into account the alien's danger to self, danger to the community, and risk of flight." *Id.*

33. The District Court of D.C., in *Ramirez v. U.S. Immigration & Customs Enforcement*, enjoined Respondents from implementing ICE's new "Age-Out Custody

Determinations” policy¹ and from “re-arresting and detaining age-outs absent a material change in their circumstances” and enforced a prior permanent injunction requiring ICE to comply with their statutory obligations by considering the least restrictive setting available for every unaccompanied child who turns 18. *Ramirez v. U.S. Immigration & Customs Enforcement*, No. 1:18-cv-00508-RC (D. D.C. Dec. 15, 2025), ECF No. 436 at 40; *see also* 568 F.Supp.3d 10 (D. D.C. 2021) (granting permanent injunction); 338 F.Supp.3d 1 (D. D.C. 2018) (certifying the class of former UACs re-arrested by ICE); 310 F.Supp.3d 7 (D. D.C. 2018) (granting a preliminary injunction ordering Respondents to comply with 8 U.S.C. § 1232(c)(2)(B)).

34. In *Ramirez*, the Court clarified that “Section 1232(c)(2)(B)’s entitlements extend to all former unaccompanied minors in ICE custody.” *Ramirez*, No. 1:18-cv-00508-RC (D. D.C. Dec. 15, 2025), ECF No. 436 at 5. And reiterated that “[Section 1232(c)(2)(B)] does not place any time limits on ICE’s duties under the statute, either on the front end or the back end.” *Id.* at 29. Thus, Petitioner’s protections under the TVPRA did not end when he turned 18.

35. Furthermore, “the authority under which individuals are detained are [im]material to whether Defendants must comply with 8 U.S.C. § 1232(c)(2)(B)’ because ‘the obligation to place former unaccompanied minors consistent with 8 U.S.C. § 1232(c)(2)(B) arises upon their transfer to DHS custody and does not turn on the statutory authority under which a particular former unaccompanied minor is detained.’” *Id.* (quoting *Ramirez*, 338 F.Supp.3d at 46).

¹ ICE’s October 1, 2025 Policy: Age-Out Custody Determinations, outlines the updated process for handling custody determinations for UACs who reach their 18th birthday.

36. Other judicial circuits have also held that Respondents cannot re-detain a petitioner under INA Section 235(b) if they were previously designated as a UAC. *See R.D.T.M. v. Wofford*, 1:25-cv-01141-KES-SKO (HC) (E.D. Cal. Sep 18, 2025), ECF No. 11 (finding that a pre-deprivation hearing was required where a former UAC was detained without a change in circumstances after their release from ORR).

37. Accordingly, the mandatory detention provisions of § 1225(b) do not apply to former UACs like Petitioner, who cannot be re-arrested or detained absent a material change in their circumstances making them a danger to self, danger to the community, or a risk of flight.

B. Alternatively, Petitioner is Entitled to a Bond Hearing Under Section 1226 of the INA

38. There are two main statutory provisions that govern adult immigration detention: 8 U.S.C. § 1225, which subjects noncitizens to mandatory detention, and 8 U.S.C. § 1226 which provides that detention is discretionary and, if detained, a noncitizen may request a bond hearing before an IJ, where he “may secure his release if he can convince the officer or immigration judge that he poses no flight risk and no danger to the community.” *Nielsen v. Preap*, 586 U.S. 392, 397-98 (2019).

39. The Supreme Court has explained that the mandatory detention scheme of 8 U.S.C. § 1225 applies “at the Nation’s borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Conversely, “[s]ection 1226 generally governs the process of arresting and detaining that group of aliens [already in the country].” *Id.* at 288.

40. EOIR regulations also provide that, in general, people who entered the country without inspection are not considered detained under § 1225 and that they are instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

41. On July 8, 2025, ICE announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

42. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” (hereinafter, “DHS Policy”) claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months or years.

43. On September 5, 2025, the BIA adopted this same position in a published decision holding that all noncitizens, like Petitioner, who entered the United States without being admitted are subject to detention under § 1225(b) and are ineligible for IJ bond hearings. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

44. Since Respondents adopted their new policies, a majority of federal courts have rejected their new interpretation of the INA’s detention authorities². Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as the new DHS Policy. *See, e.g., Hinojosa Garcia v. Noem*, No. 2:25-CV-00879-SPC-NPM, 2025 WL

² The list of District Courts that have rejected Respondents’ new interpretation of the INA’s detention authorities continues to grow. *See e.g., Munoz Avendano v. Warden*, No.: 2:25-cv-01221-SPC-NPM (M.D. Fla. Jan. 20, 2026); *Suarez-Duarte v. Harper*, 2:25-cv-03142-TLP-tmp (W.D. Tenn. Jan 12, 2026), ECF. No. 8; *Aguilar v. Bondi*, No. 1:25-cv-00996-KWR-KK (D. N.M. Jan 12, 2026), ECF. No. 26; *Flores v. Warden, Fla. Soft Side S.*, U.S., No. 2:25-cv-1162-KCD-NPM (M.D. Fla. Jan 05, 2026), ECF. No. 10; *Vadel v. Lowe*, No. 3:25-CV-02452 (M.D. Pa. Dec 31, 2025), ECF No. 5; *Ramirez-Morales v. Lyons*, No. EP-25-CV-00476-DCG-RFC (W.D. Tex. Dec 30, 2025), ECF. No. 18.

3041895 (M.D. Fla. Oct. 31, 2025); *Cardona-Lozano v. Noem*, No. 1:25-CV-1784-RP, 2025 WL 3218244 (W.D. Tex. Nov. 14, 2025); *Patel v. Almodovar*, No. CV 25-15345 (SDW), 2025 WL 3012323 (D.N.J. Oct. 28, 2025); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025).

45. Courts have uniformly rejected DHS' and EOIR's new interpretation because it defies the INA. As the *Hinojosa Garcia* Court and others have explained, the plain language of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner who were detained inside the U.S. *See Hinojosa Garcia v. Noem*, 2025 WL 3041895.

C. Irrespective of the Applicable Detention Authority, Petitioner's Detention Without a Custody Hearing Violates His Due Process Rights

46. "[T]he Due Process Clause applies to all persons within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v Davis*, 533 U.S. 678, 679 (2001).

47. Under 8 C.F.R. § 287.3(d), when a noncitizen is arrested without a warrant, DHS generally must make a determination within 48 hours as to whether they will be kept in custody or released. Here, Petitioner has been detained for weeks without being charged and in violation of his Due Process Rights.

48. Courts have applied a three-part balancing test to determine whether the process afforded in the civil immigration context was adequate:

- (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.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976); *see also Alfonso Perez v. Mordant*, No. 2:25-cv-00947-SPC-DNF, 2025 WL 3466956 (M.D. Fla. Dec. 3, 2025)

49. Courts in this Judicial District have held that all three of the *Mathews* factors weigh heavily in favor of noncitizens like Petitioner, who are being detained without a bond hearing. *See, e.g., Id.; Carmona v. Ripa*, 2:25-cv-1128-SPC-DNF (M.D. Fla. Dec 17, 2025) (finding that a noncitizen who was paroled into the U.S. and later detained by ICE had an interest in his freedom from detention, he faced a strong risk of erroneous deprivation of that interest because he was not a flight risk and had a clean criminal record, and no government interest was served by his detention without bond).

50. This interest in being free from detention also extends to parolees, as “the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a ‘grievous loss’ on the parolee,” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972), and to those on conditional release, like Petitioner. *See Young v. Harper*, 520 U.S. 143, 147-49 (1997).

51. Courts in other judicial districts considering cases similar to Petitioner’s, have found that noncitizens “[have] a protected liberty interest in [their] release,” and were “entitled to a bond hearing, which should have been provided before [the noncitizen] was detained.” *R.D.T.M.*, 2025 WL 2617255, at *3-4 (E.D. Cal. Sep 18, 2025). Furthermore, “Due Process requires a pre-deprivation hearing before those released on parole from a criminal conviction can have their bond finally revoked [and the] same is true for those

subject to revocation of probation.” *Id.* (citing *Morrissey*, 408 U.S. 480-486 (1972) and *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)).

52. Accordingly, regardless of the authority Respondents rely on to detain Petitioner without custody hearing, he is being detained in violation of his Due Process rights under the Fifth Amendment.

CLAIMS FOR RELIEF

COUNT I

Violation of the TVPRA

53. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

54. The TVPRA requires that noncitizens designated as UACs be placed in the least restrictive setting available even after the “minor [...] reaches the age of 18”. 8 U.S.C. § 1232(c)(2)(B).

55. Section 1232(c)(2)(B) “calls for an individualized assessment of the proper placement for each former unaccompanied minor in light of DHS’s assessment of his or her danger to self, danger to the community, and risk of flight.” *Ramirez*, No. 1:18-cv-00508-RC (D. D.C. Dec. 15, 2025), ECF No. 436 at 22.

56. The application of § 1225(b) to Petitioner unlawfully mandates his continued detention and violates the TVPRA, as former UACs cannot be re-arrested or detained absent a material change in their circumstances showing they are a danger to self, danger to the community, or a flight risk.

COUNT II

Violation of the INA

57. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

58. The mandatory detention provisions in 8 U.S.C. § 1225(b) do not apply to all noncitizens residing in the United States 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 United States prior to being detained and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

59. The application of § 1225(b) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT III

Violation of Due Process

60. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

61. The government may not deprive a person of life, liberty, or property 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 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

62. Petitioner has a fundamental interest in liberty and being free from official restraint.

63. The government’s re-detention of Petitioner without charging him and without a pre-deprivation hearing to evaluate any changed circumstances, or a bond hearing to determine whether he is a flight risk or danger to others, violates his due process rights.

PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Order that Petitioner shall not be transferred outside of the Middle District of Florida while this habeas petition is pending;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a), within seven days, where the Government bears the burden of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a flight risk;
- e. Declare that Petitioner's detention is unlawful; and
- f. Grant any other and further relief that this Court deems just and proper.

DATED: January 21, 2026

Respectfully submitted,

/s/Rolando Grillo

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LEAD COUNSEL FOR PETITIONER

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

I am submitting this verification on behalf of Petitioner, because I am Petitioner's attorney. I have discussed with the Petitioner the facts described in this petition. Based on those discussions, I hereby verify that the factual statements in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on January 21, 2026.

/s/Rolando Grillo
Rolando Grillo
Attorney for Petitioner