

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

Miguel H. Candelario Gilberto,

Petitioner,

v.

Case No. 2:26-cv-122

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, Miguel H. Candelario Gilberto, has been in the physical custody of Respondents since January 11, 2026, and is currently detained at the Florida Soft Side South Detention Center.

2. Despite detaining Petitioner for over week, Respondents have not charged Petitioner and have not served him with a Notice to Appear (NTA).

3. 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(b)(2).

4. 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(b)(2)(A) 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.

5. Petitioner's detention without a bond hearing 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.

6. Petitioner is a member of the nationwide “Bond Eligible Class” as certified by the U.S. District Court in the Central District of California on November 25, 2025, and is thus eligible for release on bond pursuant to § 1226(a). *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); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025) (final judgement extending a declaratory judgment to the certified class).

7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

JURISDICTION & VENUE

8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the ICE Detention Facility at Florida Soft Side South Detention Center, located at 54575 Tamiami Trl E, Ochopee, Florida. *See* ICE Detainee Locator Search Results from January 22, 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 Miguel H. Candelario Gilberto is a citizen and national of Guatemala and has been living in the United States since September of 2012, and has been detained by Respondents since January 11, 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 Detention Center 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 [p]rudential 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)(2)(A). *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 entered the United States through the southern border on or about September of 2012 and has resided here ever since.

22. Petitioner is married to a lawful permanent resident and has a pending I-130 Petition for Alien Relative submitted on his behalf to the U.S. Citizenship and Immigration Service (USCIS) in 2023.

23. Petitioner lives in Fort Pierce, Florida with his wife and his U.S. citizen son and step-son.

24. On January 11, 2026 Petitioner was detained in Fort Pierce, Florida for a misdemeanor fishing violation. Respondents later transferred Petitioner to the Florida Soft Side South Detention Center in Ochopee, Florida, where he is currently detained. *See Exhibit 1.*

25. 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.

26. 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.

27. 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.

28. 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).

ARGUMENT

Petitioner is detained under Section 1226 of the INA

29. There are two main statutory provisions that govern 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).

30. 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.

31. 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).

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

33. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”¹ (hereinafter, “DHS Policy”) claims that all persons who entered

¹ A copy of the internal DHS policy is available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>

the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, or like Petitioner, over a decade.

34. 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)(2)(A) and are ineligible for IJ bond hearings. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

35. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. 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 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).

36. Courts have uniformly rejected DHS' and EOIR's new interpretation because it defies the INA². 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

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.

Petitioner who were detained inside the U.S. *See Hinojosa Garcia v. Noem*, 2025 WL 3041895.

Maldonado Batista Bond Eligible Class

37. On November 25, 2025, the Central District of California certified a nationwide “Bond Eligible Class” that includes those who, like Petitioner are:

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 v. Santacruz, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025)

38. On December 18, 2025, the *Bautista* court entered a class-wide declaratory judgment declaring that the Bond Eligible Class members are detained under § 1226(a), are not subject to mandatory detention under § 1225(b)(2), and are therefore “entitled to consideration for release on bond by immigration officers and, if not released, a custody redetermination hearing before an immigration judge.” 2025 WL 3678485, *1 (C.D. Cal. Dec. 18, 2025). The *Bautista* court vacated the July 8, 2025, DHS policy under the Administrative Procedure Act (“APA”) “as not in accordance with law,” and held that *Yajure-Hurtado*, 29 I. & N. Dec. 216 “is no longer controlling.” *Id.*

39. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

Irrespective of the Applicable Detention Authority,
Petitioner's Due Process Rights Were Violated

40. “[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).

41. 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.

42. Courts have also 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)

43. 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).

44. Petitioner has a significant private interest in being free from physical detention which is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Perez v. Warden*, No. 2:26-cv-9-SPC-DNF (M.D. Fla. Jan. 19, 2026), ECF No. 5.

45. Petitioner has kept a clean criminal record for the over 13 years he has lived in the U.S. Thus, without an individualized bond hearing, Petitioner risks the erroneous deprivation of his freedom. Moreover, the government’s interests in preventing danger to the community and ensuring Petitioner’s appearance at future immigration proceedings would be “protected by the individualized determination by an IJ whether [Petitioner] should be granted bond under § 1226.” *Aguilar Merino v. Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, Miami Field Office*, No. 1:25-cv-23845-JEM (S.D. Fla. Oct. 15, 2025), ECF No. 28 at 9.

46. Accordingly, regardless of whether Section 1225 or 1226 applies to Petitioner, he is being detained in violation of his Due Process rights under the Fifth Amendment.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA and Request for Relief Pursuant to *Maldonado Bautista*

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

48. The mandatory detention provision in 8 U.S.C. § 1225(b)(2) does 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 apprehended 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.

49. Moreover, Petitioner is a member of the nationwide Bond Eligible Class certified in *Maldonado Bautista*, and is subject to § 1226(a) and not § 1225(b)(2).

50. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II

Violation of Due Process

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

52. 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).

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

54. The government’s detention of Petitioner without charging him and without 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 22, 2026

Respectfully submitted,

/s/Rolando Grillo

Rolando Grillo

Florida Bar No.: 96366

3540 Forest Hill Blvd, Ste 209

West Palm Beach, FL 33406

Tel: (561) 247-2391

Rolando@grilloesq.com

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 22, 2026.

/s/Rolando Grillo
Rolando Grillo
Attorney for Petitioner