

1. Petitioner Alonso Alfredo Tapia Riveros (“Mr. Tapia Riveros”), a native and citizen of Mexico, challenges his continued custodial detention by the Department of Homeland Security Immigration and Customs Enforcement (“ICE”) since January 19th, 2026, as an unconstitutional and unjustified restraint and deprivation of his physical liberty, and seeks immediate relief from this Court.
2. Mr. Tapia Riveros is being unlawfully subjected to continued custodial detention by Respondents without the ability to pursue substantive administrative remedies with the Department of Justice Executive Office for Immigration Review (“EOIR”).
3. Mr. Tapia Riveros’ continued detention by ICE, without any further meaningful mechanism to challenge his confinement, violates the U.S. CONST. Due Process

Clause of the Fifth Amendment (the “Fifth Amendment”), the Immigration and Nationality Act (the “INA”) and the Administrative Procedures Act, 5 U.S.C. § 702 (the “APA”).

4. Mr. Tapia Riveros petitions for a writ of habeas corpus to remedy his unlawful detention, and prays this Court will issue an order 1) declaring that the continued immigration detention of Mr. Tapia Riveros violates the Due Process Clause of the Fifth Amendment, the INA and the APA; 2) granting Mr. Tapia Riveros his immediate release from the custody of Respondents, or in the alternative, a bond hearing before an immigration judge under section 1226(a) of the INA where the burden is on Respondents to establish flight risk and/or danger to the community; and 3) preventing Respondents from once again taking Mr. Tapia Riveros into custody unless he is determined to be a flight risk and/or a danger to the community.

JURISDICTION AND VENUE

5. Mr. Tapia Riveros is currently detained by ICE at 14400 49th Street North, Clearwater, FL 33762 (the “Pinellas County Jail”) which is within the jurisdiction of the United States District Court for the Middle District of Florida.
6. This action arises under the Due Process Clause of the Fifth Amendment, the INA and the APA.
7. This Court has subject-matter jurisdiction under 28 U.S.C. § 2241 (“Habeas Corpus”), the Suspension Clause of the United States Constitution, 28 U.S.C. § 1346 (civil actions against the United States), 28 U.S.C. § 1651 (“All Writs Act”), and 28 U.S.C. §§ 2201-02 (“Declaratory Relief”), as Mr. Tapia Riveros is presently held in custody under or by color of the authority of the United States. His detention by Respondents is a “severe restraint” on his individual liberty “in violation of the...laws ... of the United States.” *See Hensley v. Municipal Court, San Jose-Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973).
8. This Court has jurisdiction to hear Habeas Corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by U.S. immigration officials. *See, e.g., Jennings v. Rodriguez*, 138 S. Ct. 830,841 (2018); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687.

9. In addition to the habeas protections in the Constitution and INA, federal district courts have subject-matter jurisdiction under 28 U.S.C. § 1331 (“*Federal Questions*”) to hear claims by individuals challenging the lawfulness of agency action.
10. Venue is proper because Mr. Tapia Riveros is currently detained within the State of Florida. At 5:00 p.m. Eastern Daylight Savings Time on January 23rd, 2026, Mr. Tapia Riveros personally confirmed to undersigned counsel that he is in Clearwater, Florida and has been verified to be in ICE Custody. *See* Ex. 1 hereto.

PARTIES

11. Petitioner Alonso Alfredo Tapia Riveros is a citizen and national of Mexico. He is currently detained by the Respondents at the Tampa ICE Facility which is within the jurisdiction of the Middle District of Florida since January 19th, 2026.
12. Respondent Pamela Bondi is the U.S. Attorney General, and in that capacity is responsible for the EOIR which includes the Board of Immigration Appeals and immigration courts. She is sued in her official capacity.
13. Respondent Kristi Noem is the Secretary of Homeland Security, and in that capacity is responsible for the Department of Homeland Security (“DHS”) and all sub-cabinet agencies of DHS, including ICE. She is sued in her official capacity.
14. Respondent Todd M. Lyons is the Acting Director of ICE, responsible for ICE’s detention and removal operations of non-citizens such as Petitioner, among all its other functions. He is sued in his official capacity.
15. Respondent Field Office Director, Miami Field Office, U.S. Immigration and Customs Enforcement who is responsible for ICE’s operations in the Tampa/Sarasota area. Upon information and belief, they are the immediate custodian of Alonso Alfredo Tapia Riveros. They are being sued in their official capacity.

STATEMENT OF FACTS

16. Alonso Alfredo Tapia Riveros, born in Mexico on  last entered the United States in approximately November of 2022 at the age of 16. Mr. Tapia Riveros was not stopped by ICE Officials at the time of his 2002 entry and entered the United States without inspection. On January 19th, 2006, Mr. Arrellano-Cabrera was apprehended by Respondents.

17. Mr. Tapia Riveros was never placed in expedited removal proceedings under section 1225 of the INA.
18. Mr. Tapia Riveros has never been convicted of any violent crimes either in his home country or in the United States. His records consist of traffic citations for driving without a license. Mr. Tapia Riveros has continuously lived in the State of Florida since 2002 with his parents. He now has two United States children and his sister who is also a United States Citizen. Mr. Tapia Riveros has been gainfully employed since 2003 and has been filing his taxes since 2005.
19. Mr. Tapia Riveros was detained by ICE on January 19th, 2026, in Sarasota, Florida. Mr. Tapia Riveros was told that he would be detained without bond. He is still detained at the Pinellas County Jail by ICE as of 4:00 p.m. Eastern Daylight Savings Time on January 23rd, 2026. Mr. Tapia Riveros is being subjected to detention under either section 1225(b)(1) or section 1225(b)(2).
20. Respondents are presumably detaining Mr. Tapia Riveros under section 1225(b)(2) as a result of the BIA's decision in *Matter of Yajure-Hurtado*, 29 I. & N. 216 (BIA 2025). The BIA's interpretation of section 1225(b)(2) in *Matter of Yajure-Hurtado* has been found by dozens of Federal courts across the country as an unlawful interpretation of the INA. Mr. Tapia Riveros is unable to submit any evidence demonstrating that he is neither a flight risk nor a danger to the community to secure his release from custody by an immigration judge under the INA.

EXHAUSTION

21. The decision to detain Mr. Tapia Riveros is subject to challenge through a petition for a writ of habeas corpus, and Mr. Tapia Riveros need not exhaust additional administrative remedies which might be available to him before seeking this Court's review. See e.g. *McCarthy v. Madigan*, 503 U.S. 140, 147-48 (1992) ("[A]n administrative remedy may be inadequate [because] ... an agency, as a preliminary matter, may be unable to consider whether to grant relief because it lacks institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute" or "where the administrative body ... has otherwise pre-determined the issue before it."); *Janvier v. INS*, 174 F. Supp. 2d 430, 434 (E.D. Va. 2001) (noting that "§ 2241 is silent on exhaustion.").

22. Moreover, further exhaustion would be futile because Mr. Tapia Riveros will be pursuing a remedy to no avail. *See Janvier*, 174 F. Supp. 2d at 434 (recognizing that exhaustion is not necessary "where the pertinent administrative agency lacks the competence to reach a definitive resolution of the particular issue presented[,] such as "where, as here, the administrative agency may consider constitutional claims, but lacks authority to rule dispositively on those claims, because "the final say on constitutional matters rests with the courts."). In particular, under new BIA precedent, Mr. Tapia Riveros is no longer considered eligible for the bond and Respondents have exercised their authority to prevent any immigration judge from granting bond.
23. The detention of Mr. Tapia Riveros by ICE, years after he last entered the United States without the ability to challenge his detention is unconstitutional, and administrative exhaustion is excused. *See Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992) ("Exhaustion of administrative remedies may not be required when ...a plaintiff has raised a substantial constitutional question.").

CLAIMS FOR RELIEF

COUNT ONE

Mr. Tapia Riveros' Detention Violates His Right to Substantive Due Process Under the Fifth Amendment

24. Petitioner re-alleges and incorporates by reference the paragraphs above.
25. As a "person" within the meaning of the Fifth Amendment, Mr. Tapia Riveros is entitled to due process of law while in the United States, and certainly while in immigration custody. U.S. CONST. amend. V; *see Reno v. Flores*, 507 U.S. 292, 306 (1993) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.").
26. The Substantive Due Process Clause protects a person's freedom from arbitrary confinement. *See Zadvydas*, 533 U.S. at 693. The Supreme Court has recognized this protection applies regardless of a person's immigration status. *See id.*; *see also Mathews v. Diaz*, 426 U.S. 67, 77 (1976).
27. Civil detention, such as immigration detention, must be carefully limited to avoid due process concerns. *See e.g., Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom

from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action"); *Addington v. Texas*, 441 U.S. 418, 425 (1979) ("This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection"); *see also United States v. Salerno*, 481 U.S. 739, 755 (1987) ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception").

28. The Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and prevent flight. *See Demore*, 538 U.S. at 528; *see also Matter of Patel*, 15 I. & N. Dec. 666 (BIA 1976) ("An alien generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security, or that he is a poor bail risk[.]" (internal citation omitted)). Additionally, a period of detention must "bear [a] reasonable relation to the purpose for which the individual was committed." *See Demore*, 538 U.S. at 516–17.
29. Mr. Tapia Riveros is being denied substantive due process as the Respondents continue to exercise their authority contrary to law by refusing his release under section 1226(a) of the INA without due process and preventing Mr. Tapia Riveros from seeking release under the INA under section 1226(a) of the INA. The EOIR, through the BIA, took the position in *Matter of Yajure-Hurtado* that an individual such as Mr. Tapia Riveros, with over twenty years after his last entry to the United States, is subject to the mandatory detention provisions of Section 1225 of the INA.
30. Under Section 1226(a) of the INA, an immigration judge would be able to consider any relevant evidence submitted by Mr. Tapia Riveros demonstrating that he was not a flight risk or a danger to the community. The immigration judge would evaluate this evidence and determine, as a neutral factfinder, whether Mr. Tapia Riveros was in fact a flight risk or a danger to the community. The Respondents have made applications for bond by Mr. Tapia Riveros under Section 1226(a) of the INA futile by applying *Matter of Yajure-Hurtado* to cases with the same facts and circumstances as Mr. Tapia Riveros.

31. But for *Matter of Yajure-Hurtado*, Mr. Tapia Riveros would have the ability to demonstrate to a neutral fact-finder that he is not a flight risk as he has ample ties to the community through his family and employment. He would also have been able to demonstrate that he was not a danger to the community. No justification exists to deprive Mr. Tapia Riveros of his ability to present evidence to secure his liberty.

COUNT TWO

Mr. Tapia Riveros' Detention Violates His Right to Procedural Due Process Under the Fifth Amendment

32. Petitioner re-alleges and incorporates by reference the paragraphs above.
33. "Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty" that the Fifth Amendment's Due Process Clause protects. *See Zadvydas*, 533 U.S. at 690.
34. To that end, due process demands "adequate procedural protections" to ensure that the Government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (internal quotation marks omitted).
35. Given the gravity of the liberty deprivation when the government preventively detains individuals, due process requires the jailers bear the burden of proof. *See e.g., Salerno*, 481 U.S. at 751 (affirming legality of pre-trial detention where burden of proof was on the government); *see also Foucha*, 504 U.S. at 81-82 (holding unconstitutional a state "statute that place[d] the burden on the detainee to prove that he is not dangerous"). The Court has held that it is improper to ask an "individual to share equally with society the risk of error when the possible injury to the individual-deprivation of liberty-is so significant." *See Addington*, 441 U.S. at 427.
36. In *Mathews v. Eldridge*, the Supreme Court set forth the factors to consider in determining if government action deprives an individual's Fifth Amendment right to procedural due process or whether the government process is constitutionally adequate. 424 U.S. 319 (1976). The *Mathews* factors apply here to determine if Petitioner's procedural due process rights as a civil detainee have been violated by the Government's continued custodial detention.

37. Mr. Tapia Riveros has a substantial liberty interest in his bodily freedom. Mr. Tapia Riveros is the primary economic provider for his family which includes two United States citizen children. The unlawful detention by Respondents is preventing Mr. Tapia Riveros his right to bodily freedom, a core liberty interest.
38. Mr. Tapia Riveros was not provided any process at all in the course of his arrest, processing, and detention by ICE through notice and an opportunity to respond that would reduce the risk of an erroneous deprivation of his interests. ICE deprived Mr. Tapia Riveros of adequate procedural protection in his substantial interest with respect to his liberty by taking him into custody with no regard to its own long-established practices, procedures and applicable regulations. Specifically, Respondents did not follow section 1226(b).

COUNT THREE

Mr. Arrellano Cabrera's Detention by ICE is in Violation of the INA

39. Section 1225 of the INA authorizes the mandatory detention of "arriving aliens" and those noncitizens who cannot demonstrate they have "been physically present in the United States continuously for the 2-year period immediately prior[.]" 8 U.S.C. § 1225(b)(1)(A)(iii)(II).
40. As noted above, Mr. Tapia Riveros has lived in the United States for over twenty years prior to being detained. Mr. Tapia Riveros was never processed as an arriving alien or placed in expedited removal proceedings under section 1225 of the INA. Applying section 1225 of the INA to Mr. Tapia Riveros, over twenty years after his entry is contrary to the INA.
41. Respondents claim that Mr. Tapia Riveros is subject to mandatory detention under section 1225 and is not eligible for bond under section 1226(a) despite his presence in the United States for over twenty years and his initial detention and release under section 1226(a). Dozens of Federal courts have found this legal interpretation by DHS in cases similar to Petitioner's case erroneous.

COUNT FOUR

Mr. Tapia Riveros' Detention by ICE is in Violation of the APA 5 U.S.C. § 702

(Unconstitutional, unlawful, arbitrary, and capricious actions)

42. Petitioner re-alleges and incorporates by reference the paragraphs above.
43. The decision to deny Mr. Tapia Riveros' release under section 1226(a) and detain him without any opportunity to challenge his custody is arbitrary, capricious, and not in accordance with the INA, and contrary to Mr. Tapia Riveros' right to due process under the Fifth Amendment.
44. This Court may set aside agency action which is arbitrary, capricious, unlawful, or contrary to constitutional right, power, privilege, or immunity. *See* 5 U.S.C. §§ 706(2)(A), (B).
45. Mr. Tapia Riveros has lived over twenty years in the United States, after which he was arrested without any cause and has since been detained in immigration custody without further justification.
46. Additionally, the determination by ICE and EOIR that Mr. Tapia Riveros is subject to mandatory detention under Section 1225 of the INA is without any basis in law.
47. Such actions are arbitrary and capricious, and should be held unlawful and set aside.
48. As a result of the arbitrary, capricious, unlawful, and unconstitutional actions by Respondents, Mr. Tapia Riveros has suffered prejudice, actual and substantial hardship, and irreparable injury in fact.
49. Mr. Tapia Riveros has no other adequate remedy at law.

PRAYER FOR RELIEF

Based on the foregoing, Mr. Tapia Riveros requests that this Court:

- a. Assume jurisdiction over the matter;
- b. Declare that the continued immigration detention of Mr. Tapia Riveros violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution, the INA and the APA;
- c. Issue a writ of habeas corpus ordering Respondents to immediately release Mr. Tapia Riveros his immediate release from the custody of Respondents, or in the alternative, a bond hearing before an immigration judge under section 1226(a) of the INA where the burden is on Respondents to establish flight risk and/or danger to the community;

- d. Issue an order preventing Respondents from once again taking Mr. Tapia Riveros into custody unless he is determined to be a flight risk and/or a danger to the community in accordance with the U.S. Constitution and applicable law;
- e. Award Mr. Tapia Riveros all costs incurred in maintaining this action; and
- f. Grant any other and further relief this Court deems just and proper

Respectfully Submitted this 23rd, day of January 2026.

/s/ Catherine Perez, Esq.

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