

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
NORTHERN DIVISION

JOSE ALEXIS MONTENEGRO RIZO

(A# )

Petitioner,

v.

PAMELA BONDI, U.S. Attorney General;  
KRISTI NOEM, Secretary of the U.S.  
Department of Homeland Security;  
TODD M. LYONS, in his official capacity as  
Acting Director of U.S. Immigration and  
Customs Enforcement;  
VERNON LIGGINS, in his official capacity  
as Acting Field Office Director in charge of  
ICE Baltimore Field Office.

Respondents.

Case No.: 26-cv-00601

**PETITION FOR WRIT OF HABEAS  
CORPUS**

INTRODUCTION

1. Petitioner Jose Alexis Montenegro Rizo (“Mr. Montenegro”) challenges his continued custodial detention by the Department of Homeland Security Immigration and Customs Enforcement (“ICE”) since February 12, 2026 as an unconstitutional and unjustified restraint and deprivation of his physical liberty, and seeks immediate relief from this Court.
2. Mr. Montenegro was unlawfully detained without any cause and without a warrant by the Respondents. Mr. Montenegro is also being 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. Montenegro’s warrantless arrest without any cause and continued detention by Respondents, without any further meaningful mechanism to challenge his

confinement, violates the U.S. CONST. Due Process Clause of the Fifth Amendment (the “Fifth Amendment”) and the Immigration and Nationality Act (the “INA”).

4. Mr. Montenegro petitions for a writ of habeas corpus to remedy his unlawful detention, and prays this Court will issue an order 1) declaring that the warrantless arrest without cause and the continued immigration detention of Mr. Montenegro violates the Fourth Amendment, the Due Process Clause of the Fifth Amendment, and the INA; 2) granting Mr. Montenegro his immediate release from the custody of Respondents, or in the alternative, a bond hearing before an immigration under section 1226(a) of the INA and with all the due process afforded to him under the Constitutions and laws of the United States; and 3) preventing Respondents from once again taking Mr. Montenegro into custody unless he is determined to be a flight risk and/or a danger to the community.


#### **JURISDICTION AND VENUE**

5. Mr. Montenegro is currently detained by ICE in the State of Maryland at either the Salisbury Field Office at 119 W. Naylor Mill Road, Salisbury, Maryland 21801 (the “Salisbury ICE Facility) or at 31 Hopkins Plaza, Baltimore, Maryland 21201 (the “Baltimore ICE Facility”), both of which are within the jurisdiction of the United States District Court for the District of Maryland.
6. This action arises under the Fourth Amendment of the U.S. Constitution, the Due Process Clause of the Fifth Amendment of the U.S. Constitution and the INA.
7. This Court has subject-matter jurisdiction under 28 U.S.C. § 2241 (“Habeas Corpus”), 28 U.S.C. § 1346 (civil actions against the United States), 28 U.S.C. § 1651 (“All Writs Act”), the Suspension Clause of the Constitution and 28 U.S.C. §§ 2201-02 (“Declaratory Relief”), as Mr. Montenegro 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 U.S. 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. Montenegro is currently detained within the State of Maryland. Upon information and belief, at 12:48 p.m. Eastern Daylight Savings Time on February 13, 2026, Mr. Montenegro is still in ICE custody either at the Salisbury ICE Facility in Salisbury, Maryland or the Baltimore ICE Facility in Baltimore, Maryland. The ICE Detainee Locator indicates that he is detained in ICE custody. *See* Ex. 1 hereto.

#### **PARTIES**

11. Petitioner Jose Alexis Montenegro Rizo was born  and has been a resident of the State of Delaware for over ten years. He is currently detained by the Respondents either at the Salisbury ICE Facility or at the Baltimore ICE Facility both of which are within the jurisdiction of the District of Maryland since February 12, 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 Vernon Liggins is the Acting Field Office Director of the ICE Baltimore Field Office, and is responsible for ICE’s operations in the State of Maryland. Upon information and belief, he is the immediate custodian of Mr. Montenegro. He is sued in his official capacity.

#### **STATEMENT OF FACTS**

16. Mr. Montenegro has resided in the State of Delaware for over ten years. Mr. Montenegro has been residing with his wife and 2 United States citizen step-children who are 23 and 17 years old.
17. Mr. Montenegro is employed as a painter for over five years.
18. Mr. Montenegro was detained by ICE on February 12, 2026 in the State of Maryland as he was working. Mr. Montenegro was arrested without a warrant and without any sort of legal cause or justification.
19. Mr. Montenegro was transferred to the Salisbury ICE Facility in the State of Maryland where he was told that he would be detained without bond pending proceedings before an immigration judge. He is still detained by ICE either at the Salisbury ICE Facility or at the Baltimore ICE Facility as of 12:48 p.m. Eastern Daylight Savings Time on February 13, 2026.
20. Respondents unlawfully detained Mr. Montenegro without a warrant or cause and continue to justify his continued mandatory detention under section 1225(b)(2) of the INA. As such, Mr. Montenegro is unable to file a bond redetermination with the EOIR to challenge his custody that will be meaningfully considered as a result of the BIA publishing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) on September 5, 2025. *Matter of Yajure Hurtado* deemed individuals such as Mr. Montenegro as subject to mandatory detention under Section 1225(b)(2) of the INA.-
21. The BIA's decision in *Matter of Yajure Hurtado* has been found by dozens of Federal courts across the country as an unlawful interpretation of the INA. Mr. Montenegro 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.
22. Mr. Montenegro is filing this Petition to be immediately released from custody as a result of his unlawful warrantless arrest and to also be deemed to have the right to a bond redetermination request before EOIR considered by an immigration judge under section 1226(a) of the INA and with all due process afforded to him by the U.S. Constitution and the laws of the United States.

**EXHAUSTION**

23. The decision to detain Mr. Montenegro is subject to challenge through a petition for a writ of habeas corpus, and Mr. Montenegro 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.").
24. Moreover, further exhaustion would be futile because Mr. Montenegro 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 make a dispositive ruling on those claims, because "the final say on constitutional matters rests with the courts."). In particular, under new BIA precedent, Mr. Montenegro is no longer considered eligible for bond under section 1226(a) of the INA and Respondents have exercised their authority to prevent any immigration judge from granting bond.
25. The unlawful detention of Mr. Montenegro by Respondents, after years of residing in the United States and 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. Montenegro's Arrest without a Warrant and without any cause violated his  
rights under the Fourth Amendment**

26. Petitioner re-alleges and incorporates by reference the paragraphs above.

27. The Fourth Amendment protects all persons from unreasonable search and seizures. As such, any government official who subjects any person to an arrest must do so either with probable cause or with a judicial warrant.
28. Mr. Montenegro's arrest was without a judicial warrant and without any sort of cause, let alone probable cause. Mr. Montenegro was working when he was detained with several other co-workers. Mr. Montenegro was not engaged in any conduct that could be deemed to provide probable cause for his arrest.
29. The Respondents have provided Mr. Montenegro with an administrative warrant, Form I-200, which was produced after his arrest while he was already in custody; however, this administrative warrant does not comport with the Fourth Amendment requirements as it is a *post-hoc* document that does not justify or explain the initial arrest.
30. As such, Mr. Montenegro's arrest was unlawful and this Court should order his immediate release as the remedy for this blatant constitution violation.

## COUNT TWO

### **Mr. Montenegro's Detention Violates His Right to Substantive Due Process Under the Fifth Amendment**

31. Petitioner re-alleges and incorporates by reference the paragraphs above.
32. As a "person" within the meaning of the Fifth Amendment, Mr. Montenegro 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.").
33. 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).
34. 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").

35. 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.
36. Mr. Montenegro is being denied substantive due process as the Respondents continue to exercise their authority contrary to law in order to prevent Mr. Montenegro 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. Montenegro, over twenty years after his last entry to the United States, is subject to the mandatory detention provisions of Section 1225 of the INA.
37. Under Section 1226 of the INA, an immigration judge would be able to consider any relevant evidence submitted by Mr. Montenegro 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 fact-finder, whether Mr. Montenegro was in fact a flight risk or a danger to the community.
38. The Respondents have made applications for bond by Mr. Montenegro under section 1226(a) of the INA futile by applying *Matter of Yajure Hurtado* to cases with the same facts and circumstances as Mr. Montenegro and summarily dismissing for "lack of jurisdiction". Mr. Montenegro is entitled to a bond hearing under section 1226(a) of the INA before an immigration judge that is meaningfully considered and not denied for lack of jurisdiction under *Matter of Yajure Hurtado*.

39. But for *Matter of Yajure-Hurtado*, Mr. Montenegro 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. Montenegro the ability to present such evidence to secure his liberty.
40. Additionally, Respondents have engaged in a pattern of conduct designed to undermine the due process of individuals before the Executive Office for Immigration Review. Over one hundred immigration judges have been fired without cause of the last six months in an attempt to have the Executive Office for Immigration Review become an enforcement agency focused on the removal of individuals, rather than on the actual fair and impartial implementation of the INA.
41. The undermining of due process has extended to the determination of bond by immigration judges. Immigration practitioners have noted a pattern and practice of immigration judges denying bond on pre-textual reasons and without following the EOIR's own precedents. *See Ex. 2.*
42. The Board of Immigration Appeals ("BIA") has also begun the process of implementing summary dismissals of appeals from rulings by immigration judges in a manner completely inconsistent with proper due process. *See Ex. 3.* Summary dismissal of appeals by the BIA will prevent Mr. Montenegro from obtaining proper administrative review of any orders by an immigration judge, exacerbating the denial of due process being implemented by Respondents on a systemic basis.

### **COUNT THREE**

#### **Mr. Montenegro's Continued Detention Violates His Right to Procedural Due Process Under the Fifth Amendment**

43. Petitioner re-alleges and incorporates by reference the paragraphs above.
44. "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.
45. 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).

46. 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.
47. 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.
48. Mr. Montenegro has a substantial liberty interest both in his bodily freedom. Mr. Montenegro is legally blind and supports himself through continued employment as a waiter. The unlawful detention by Respondents is preventing Mr. Montenegro his right to bodily freedom.
49. Mr. Montenegro was not provided any due process 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. Montenegro of adequate procedural protection in his substantial interest with respect to his liberty by taking him into custody without any sort of cause and with no regard to its own long-established practices, procedures and applicable regulations.

#### COUNT FOUR

##### **Mr. Montenegro's Detention by ICE is in Violation of the INA**

50. 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).

51. As noted above, Mr. Montenegro has lived in the State of Maryland for over twenty years prior to being detained. Mr. Montenegro has been placed in removal proceedings by the Respondents without the ability to seek release under Section 1226 of the INA despite his possibility for relief from removal.
52. However, Respondents claim that Mr. Montenegro is not eligible for bond by characterizing his detention under Section 1225 of the INA despite his residing in the State of Maryland for over twenty years and his detention not occurring at the border. Dozens of Federal courts have found this legal interpretation by DHS in cases similar to Petitioner’s case erroneous.

#### **PRAYER FOR RELIEF**

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

- a. Assume jurisdiction over the matter;
- b. Declare that the continued immigration detention of Mr. Montenegro violates the Fourth Amendment and the Due Process Clause of the Fifth Amendment of the U.S. Constitution, and the INA;
- c. Issue a writ of habeas corpus ordering Respondents to immediately release Mr. Montenegro from their custody, or in the alternative, a bond hearing before an immigration judge under section 1226(a) of the INA and with all the due process afforded to him under the Constitutions and laws of the United States and not dismissed for lack of jurisdiction under *Matter of Yajure Hurtado*;
- d. Issue an order preventing Respondents from once again taking Mr. Montenegro 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. Grant any other and further relief this Court deems just and proper

Respectfully Submitted,

February 13, 2026

/s/ Michael E. Rosado

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

I represent Petitioner, Jose Alexis Montenegro Rizo, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 13th day of February, 2026.

/s/Michael E. Rosado

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