

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

DIDIE ESPINOSA FONT

Petitioner,

v.

KRISTI NOEM, Secretary of the US
Department of Homeland Security

PAMELA BONDI, Attorney General of the
United States

TODD M. LYONS, Acting Director of
Immigration and Customs
Enforcement

CYNTHIA SWAIN, Warden of Broward
Transitional Center

GARRET J. RIPA, Field Office Director of
Enforcement and Removal Operations, US
Department of Homeland Security;


In their official capacities.

Civil Case No. 26-cv-60431

PETITION FOR WRIT OF HABEAS
CORPUS

UNDER 28 U.S.C. § 2241

I. INTRODUCTION

1. Petitioner, DIDIE ESPINOSA-FONT, alien number  ("Petitioner"), is being detained unlawfully at the Broward Transitional Center in the custody of U.S. Immigration Customs and Enforcement ("ICE").

2. Petitioner is a noncitizen of the United States who is being unlawfully detained by Respondents in violation of Section 236(a) of the Immigration and Nationality Act ("INA"), 8

USC § 1226(a), and the Due Process Clause of the Fifth Amendment to the United States Constitution.

3. On February 13, 2026, the Immigration Judge denied Petitioner's request for bond, concluding that he "is ineligible for release on bond pursuant to Matter of M-S-." **Exhibit A**

4. In *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), the Attorney General held that a noncitizen who is initially placed in expedited removal proceedings and subsequently establishes a credible fear of persecution remains detained under 8 U.S.C. § 1225(b)(1)(B)(ii) and is categorically ineligible for release on bond before an Immigration Judge. The decision overruled prior Board precedent and interpreted § 1225(b)(1)(B)(ii)'s directive that such an individual "shall be detained for further consideration of the application for asylum" to mandate detention throughout the pendency of removal proceedings unless the Department of Homeland Security exercises its discretionary parole authority under § 212(d)(5)(A). Relying on this interpretation, the Immigration Judge concluded that he lacked jurisdiction to conduct a bond redetermination hearing in Petitioner's case and therefore denied bond without reaching the merits of flight risk or danger.

5. Petitioner has been continuously detained since June 16, 2025.

6. Petitioner has no access to a custody redetermination hearing.

7. Respondents have denied Petitioner's parole request under § 212(d)(5)(A).

8. Petitioner remains detained without any adversarial proceeding at which the Government bears the burden of justifying continued confinement.

9. Petitioner does not challenge removability in this action.

10. Instead, Petitioner brings this habeas corpus action pursuant to 28 U.S.C. §2241 to challenge his continued unlawful detention by ICE in violation of the Immigration and Nationality Act (INA) and the Fifth Amendment to the US Constitution.

11. Absent an Order from this Court, Petitioner will continue to be unlawfully held in detention by ICE.

12. Petitioner asks the Court to find that Petitioner is being unlawfully detained by ICE and order that Petitioner be immediately released from unlawful detention, or grant him a custody redetermination hearing.

II. REQUIREMENTS OF 28 U.S.C. § 2243

13. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within three days unless for good cause additional time, not exceeding’s twenty days, is allowed.” *Id.* (emphasis added).

14. Courts have long recognized the significance of the habeas state in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, 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).

III. JURIDICTION

15. Petitioner is in the physical custody of Respondents and is detained at the Broward Transitional Center in Broward, Florida.

16. Petitioner's case arises under 28 USC § 2241, and his claims further arise under INA, 8 U.S.C. §§ 1101-1538, and its implementing regulations; the APA, 5 U.S.C. §§ 500-596, 701-706, and the U.S. Constitution.

17. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as this is a civil action arising under the laws of the United States, and under 28 U.S.C. § 2241 as the case challenges Petitioner's unlawful detention.

18. The Court may grant relief pursuant to 28 U.S.C. § 2241; the Declaratory Judgment Act, 28 U.S.C. § 2201; the APA, 5 U.S.C. §§ 702, 706; the All Writs Act, 28 U.S.C. § 1652; Federal Rules of Civil Procedure 65; and the Court's inherent equitable powers.

IV . VENUE

19. Venue properly lies in the Southern District of Florida under 28 U.S.C. §1391(e), because Petitioner is detained in this District.

20. In addition, venue is proper in this District because Respondents are officers, employees, or agencies of the United States and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of Florida.

V. PARTIES

21. Petitioner, is a forty-five-year-old man who is a native and citizen of Cuba who has resided in the United States for over three years. He is currently detained by ICE at the Broward Transitional Center.

22. Respondent, Cynthia Swain, Warden of Port Isabel Detention Center, is the legal custodian of Petitioner.

23. Respondent Garret J. Ripa is the Acting Field Office, Director of Enforcement and Removal Operations for Immigration and Customs, Enforcement within the State of Florida, an agency of the Department of Homeland Security, and is sued in his official capacity.

24. 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 component agency. She is sued in her official capacity.

25. Respondent Krist Noem is the Secretary of Homeland Security of the United States. She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioner's detention. Respondent Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

26. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity.

VI. FACTS

27. Petitioner is currently detained at the Broward Transitional Center in Broward, Florida.

28. Petitioner is a native and citizen of Cuba.

29. Petitioner fled Cuba due to political persecution, harassment, arrests, threats, and physical harm inflicted by Cuban authorities.

A. Entry and Initial Custody

30. Petitioner entered the United States on or about May 22, 2022, near the Calexico, California, Port of Entry, where he voluntarily surrendered to U.S. Border Patrol officers.

31. On May 23, 2022, Petitioner was inspected, processed, and released on his own recognizance under Form I-220A in accordance with INA § 236 removal proceedings. **Exhibit**

B – Order of Release on Recognizance. Petitioner timely filed Form I-589, asserting a strong and well-founded claim for asylum.

32. The I-220A reflects that Petitioner was released pursuant to Section 236 of the INA. *Id.*

33. The I-220A required Petitioner to report to ICE and comply with conditions of release.

34. Petitioner complied with ICE reporting requirements in 2022, 2023, 2024 and 2025.

35. At no time prior to June 16, 2025, did Petitioner abscond or violate reporting conditions.

B. Notice to Appear

36. On January 4, 2023, DHS issued a Notice to Appear charging Petitioner under INA § 212(a)(6)(A)(i) as an alien present without admission or parole. **Exhibit C.**

37. The Notice to Appear did not classify Petitioner as an “arriving alien.”

38. Petitioner was placed into removal proceedings under INA § 240 before the Miami Immigration Court. The Notice scheduled him for an initial Master Calendar Hearing on June 16, 2025, before the Miami Immigration Court.

C. Dismissal and Expedited Removal

39. On June 16, 2025, the Petitioner appeared at his initial Master Calendar Hearing before the Miami Immigration Court. That day, DHS moved to dismiss the § 240 proceedings without prejudice, which the Immigration Judge granted, over Petitioner’s written and oral objections.

40. Immediately after exiting the courtroom, the Petitioner was arrested and detained by ICE Officer and placed into custody, and issued a Notice and Order of Expedited Removal, and Order of Removal under Section 235(b)(1) of the Act. **Exhibit D.**

D. Credible Fear Determination

41. On January 5, 2026, the asylum officer made a positive credible fear finding, confirming that he has a significant possibility of establishing eligibility for asylum.

42. The credible fear determination was approved by a supervisory asylum officer on January 7, 2026.

43. Following the credible fear finding, Petitioner was referred for full removal proceedings.

44. Petitioner does not presently have a final order of removal.

E. Parole and Bond Denial

45. On January 14, 2026, Petitioner requested release on parole from Deportation Officer V. Delgado, which was denied on January 21, 2026, without justification or individualized consideration of Petitioner's circumstances. Parole review was conducted by the detaining authority and not by a neutral adjudicator.

46. On February 13, 2026, Petitioner had a bond redetermination hearing with an immigration judge at the Broward Transitional Center and the IJ denied bond. According to the written Order of the Immigration Judge dated February 13, 2026, the reason for bond denial was because Petitioner was "ineligible for release on bond pursuant to Matter of M-S-" and therefore lacked jurisdiction. **Exhibit A**

VII - LEGAL FRAMEWORK

A. Detention is Governed by 8 U.S.C. § 1226 (a) (INA § 236(a))

47. Title 8 U.S.C. § 1225 governs DHS's inspection of noncitizens who arrive at the borders and ports of entry of the United States. Section 1225 provides for mandatory detention of noncitizens subject to Expedited Removal under 28 USC § 1225(b)(1) and for recent arrivals "seeking admission" referred to under § 1225(b)(2).

48. Further, under the plain meaning of the term "arriving" in Section 1225(b)(1)(A)(i), Petitioner cannot reasonably be classified as a noncitizen "who is arriving in the United States," even though he was initially detained as such in at the Port of Entry in Calexico, California. When

ICE arrested Petitioner more than three years after he entered the United States, he was not “arriving” in the United States. Rather, he had been living in the United States, See *Bollat Vasquez v. Wolf*, 460 F. Supp. 3d 99, 111 (D. Mass. 2020) (“Under the statutory language, if applicants are apprehended while crossing the border (whether or not at a check point), they are ‘arriving’ applicants under the statute, and if apprehended at some point thereafter, they are not ‘arriving,’ but rather “aliens[s] present in the United States who [have] not been admitted.” (quoting 8 USC § 1225(a)(1))); *Al Otro Lado Exec. Off. For Immigr. Rev.* 138 F.4th 1102, 1115 (9th Cir. 2025), cert. granted sub. nom. *Noem v. Al Otro Lado*, No. 25-5, 2025 WL 3198572 (U.S. Nov. 17, 2025).

49. For the above reasons, Petitioner is not an arriving alien and therefore not subject to mandatory detention under Section 1225(b)(1)(A)(i).

50. Therefore, because Petitioner is not an “arriving alien” under Section 1225(b)(1)(A)(i), his detention is not governed by Section 1225(b)(1). Likewise, Petitioner is not subject to mandatory detention under Section 1225(b)(2), which theoretically would be the basis for mandatory detention under the BIA case of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). On September 5, 2025, the Board of Immigration Appeals (a component of the Department of Justice) decided *Matter of Yajure Hurtado*, whereby the Board decided that it was the “plain language” of 8 USC § 1225(b)(2)(A) that all persons who are present in the United States without admission or parole are all “seeking admission,” into the United States and, therefore, not entitled to a bond hearing. However, DHS’s and DOJ’s reasoning set forth in *Matter of Yajure Hurtado* is in direct contraction with the INA.

51. Section 1225(b) applies to people arriving at U.S. ports of entry or who very recently entered the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 USC § 1225(b)(2)(A). *See also*

Diaz Martinez, 2025 WL 2084238, at 8 (“[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission...and those who are within the United States after entry, irrespective of its legality.” (Quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a [] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to someone such as Petitioner, who has already entered and has been residing in the United States at the time he was apprehended.

52. In *Cerritos Echevarria v. Bondi*, Judge Lanza in the District of Arizona concluded that § 1225(b)(2)(A)’s mandatory detention provisions applies only to “applicants for admission” who are, in fact, seeking admission at the border, and that longtime resident noncitizens arrested in the interior—like Petitioner—fall instead under §1226(a)’s default detention framework and are entitled to bond hearings. *Cerritos Echevarria v. Bondi*, No. 25-CV-03252-PHX-DWL, 2025 WL 2821282, at *4-5 (D. Ariz. Oct. 3, 2025). In *Echeverria*, Judge Lanza noted that “[g]iven that an immigrant submits an ‘application for admission’ at a distinct point in time, stretching the phrase ‘at the time of application for admission’ to refer to a period of years would push the statutory text beyond its breaking point.” *Id.* at * 6.

53. Title 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge. *See*, 8 U.S.C. 1229a. Individuals in Section 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. § 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of

certain crimes are subject to mandatory detention until their removal proceedings are concluded, see 8 U.S.C. §1226(c).

54. According to the Supreme Court, “1226(c) applies to aliens already present in the United States. Section 1226(a) creates a default rule for those aliens...”. *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018). The Court states, “Section 1226(a) also permits the Attorney General to release those aliens on bond, ‘[e]xcept as provided in subsection (c) of this section.’” Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” In the case at bar, Petitioner was released “pursuant to the authority contained in Section 236 of the Immigration and Nationality Act.” 8 U.S.C. § 1226. In addition, according to the Notice to Appear in Immigration Court, Petitioner’s removal proceedings are being conducted under Section 240 of the Immigration and Nationality Act (8 USC 1229a). The purpose of these removal proceedings under Sec. 1229a is to “decide the inadmissibility or deportability of a [] [noncitizen].

B. Procedural Due Process

55. The Fifth Amendment guarantees that “[n]o person shall be...deprived of life, liberty, or property, without the process of laws.” U.S. Const. amend. V. Petitioner’s detention violates his Fifth Amendment right to procedural due process.

56. Whether or not Respondents violated Petitioner’s procedural due process rights by detaining him without any pre-deprivation notice or opportunity to be heard necessitates a balancing of the factors set forth in *Mathews v. Eldridge*: (1) “the private interest that will be impacted 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 [g]overnment’s interest, including the fiscal and administrative burdens that the additional or substitute procedural requirement[s] would entail.” 424 U.S. at 335.

57. Petitioner has a liberty interest in being free from detention. Respondents unequivocally infringed on his interest in being free from detention when they arrested him, and have held him in custody since that time.

58. Respondents did not evaluate whether there had been any change in circumstances since Petitioner’s release on May 23, 2022. Thus, without any individualized determination of flight risk or danger, and without consideration of whether there was any change of circumstances since his release there is a high risk of erroneous deprivation of a protected liberty interest. *See, Rodriguez-Acurio*, 2:25-cv-6065, at *63. Additionally, there is no evidence that Petitioner would be a flight risk or danger which might support the government’s interest in detaining him. To the contrary, Petitioner has no criminal history and no history of missed immigration appointments. Moreover, Petitioner has an extraordinary incentive to appear for future immigration court hearing because he has filed for Asylum and has family ties in the United States.

VIII- CLAIMS FOR RELIEF

COUNT I VIOLATION OF 8 USC 1226(a) Unlawful Denial of Release on Bond

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

60. The mandatory detention provisions of 8 U.S.C. § 1225(b)(2) does not apply to all citizens residing in the United States who previously entered the country and have been residing in the United States prior to being arrested and placed in removal proceedings by Respondents. 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), §1225(c), or §1231. The application of §1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

61. Section 1226(a) governs detention of noncitizens pending removal proceedings except where mandatory detention provisions apply.

62. DHS initially detained and released Petitioner pursuant to INA § 236, as reflected in Form I-220A (**Exhibit B**).

63. DHS issued a Notice to Appear and placed Petitioner in § 240 proceedings (**Exhibit C**).

64. Petitioner lived in the United States under supervision for approximately three years.

65. The expedited removal order (**Exhibit D**) was issued years after entry and after placement into § 240 proceedings.

66. DHS cannot nullify § 1226(a) protections by dismissing proceedings and re-designating an individual into expedited removal.

67. The statutory structure of the INA does not permit the Executive Branch to eliminate bond jurisdiction through procedural re-designation.

68. Accordingly, Petitioner's detention is governed by § 1226(a).

COUNT II

PROLONGED DETENTION WITHOUT INDIVIDUALIZED REVIEW VIOLATES THE DUE PROCESS UNDER THE FIFTH AMENDMENT

69. Petitioner repeats, realleges, and incorporates by reference each and every factual allegation in the preceding paragraphs as if fully set forth herein.

70. In the alternative, even if detention is governed by § 1225(b), prolonged mandatory detention without individualized review violates due process.

71. 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).

72. Petitioner has been detained since June 16, 2025.

73. He has not received a bond hearing before a neutral adjudicator.

74. The Government bears no burden to justify detention.

75. Parole review is discretionary and controlled by the detaining authority.

76. Under *Mathews v. Eldridge*, due process requires balancing the liberty interest, risk of erroneous deprivation, and governmental burden. Petitioner’s liberty interest is substantial. The risk of erroneous deprivation is significant because there is no neutral review. The burden on the Government to provide a bond hearing is minimal.

77. As detention lengthens and asylum proceedings continue without defined endpoint, continued confinement without review becomes excessive relative to its regulatory purpose.

78. Continued detention without individualized review violates procedural and substantive due process.

79. Petitioner has a fundamental interest in liberty and being free from official restraint. The Respondents detention of Petitioner without any hearing at all to determine whether he is a flight risk or danger to other violates his right to due process.

IX – PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court

- a. Assume jurisdiction over this matter; Order that Petitioner shall not be transferred outside the Southern District of Florida;

- b. Issue an Order to Show Cause Ordering Respondents to show cause why this Petition should not be granted within 3 days;
- c. Issue a Writ of Habeas Corpus, either (1) ordering his immediate release, or (2) requiring an individualized custody redetermination hearing with an immigration judge;
- d. Declare that Petitioner's detention is unlawful; and
- e. Grant any other and further relief that this Court deems just and proper.

DATED this 17th day of February, 2026

Respectfully submitted,

/s/ Jose-Carlos Villanueva. /
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