

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Fort Myers Division

CASE NO: 2:26-cv-00610

FABIAN FERNANDEZ PIZO

(A-)

Petitioner,

v.

**PETITION FOR WRIT OF
HABEAS CORPUS**

WARDEN, *Florida Soft Side South Detention Center*; GARRETT J. RIPA, *Field Office Director of U.S. Immigration and Customs Enforcement Miami Office*; TODD LYONS, *Acting Director of Immigration and Customs Enforcement*; KRISTI NOEM, *Secretary of the United States Department of Homeland Security*; and PAM BONDI, *Attorney General of the United States*, in their official capacities,

Respondents.

INTRODUCTION

1. Petitioner, Fabian Fernandez Pizo, brings this Petition for Writ of Habeas Corpus to seek enforcement of their rights under the Due Process Clause of the Fifth Amendment.

2. Petitioner is a Colombian citizen born on  in Popayan, Colombia. Mr. Fernandez Pizo entered the United States on or about November 18, 2018, at or near Miami, Florida, following past persecution in Colombia and fears future persecution in Colombia, should he be forced to return. Petitioner has lived in the country ever since.

3. On or about February of 2026, Petitioner was taken into immigration custody by ICE agents, following an arrest at or around Miami International Airport. At this time, Petitioner was improperly classified as an "arriving alien," notwithstanding Petitioner's timely filed Application

for Asylum and Withholding of Removal, filed on or about March of 2019. A true and correct copy of I-589 Application of Asylum and Withholding of Removal is attached hereto as **Exhibit “A.”**

4. Petitioner has been detained in immigration custody since February of 2026, even though no neutral decisionmaker has conducted a hearing to determine whether this incarceration is warranted based on danger or flight risk.

5. Petitioner’s detention without a hearing on danger and flight risk violates the Due Process Clause of the Fifth Amendment. Additionally, Petitioner’s detention based on his alleged status as “arriving alien” violates the Due Process Clause of the Fifth Amendment as he is not an “arriving alien” and has been living in the United States since the year 2018.

6. Petitioner hereby petitions this Court for a writ of habeas corpus to remedy his unlawful detention by Respondents, specifically determine that Petitioner’s detention is not justified because the government has not established by clear and convincing evidence that Petitioner presents a risk of flight or danger in light of available alternatives to detention, as well as determine that Petitioner’s detention is not mandatory as Petitioner has been misclassified as an “arriving alien,” and order Petitioner’s release, with appropriate conditions of supervision if necessary, taking into account Petitioner’s ability to pay a bond.

7. Alternatively, Petitioner requests that the Court issue a writ of habeas corpus and order Petitioner’s release within 20 days unless Respondents schedule a hearing before an immigration judge where: (1) to continue detention, the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Petitioner’s release would present; and (2) if the

government cannot meet its burden, the immigration judge shall order Petitioner's release on appropriate conditions of supervision, taking into account Petitioner's ability to pay a bond.

CUSTODY

8. Petitioner is presently detained at Florida Soft Side South, located in Ochopee, Florida, under direct control and custody of Respondents and Respondents' agents, who are responsible for all decisions and actions regarding the Petitioner's detention at this facility.

JURISDICTION

8. This action arises under the United States Constitution and the Immigration and Nationality Act of 1952, 8 U.S.C. § 1101 et seq. ("INA").

9. This Court has jurisdiction over this petition for writ of habeas corpus under 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1361 (mandamus); art. I, § 9, cl. 2 of the U.S. Constitution ("Suspension Clause")

10. This Court may grant relief pursuant under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, and the All-Writs Act, 28 U.S.C. § 1651.

VENUE

11. Venue in this District is proper under 28 U.S.C. § 1391(e)(2) because the Officer in Charge who makes custody decisions in Petitioner's case is located within this judicial district and Petitioner is detained within this judicial district; and venue is proper under § 1391(b)(2) because a substantial part of the events giving rise to these claims occurred in this District.

REQUIREMENTS OF 28 U.S.C. § 2243

12. 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 twenty days, is allowed.”

Id. (emphasis added).

13. Courts have long recognized the significance of the habeas statute 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) (emphasis added).

PARTIES

14. Petitioner, a Colombian citizen, is in the custody, and under the direct control, of Respondents and their agents at Florida Soft Side South.

15. Respondent Warden of Florida Soft Side South is the acting Warden of Florida Soft Side South, and he has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner.

16. Respondent Garret J. Ripa, in his official capacity as Field Office Director of U.S. Immigration and Customs Enforcement, Miami Office, is responsible for the Miami Field Office of ICE with administrative jurisdiction over Petitioner’s case. They are legal custodian of Petitioner and are named in their official capacity.

17. Respondent, Todd Lyons, in his official capacity as Acting Director of Immigration and Customs Enforcement, has administrative jurisdiction over Petitioner’s case and oversees U.S. Immigration and Customs Enforcement the component agency responsible for Petitioner’s detention and custody. Respondent Lyons is a legal custodian of Petitioner.

18. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.

19. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

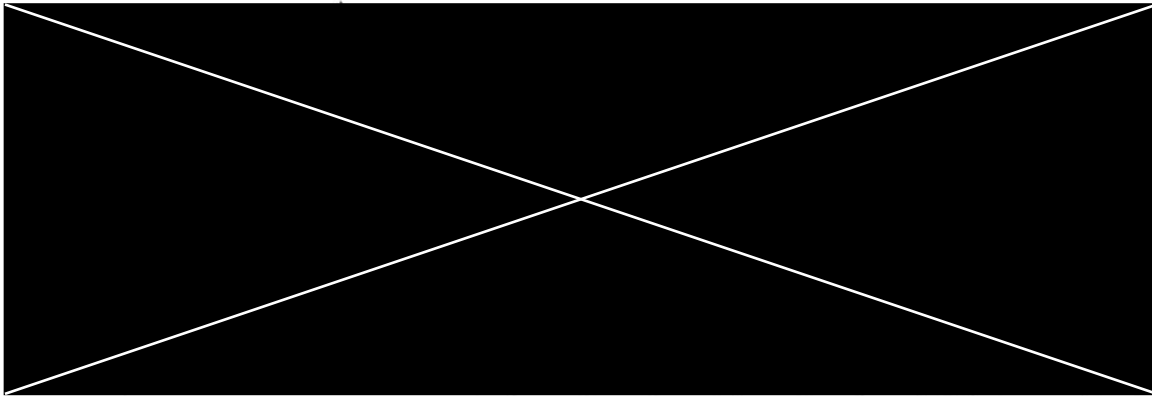
19. Petitioner resides in South Florida with his son, Fabian Fernandez, and brother, Luis Fernandez.

20. Petitioner entered the United States on or about November 18, 2018, at or near Miami, Florida.

21. Prior to Petitioner's detention, on or about December 5, 2018, the Department of Homeland Security issued a Notice to Appear, wherein Petitioner was improperly classified as an "arriving alien." A true and correct copy of the Notice to Appear is attached hereto as **Exhibit "B."**

22. On or about December 5, 2018, Petitioner presented to the Broward Transitional Center where an asylum officer conducted an interview as to Petitioner's credibility for asylum.

23. During Petitioner's interview, Petitioner testified that he specifically feared members of [REDACTED] in Colombia. More specifically, he



 A true and correct copy of U.S. Citizenship and Immigration Services Record of Determination/Fear Worksheet is attached hereto as **Exhibit “C.”**

24. At the conclusion of Petitioner’s Interview for asylum credibility, the asylum officer found that Petitioner’s fear of torture was credible. The asylum officer also found that the Petitioner did not appear to be subject to a bar to asylum or withholding of removal. *See Id.*

25. Petitioner timely applied for Asylum on or about March of 2019, reiterating his fears and need for asylum as it relates to his political status in Colombia and his fear of returning. *See Exhibit “A.”*

26. On or about February of 2016, Petitioner was taken into immigration custody by ICE agents, following an arrest at Miami International Airport, which led to the misclassification as “arriving alien.”

27. Petitioner has strong ties to the South Florida Community and has established a life in the United States for the past eight (8) years. Petitioner’s detention has caused extreme hardship to his family, as they rely on him both financially and emotionally.

28. Petitioner was arrested by local law enforcement/interior enforcement and not border patrol, as he was hundreds of miles from a United States border.

29. Petitioner was neither attempting to leave nor enter the United States at the time of arrest on or about February of 2026.

30. To date, Petitioner has not received a bond hearing pursuant to the Fifth Amendment's Due Process Clause.

31. There is no statutory or regulatory pathway for Petitioner to seek a bond hearing before a neutral decisionmaker.

32. Absent intervention by this Court, Petitioner cannot and will not be provided with a bond hearing by a neutral decisionmaker to assess the propriety of Petitioner's continued detention.

LEGAL GROUNDS FOR PETITIONER'S RELEASE FROM CUSTODY

“It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention.”). This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious”).

Due process requires “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.” *Zadvydas*, 533 U.S. at 690 (internal quotation

marks omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

Due process requires that the government provide bond hearings to noncitizens facing prolonged detention. “The Due Process Clause foresees eligibility for bail as part of due process” because “[b]ail is basic to our system of law.” *Jennings*, 138 S. Ct. at 862 (Breyer, J., dissenting) (internal quotation marks omitted). While the Supreme Court upheld the mandatory detention of a noncitizen under Section 1226(c) in *Demore*, it did so based on the petitioner’s concession of deportability and the Court’s understanding at the time that such detentions are typically “brief.” *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has been detained for a prolonged period or is pursuing a substantial defense to removal or claim to relief, due process requires an individualized determination that such a significant deprivation of liberty is warranted. *Id.* at 532 (Kennedy, J., concurring) (“[I]ndividualized determination as to his risk of flight and dangerousness” may be warranted “if the continued detention became unreasonable or unjustified”); see also *Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (holding that detention beyond the “initial commitment” requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) (holding that “lesser safeguards may be appropriate” for “shortterm confinement”); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (holding that, in the Eighth Amendment context, “the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards”); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021) (holding that “the Due Process Clause imposes some form of reasonableness limitation upon the duration of detention” under section 1226(c)) (internal quotation marks omitted).

Furthermore, under 8 U.S.C. § 1225(b)(1)(A)(i), the United States Department of Homeland Security may subject to expedited removal a noncitizen (1) “who is arriving in the United States” at a port of entry and (2) who is inadmissible under 8 U.S.C. § 1182(a)(6)(C) or (a)(7) (emphasis added). Section 1182(a)(6)(C) renders inadmissible an individual who makes a false claim to U.S. citizenship or who seeks an immigration benefit by fraud or misrepresentation of material facts. Section 1182(a)(7) renders inadmissible an individual who lacks proper entry documentation. Petitioner does not classify as an individual subject to expedited removal.

The Code of Federal Regulations defines “arriving alien” as [a]n applicant for admission coming or attempting to come into the United States at a port-of-entry, or [a noncitizen] seeking transit through the United States at a port-of-entry, or [a noncitizen] interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving [noncitizen] remains an arriving [noncitizen] even if paroled pursuant to section 212(d)(5) of the Act [8 U.S.C. § 1182], and even after such parole is terminated or revoked. 8 C.F.R. § 1.2, 1001.1(q). Petitioner does not classify as an “arriving alien” subject to the definition provided by the Code of Federal Regulations.

CLAIMS FOR RELIEF

COUNT I: IMPROPER CLASSIFICATION AS AN “ARRIVING ALIEN” AND UNLAWFUL DETENTION UNDER U.S.C. § 1225(B)

33. Petitioner realleges and incorporates by reference all preceding paragraphs.

34. Respondents have unlawfully classified Petitioner as an “arriving alien” and have subjected him to mandatory detention under 8 U.S.C. § 1225(b), despite the fact that Petitioner has been continuously present in the United States since approximately 2018 and was not seeking admission at the time of his arrest in February of 2026.

35. Petitioner was arrested domestically at the Miami International Airport. He was not attempting to depart the United States, was not presenting himself for admission, and likewise had not left the country. Plainly stated, Petitioner's arrest constituted interior enforcement, not border processing.

36. Although Petitioner may have been designated an "arriving alien" in 2018 when he first entered the United States, that historical designation does not control the statutory authority governing his current detention eight (8) years later.

37. Section 1225(b) applies to individuals who are currently seeking admission or who are apprehended at or near the border. It does not govern the detention of individuals who have long resided within the United States.

38. This misclassification has unlawfully deprived Petition of access to bond proceedings and has resulted in detention without individualized custody review.

39. Respondents are bound by the judgment in *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* has the "full force and effect of a final judgment." 28 U.S.C. § 2201(a).

39. Respondents' continued detention of Petitioner exceeds statutory authority and violates the Immigration and Nationality Act. Federal courts possess jurisdiction under 28 U.S.C. § 2241 to correct such unlawful custody classifications.

40. Petitioner therefore seeks an order directing Respondents to provide a prompt bond hearing as provided under the Due Process Clause of the Fifth Amendment.

**COUNT II: PROLONGED DETENTION WITHOUT A CONSTITUTIONALLY
ADEQUATE BOND HEARING VIOLATES DUE PROCESS**

41. Petitioner realleges and incorporates by reference all preceding paragraphs.

42. The Due Process clause applies to all persons in the United States, “whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

43. Petitioner has been detained since February of 2026 following his arrest, which led to his immediate detention at Florida Soft Side South. Although immigration detention is civil in nature, civil detention cannot be indefinite and must comport with the requirements of the Fifth Amendment’s Due Process Clause.

44. Furthermore, in December of 2018, Petitioner went before the Department of Homeland Security and its Asylum Officer, who thoroughly interviewed Petitioner, finding that his fears of persecution in Colombia were credible. *See Exhibit “C.”*

45. Most notably, Petitioner has provided substantial and competent evidence that he does not present neither a threat to national security, nor does he pose a flight risk. Specifically, Petitioner has not been convicted of any crimes, Petitioner appropriately and timely applied for Asylum protections and withholding of Removal, and Petitioner has no prior immigration record nor history of non-appearance at immigration court proceedings.

46. The Fifth Amendment does not permit the government to incarcerate a civil detainee for months on end without requiring the government to demonstrate, by clear and convincing evidence, that continued detention is necessary to serve its legitimate purposes. Where liberty is at stake, heightened procedural safeguards are required.

47. Petitioner’s pending application to adjust his immigration status, serves as the basis for a significant liberty interest under INA Section 245(a). These circumstances collectively establish that Petitioner is entitled to constitutional protection while his application remains pending. ICE’s

efforts to continue Petitioner's detainment before the U.S. Citizenship and Immigration Services (USCIS) has had an opportunity to adjudicate his application for lawful immigration status—constitute an attempt to circumvent the process to which Petitioner is entitled. Such premature removal not only undermines the procedural safeguards inherent in the adjustment process but also threatens Petitioner's liberty interests as recognized by law.

48. Petitioner's detention, without any individualized review, is unreasonable under the *Mathews v. Eldridge* due process test. Alternatively, Petitioner prevails under the multi-factor reasonableness test the Third Circuit adopted in *German Santos v. Warden Pike Correctional Facility*, 965 F.3d 203, 211 (3d Cir. 2020).

49. Each year, thousands of noncitizens are incarcerated for lengthy periods pending the resolution of their removal proceedings. See *Jennings*, 138 S. Ct. at 860 (Breyer, J., dissenting) (observing that class members, numbering in the thousands, had been detained “on average one year” and some had been detained for several years). For noncitizens who have some criminal history, their immigration detention often dwarfs the time spent in criminal custody, if any. *Id.*

50. Petitioner faces severe hardships while detained by ICE. Petitioner is held in a locked down facility, with limited freedom of movement and access to Petitioner's family or support network: “[T]he circumstances of their detention are similar, so far as we can tell, to those in many prisons and jails.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting).

51. The *Mathews* test for procedural due process claims balances: (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the value of additional or substitute safeguards; and (3) the government interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Here, each factor weighs in Petitioner's favor, requiring this Court to promptly hold a hearing to evaluate whether the government can justify their ongoing detention.

52. First, Petitioner indisputably has a weighty interest in their liberty, the core private interest at stake here. *Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment. . . lies at the heart of the liberty [the Due Process Clause] protects.”)

53. Second, Petitioner will suffer the erroneous risk of deprivation of their liberty without an individualized evidentiary hearing. The risk of erroneous deprivation of their liberty is high, as they have been detained since September of 2025, without any evaluation of whether the government can justify detention under their individualized circumstances. “[T]he risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial.” *Diouf*, 634 F.3d at 1092. Conversely, the probable value of additional procedural safeguards is high, because Respondents have provided virtually no procedural safeguards at all.

54. Third, the government’s interest is very low in continuing to detain Petitioner without providing any neutral review. *See Mathews*, 424 U.S. at 335. The specific interest at stake here is not the government’s ability to continue to detain Petitioner, but rather the government’s ability to continue to detain them for months on end without any individualized review. Without such safeguards, Petitioners continued detention violates procedural due process.

EXHAUSTION

55. Petitioner believes any appeal to the BIA would be futile considering the September 5, 2025, BIA decision where the BIA adopted DHS’ interpretation of the INA as mandating detention without bond for millions of noncitizens who reside in the U.S. *See Matter of Yajure Hurtado*, 29 *I&N Dec.* 216 (BIA 2025). The BIA’s decision held that immigration judges lack jurisdiction to hold bond hearings or grant bail to all individuals charged with entering the country without inspection. *Id.* 65.

56. Based on the above, the Court should find administrative exhaustion would be futile. *See Vasquez- Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021) (“where the agency's position appears already set and recourse to administrative remedies is very likely futile, exhaustion is not required.”). BIA decisions are binding on immigration judges, and *Hurtado* thus precludes an immigration judge from finding jurisdiction over noncitizens like petitioner to hold a custody redetermination hearing. Judicial intervention is needed to stop Respondents from blocking petitioner’s bond hearing under *Hurtado*, so petitioner can pursue administrative remedies. Therefore, the Court should consider the merits of the Petition.

RELIEF REQUESTED

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- a. Assume jurisdiction over this matter;
- b. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- c. Declare that Petitioner’s detention violates the Immigration and Nationality Act, the Due Process Clause of the Fifth Amendment to the United States Constitution;
- d. Issue a Writ of Habeas Corpus ordering Petitioner’s immediate release by Respondents;
- e. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412 and on any other basis justified under law.
- f. Declare that Respondents improperly classified Petitioner as an arriving alien and is entitled to consideration for release on bond under 8 U.S.C. § 1226(a);
- g. Grant such other relief as this Court may deem just and proper.

Dated: March 4, 2026

Respectfully submitted,

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By: /s/ Mariela E. Cano
Mariela E. Cano, Esq.
Florida Bar No.: 1015817

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2026, a true and correct copy of the foregoing was served via United States Postal Service, Certified Mail, and CM/ECF portal on all counsel or parties of record on the Service List below.

By: /s/ Mariela E. Cano
Mariela E. Cano, Esq.

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