

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Byron BARRIOS CABRERA

Petitioner,

Case No. _____

: Before the Honorable
_____ =

JL JAMISON, in his official capacity as warden of
Federal Detention Center in Philadelphia;
**BRIAN MCSHANE, in his official capacity as
Acting Philadelphia Field Office Director,
United States Immigration and Customs**

Enforcement; TODD LYONS, in his
Official capacity as Acting Director of
Immigration and Customs Enforcement;
MARKWAYNE MULLIN, in his official capacity as:
Acting Secretary of the Department of Homeland
Security; THE U.S. DEPARTMENT OF
HOMELAND SECURITY; PAMELA BONDI,;
Attorney General of the United States

Respondents.:

PETITION FOR WRIT OF HABEAS CORPUS

Byron BARRIOS CABRERA, submits this petition for a Writ of Habeas Corpus
pursuant to 28 U.S.C. 2241 and the Suspension Clause (Article I , Section 9, Clause 2)

of the United States Constitution. Petitioner requests that this Court release him from detention by the Immigration and Customs Enforcement ("ICE") or, alternatively, conduct or order a bond hearing in which the Respondents bear the burden of justifying Petitioner's continued detention. Petitioner also requests that the Court set aside recent policies implemented by Respondents that are contrary to the statutory right of non-citizens like Petitioner to seek release and bail through an exercise of the Respondents' discretion.

Mr. Barrios Cabrera is a native of Guatemala and has been physically present in the United States since he crossed the border without inspection in 2017. He was not apprehended at that time. Shortly before that last entry without inspection, he had attempted to enter with a B-1/B-2 tourist visa, and was refused.

On or about March 5, 2026, Mr. Barrios was on his way to work when he noticed several cars following him. He attempted to return to his house, and was apprehended outside of his home. He was apprehended and detained by agents of the Immigration and Customs Enforcement, and taken initially to the office at 114 North 8th Street in Philadelphia, Pennsylvania. He was thereafter transferred to the Federal Detention Center, where he is currently located.. Mr. Barrios has no outstanding criminal warrants or convictions, and it is believed that he was taken into custody pursuant to a directive from headquarters setting a specific quota for apprehension. . Respondents arbitrarily detained, Mr. Barrios despite the requirement under 8 U.S.C. 1226(a) and its

implementing regulations that immigration officials make an individualized custody determination. Moreover, Respondents have adopted policies enshrined in administrative decisions by the Board of Immigration Appeals ("BIA") that subject non-citizens like Mr. Barrios to mandatory detention in violation of Section 1226(a).

Mr. Barrios is presently detained at Federal Detention Center in Philadelphia Pennsylvania.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. 1651 (All Writs Act); 28 U.S.C. 1331 (federal question); 5 U.S.C. 702 (Administrative Procedures Act); U.S. Const. amend. V (Due Process Clause); and U.S. Const. art. I, 9, cl. 2 (Suspension Clause).

2. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. 1391(b) and 28 U.S.C. 2241(d), because at the time of filing his Petition for Writ of Habeas Corpus (Doc. 1), Mr. Barrios is imprisoned at the Federal Detention Center ("FDC") in Philadelphia, Pennsylvania.

PARTIES

3. Petitioner Byron Barrios Cabrera is a native of Guatemala who has been present in the United States for approximately nine (9) and is the father of a lawful

permanent resident son, his son B [REDACTED] He is also the father of two other children with Guatemalan citizenship, and is married to a Guatemalan citizen all of whom live in the United States and their current immigration status is unknown. As noted supra, he is detained at the Federal Detention Center in Philadelphia, PA.

4. Respondent JL Jamison is named in his official capacity as the Warden of Federal Detention Facility in Philadelphia, PA, which detains individuals suspected of civil immigration violations. Respondent Jamison is the immediate physical custodian responsible for the detention of Petitioner.

5. Respondent Brian McShane is the Acting Philadelphia Field Office Director for Immigration and Customs Enforcement's ("ICE") Enforcement and Removal Operations. In this capacity he is responsible for the custody of all noncitizens detained by ICE at FDC, Philadelphia, where the Petitioner is currently detained, and has the authority to order the release Barrios or transfer him to a different facility. He is one of Mr. Leiva Pinto's immediate custodians and is sued in his official capacity.

6. Respondent Todd Lyons is the Acting Director of ICE. In this capacity he is responsible for enforcing immigration laws, and as such is a legal custodian of Mr. Barrios. He is sued in his official capacity.

7. Respondent Markwayne Mullin is Acting Secretary of Homeland Security. In this capacity he runs the Department of Homeland Security, and is charged

pursuant to 8 U.S.C. 1 103(a)(1) with administering and enforcing immigration laws. He is the ultimate legal custodian of Mr. Barrios, and is sued in his official capacity.

8. The Department of Homeland Security ("DHS") is the agency of the federal government responsible for enforcing the immigration laws. DHS is also Mr. Barrios' legal custodian.

9. Respondent Pamela Bondi is the Attorney General of the United States and the head of the U.S. Department of Justice, which encompasses the Board of Immigration Appeals ("BIA") and immigration courts, known collectively as the Executive Office of Immigration Review ("EOIR"). Ms. Bondi shares responsibility for the implementation and enforcement of immigration laws along with Respondent Noem. Ms. Bondi is a legal custodian of Mr. Barrios. She is sued in her official capacity.

LEGAL FRAMEWORK

10. For non-citizens attempting to enter the United States, the INA provides under 8 U.S.C. 1225(b)(2)(A) that "in the case of [a non-citizen] who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained." "A noncitizen detained under Section 1225(b)(2) may be released only if he is paroled 'for urgent humanitarian reasons or significant public benefit' pursuant to 8 U.S.C. 1182(d)(5)(A)." *Gomes v. Hyde*, 25 Civ. 11571, 2025 WL

1868288, at *2 (D. Mass. July 7, 2025) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018)).

11. In contrast, the Supreme Court has found that "U.S. immigration law authorizes the Government to detain certain [non-citizens] already in the country pending the outcome of removal proceedings under 1226(a) and (c)."

Jennings, 583 U.S. at 288-89.

12. Section 236 of the INA provides in relevant part as follows:

(a) Arrest Detention and Release. On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole ...

13. The Supreme Court has interpreted similar "may" language in other provisions of the INA to require "some level of individualized determination." *I.N.S. v. Nat'l Ctr. For Immigrants ' Rights*, 502 U.S. 183, 194 (1991). The regulation implementing Respondents' authority to arrest non-citizens present in the United States reads:

"Any officer authorized to issue a warrant of arrest may, in the officer's discretion, release an alien not described in [8 U.S.C. §

1236(c)(1)] of the Act, under the conditions at section [8 U.S.C. § 1236(a)(2) and (3)]; provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding...

8 U.S.C. 1236.1

14. Noncitizens may request a review of an initial custody determination before an Immigration Judge ("IJ"). 8 C.F.R. 1236.1(d)(1); 8 C.F.R.

§ 1002.19(a). At this hearing an IJ may make the decision "upon any information that is available to the [Immigration Judge] or that is presented to him or her by the [non-citizen] or the [government]." 8 C.F.R. 1003.19(d), see also *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006). Non-citizens may appeal a negative decision in a custody review before an IJ to the Board of Immigration Appeals. 8

C.F.R. 1236.1(d)(3)(i). The current statutory scheme was created through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA").

15. For the first time in nearly three decades, Respondents have taken the position through a series of precedential decisions by the Board of Immigration Appeals that non-citizens residing in the interior of the United States are not entitled to a custody redetermination (a "bond hearing") before an Immigration Judge.

16. First, in *Matter of Q. Li*, 29 Dec. 66 (BIA 2025), the BIA held that a non-citizen who had been apprehended at the border and subsequently released into the United States is subject to mandatory detention without a possibility of bail upon

re-detention, pursuant to 8 U.S.C. 1225(b), even if that re-detention occurs years after their initial release from custody. The BIA reasoned that "an applicant for admission who is arrested and detained without a warrant while in the process of arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section [1225(b)] [J, and is ineligible for any subsequent release on bond under section [1226(a)]." Q. Li,

29 Dec. at 74.


17. Then in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA stated that all non-citizens who are present in the United States without admission are subject to mandatory detention under Section 1225(b), regardless of how long they have been residing in the U.S. and absent any prior interaction with immigration authorities.


FACTS AND PROCEDURAL HISTORY

18. Mr. Barrios is a native of Guatemala;

19. At some point in the year 2017, Mr. Barrios entered the United States via the US Border and was not encountered by agents of the Department of Homeland Security.

20. Prior to March 5, 2026, Mr. Barrios had never had any contact with agents of the Department of Homeland Security;

21. Mr. Barrios settled into Pennsylvania, where he has been living with his family at the following address: 

22. Mr. Barrios would be eligible for asylum, withholding of removal or withholding under the Convention Against Torture, as he was the victim of 



23. As noted supra, on or about March 5, 2026 Mr. Barrios was on his way to work when he noticed several cars following him. He attempted to return to his house, and was apprehended outside of his home. He was apprehended and detained by agents of the Immigration and Customs Enforcement, and taken initially to the office at 114 North 8th Street in Philadelphia, Pennsylvania. He was thereafter transferred to the Federal Detention Center, where he is currently located..

CLAIM FOR RELIEF
COUNT ONE VIOLATION
OF DUE PROCESS, U.S.
CONST. AMEND. V

24. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

25. The Fifth Amendment's Due Process Clause prevents the Government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. amend. V.

26. The Due Process Clause extends to noncitizens residing in the United States, whether they have lawful status or not. See *Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Specifically, "[i]t is well established that the Fifth Amendment entitles [non-citizens] to due process of law in deportation proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993); see also *Abdulai v. Ashcroft*, 239 F.3d 542, 549 (3d Cir. 2001) ("[Non-citizens] facing removal are entitled to due process"); *Calderon-Rosas v. Atty ' Gen.*, 957 F.3d 378, 386 (3d Cir. 2020) ("In sum, petitioners seeking discretionary relief are entitled to fundamentally fair removal proceedings, which constitutes a protected interest supporting a due process claim.").

27. Evaluating the adequacy of the process provided to a non-citizen requires a balancing of factors. "First, the private interest that will be affected by the official action; second, 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 finally, 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).

28. First, Mr. Barrios faces "the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Second, Respondents have erroneously deprived Mr. Leiva Pinto of his liberty without any individualized assessment of his circumstances. Third, Respondents did not make any individualized finding that Mr. Barrios was a danger or flight risk, so there does not appear to be a significant government interest in detaining Mr. Leiva Pinto;

29. An application of these factors requires that Mr. Barrios should have been provided with additional process before being detained.

COUNT TWO

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. 12260)

31. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

32. The mandatory detention provision at 8 U.S.C. 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to grounds of inadmissibility. As, relevant here, it does not apply to those who have been residing in the United States at liberty after being briefly detained at or near the border. Such noncitizens, if detained, are done so under 1226(a), and are generally eligible release on bond.

33. Respondents' authority to detain Mr. Barrios is derived from 8 U.S.C. 1226(a) as Mr. Barrios is already present in the United States.

34. Respondents have detained Mr. Barrios without making an individualized determination regarding whether he posed a danger or flight risk as required by 8 U.S.C. 1226(a) and its regulations.

35. Moreover, Respondents' current policies as set forth in the BIA's decisions in Matter of Q. Li and Matter of Yajure Hurtado unlawfully prevent Mr. Barrios from obtaining a custody redetermination in front of an Immigration Judge as is his right by statute.

COUNT THREE

VIOLATION OF THE BOND REGULATIONS, 8 C.F.R. 236.1, 1236.1 and 1003.19

36. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

37. In 1997, after Congress amended the INA through IIRIRA, EOIR the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Non-citizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination. " 62 Fed. Reg. at 10323 (emphasis added). Thus, the agencies made clear that non-citizens present in the United States would be eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. 1226 and its implementing regulations.

38. Yet, Respondents have adopted a policy and practice of applying § 1225(b)(2) to non-citizens like Mr. Barrios who are present in the United States without being admitted or paroled.

39. The application of 1225(b)(2) to Mr. Barrios unlawfully mandates his continued detention in violation of 8 C.F.R. 236.1, 1236.1, and 1003.19.

COUNT FOUR

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT ("APA"), 5 U.S.C. 701, et. seq.

40. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

41. Mr. Barrios is aggrieved by agency action under the Administrative Procedure Act, 5 U.S.C. 701 et. seq. Specifically, Respondents have acted arbitrarily in detaining Mr. Barrios without conducting an individualized determination into his circumstances. In other words, Respondents have not presented any indication that Mr. Barrios' circumstances have changed such that he is now a danger or flight risk in a way that he was not when he entered the country in 2023.

42. Additionally, Respondents' recent policies announced through administrative decisions issued by the BIA unlawfully withhold the right to a bond hearing under 8 U.S.C. 1226(a) to Mr. Barrios, and make any exhaustion of his remedies moot.

43. These policies are arbitrary, capricious, and not in accordance with the text of the INA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody immediately on his own recognizance or under parole, bond or reasonable conditions of supervision, on the ground that his continued detention by the Department of Homeland Security violates his Due Process rights;

Set aside Respondents' unlawful detention policy contained Matter of Q. Li and Matter of Yajure Hurtado under the APA, 5 U.S.C. 706(2), as contrary to law, arbitrary and capricious, and contrary to constitutional right;

Issue a writ requiring an immediate, constitutionally adequate hearing before an Immigration Judge, at which: (i) DHS bears the burden to demonstrate, by clear and convincing evidence, that Petitioner's continued detention is necessary, and (ii) the immigration judge considers Petitioner's ability to pay a bond.

While this petition is pending, order Petitioner's immediate release pursuant to the Court's inherent authority to release habeas corpus petitioners on bail;

Enter a judgment declaring that Respondents' detention of Petitioner is unauthorized by statute and contrary to law and the U.S. Constitution;

Award Petitioner reasonable costs and attorneys' fees;

Grant any further relief that this Court may deem fit and proper.

Dated: March 5, 2026

Respectfully submitted,

A handwritten signature in blue ink, reading "Christine M. Flowers", is written over a horizontal line.

Christine M. Flowers, Esquire

(PA Bar 51181)

Joseph M. Rollo and
Associates PC

2527 South Broad
Street

Philadelphia PA 19148

(215)271-5550

team@rollolawoffice.
com

ATTORNEY FOR PETITIONER

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

Place of Accident, Incident, or Transaction: PHILADELPHIA PA

RELATED CASE IF ANY: Case Number: N/A Judge: N/A

- 1. Does this case involve property included in an earlier numbered suit? Yes []
2. Does this case involve a transaction or occurrence which was the subject of an earlier numbered suit? Yes []
3. Does this case involve the validity or infringement of a patent which was the subject of an earlier numbered suit? Yes []
4. Is this case a second or successive habeas corpus petition, social security appeal, or pro se case filed by the same individual? Yes []
5. Is this case related to an earlier numbered suit even though none of the above categories apply? Yes []

I certify that, to the best of my knowledge and belief, the within case [] is / [] is not related to any pending or previously terminated action in this court.

Civil Litigation Categories

A. Federal Question Cases:

- 1. Indemnity Contract, Marine Contract, and All Other Contracts)
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Wage and Hour Class Action/Collective Action
6. Patent
7. Copyright/Trademark
8. Employment
9. Labor-Management Relations
10. Civil Rights
11. Habeas Corpus
12. Securities Cases
13. Social Security Review Cases
14. Qui Tam Cases
15. Cases Seeking Systemic Relief *see certification below*
16. All Other Federal Question Cases. (Please specify):

B. Diversity Jurisdiction Cases:

- 1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify):
7. Products Liability
8. All Other Diversity Cases: (Please specify):

I certify that, to the best of my knowledge and belief, that the remedy sought in this case [] does / [X] does not have implications beyond the parties before the court and [] does / [X] does not seek to bar or mandate statewide or nationwide enforcement of a state or federal law including a rule, regulation, policy, or order of the executive branch or a state or federal agency, whether by declaratory judgment and/or any form of injunctive relief.

ARBITRATION CERTIFICATION (CHECK ONLY ONE BOX BELOW)

I certify that, to the best of my knowledge and belief:

[X] Pursuant to Local Civil Rule 53.2(3), this case is not eligible for arbitration either because (1) it seeks relief other than money damages; (2) the money damages sought are in excess of \$150,000 exclusive of interest and costs; (3) it is a social security case, includes a prisoner as a party, or alleges a violation of a right secured by the U.S. Constitution, or (4) jurisdiction is based in whole or in part on 28 U.S.C. § 1343.

[] None of the restrictions in Local Civil Rule 53.2 apply and this case is eligible for arbitration.

NOTE: A trial de novo will be by jury only if there has been compliance with F.R.C.P. 38.