

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Case No. 2:26-cv-639-SPC-DNF

ERWIN MENDEZ LABARCA,

Petitioner,

v

**DIRECTOR, U.S. Department of Homeland
Security (“DHS”) Immigration and Customs
Enforcement (“ICE”) Enforcement and
Removal Operations (“ERO”) Miami Field
Office; ACTING DIRECTOR, U.S. DHS
ICE; SECRETARY, DHS; and U.S.
ATTORNEY GENERAL;**

Respondents.

**PETITIONER’S TRAVERSE IN SPUPPORT OF
PETITION FOR HABEAS CORPUS**

Petitioner, ERWIN MENDEZ LABARCA, files this Traverse in support of his Petition for Writ of Habeas Corpus and Replies to the government’s Response to the Petition for Habeas Petition as follows:

In his Writ of Habeas Corpus (ECF 1), Petitioner challenges his subjection to continued mandatory detention under 8 U.S.C. § 1225(b)(2). While he may be statutorily defined as an “applicant for admission” under 8 U.S.C. § 1225(a)(1), he was not “seeking admission” at the time of his arrest by ICE on March 2, 2026. Although the Petitioner was initially paroled in the United States, his parole was terminated or expired¹ at the time of his detention. As a result, he

¹ The parole issued to the petitioner indicates it was valid through December 25, 2025 (ECF 1, Exh 1). Likewise, Respondents allege Petitioner’s parole expired on December 25, 2025. See ECF 6, p. 2. However, according to

falls outside of the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A). Instead, he maintains his detention is controlled by 8 U.S.C. § 1226, such that he is entitled to either immediate release or a bond hearing before an Immigration Judge. In addition, or in the alternative, the Petitioner challenges his detention as a violation of the Due Process Clause of the United States Constitution.

In its Response to the Petition for Writ of Habeas Corpus, the government alleges that when the Petitioner's parole expired (or was terminated)² the Petitioner "reverted to the same position he was in when he first presented himself at the border without proper documentation." More specifically, Respondents allege the Petitioner "entered the United States... with no proper documents or basis to be admitted into the United States." *See* ECF 6, p. 2. Accordingly, they maintain that Petitioner remains an applicant for admission subject to mandatory detention pursuant to 8 U.S.C. § 1225. Respondents further allege that 8 U.S.C. § 1252(g) and § 1252(b)(9) bars this Court's review of Petitioner's claims and that he failed to exhaust his administrative remedies.

A. FACTS:

In their response to the petition, the Respondents suggest the Petitioner arrived in the United States without prior authorization or basis to be admitted to the United States. *See* ECF 6, p. 2. Notwithstanding, the respondents concede the Petitioner arrived in the United States pursuant to what they refer to as the "Venezuela Humanitarian Parole" program. *See* Implementation of a Parole Process for Venezuelans, 87 Fed. Reg. 63507 (Oct. 19, 2022) and Implementation of Changes to the Parole Process for Venezuelans, 88 Fed. Reg. 1279 (Jan. 9, 2023).

Respondent's Exhibit 6-2, Petitioner's parole expired "upon the earlier of (1) your original parole expiration date or (2) April 24, 2025."

² *See* n. 1.

The goal of the program was to “provide[] a safe and orderly pathway for certain individuals to seek authorization to travel to the United States to be considered for parole at an interior port of entry.” *Id.* at p. 1279. In contrast, “Venezuelans who have not availed themselves of the process, and instead entered the United States without authorization, have been expelled to Mexico...or, if not expelled, processed for removal or the initiation of removal proceedings.” *Id.* In other words, the Petitioner followed all the rules, did not “sneak” into the country, and was “invited” to the United States at his own expense through the parole program instituted by the prior administration. *See Mata Velasquez v Kurzdorfer, et al.*, 794 F. Supp. 3d 128 (W.D. N.Y. 2025).

The Petitioner has since sought asylum in the United States, which application remains pending. He has gotten married and worked. At the time of his detention, he was living with his wife and two United States daughters.

B. JURISDICTION

This Court has consistently found it has jurisdiction over claims such as the one raised by the Petitioner herein despite 8 U.S.C. §§ 2252(b), 1252(b)(9), and it has consistently found that detained noncitizens like the Petitioner herein are not required to exhaust their administrative remedies because such attempts would be futile. *See, i.e. Rosabal Blanco v Bondi, et al.*, 2:26-cv-00051 SPC-DNF (M.D. Fla. Jan. 28, 2026); *Alonzo Izaguirre v Mordant, et al.*, 2:26-cv-00048-SPC-DNF (M.D. Fla. Jan. 26, 2026); *Munoz Avendano v Warden, Florida Soft Side South, et al.*, 2:25-cv-01221-SPC-NPM (M.D. Fla., Jan. 20, 2026); *Lopez Arevalo v Hardin, et al.*, 2:26-cv-00018-SPC-DNF (M.D. Fla. Jan. 15, 2026); *Padilla-Orellana v Warden, Glades County Detention Center, et al.*, 2:25-cv-01195-SPC-NPM (M.D. Fla. Jan. 6, 2026); *Gomez Rodriguez v Noem, et al.*, 2:25-cv-01115-SPC-NPM (M.D. Fla. Dec. 31, 2025); *Gonzalez Carmona v Ripa,*

2:25-cv-1128-SPC-DNF (M.D. Fla. Dec. 17, 2025); *Alfonso Perez v Mordant, et al.*, 2:25-cv-00947-SPC-DNF (M.D. Fla. Dec. 3, 2025); *Vasquez Carcamo v Noem, et al.*, 2:25-cv-00922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025); *Hinojosa Garcia v Noem, et al.*, 2:25-cv-00879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. October 31, 2025).

The Respondents acknowledge that the Court has ruled against their jurisdictional arguments in at least one case, to wit: *Hinojosa Garcia v Noem, et al.*, *id.* Given the consistency of the Court's decisions as referenced herein above and the applicability of the Court's reasoning in those cases to the facts herein, the Petitioner respectfully relies on this Court's own prior precedent and will not further address the Court's jurisdiction unless specifically requested by this Court.

C. MERITS

1. Because the Petitioner's parole expired, he was not "seeking admission" at the time of his arrest such that his detention is controlled by 8 U.S.C. § 1226.

Respondents rely on the language in 8 U.S.C. § 1182(d)(5)(A) to argue that upon the termination of the Petitioner's parole, he "shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States," reiterating that Petitioner's parole "shall not be regarded as an admission to the United States," and summarily concluding that he is subject to mandatory detention under 8 U.S.C. § 1125. *See* ECF 6, p. 2. The courts in *Cabrera Martinez v Marich, et al.*, 25-cv-1110-LJV, 2025 WL 3771228 (W.D.N.Y. Dec. 31, 2025) and *Qasemi v Francis, et al.*, 25-cv-10029 (S.D.N.Y. Dec. 17, 2025) relied on the same statutory provision as well as the overall statutory framework of the Immigration and Nationality Act to reach the conclusion that a noncitizen who arrived at the United States but had not been admitted was an "applicant for admission" pursuant to 8 U.S.C. § 1225(a)(1). However, they found that once the noncitizen's parole ended the noncitizen was no longer "arriving in the United States"

within the meaning of section 1225(b)(1)(A)(i), such that the noncitizen was not subject to mandatory detention. The Petitioner adopts the analysis set forth by the courts in *Cabrera Martinez* and *Qasemi* as if fully set forth herein.

To reach this conclusion, the court in *Qasemi* looked at the plain meaning of the relevant terms and read the words of the statute “in their context with a view to their place in the overall statutory scheme,” concluding that a noncitizen like the Petitioner, was not “arriving in the United States.” As was noted by the court in *Qasemi*, while the noncitizen may be an “applicant for admission” it does not follow that he is “arriving in the United States.” “He has already arrived, was paroled, entered, and has now been present in the United States.” *Qasemi*, slip op at 12. See also *Cabrera Martinez v Marich, et al.*, 25-cv-1110-JLV, slip op at 6, noting that, “the ‘entry fiction’ ends once a person has been living in the country after parole expires. Following its analysis of the statutory scheme, the court in *Qasemi* concluded:

Putting these pieces together, the termination by expiration of Qasemi’s parole returned him to the “custody” of DHS pursuant to the INA. Because he was paroled, and because he is not an arriving alien, he is no longer subject to the mandatory detention provision of Section 1225(b)(1). The outcome of this textual analysis is ultimately simple: absent ongoing parole status, Section 1182 mandates that Qasemi be treated just as the INA would treat any noncitizen previously granted parole and living in the United States. Every court that this Court is aware of that has considered the question has determined the same. (Citations omitted).

Therefore, any determination as to Qasemi’s detention must be conducted under the discretionary framework of Section 1226(a), which “governs the process of arresting and detaining noncitizens who have already entered the United States pending their removal.” *Tumba*, 2025 WL 3079014, at *3 (quoting *Jennings*, 583 U.S. at 288). That describes Qasemi, who is undoubtably within the United States pending the adjudication of his asylum claim.

Qasemi, slip op. at 24-25. See also *Campbell v Almodovar*, 1:25-cv-09509 (JLR), 2025 WL 3538351 (S.D.N.Y. Dec. 10, 2025).

As applied herein, because the Petitioner's parole ended, either because it was unilaterally terminated by the Respondents or because it expired by its own terms, he is not an "arriving alien" subject to mandatory detention under § 1225. Rather, he is an alien who is present in the United States. Accordingly, his detention is governed by § 1226, and he is entitled to release or to a full custody redetermination hearing on the merits before an immigration judge, at minimum. *See also Puga v Assistant Field Office Director Krome, et al.*, 25-cv-24535-civ-Altonaga, 2025 WL 2938369 (S.D. Fla. Oct 16, 2025)

As was noted by the court in *Qasemi*, treating a noncitizen like the Petitioner under Section 1226(a) rather than § 1225(b)(1) avoids potentially absurd results. "Under the Government's view, a person who was paroled into the United States... would upon its automatic termination be forever at risk of being arrested at any time, in any place, and for any reason, with no notice and no recourse. It is 'quite impossible that Congress would have intended' this result. *Id.*, particularly because greater protections are afforded to noncitizens who entered the country without inspection. Under Section 1226(a) a noncitizen who has bypassed the border entirely and is encountered within the interior of the country is evaluated by DHS for potential release on their own recognizance, and if detained is provided with the opportunity for a bail hearing. 8 CFR § 1236.1(d)(1) (citations omitted)." *See also Cabrera Martinez v Marich, et al.*, 25-cv-1110-LJV, 2025 WL 3771228 *13 (W.D.N.Y. Dec. 31, 2025) (noting that it makes little sense to treat those who present themselves at the border and are paroled and then overstay their welcome more harshly than those who sneak into the country without having had authority or permission to be here). Thus, the Petitioner's detention is controlled by § 1226 rather than § 1225.

2. Petitioner's Continued Detention Violates His Due Process Rights

Even if the Court finds the Petitioner is subject to mandatory detention pursuant to the Immigration & Nationality Act, the Court may still grant his Petition on a finding that his continued detention violates his procedural and/or substantive due process rights. Noncitizen detainees charged with being in the U.S. illegally are entitled to procedural due process, meaning “notice and opportunity to be heard appropriate to the nature of the case.” *See Trump v J.G.G.*, 604 U.S. 670, 145 S. Ct. 1003, 1006 (2025); *see also A. A. R. P. v. Trump*, 605 U.S. 91 (2025). “‘Procedural due process rules are meant to protect’ against ‘the mistaken or unjustified deprivation of life, liberty, or property.’” *Id.* (quoting *Carey v. Piphus*, 435 U.S. 247, 259 (1978)). Due process “is a flexible concept that varies with the particular situation.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). Notably, in their response to the petition, government Respondents have not challenged or opposed the petition on due process grounds.

Nevertheless, to determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Those factors are: (1) “the private interest that will be affected 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 Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335, 96 S.Ct. 893.

Petitioner has a significant private interest in remaining free from detention. “The interest in being free from physical detention...is the most elemental of liberty interests.” *Hamdi*

v Rumsfeld, 542 U.S. 507, 529 (2004). Noncitizens, like the Petitioner, “who have ‘established connections’ in the United States by virtue of living in the country for a substantial period acquire a liberty interest in being free from government detention without due process of law. *Hassen v Noem et al.*, EP-26-cv-00048-DB (W.D. TX Feb. 9, 2026).

In the instant case, the Petitioner relied on the government’s invitation to come the United States more than two years ago with a valid parole, with the expectation that he would be able to “seek humanitarian relief or other immigration benefits for which they may be eligible, and to work and contribute to the U.S. economy as they do so.” *See* 87 Fed. Reg. 63507 at 63508. In the more than two years he has been in the United States up until the time of his detention, he has worked, gotten married and currently resides with his wife and two United States citizen daughters. Moreover, his asylum application remains pending to date. *See Pinchi v Noem*, Case No. 792 F. Supp. 3d 1025 (N.D. Ca. July 4, 2025) (recognizing Pinchi’s protected liberty interest in remaining out of custody where, during the more than two years since she entered the United States she found a job, provided for her family, built a community at work and church and has undertaken treatment for serious health conditions). Therefore, Petitioner has a substantial interest that is being impacted by his detention and possible removal. *See also Rosabal Blanco v Bondi, et al.*, 2:26-cv-00051 SPC-DNF, *supra* and *Gonzalez Carmona v Ripa*, 2:25-cv-1128-SPC-DNF, *supra*, where this Court recognized a noncitizen’s inherent interest in freedom from detention.

Secondly, the risk of erroneous deprivation of that interest is substantial. The inability to request a bond hearing creates a high risk of erroneous deprivation since the process afforded in removal proceedings does “not ameliorate the risk that [a petitioner] will be erroneously deprived of his liberty while his removability is assessed.” *See Rojas v. Noem*, 3:25-cv-00443-

KC, 2025 WL 3038262 at *3-*4 (W.D. TX Oct. 30, 2025). Bond hearings that “conduct individualized custody determinations considering flight risk and dangerousness” are the precise “type of proceeding that would give [a noncitizen] an opportunity to be heard and to receive a meaningful assessment of whether he is dangerous or likely to abscond.” *Id.* at *4. At the time he was granted parole through the Venezuelan Humanitarian Parole Program, the Petitioner passed rigorous national security and public safety vetting processes. Based upon information and belief, the Petitioner has never been arrested in the United States, and there is no indication the Petitioner is a danger to the community or a flight risk.

Third, while the government “has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community,” such interest “would be squarely addressed through a bond hearing.” *Id.* (citing *Martinez v. Noem*, 2025 WL 2598379 at *4 (W.D. Tex. Sep. 8, 2025)). To this end, the Petitioner has resided in the United States for more than two years, he has worked here and established community ties, and has no criminal record. Indeed, the burden on the Government to provide the Petitioner with the procedural safeguards of a hearing are minimal, and it would be less of a burden to return the Petitioner home to await a determination on his immigration proceedings than to continue to detain him.

CONCLUSION

For the reasons set forth herein, the Petitioner respectfully requests that the Court grant the Petitioner’s Writ of Habeas Corpus and order his immediate release from custody or alternatively, that he be provided with a constitutionally adequate bond hearing before an Immigration Judge.³

³ Respondents allege the Executive Office for Immigration Review (EOIR) is not a proper party to these proceedings. However, the Petitioner did not specifically name the EOIR as a respondent herein. Rather, Petitioner named the Attorney General as a party because the Attorney General retains significant authority over immigration matters through the EOIR. *See generally* 8 U.S.C. § 1103; 8 CFR § 1003.0. Should this Court find the Petitioner is

March 19, 2026

Respectfully submitted,

Sylvia H. Alonso

Sylvia H. Alonso
Fla. Bar No. 767190
sylviahalonso@gmail.com
Sylvia H. Alonso, PLLC
10300 NW 6th Street
Plantation, FL 33324
(954) 868-6093
Attorney for the Petitioner

A. M. Candela

Ana Maria Candela
Fla. Bar No.: 0128856
ana@cejimmigration.com
Candela Eig Jurgens, LLC
2730 S.W. 3rd Ave. #501
Miami, FL 33129
(305)401-1894
Attorney for Petitioner

entitled to a bond hearing by a neutral decision maker as requested by the Petitioner as an alternative to outright release, the authority to oversee and enforce this relief entails oversight of the immigration judge and makes the DOJ a proper respondent in this case.