

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

Antonio Jose PEROZO-GUTIERREZ



380 Racquet Club Rd., Apt. 202
Weston, FL 33326

Petitioner,

v.

Kristi Noem, Secretary of DHS
2707 Martin Luther King Jr Ave, SE
Washington, DC 20528-0525

Pam Bondi, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530-0001

Todd Lyons, Acting Director
Immigrations and Customs Enforcement
500 12th Street SW
Washington, DC 20536

Warden, Glades County Detention Center
1279 East SR 78
Moore Haven, Florida 33471

Respondents.

No.

**PETITION FOR WRIT OF HABEAS
CORPUS**

PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

1. Mr. Antonio Jose Perozo Gutierrez is a 30-year-old native and citizen of Venezuela. Petitioner entered the United States on or about December 26, 2021. Upon his entry, Petitioner was apprehended at the border but was subsequently released by immigration authorities under an order of supervision. Following his release, Petitioner complied with all immigration requirements and received Temporary Protected Status and timely filed an I-589 Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture with U.S. Citizenship and Immigration Services. (Petitioner's I-589 Receipt Notice is attached hereto as Exhibit 1).
2. On December 22, 2025, while driving in Florida, Petitioner was suddenly arrested without a warrant by Customs and Border Protection officials. Petitioner was initially held at the Customs and Border Protection office in Fort Lauderdale, Florida, before being transferred to the Glades County Detention Center in Moore Haven, Florida, where he remains detained.
3. After his detention, Petitioner requested an immigration bond hearing before the immigration court. However, the immigration judge determined that the court lacked jurisdiction to conduct a bond hearing, leaving Petitioner with no meaningful opportunity to seek release from custody. As a result, Petitioner remains detained indefinitely despite posing no danger to the community and no risk of flight, and despite the government never demonstrating otherwise.
4. Petitioner PEROZO GUTIERREZ petitions this Honorable Court to issue a Writ of Habeas Corpus seeking relief to remedy his arbitrary, capricious, and unlawful detention by ICE. 28 U.S.C. § 2241.

5. Petitioner has strong family and community ties in Florida, including his Lawful Permanent resident fiancée and siblings, who rely on him both emotionally and financially. Petitioner has stable employment, local counsel, and no criminal record.

CUSTODY

6. Petitioner is in the physical custody of Respondents. Petitioner is currently detained at 1279 East SR 78, Moore Haven, Florida 33471 (Glades County Detention Center). Petitioner is under the direct control of Respondents and their agents.

JURISDICTION AND VENUE

7. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq., and the Administrative Procedure Act (APA), 5 U.S.C. § 701, et seq. 4. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I § 9, cl. 2 of the United States Constitution (Suspension Clause) and 28 U.S.C. § 1331, as Petitioner is presently in custody under the alleged color of authority of the United States, and such custody is in violation of the Constitution, laws, and/or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651.
8. Venue is proper in the Middle District of Florida because that is where Petitioner is currently detained. *See* 28 U.S.C. § 1391(b); *Kholyavskiy v. Achim*, 443 F.3d 946 (7th Cir. 2006).

THE PARTIES

9. Petitioner Antonio Jose PEREZ-GUTIERREZ is a male citizen and national of Venezuela who entered the United States on or about December 26, 2021, and was subsequently released under an order of supervision.

10. Defendant Krisiti Noem is the Secretary of the Department of Homeland Security in Washington, D.C. Ms. Noem is responsible for the enforcement of the U.S. immigration laws, including those governing the admissibility of foreign nationals in the U.S. Ms. Noem and agents acting under her direction are at present detaining Petitioner. Ms. Noem is being sued in her official capacity only.
11. Defendant Pam Bondi is the Attorney General of the United States. The Attorney General has supervisory authority over the Executive Office of Immigration Review, which adjudicates immigration proceedings, such as Petitioner's. She is sued in her official capacity only.
12. Defendant Todd Lyons is the Acting Director of Immigration and Customs Enforcement in Washington, D.C. Mr. Lyons is responsible for the enforcement of the U.S. immigration laws, and the agents holding Mr. PEROZO-GUTIERREZ are under his direction. Mr. Lyons is being sued in his official capacity only.
13. Defendant Warden of the Glades County Detention Center is the official in charge of operations at Glades County Detention Center, 1279 East SR 78, Moore Haven, Florida 33471, where Petitioner is currently detained.

FACTUAL ALLEGATIONS

14. Petitioner is a citizen and national of Venezuela who entered the United States on or about December 26, 2021, without a visa. After his entry, Petitioner was apprehended by immigration authorities but was released into the United States under an order of supervision.

15. Petitioner thereafter complied with all immigration requirements and filed for TPS and an I-589 application for asylum, withholding of removal, and protection under the Convention Against Torture, which remains pending.
16. On December 22, 2025, immigration officials suddenly detained Petitioner while he was driving in Florida. Petitioner was subsequently transferred to the Glades County Detention Center, where he remains detained.
17. Petitioner filed a motion requesting a bond determination before the immigration court. However, the immigration judge concluded that the court lacked jurisdiction to consider the request pursuant to *Matter of Yajure-Hurtado*, 28 I. & N. Dec. 428 (BIA 2022).
18. As a result, Petitioner has no meaningful mechanism through which he may request release from detention except this Honorable Court, despite having no criminal record, strong family ties in the United States, stable employment, and a pending application for relief from removal.
19. Before his recent detention, Petitioner worked very hard to support his family and his Legal Permanent Resident fiancée, both financially and emotionally. They are suffering severely both financially and emotionally without his presence or support.

LEGAL BACKGROUND

14. The Fifth Amendment to the U.S. Constitution provides limits on detention. As the Supreme Court has noted, "[i]t is well-established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Hyung Joon 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 liberty," that the Due Process Clause protects.

Zadvydas v. Davis, 533 U.S. 678,690 (2001). This fundamental due process protection applies to all noncitizens, even if they are removable or inadmissible. *See id.* at 721 (Kennedy, J., dissenting) ("(B)oth removable and inadmissible aliens are entitled to be free from detention that is arbitrary or capricious."). Under these due process principles, detention must "bear [a] reasonable relation to the purpose for which the individual [was] committed." *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

15. Due process, therefore 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." *Id.* at 690 (internal quotations 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 538.
16. Following *Zadvydas*, *supra*, and *Demore*, *supra*, most circuit courts to confront the issue have protected the due process rights of people detained in civil immigration detention by requiring a custody hearing for noncitizens subject to unreasonably prolonged detention pending removal proceedings. *See Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199 (11th Cir. 2016); *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016); *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015); *Rodriguez v. Robbins (Rodriguez III)*, 804 F.3d 1060 (9th Cir. 2015); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. 2011); *Ly v. Hansen*, 351 F.3d 263 (6th Cir.2003).
17. In addition to the amount of time in detention, courts weigh the following factors when assessing reasonableness: (1) how long the detention will likely continue in the absence of judicial relief; (2) the nature and extent of removal proceedings, including whether any

delays are attributable to the government or the immigrant; (3) the conditions of detention; and (4) the likelihood that the proceedings and judicial review will end with a removal order.

18. Importantly, the INA draws a clear statutory distinction between noncitizens detained at the time of arrival under 8 U.S.C. § 1225 and those detained after they are already present in the United States under 8 U.S.C. § 1226. Section 1225 governs “applicants for admission” encountered at or near the border and mandates detention during expedited or initial admission proceedings, while § 1226(a) is the “default rule” governing detention of noncitizens already inside the country pending removal proceedings and expressly authorizes release on bond or conditional parole. *Jennings v. Rodriguez*, 583 U.S. 281, 289, 303 (2018). In *Said v. Noem*, the court held that although the petitioner was initially apprehended at the border and processed under § 1225, DHS’s subsequent issuance of a Notice to Appear placing him in standard removal proceedings under INA § 240 and classifying him as “present in the United States without admission or parole” triggered detention authority under § 1226(a) going forward. *Said v. Noem*, No. 3:25-cv-00938-MOC, 2025 LX 592150 (W.D.N.C. Dec. 17, 2025). The court emphasized that DHS may not retroactively “rebrand” a noncitizen as an arriving alien subject to mandatory detention after allowing him to reside in the United States on parole and proceed through § 240 removal proceedings, as such recharacterization conflicts with the statutory distinction between noncitizens “on the threshold of entry” and those who have effected entry into the country. *Id.* at 12–14 (citing *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)). Accordingly, the court concluded that a noncitizen apprehended at the border, later released, and subsequently detained at a routine check-in

appointment is subject to discretionary detention under § 1226(a), not mandatory detention under § 1225. *Id.* at *14–16.

19. Finally, under the APA, a court shall “hold unlawful and set aside agency action” that is arbitrary and capricious. 5 U.S.C. § 706(2)(A). An agency action is arbitrary and capricious if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

FIRST CLAIM FOR RELIEF

VIOLATION OF THE DUE PROCESS CLAUSE OF THE U.S. CONSTITUTION

20. Petitioner re-alleges and incorporates by reference the paragraphs above.
21. Petitioner’s detention violates the substantive and procedural Due Process guarantees of the United States Constitution. Petitioner entered the United States in December of 2021 and was initially apprehended at the border. DHS thereafter issued a Notice to Appear placing him in standard removal proceedings and designated him as a noncitizen “present in the United States without admission or parole.” After releasing Petitioner into the United States, DHS subjected him to re-detention after some years in the U.S. Because DHS elected to proceed under regular removal proceedings and treated Petitioner as already present in the United States, his subsequent detention is governed by the discretionary framework of 8 U.S.C. § 1226(a), not the mandatory detention provisions of 8 U.S.C. § 1225. Petitioner’s re-detention without an individualized bond hearing, therefore, violates

both substantive and procedural due process. *See Said, supra; Velasquez v. Noem*, Civil Action No. GLR-25-3215, 2025 LX 400577 (D. Md. Oct. 27, 2025); *Maldonado de Leon v. Baker*, Civil Action No. 25-3084-TDC, 2025 LX 473505 (D. Md. Oct. 21, 2025).

22. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. Amend. V. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including [non-U.S. citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas, supra*, at 693 (2001). For this reason, even “removable and inadmissible [non-U.S. citizens] are entitled to be free from detention that is arbitrary and capricious,” *Id.* at 721 (Kennedy, J., dissenting).
23. Before depriving Petitioner of his liberty interest, he should at least be afforded an opportunity to be heard before a neutral decision maker. Procedural due process requires, at a minimum, an opportunity to be heard “at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Applying the Mathews factors, courts consistently find that: (a) the private interest in freedom from physical restraint is “the most elemental of liberty interests”; (b) the risk of erroneous deprivation is high where detention occurs without a hearing; and (c) the government’s interest in immediate detention without process is minimal. *See P.T. v. Hermosillo*, No. 2:2025cv02259 (W.D.W.A) (applying Mathews and finding detention unconstitutional where ICE failed to provide pre-deprivation process); *see also Ngha v. Noem*, No. 8:25-C-V-04055-BAH, 2025 (D. Md. Dec. 11, 2025). Applying the three factors to Petitioner’s facts show: 1) Petitioner PEROZO-GUTIERREZ invokes “the most significant liberty interest there is, the interest in being free from imprisonment,” and a “person’s liberty interest cannot be abridged

without adequate procedural protections;” 2) the risk of erroneous deprivation is high because Petitioner was not afforded a hearing before a neutral decision maker, before or at the time of, Petitioner’s arrest; and 3) the Government’s interest in immediate detention without process is minimal. *See Artiga v. Genalo*, No. 25-CV-5208, Mem. & Order at 19 (E.D.N.Y. Oct. 5, 2025). Due to Petitioner’s unique circumstances, including his two lawful permanent resident fiancée and siblings, who depend on him for financial and emotional support, his pending asylum application, and no criminal record, his *Mathews* factors support that she should be entitled to be free from unlawful, arbitrary, and capricious detention under the inter alia due process clause.

24. Additionally, Respondents’ arrest and detention of Petitioner violates his substantive due process rights. The Supreme Court in *Zadvyda, supra*, held that detention where removal cannot occur within the reasonably foreseeable future is unconstitutional and found that a six-month period is a presumptive maximum period of reasonable detention. Here, Petitioner’s removal is not reasonably foreseeable, as he is currently still in immigration proceedings and is entitled to pursue, and is eligible for relief. Thus, Petitioner’s continued custody exceeds statutory authority and violates due process.

25. Accordingly, Petitioner should be released or at least be permitted a meaningful immigration bond hearing regarding the alleged change in circumstances or any other reasons for why he was unexpectedly arrested and re-detained on December 22, 2025, because his detention falls under 8 U.S.C. § 1226(a).

SECOND CLAIM FOR RELIEF

VIOLATION OF 28 U.S.C. § 1361 (Writ of Mandamus)

26. Petitioner re-alleges and incorporates by reference the paragraphs above.
27. Petitioner's detention, despite having many years of presence in the United States, a Lawful Permanent Resident fiancée, a pending asylum application, employment, family, no criminal record, and deep community ties, is an abuse of discretion and unlawful.
28. For these reasons, this Court should order Respondents to immediately release Petitioner from detention based on violations of, inter alia, his Fifth Amendment rights, his eligibility for asylum, and strong family and deep community ties within the United States.

THIRD CLAIM FOR RELIEF

VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT

29. Petitioner re-alleges and incorporates by reference the paragraphs above.
30. Under the APA, a court shall "hold unlawful and set aside agency action" that is arbitrary and capricious. 5 U.S.C. § 706(2)(A). An agency action is arbitrary and capricious if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).
31. Here, ICE's decision to detain Petitioner, who has a Lawful Permanent Resident fiancée, is eligible for asylum, has no criminal record, and has strong family and deep community ties in Florida, is arbitrary and capricious.

32. For these reasons, this Court should order Respondents to immediately release Petitioner from detention and/or order a prompt bond hearing based on violations of, inter alia, his Fifth Amendment rights, eligibility for relief, and strong family and deep community ties within the United States. He is not a danger to the community, nor is he likely to abscond due to his deep roots here in the community. Petitioner's family depend on him for their well-being and care.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Honorable Court:

- 1) Assume jurisdiction over this matter;
- 2) Grant a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, on reasonable conditions of supervision if necessary, and/or order that a bond hearing before an immigration judge be conducted within seven days;
- 3) Order Respondents to show cause, returnable within seven days pursuant to 28 U.S.C. §2243, as to why the relief requested in this petition should not be granted;
- 4) Declare the Petitioner's detention is unlawful and violates, inter alia, the Fifth Amendment of the U.S. Constitution, INA, and the APA.
- 5) Grant such further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Ana S. Soler

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