

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

Elias Mixtega-Cortes,

Petitioner,

v.

Case No.:

Kristi Noem, Secretary of the Department of Homeland Security; **Pamela Bondi**, Attorney General of the U.S.; **Todd M. Lyons**, Acting Director of U.S. Immigration and Customs Enforcement; and **Garrett Ripa**, Warden/ICE ERO Miami, Field Office Director,

Respondents.

**EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. §2241 AND FOR IMMEDIATE RELEASE**

To the Honorable Judge of Said Court:

I. INTRODUCTION

1. Petitioner, Elias Mixtega-Cortes (hereinafter “Mr. Mixtega-Cortes” or “Petitioner”), seeks a writ of habeas corpus to remedy his unlawful detention by the Respondents. Mr. Mixtega-Cortes is being unlawfully detained by Respondents in violation of his constitutional right to Due Process.

2. Mr. Mixtega-Cortes, a 44-year-old Mexican national, entered the United States on or around June 28, 2005, without inspection. Mr. Mixtega-Cortes has concerns about returning to Mexico and together with his wife they filed an application for asylum before the United States Citizenship and Immigration Services (hereinafter “USCIS”). **Exhibit A.**

3. Despite having an asylum application pending, having work authorization, a driver’s license, and not having prior criminal history, he was unlawfully detained without probable cause or

any reasonable suspicion. He was then transferred to the Krome Processing Center (hereinafter “the detention center”), a facility managed and under the supervision/control of the U.S. Department of Homeland Security (hereinafter “DHS” or “the Department”) and the U.S. Immigration and Customs Enforcement (hereinafter “ICE”). **Exhibits B and C.**

4. Mr. Mixtega-Cortes respectfully requests this Honorable Court order Respondents to show cause why the writ should not be granted within three days and, if necessary, set a hearing on this Petition within five days of the return, pursuant to 28 U.S.C. § 2243.

5. Mr. Mixtega-Cortes further respectfully requests that this Honorable Court grant him a writ of habeas corpus, ordering Respondents to release him immediately.

II. PARTIES

6. Petitioner, Elias Mixtega-Cortes, is a 44-year-old native and citizen of Mexico who entered the United States on or about June 28, 2005, and has a pending Application for Asylum and for Withholding of Removal, Form I-589(which also requests withholding of removal or protection under the convention against torture if placed in removal proceedings, hereinafter “Asylum Application”). He is being unlawfully detained by Respondents at the detention center in Florida.

7. Respondent, Kristi Noem, is the Secretary of DHS, which is responsible for the administration of ICE, a subunit of DHS, and the implementation and enforcement of the immigration laws. As such, Ms. Noem is the ultimate legal custodian of Mr. Mixtega-Cortes. This Respondent is being sued in her official capacity.

8. Respondent, Pamela Bondi, is the Attorney General of the United States and head of the Department of Justice, which encompasses the Board of Immigration Appeals (hereinafter “BIA”), the Executive Office for Immigration Review (hereinafter “EOIR”), and the Immigration Courts. Ms. Bondi shares responsibility for implementation and enforcement of the immigration laws with Respondent Noem. As such, Ms. Bondi is a legal custodian of Mr. Mixtega-Cortes. This

Respondent is being sued in her official capacity.

9. Respondent, Todd M. Lyons, is the Acting Director of ICE. He is responsible for the administration of ICE and the implementation and enforcement of the immigration laws, including non-citizen detention. As such, he is a legal custodian of Mr. Mixtega-Cortes. This Respondent is being sued in his official capacity.

10. Respondent, Garrett Ripa, is the ICE Field Office Director for the Miami Field Office. The Miami Field Office is responsible for the detention of non-citizens in Florida and at the detention center where Mr. Mixtega-Cortes is being detained. This Respondent also effects operational, legal, and factual control over the detention center as a custodial warden, and, as such, is a legal custodian of Mr. Mixtega-Cortes. This Respondent is being sued in his official capacity.

III. JURISDICTION AND VENUE

11. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201-02 (declaratory relief), and Art. I, Sec. 9, Cl. 2 of the U.S. Constitution (Suspension Clause), as Mr. Mixtega-Cortes is presently in custody under, or by color of, the authority of the U.S. and challenges his custody as in violation of the Constitution, laws, or treaties of the U.S.

12. The federal district courts have jurisdiction under Section 2241 to hear habeas claims by individuals challenging the lawfulness of their detention by ICE and to order their release. *See, e.g., Demore v. Kim*, 538 U.S. 510 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Supreme Court upheld the federal courts' jurisdiction to review such claims in *Jennings v. Rodriguez*, 583 U.S. 281, 291-295 (2018).

13. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. §§ 1391 because Mr. Mixtega-Cortes is detained at the detention center in Miami Dade County in Miami,

Florida, within the court's jurisdiction.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

14. Mr. Mixtega-Cortes has no administrative remedies available to him and his only remedy is by way of this judicial action.

15. No statutory exhaustion requirements apply to Mr. Mixtega-Cortes's claim of unlawful detention. This petition raises a constitutional law issue, and the administrative agency will not address the constitutional issue. Likewise, the agency is unable to strike down its own regulation as in violation of the statute. *See Matter of G-K-*, 26 I. & N. Dec. 88 (BIA 2013).

16. Further, Mr. Mixtega-Cortes is detained by Respondents pursuant to immigration custody. He has no adequate administrative remedy to obtain a bond hearing in light of *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), a recent precedential decision of the BIA which departed from decades-long immigration detention statutes interpretation and determined Immigration Judges (hereinafter "IJs") lack jurisdiction to consider bond for individuals present in the U.S. without admission under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). Exhaustion is therefore futile and should not be required. *See* 28 U.S.C. § 2241; *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992). However, Mr. Mixtega-Cortes, did apply for bond or custody determination before the IJ with jurisdiction over his case and was denied due to a lack of jurisdiction in light of *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). **Exhibit D.**

V. LEGAL FRAMEWORK

Asylum and Refugee Law

17. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the Refugee Act is to enforce the "historic policy of the United States to respond to the urgent needs of

persons subject to persecution in their homelands.” Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

18. The “motivation for the enactment of the Refugee Act” was the United Nations Protocol Relating to the Status of Refugees, “to which the United States had been bound since 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a legislative purpose “to give ‘statutory meaning to our national commitment to human rights and humanitarian concerns.’” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

19. The Refugee Act established the right to apply for asylum in the United States and defines the standards for granting asylum. It is codified in various sections of the INA.

20. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to non-citizens who satisfy the definition of “refugee.” Under that definition, individuals generally are eligible for asylum if they have experienced past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion and if they are unable or unwilling to return to and avail themselves of the protection of their homeland because of that persecution or a well-founded fear thereof. 8 U.S.C. § 1101(a)(42)(A).

21. Although a grant of asylum may be discretionary, the right to apply for asylum is not. The Refugee Act broadly affords a right to apply for asylum to any non-citizen “who is physically present in the United States or who arrives in the United States[.]” 8 U.S.C. § 1158(a)(1).

22. Because of the life-or-death stakes, the statutory right to apply for asylum is robust. The right necessarily includes the right to counsel, at no expense to the government, *see* 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the right to counsel, *see* 8 U.S.C. § 1158(d)(4), and the right to access information in support of an application, *see* § 1158(b)(1)(B) (placing the burden on the applicant to present evidence to establish eligibility).

23. Non-citizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

24. Non-citizens who are applicants for asylum are entitled to a full hearing in immigration court before they can be removed from the United States. 8 U.S.C. § 1229a. Consistent with due process, non-citizens may seek administrative appellate review before the BIA of removal orders entered against them and judicial review in federal court upon a petition for review. 8 U.S.C. § 1252(a) *et seq.*

Release and Indefinite, Mandatory Detention

25. The Immigration and Nationality Act (hereinafter “INA”) distinguishes between detention of applicants for admission under 8 U.S.C. § 1225 and detention of other non-citizens under 8 U.S.C. § 1226.

26. Non-citizens subject to 8 U.S.C. § 1226 may be detained by DHS upon issuance of a warrant and are eligible for release on conditional parole or bond, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention under 8 U.S.C. § 1226(c); 8 C.F.R. § 236.1(b). Mr. Mixtega-Cortes posits that he is subject to § 1226.

27. In accordance with 8 C.F.R. § 236.1(c)(8), ICE may release the non-citizen on their own recognizance through the issuance of Form I-286 but the non-citizen “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.”

28. Non-citizens detained pursuant to 8 U.S.C. § 1226 may request a custody redetermination by an IJ. The IJ may detain the non-citizen, release the non-citizen, and determine the amount of bond, if any. 8 C.F.R. § 236.1(d). *But see Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), a recent precedential decision of the BIA which determined that all individuals present in the U.S. without admission were detained under INA § 235(b)(2)(A), 8 U.S.C. §

1225(b)(2)(A), and IJs lack jurisdiction to consider bond. This new approach will subject millions more of aliens such as Mr. Mixtega-Cortes to mandatory detention, while simultaneously narrowing § 1226(a) such that it would have little to no application.

29. Non-citizens subject to expedited removal or certain recent arrivals seeking admission into the country are subject to mandatory detention under 8 U.S.C. § 1225 and may be released on a temporary grant of parole by DHS pursuant to 8 U.S.C. § 1182(d)(5)(A). The grant of parole terminates automatically at the termination of the time for which parole was authorized or upon written notice. *See* 8 C.F.R. § 212.5(e).

30. Under 8 C.F.R. § 212.5(e)(2)(i), parole termination requires an individualized discretionary determination by authorized DHS officials that neither humanitarian reasons nor public benefit justify continued parole. Under *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019), immigration judges lack jurisdiction to conduct bond hearings for individuals subject to mandatory detention under § 1225(b), which includes individuals who enter on parole as “arriving aliens.” *See* 8 C.F.R. § 1003.19(h)(2)(i); 8 C.F.R. § 1.2.

31. Nonetheless, non-citizens who enter the United States are entitled to due process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025).

32. 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.

33. The interest in being free from physical restraint is the most elemental liberty interest and has always been at the core of the liberty protected by the Due Process Clause. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Sopo v. U.S. Attorney General*, 825 F.3d 1199, 1212 (11th Cir. 2016), vacated on other grounds.

34. The essence of procedural due process is that a person risking a serious loss be given

notice and an opportunity to be heard in a meaningful manner and at a meaningful time. *See Mathews v. Eldridge*, 424 U.S. 319, 348 (1976).

35. Immigration detention is a form of civil confinement that “constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979).

36. Immigration detention should not be used as a punishment and should only be used when, under an individualized process, a determination is made that the non-citizen is a danger to the community or a flight risk because he is unlikely to appear for immigration court. *Zadvydas v. Davis*, 533 U.S. at 690.

37. ICE has the authority to re-detain a non-citizen and revoke their release pending the outcome of removal proceedings only when there has been a change in circumstances since the individual's initial release. *See Matter of Sugay*, 17 I. & N. Dec. 637, 640 (B.I.A. 1981).

VI. FACTS AND PROCEDURAL HISTORY

38. Mr. Mixtega-Cortes, is a 44-year-old native and citizen of Mexico who entered the U.S. on or about June 28, 2005.

39. Mr. Mixtega-Cortes remained in the U.S. with no departures and is the father of 3 United States citizen children. **Exhibit E**.

40. Mr. Mixtega-Cortes has lived in the U.S. for over 20 years with no criminal history.

41. Based on safety concerns Mr. Mixtega-Cortes filed an application for asylum with USCIS, which remained pending up until the time of his detention. Mr. Mixtega-Cortes had complied with biometrics requests and had provided DHS with his most current address and contact information.

42. Mr. Mixtega-Cortes obtained employment authorization and, at the time of his detention, on January 20, 2026, he was gainfully employed and authorized to drive in the State of

Florida. *See*, Employment Authorization Document and Florida Driver's License attached hereto as **Exhibits B and C**.

43. Nonetheless, on or about January 20, 2026, Mr. Mixtega-Cortes was targeted in an unlawful sting operation lacking probable cause or any reasonable suspicion. While on his way to work he was suddenly, and without any justified cause, detained by local law enforcement agents who then called on ICE personnel who transferred him to ICE custody. Afterwards, he was transferred to the detention center. To this day, Mr. Mixtega-Cortes remains in detention without meaningful process and without a prompt opportunity to seek review of the legal basis for his continued confinement.

44. At the time of Mr. Mixtega-Corte's detention, and since Mr. Mixtega-Cortes's filed his application for asylum more than nine (9) years ago where he has been consistently presenting biometrics, renewing his work authorization and complying with all requirements of his application, there has been no change in circumstances that would warrant his current detention, even in the event that removal proceedings were initiated. It is clear that Mr. Mixtega-Cortes has a genuine interest to have his case heard, to present evidence and receive final adjudication of his application for asylum.

45. Mr. Mixtega-Cortes challenges Respondent's constitutional and statutory authority to detain him, where Respondents have arbitrarily detained him overnight while presenting no legal justification or evidence of changed circumstances to justify his detention.

46. Respondents have provided no meaningful procedures and deprived Mr. Mixtega-Cortes of procedural and substantive due process, and acted contrary to established law in an arbitrary and capricious manner. *See Jennings*, 583 U.S. at 291-298; *Id.* at 355-356 (Breyer, J., dissenting); *Zadvydas*, 533 U.S. at 688 (Explaining the court's authority to consider a habeas challenge to detention that is without statutory authority notwithstanding Congress' attempt to limit judicial review in immigration matters).

VII. CAUSES OF ACTION

Count 1: Unlawful Restraint/Detention in Violation of Constitutional Due Process

47. Mr. Mixtega-Cortes incorporates by reference the allegations set forth in the preceding paragraphs.

48. 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. Due process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

49. Civil immigration detention violates due process if it is not reasonably related to its purpose. *See Zadvydas*, 533 U.S. at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)); *Demore*, 538 U.S. at 513. As categorical detention becomes increasingly prolonged, a sufficiently strong special justification is required to outweigh the significant deprivation of liberty. *Zadvydas*, 533 U.S. at 690-91

50. Civil detention violates due process unless it is accompanied by strong procedural protections to guard against the erroneous deprivation of liberty. *Id.* at 690-91; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). To justify Mr. Mixtega-Cortes’s ongoing detention, due process requires that the government provide a legal justification for his ongoing detention. *United States v. Salerno*, 481 U.S. 739, 750, 752 (1987); *Svetlana Doe, et al., v. Noem, et al.*, No. 25-cv-10495 (D. Mass. April 14, 2025).

51. In *Sopo v. U.S. Attorney General*, 825 F.3d 1199, 1217–18 (11th Cir. 2016), vacated on other grounds, the Eleventh Circuit held that prolonged detention without an individualized finding of danger or flight risk raises serious due process concerns. While *Sopo* was vacated after the

petitioner was removed, Eleventh Circuit panels and district courts continue to rely on its analytical framework, which explains that detention becomes unconstitutional when the government “provides no individualized justification” for continuing to detain a non-citizen.

52. Mr. Mixtega-Cortes has not been afforded the necessary procedural safeguards to guarantee against the erroneous deprivation of his liberty. This is particularly true as Mr. Mixtega-Cortes period of detention grows and where the government provides no legal justification for his ongoing detention other than to possibly claim that Mr. Mixtega-Cortes is subject to mandatory detention under Section 1225(b)(2)(A) which the basis for the decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which deprived the immigration judges of jurisdiction in bond proceedings in cases such as Mr. Mixtega-Cortes.

53. Respondents have provided no individualized showing whatsoever that Mr. Mixtega-Cortes is dangerous or a flight risk. Mr. Mixtega-Cortes filed the Asylum Application, was gainfully employed after obtaining employment authorization, and has no criminal history.

54. Under these circumstances, Mr. Mixtega-Cortes’s detention without any evidence of danger or flight risk is impermissible and violates both substantive and procedural due process. Detention must be individualized and justified. Because Respondents have not carried—even minimally—their burden to justify detention, Mr. Mixtega-Cortes must be released.

55. To the extent Respondents contended - in bond proceedings before the immigration court - that Petitioner is subject to mandatory detention under INA § 235/8 U.S.C. § 1225(b)(2)(A), Respondents must identify a lawful basis for classifying Petitioner into a different detention regime than that of what has been historically applied to aliens such as Mr. Mixtega-Cortes.

Count 2: Violation of the Administrative Procedure Act

56. Mr. Mixtega-Cortes incorporates by reference the allegations set forth in the preceding paragraphs.

57. Under the Administrative Procedure Act (hereinafter “APA”), a court shall “hold unlawful and set aside agency action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

58. An action is an abuse of discretion and a violation of the APA 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 Homebuilders 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, 42 (1983)).

59. Detaining Mr. Mixtega-Cortes under 8 U.S.C. § 1225(b)(2)(A) exceeds statutory authority and is arbitrary and capricious. *See Jennings v. Rodriguez*, 583 U.S. 281 (2018) (reserving constitutional questions); *Demore v. Kim*, 538 U.S. 510, 530–31 (2003) (upholding brief, not indefinite, detention).

60. Because Mr. Mixtega-Cortes has been present in the United States since June 2005, and because § 1226(a) sets forth “the default rule” for detaining and removing aliens “already present in the United States,” *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018), Mr. Mixtega-Cortes detention is governed by § 1226(a). And under § 1226(a) and its implementing regulations, he is entitled to a bond hearing before an IJ in which the IJ must determine whether he poses a danger to the community, and whether he is a flight risk. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Unless the IJ makes such a determination, Mr. Mixtega-Cortes’s continued detention is unlawful.

61. By categorically subjecting Mr. Mixtega-Cortes to mandatory detention under § 1225(b)(2)(A), Respondents violated the APA.

VIII. PRAYER FOR RELIEF

WHEREFORE, Mr. Mixtega-Cortes prays that this Court grant the following relief:

1. Accept jurisdiction and maintain continuing jurisdiction of this action;

2. Order Respondents to show cause why the writ should not be granted within three days, and, if necessary, set a hearing on this Petition within five days of the return, pursuant to 28 U.S.C. § 2243;

3. Issue a writ of habeas corpus ordering Respondents to immediately release Mr. Mixtega-Cortes from their custody;

4. Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Mr. Mixtega-Cortes;

5. Enjoin Respondents from transferring Mr. Mixtega-Cortes outside the jurisdiction of the Court pending resolution of this matter;

6. Declare that Mr. Mixtega-Cortes's detention violates the Due Process Clause of the Fifth Amendment;

7. Declare that Mr. Mixtega-Cortes's detention violates the Administrative Procedure Act;

8. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

9. Grant such further relief as this Court deems just and proper.

Respectfully submitted on this 19th day of February, 2026.

/s/Francisco F. Symphorien-Saavedra
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Verification by Someone Acting on the Petitioner's Behalf Pursuant to 28 U.S.C. § 2242

I, Francisco F. Symphorien-Saavedra, hereby declare under penalty of perjury that the facts alleged in the foregoing Petition for Writ of Habeas Corpus are true and correct, to the best of my knowledge.

Dated: February 19, 2026.

/s/Francisco F. Symphorien-Saavedra
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