UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RICARDO RIVERA PEREZ,

Petitioner,

v. Case No. 8:26-cv-926

BOB GUALTIERI, Sheriff of Pinellas County;
COLONEL JOSEPH GERRETZ, Commander of the Department of Detention and Corrections of the Pinellas County Sheriff's Office;
SECRETARY OF HOMELAND SECURITY;
PAMELA JO BONDI, U. S. Attorney General;
GARRETT RIPA, Miami Field Office Director, U.S. Immigration and Customs Enforcement and Removal Operation;
TODD LYONS, Acting Director of Immigration and Customs Enforcement;
PINELLAS COUNTY SHERIFF'S OFFICE;
U.S. DEPARTMENT OF HOMELAND SECURITY;
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; and
U.S. DEPARTMENT OF JUSTICE

Respondents.

_____/

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner RICARDO RIVERA PEREZ is in the physical custody of

Respondents at the Pinellas County Jail. He faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) determined that Petitioner is subject to mandatory detention and because the Department of Homeland Security arrested him in violation of its own regulations.

2. Petitioner entered the United States without inspection, *see* 8 U. S. C. § 1182(a)(6)(A)(i), which, Respondents claim, makes him ineligible for bond.

JURISDICTION

3. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). *See Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006) (holding that U. S. district courts have jurisdiction to review aliens' habeas corpus petitions).

4. Furthermore, "a federal court always has jurisdiction to determine its own jurisdiction," including its own subject-matter jurisdiction. *Brownback v. King*, 592 U.S. 209, 218-19 (2021) (quoting *United States v. Ruiz*, 536 U.S. 622, 628 (2002)).

5. This court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act (INA), 8 U.S.C. § 1252(e)(2).

VENUE

6. Venue is proper because Petitioner is in Respondents' custody in Pinellas County, Florida, and because a substantial part of the events giving rise to Petitioner's claim occurred in the Middle District of Florida. 28 U.S.C. § 1391(e).

CUSTODY

7. Pursuant to 28 U. S. C. § 2241(c), only persons "in custody" may apply for a writ of habeas corpus. Custody may be physical or constructive custody, where the person is under a restraint on liberty not shared by the public generally. *See Jones v. Cunningham*, 371 U. S. 236, 240, 83 S. Ct. 373, 9 L. Ed. 2D 285 (1963) ("[B]esides physical imprisonment, there are other restraints on a man's liberty, restraints not shared by the public generally, which have been thought sufficient in the English-speaking world to support the issuance of habeas corpus.").

8. Here, Petitioner is in Respondents' physical custody, detained at the Pinellas County Jail, Pinellas County, Florida.

PARTIES

THE PETITIONER

9. The Petitioner resides in and is present in the Middle District of Florida at the time of filing this petition.

THE RESPONDENTS

10. Respondent BOB GUALTIERI is the Sheriff of Pinellas County, and as such, he is responsible for overseeing the Pinellas County Jail. He is sued in his official capacity.

11. Respondent Colonel JOSEPH GERRETZ is the Commander of the Department of Detention and Corrections of the Pinellas County Sheriff's Office. As such, he is responsible for the supervision and management of the Pinellas County Jail. He is sued in his official capacity.

12. Respondent Secretary of Homeland Security is responsible for the actions of the Department of Homeland Security, its subagencies, and its officers and personnel. The Secretary of Homeland Security is sued in the Secretary's official capacity.

13. Respondent PAMELA BONDI is the Attorney General of the United States. She has responsibility for the conduct and operations of the Department of Justice and all of its officers and personnel, including the Executive Office for Immigration Review. PAMELA BONDI is sued in her official capacity.

14. Respondent GARRETT RIPA is the Field Office Director for the Miami Field Office, Immigration and Customs Enforcement and Removal Operations ("ICE"). The Miami Field Office is responsible for local custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens. GARRETT RIPA is sued in his official capacity.

15. The Miami Field Office's area of responsibility includes Pinellas County, Florida. Consequently, respondent GARRETT RIPA is the immediate legal custodian of petitioner.

16. Respondent PINELLAS COUNTY SHERIFF'S OFFICE is the entity

responsible for overseeing the Pinellas County Jail where Petitioner is being held. The Pinellas County Sheriff's Office has a Memorandum of Agreement, pursuant to INA § 287(g), with Respondents Department of Homeland Security and Immigration Customs Enforcement, allowing to perform immigration enforcement functions.

17. Respondent TODD LYONS is the Acting Director of Immigration Customs Enforcement (ICE), and as such is responsible for the means by which the immigration laws of the United States are enforced. TODD LYONS is sued in his official capacity.

18. Respondent U.S. DEPARTMENT OF HOMELAND SECURITY is an agency of the United States with responsibility for the enforcement of the nation's immigration laws. It is under the direction of Respondent SECRETARY OF HOMELAND SECURITY.

19. Respondent U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT is an agency of Respondent U.S. DEPARTMENT OF HOMELAND SECURITY, and is under the direction of Respondent TODD LYONS.

20. Respondent U.S. DEPARTMENT OF JUSTICE is an agency of the United States, and is under the direction of respondent PAMELA BONDI.

21. Respondent DEPARTMENT OF JUSTICE maintains an adjudicatory body for immigration cases, the Executive Office for Immigration Review (EOIR). Part of EOIR includes the Office of the Immigration Judge, generally known as the Immigration Court.

LEGAL BACKGROUND

ACCARDI DOCTRINE AND REGULATORY REQUIREMENTS FOR AN ARREST

22. In *Accardi v. Shaughnessy*, 347 U. S. 260 (1954), the U. S. Supreme Court ruled that agencies must abide by their own regulations.

23. Under the *Accardi* doctrine, failure to abide by internal regulations renders agency actions unlawful. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974).

24. Respondents failed to follow immigration-specific arrest and processing regulations. Warrantless arrests must comply with 8 C.F.R. § 287.8(c). For any arrest, immigration officers must have reason to believe that an individual committed an offense against the United States or was present in the United States illegally, 8 C.F.R. § 287.8(c)(2)(i). For warrantless arrests, officers must have reason to believe that an individual is "likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8(c)(2)(ii).

25. These regulatory requirements are mandatory, imposing substantive limitations on ICE's authority to conduct warrantless arrests. They are designed to prevent arbitrary deprivations of liberty.

BURDEN OF PROOF REQUIRED BY DUE PROCESS

26. The Fifth Amendment Due Process clause requires that the government justify Mr. Rivera's detention, at a minimum, by clear and convincing evidence. Noncitizens physically present in the United States—including those who

entered without inspection—are "persons" within the meaning of the Fifth Amendment and entitled to full procedural due process protections. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982).

27. Three factors determine whether due process is satisfied: (1) "the private interested 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 [g]overnment'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. **Immigration detention implicates a fundamental liberty interest.** *See Zadvydas v. Davis*, 533 U. S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.").

29. Freedom from physical restraint "is the most elemental of liberty Interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld*, 542 U. S. 507, 529. Even the government's interest in waging a war is insufficient to outweigh a person's interest in being free from physical detention:

> Moreover, as critical as the Government's interest may be in detaining those who actually pose an immediate threat to the national security of the United States during ongoing international conflict, history and common sense teach us that an unchecked system of detention carries the

> potential to become a means for oppression and abuse of others who do not present that sort of threat.

Hamdi, 542 U. S. at 530.

30. Here, the government's interest is not as weighty as that associated with an international conflict. Therefore, Mr. Rivera's fundamental liberty interest prevails.

31. **The risk of erroneous depravation and the value of additional procedural safeguards weigh in favor of the government bearing the burden of proof to justify an alien's detention.**

32. Pursuant to Due Process, Mr. Rivera's liberty interest requires that the Government justify Mr. Rivera's detention. Even persons labeled as enemy-combatants are afforded more due process than aliens in Mr. Rivera's situation.

33. Applying the *Matthews v. Eldridge*, the U. S. Supreme Court found that the Government has the initial burden to demonstrate that persons labeled as enemy-combatants meet the criteria, with the burden then shifting to the person so labeled. *Hamdi*, 542 U. S. at 534. The Supreme Court explained, "Thus, once the Government puts forth credible evidence that the habeas petitioner meets the enemy-combatant criteria, the onus could shift to the petitioner to rebut that evidence with more persuasive evidence that he falls outside the criteria." *Hamdi*, 542 U. S. at 534; *see also Hamdan v. Rumsfeld*, 548 U. S. 557, 603 ("At a minimum, the Government must make a substantial showing that the crime for which it seeks to try a defendant by military commission is acknowledged to be an

offense against the law of war. That burden is far from satisfied here.").

34. **The government's interest is minimal, if at all, against the burden of proof by clear and convincing evidence.**

35. In civil cases where personal liberty is at risk, the Supreme Court has reaffirmed the clear and convincing standard. *See, e. g., Addington v. Texas*, 441 U.S. 418 (1979) (upholding the clear and convincing standard for civil commitment for mental health patients); *United States v. Salerno*, 481 U.S. 739, 751 (finding that the Due Process Clause allows for pretrial detention if "the Government proves by clear and convincing evidence that an arrestee presents an identified and articulable threat to an individual or the community"); *Foucha v. Louisiana*, 504 U. S. 71, 86 (1992) ("Furthermore, in civil commitment proceedings the State must establish the grounds of insanity and dangerousness permitting confinement by clear and convincing evidence.") (internal citations omitted); *United States v. Comstock*, 560 U.S. 126, 130–31 2 (2010) (upholding the constitutionality of a statute, with the clear and convincing evidence standard, allowing the continued detention of mentally ill, sexually dangerous prisoners).

36. The U. S. Supreme Court has held that the reasoning of the cases cited also applies in the immigration context:

> Nowhere did we suggest that the 'constitutionally protected liberty interest' in avoiding physical confinement, even for aliens already ordered removed, was conceptually different from the liberty interest of citizens considered in Jackson, Salerno, Foucha, and Hendricks. On the contrary, we cited those cases and expressly adopted their reasoning, even as applied to aliens

> whose right to remain in the United States had already been declared forfeited.

Demore v. Kim, 538 U.S. 510, 553 (2003) (Souter, J., concurring in part and disssenting in part).

37. Thus, the government must prove by clear and convincing evidence that Mr. Rivera's detention serves a legitimate government interest.

IMPARTIAL TRIBUNAL

38. Fundamental fairness requires, at a minimum, a meaningful opportunity to be heard before a neutral tribunal when the government restrains physical liberty for a prolonged period, *Zadvydas*, 533 U.S. at 690; *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)—a requirement not met in Petitioner's case.

39. Due process requires that immigration detention "'bear[] a reasonable relation to the purpose for which the individual was committed.'" *Demore v. Kim*, 538 U.S. 510, 527 (2003) (quoting *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001)).

40. Specifically, immigration detention must be reasonably related to the government's goals of preventing flight and protecting the community from harm, accompanied by adequate procedural protections to ensure that those goals are being served. *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001)). A fundamental procedural protection of due process is 'the opportunity to be heard.'" *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (citations omitted). Another one is "the guarantee of an impartial and disinterested tribunal," which

the Due Process Clause requires "in both civil and criminal cases." *Marshall v. Jerrico*, Inc., 446 U.S. 238, 242 (1980). In short, three elements must be met: (1) immigration detention must be reasonably related to prevent flight and harm to the community; (2) detainees must have the opportunity to be heard; and (3) an impartial and disinterested tribunal must be guaranteed.

41. Here, there is no disinterested tribunal. Immigration Courts have become a part of the Executive Branch's mass-removal and mass-detention apparatus.

42. Petitioner's removal defense is likely to continue for many additional months or years. Absent a disinterested, impartial tribunal, Petitioner faces a substantial risk of prolonged or indefinite detention under penal-like conditions without the government having to prove that it serves its legitimate interests.

43. The constitutional infirmity here is not merely the length of detention, but the complete absence of a meaningful custody process. Petitioner is detained pursuant to a regime in which DHS is not required to justify continued detention with evidence.

44. Fundamental fairness requires, at a minimum, a meaningful opportunity to be heard before a neutral adjudicator when the government restrains physical liberty for a prolonged period, *Zadvydas*, 533 U.S. at 690; *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

45. Because Respondents' policies offer no alternative constitutionally adequate custody process, habeas corpus is the only effective mechanism by

which Petitioner may contest the legality of his confinement. Continued detention under these circumstances offends the core protections of the Due Process Clause.

46. Petitioner respectfully requests that this Court order his immediate release from ICE custody; or in the alternative, order Respondents to provide a prompt, constitutionally adequate individualized custody hearing before a neutral decisionmaker with authority to grant release, at which the government bears the burden of justifying continued detention by clear and convincing evidence.

LEGAL REQUIREMENTS FOR BOND

47. Pursuant to 8 U. S. C. § 1225(b)(2)(A), aliens who are apprehended at or near the border, shortly after crossing, are subject to mandatory detention:

> Subject to subparagraphs (B) and (C), in the case of an alien 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 for a proceeding under section 1229a of this title.

[Emphasis added.].

48. However, aliens already present in the United States—not apprehended upon crossing or shortly thereafter—are eligible for bond hearings under 8 U. S. C. § 1226(a).

49. The Department of Homeland Security's policies and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), contravene the statutory framework regarding the detention of aliens. Aliens, such as Mr. Ricardo Rivera

Perez, who was not apprehended upon entering the U. S. and who has resided in the United States for decades are subject to 8 U. S. C. § 1226(a), allowing bond hearings.

50. 8 U. S. C. § 1225(a)(1) defines an applicant for admission:

> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

Respondents, therefore, assert that 8 U. S. C. § 1225(a)(1) and 8 U. S. C. § 1225(b) require detention for aliens who have entered without inspection.

51. If 8 U. S. C. § 1226(a) categorically excluded all aliens who entered without inspection from bond eligibility, the language in 8 U. S. C. § 1226(c)(1)(E) would be superfluous. 8 U. S. C. § 1226(c)(1)(E) provides for mandatory detention for aliens who are present without admission or parole *and* who have committed certain crimes. It follows that aliens without admission or parole are generally eligible for bond under 8 U. S. C. § 1226(a). *See Corley v. United States*, 556 U.S. 303, 314 (2009) (holding that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant").

52. The interpretation of 8 U. S. C. § 1226(a) as the default bond provision, regardless of manner of entry, is consistent with *Nielsen v. Preap*, 586 U. S. 392 (2019): "Although the Ninth Circuit viewed subsections [8 U. S. C. § 1226(a)] and [8 U. S. C. § 1226(c)] as establishing separate sources of arrest and release

authority, in fact subsection [8 U. S. C. § 1226(c)] is simply a limit on the authority conferred by subsection [8 U. S. C. § 1226(a)]." If 8 U. S. C. § 1226(c)(c)(1)(E) limits the authority of 8 U. S. C. § 1226(a) to grant bond to aliens who entered without inspection and committed certain crimes, 8 U. S. C. § 1226(a) generally provides authority to grant bond for persons who entered without inspection in other circumstances, for example, if they do not have any disqualifying crimes. If 8 U. S. C. § 1226(a) did not govern bond eligibility for aliens present without inspection, 8 U. S. C. § 1226(c) would not have mentioned them.

53. 8 C. F. R. § 236.1(c)(2) further reinforces these points: "Subject to paragraph (c)(6)(i) of this section, but notwithstanding any other provision within this section, an alien subject to the [Transition Period Custody Rules] who is not lawfully admitted is not eligible to be considered for release from custody." The regulation implies that an alien who was not lawfully admitted, but who is not subject to the Transition Period Custody Rules, is eligible to be considered for release from custody. *See United States v. Wells Fargo Bank*, 485 U.S. 351, 357 (1988) (holding that the expression of one is the exclusion of another).

54. Consistent with bond eligibility for aliens who entered without inspection, *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006), lists manner of entry as a discretionary factor. *Matter of Guerra* would not have listed "manner of entry" as a discretionary, not determining, factor if aliens without inspection

were ineligible for bond. Categorically excluding aliens from bond for having entered without inspection is arbitrary and capricious.

55. Bond eligibility for aliens who entered without inspection is further supported by *Jennings v. Rodriguez*, 583 U.S. 281 (2018). *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018) held that 8 U. S. C. § 1226(a) applies to aliens already present in the United States, as opposed to aliens seeking admission (subject to 8 U. S. C. § 1225(b)).

56. The U. S. Supreme Court ruled:

> In sum, U. S. immigration law authorizes the Government to detain certain aliens *seeking admission* into the country under §§1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§1226(a) and (c).

Jennings v. Rodriguez, 138 S.Ct. 830, 838 (2018) (emphasis added). The Supreme Court distinguished *aliens seeking admission* from *aliens already present in the country*. Aliens already present in the U. S. are eligible for bond.

57. Interpreting 8 U. S. C. § 1226(a), the Supreme Court avoided language that would have implied that only aliens admitted (or with inspection) qualify for bond. Instead, the Supreme Court referred to "aliens already present in the United States," which includes aliens present without inspection. *Jennings v. Rodriguez,* 138 S.Ct. 830, 846 (2018). "As noted, §1226 applies to aliens already present in the United States." *Id.*

58. On November 30, 2016, during oral argument for *Jennings v.*

Rodriguez, the Government represented that 8 U. S. C. § 1226(a) allows aliens who entered without inspection to qualify for bond. Justice Sonia Sotomayor asked the Government whether an alien who has resided within 50 miles of the border for 20 years would be subject to 8 U. S. C. § 1225(b). Transcript of Oral Argument at 8, *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018) (No. 15–1204). The Government replied that such an alien would be subject to 8 U. S. C. § 1226(a), eligible for bond. *Id.*

59. The relevant portion reads:

> JUSTICE SOTOMAYOR: So what happens to –I
>
> JUSTICE SOTOMAYOR: So what happens to --I don't know how many of these would exist, but an alien who has resided within 14 miles of the border, not 14 – how many miles?
>
> GENERAL GERSHENGORN: Within a hundred miles of the border and 14
>
> JUSTICE SOTOMAYOR: Hundred miles from the border, that's possible, who has been there for 20 years, they would still be held under 1225?
>
> GENERAL GERSHENGORN: So I'm sorry, Your Honor. They would be held under 1226(a). So this is on - - on - - they –if they hadn't committed other crimes, and - -and so, therefore, were not subject to the mandatory detention under 1226(c).
>
> JUSTICE SOTOMAYOR: I'm assuming no criminal alien.
>
> GENERAL GERSHENGORN: Okay.
>
> JUSTICE SOTOMAYOR: I'm talking about an alien who has come into the United States illegally without being admitted who takes up residence 50 miles from the border.
>
> GENERAL GERSHENGORN: The answer is they are held under 1226(a) and that they get a bond hearing under - -and this is at page 156a of the appendix.

Transcript of Oral Argument at 8, *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018) (No. 15–1204).

60. Furthermore, bond eligibility, under 8 U. S. C. § 1226(a), for persons who entered without inspection is consistent with the legislative history. The legislative history of 8 U. S. C. § 1226(a) demonstrates that congress intended for aliens already present in the United States be eligible for bond (except for certain criminal aliens subject to 8 U. S. C. § 1226(c)), even if they entered without inspection. Congress enacted the 8 U. S. C. § 1226(a) through the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. 104–208, 110 Stat. 3009.

61. Before IIRIRA, the predecessor to 8 U. S. C. § 1226(a) regulated Detention for aliens in the United States. *See* 8 U.S.C. § 1252(a)(1) (1994) ("Pending a determination of deportability . . . any [alien] . . . may, upon warrant of the Attorney General, be arrested and taken into custody."). The predecessor section also established bond eligibility for aliens who entered without inspection. *See* 8 U.S.C. § 1252(a)(1) (1994) ("[A]ny such [alien] taken into custody may, in the discretion of the Attorney General . . . be continued in custody . . . [or] be released under bond[.]").

62. Congress explained, "New section 236(a) [8 U. S. C. § 1226(a)] restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond an alien

who is not lawfully in the United States." H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.). In short, aliens who were already present in the United States, but who entered without inspection, were eligible for bond. Because congress declared this part unchanged, aliens who entered without inspection remain bond eligible.

63. The Laken Riley Act, Pub. L. 119-1, 139 Stat. 3009 (2025), added new grounds for mandatory detention under 8 U. S. C. § 1226(c). However, it made no effort to change 8 U. S. C. § 1226(a), leaving its original scope untouched. The Act confirmed decades of practice, allowing aliens already present in the United States, even if having entered without inspection, to qualify for bond.

64. The long-standing practice is reflected in the federal guidance associated with the original regulations implementing 8 U. S. C. § 1226(a). 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) established, "Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). If Congress wanted to limit this long-standing practice, it would have done so, amending 8 U. S. C. § 1226(a). The Laken Riley Act would have been the perfect opportunity to make the change, but congress chose not to, leaving bond eligibility requirements unchanged—even for aliens present without inspection.

65. These interpretations of the relevant statutory framework are

consistent with multiple decisions in this district. *See Cetino v. Hardin*, No. 2:25-cv-1037-JES-DNF (M. D. Fla. December 12, 2025); *Patel v. Parra*, No. 2:25-cv-870-JES-NPM (M. D. Fla. Dec. 2, 2025); *Reyes Rordriguez v. Florida Southside Facility*, No. 2:25-cv-1012-JES-DNF (M. D. Fla. December 15, 2025).

66. On February 6, 2026, the United States Court of Appeals for the Fifth Circuit endorsed the government's statutory interpretation in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026), foreclosing purely statutory claims to bond hearings under § 1226(a) within its Circuit. The Eight Circuit similarly ruled. *Herrera Avila v. Bondi*, No. 25-3248 (8th Cir. March 25, 2026).

67. However, even after the *Buenrostro-Mendez* decision, U. S. district courts within the Fifth Circuit continued granting writs of habeas corpus to aliens detained under 8 U. S. C. § 1225, pursuant to the Due Process Clause of the Fifth Amendment. *See e. g., Hassen v. Noem,* 3:26-cv-00048-DB, fn. 1 (W.D. Tex. Feb. 9, 2026) & *Clemente Ceballos v. Garite,* 3:26-cv-00312-DB, fn. 2 (W.D. Tex. Feb 10, 2026) ("*Buenrostro-Mendez* does not change this case's outcome on procedural due process grounds.").

68. Therefore, entry without inspection does not categorically bar aliens from bond eligibility.

STATEMENT OF FACTS

RESPONDENTS' CONDUCT

69. On January 20, 2025, the President of the United States issued

"Protecting the American People Against Invasion," an executive order, directing the Department of Homeland Security to "take all appropriate action to enable" ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures, such as mass detention.

70. In late May of 2025, Kristi Noem, former Secretary of Homeland Security, and White House Deputy Chief of Staff Stephen Miller coordinated with Immigration and Customs Enforcement, setting an arrest quota of 3,000 per day and threatening job consequences for officials not meeting the quota.[1]

71. On May 28, 2025, Deputy Chief of Staff Miller confirmed that "[u]nder President Trump's leadership, we are looking to set a goal of a minimum of 3,000 arrests for ICE every day, and President Trump is going to keep pushing to get that number up higher each and every single day."[2]

72. In an email, senior officials instructed ICE agents to "turn the creativity knob up to 11" and aggressively "push the envelope" in arrests, including pursuing "collaterals." One email advised, "If it involves handcuffs on wrists, it's probably worth pursuing."[3]

---

[1] Julia Ainsley, et al., A sweeping new ICE operation shows how Trump's focus on immigration is resphaping federal law enforcement, NBC News (June 4, 2025), https://www.nbcnews.com/politics/justice-department/ice-operation-trump-focus-immigration-reshape-federal-law-enforcement-rcna193494 (last visited January 12, 2026)

[2] Hannity, Sean, "Stephen Miller says the admin wants to create the strongest immigration system in US History," FOX NEWS (May 28, 2025), https://www.foxnews.com/video/6373591405112 (last visited January 13, 2026)

[3] Olivares, José, "US immigration officers ordered to arrest more people even without warrants," The Guardian (June 4, 2025) https://www.theguardian.com/us-news/2025/jun/04/immigration-officials-increased-detentions-collateral-arrests (last visited January 13, 2026)

73. On July 8, 2025, ICE, "in coordination with" the Department of Justice, issued the "Interim Guidance Regarding Detention Authority for Applicants for Admission," claiming that aliens who entered the United States without inspection are subject to mandatory detention under 8 U. S. C. § 1225(b)(2)(A)—regardless of when or where they were apprehended.

74. Under the new policy, it does not matter whether aliens have resided in the U. S. for decades, nor whether they were apprehended far from the border; if they entered without inspection, they are subject to mandatory detention, according to Respondents.

75. Similarly, in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals ruled that aliens who entered without inspection are subject to mandatory detention under 8 U. S. C. § 1225(b)(2)(A).

76. On January 13, 2026, Chief Immigration Judge Teresa L. Riley issued nationwide guidance instructing immigration judges to continue relying on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), despite *Bautista v. Noem*, No. Case No.: 5:25-cv-01873-SSS-BFM (C. D. Cal. December 22, 2025).

77. The Department of Homeland Security's policies and *Matter of Yajure Hurtado* contravene the statutory framework regarding the detention of aliens. Aliens, such as Mr. Rivera Perez, who was not apprehended upon entering the U. S. and who has resided in the United States for decades are subject to 8 U. S. C. § 1226(a), allowing for bond hearings.

PETITIONER'S CIRCUMSTANCES

78. Petitioner is a citizen of Mexico. On or about 2004, Petitioner entered the United States. Petitioner was not apprehended upon arrival. Petitioner has not left the United States since then.

79. Petitioner is detained at the Pinellas County Jail.

80. Prior to Petitioner's detention, he was residing in Clearwater, Florida, with his wife and three U. S. citizen children, two of whom are under 21.

81. On March 13, 2026, Petitioner was convicted of driving without a license, leading to his detention by the Pinellas County Sheriff's Office at the Pinellas County Jail.

82. On March 15, 2026, Immigration and Customs Enforcement issued an ICE Hold, requesting the Pinellas County Jail to detain Petitioner after complying with his sentence.

83. On April 1, 2026, the Pinellas County Jail complied with the ICE Hold.

84. On April 1, 2026, the Pinellas County Jail refused to release Petitioner, despite having satisfied his sentence, transferring him to a different part of the jail where persons with ICE Holds are held.

85. Neither the Pinellas County Jail nor ICE have a warrant for Petitioner's arrest. Yet, they continue to hold him.

86. Petitioner has extensive ties in the United States and is not a flight risk.

87.In fact, prior to Petitioner's detention, he had dutifully presented himself to every court hearing associated with his charge for driving without a license.

88. Petitioner has three U. S. citizen children, two under 21.

89. Petitioner is a person of good moral character and has no violent criminal record.

90. Petitioner has a pending application for T Nonimmigrant Status before U. S. Citizenship and Immigration Services, receipt number [redacted].

91. Petitioner is eligible for immigration relief, Non-LPR Cancellation of Removal under 8 U. S. Code § 1229b(b).

92. Petitioner does not have any hearings before the immigration court.

CLAIMS FOR RELIEF

COUNT I

I. Violation of the *Accardi* Doctrine with Respect to 8 C. F. R. § 287.8(C)(2)(I) and (II)

93. Under the *Accardi* doctrine, federal agencies must follow their binding regulations. Failure to abide by internal binding regulations renders agency action unlawful. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). This principle applies with full force in immigration proceedings and is enforceable through habeas corpus where regulatory violations result in unlawful detention.

94. The United States has failed to follow immigration-specific arrest and processing regulations. Warrantless arrests must comply with 8 C.F.R. § 287.8(c). For any arrest, immigration officers must have reason to believe that an individual committed an offense against the United States or was present in the United States illegally. 8 C.F.R. § 287.8(c)(2)(i). And, for a warrantless arrest, officers must also have reason to believe that an individual is "likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8(c)(2)(ii).

95. These regulatory requirements are mandatory, not discretionary. They impose substantive limitations on ICE's authority to conduct warrantless arrests in the interior of the United States and are designed to protect against arbitrary deprivations of liberty.

96. On April 1, 2026, Petitioner was taken into ICE custody without a judicial warrant. Petitioner was not evading law enforcement, was not subject to any criminal investigation, posed no danger to any person or to the community, and presented no risk of flight. Prior to being taken into ICE custody, Petitioner had a history of dutifully presenting himself to any and all court hearings. There was no factual basis to conclude that Petitioner was "likely to escape before a warrant could be obtained," as required by 8 C.F.R. § 287.8(c)(2)(ii).

97. ICE officers, therefore, failed to comply with a mandatory regulatory prerequisite to a lawful warrantless arrest. This violation of DHS's own binding regulations renders Petitioner's arrest unlawful under the *Accardi* doctrine.

98. The consequences of this regulatory violation are not limited to the

moment of arrest. Petitioner's ongoing detention flows directly from—and is predicated upon—the unlawful warrantless arrest conducted in violation of 8 C.F.R. § 287.8(c). Continued detention based on an arrest that contravenes binding regulations is itself unlawful.

99. Federal courts have repeatedly recognized that habeas corpus is an appropriate vehicle to remedy detention that results from an agency's failure to follow its own regulations, particularly where those regulations are designed to protect individual liberty. See *Accardi*, 347 U.S. at 267–68; *INS v. St. Cyr*, 533 U.S. 289, 301–05 (2001).

100. Habeas relief is therefore warranted. Petitioner respectfully requests that this Court grant the writ and order his immediate release from ICE custody or provide appropriate relief to remedy the unlawful detention resulting from DHS's regulatory violations where the government must justify the detention by clear and convincing evidence.

COUNT II

II. Constitutional Violation of the Right to Due Process

101. The government may not deprive a person of life, liberty, or property without the due process of the law. U. S. Const. amend. V; see *Zadvydas v. Davis*, 533 U. S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.").

102. Petitioner has a fundamental liberty interest in being free from

official restraint.

103. Detaining Petitioner without a bond redetermination hearing before an impartial tribunal, where the government bears the burden of proof by clear and convincing evidence, to assess whether he is a flight risk or danger to the community violates his due process rights.

COUNT III

III. Violations of the Immigration and Nationality Act (INA)

104. The mandatory detention provision of 8 U. S. C. § 1225(b)(2) does not apply to all aliens who entered the United States without inspection.

105. Specifically, the mandatory detention provision of 8 U. S. C. § 1225(b)(2) does not apply to aliens who have resided in the United States for decades and were not apprehended upon entry at the border.

106. Aliens who have resided in the United States for decades and were not apprehended upon entry at the border are eligible for bonds under 8 U. S. C. § 1226(a), unless they are subject to 8 U. S. C. § 1226(c), 8 U. S. C. § 1225(b)(1), or 8 U. S. C. § 1231.

107. Applying 8 U. S. C. § 1225(b)(2) to Petitioner contravenes the INA, unlawfully mandating his continued detention.

108. Respondents should allow Petitioner to request bond under 8 U. S. C. § 1226(a). See *Bautista v. Noem*, No. Case No.: 5:25-cv-01873-SSS-BFM (C. D. Cal. Feb. 18, 2026).

COUNT IV

IV. Violation of the Bond Regulations

109. Shortly after Congress amended the INA through IIRIRA, the former Immigration and Naturalization Service and the Executive Office for Immigration Review issued an interim regulation: 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Under the interim regulation, "[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 determination." 62 Fed. Reg. at 10323. Thus, agencies administering the INA's detention framework believed that entry without inspection did not disqualify aliens from bond eligibility under 8 U. S. C. § 1226(a).

110. Nevertheless, the EOIR and DHS have policies and practices of applying 8 U. S. C. § 1225(b)(2) to persons, such as Petitioner, who entered the U. S. without inspection, regardless of whether they were apprehended at the border or whether they have resided in the U. S. for decades. *See Matter of Yahure Hurtado*, 9 I&N Dec. 216 (BIA 2025).

111. *Matter of Yahure Hurtado*, 9 I&N Dec. 216 (BIA 2025) contradicts decades of policies and practice, constituting agency action that is arbitrary and capricious under the Administrative Procedure Act (APA), 5 U.S. Code § 706.

112. The application of 8 U. S. C. § 1225(b)(2) to Petitioner violates 8 C. F. R. § 236.1, 8 C. F. R. § 1236.1, and 8 C. F. R. 1003.19, unlawfully subjecting him

to mandatory detention.

PRAYER FOR RELIEF

1. Wherefore petitioner prays for the following relief from this court:

   a) Assume jurisdiction in this matter;

   b) Issue an immediate order barring the respondents from transferring Petitioner out of the Middle District of Florida while this habeas corpus petition is pending;

   c) Issue an order to show cause why this petition should not be granted within three (3) days;

   d) Declare petitioner's continued detention without bond violates applicable regulations, the APA, the INA, and the Fourth and Fifth Amendments to the Constitution of the United States;

   e) Declare that Petitioner's arrest by ICE violated the *Accardi* doctrine, Failing to comply with binding immigration arrest regulations;

   f) Issue a writ of habeas corpus, ordering respondents to release petitioner from custody, or, in the alternative, hold its own bond hearing before this Court; and

   g) Grant any further relief as the court may deem just and proper.

2. Alternatively, if the Court orders Respondents to promptly provide the Petitioner with a bond hearing before an immigration judge, the Petitioner respectfully requests the following additional safeguards:

a. That the Respondents shall bear the burden of establishing by clear and convincing evidence that the Petitioner poses a danger or flight risk;

b. That the Government shall not take into account or argue against bond based on any *ultra vires* factors outside the regulations;

c. That any bond set shall take into account the Petitioner's ability to pay and to the greatest extent possible utilize alternatives to detention;

d. That any order denying bond based on flight risk or danger shall detail with specificity the evidentiary/factual basis for such finding, and disclose the substance of any communications of any kind (direct or indirect, verbal, written, or in any other form) received after December 1, 2025, by the Immigration Judge issuing the order, regarding bond determinations for noncitizens after a writ habeas corpus has been issued;

e. That the Court shall retain jurisdiction to review the bond decision to ensure compliance with the Court's order and due process; and

f. That Respondents shall be prohibited from invoking the automatic stay provisions under 8 C.F.R. § 1003.19(i)(2) as that regulation violates the procedural due process rights of noncitizens granted bond.

DATED this 1st day of April 2026.

/s/José Manuel Godínez Samperio, Esq.
José Manuel Godínez Samperio, Esq.
Lead Counsel for Petitioner Ricardo Rivera Perez

PLAINTIFF-PETITIONER VERIFICATION

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, on information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

By: */s/ José Manuel Godínez Samperio*
José Manuel Godínez Samperio, Esq.
Florida Bar 111231
Pathway Legal Group, PLLC
3711 Cortez Road West, Suite 130
Bradenton, FL 34210
Tel. 941 265 85 95
E-mail: manuel@pathwaylegalgroup.com
Lead Counsel for Petitioner