

UNITED STATES DISTRICT COURT
for the
Middle District of Florida

EVELIO GARCIA PENA
Petitioner

vs

Case No. 3:26-cv-1040

WARDEN, in his official capacity of)
BAKER COUNTY CORRECTIONAL)
INSTITUTION UNITED STATES)
DEPARTMENT OF HOMELAND)
SECURITY; UNITED STATES)
IMMIGRATION AND CUSTOMS)
ENFORCEMENT; and TODD)
BLANCHE, in his official capacity as,)
ACTING ATTORNEY GENERAL OF)
THE UNITED STATES)
Respondents.)

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Evelio Garcia Pena, petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to compel his release from custody, as his current civil immigration detention violates the Due Process Clause of the United States Constitution and the Administrative Procedure Act.

JURISDICTION AND VENUE

1. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.*
2. This court has subject matter jurisdiction under 28 U.S.C. §§ 2241 and 1331, and Article I, section 9, clause 2 of the United States Constitution.
3. This Court may grant relief under the habeas corpus statutes, 28

U.S.C. § 2241 *et seq.*, the All Writs Act, 28 U.S.C. § 1651, and the INA, 8 U.S.C. § 1252(e)(2). This Court also has remedial authority under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

4. Venue is proper because Petitioner is in Respondents' custody in Sanderson, Florida at the Baker Correctional Institution pursuant to an intergovernmental service agreement between Respondent United States Immigration and Customs Enforcement ("ICE") and the State of Florida. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. *See* 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

5. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require Respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

6. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

7. **Petitioner Evelio Garcia Pena is a non-citizen.** Petitioner is currently detained at Baker Correctional Institution, 20706 FL-10, Sanderson, Florida 32087. He is in the custody, under the direct control, of Respondents and their agents. Petitioner's Alien number is 

8. **Respondent is the Warden** of the Baker Correctional Institution and has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent is a legal custodian of Petitioner.

9. **Respondent U.S. Immigration and Customs Enforcement (ICE)** is the federal agency responsible for custody decisions relating to noncitizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens. Respondent is a legal custodian of Petitioner.

10. **Respondent U.S. Department of Homeland Security** is the federal agency that has authority over the actions of ICE.

11. **Respondent Todd Blanche is the Acting Attorney General of the United States** and the senior official of the U.S. Department of Justice. He is sued in his official capacity. In that capacity, he has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals (BIA). Respondent Blanche is responsible for decisions relating to noncitizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens. Therefore, he is also Petitioner's legal custodian.

STATEMENT OF FACTS

12. Petitioner is a 46-year-old native of Nicaragua, who entered the United States at the southern border on or about November 13, 2022, seeking asylum. A Border Patrol officer paroled Petitioner into the United States, pursuant to INA § 212(d)(5). In January 2023, Parole was terminated and he was enrolled in Alternatives to Detention (ADF). Petitioner reported to ICE in January 2023 and has reported and complied with all requirements of ADF. He has resided in Jacksonville continuously until his detention in March 2026. Petitioner has four (4) children. A 29-year-old daughter that lives in Spain, a 19-year-old daughter that lives in Jacksonville with Petitioner (along with Petitioner's U.S. citizen grandchild), an eight (8) year old daughter that lives in Nicaragua, and a six (6) year old son that lives in Nicaragua.

13. Petitioner fled his native country of Nicaragua after having 


 and was threatened and harmed for his political opinion.

15. In September of 2024, Petitioner applied for affirmative asylum with United States Citizenship and Immigration Services (USCIS) based on the previous persecution by  On June 28, 2025, USCIS gave Petitioner work authorization and sent him a work authorization document, also known as a work permit. USCIS scheduled Petitioner for an interview on his asylum application on July 28, 2025. Petitioner traveled to the Tampa asylum office for his scheduled interview and was informed the interview had been cancelled and would

be rescheduled. He subsequently received notice of this cancellation. As of the date of Petitioner's detention, the interview had not been rescheduled.

16. Petitioner is employed as a landscaper and is employed by The Grounds Guys landscaping in Jacksonville, Florida.

17. Petitioner has never been arrested or detained prior to the current detention and has no criminal history. In March 2026, Petitioner was a passenger in a vehicle being driven by a United States citizen. The vehicle was stopped by Florida Highway Patrol for an alleged traffic violation and Petitioner was subsequently detained and delivered to ICE.

LEGAL FRAMEWORK

18. District courts have the power to grant writs of habeas corpus. 28 U.S.C. § 2241(a). The Constitution guarantees that the writ of habeas corpus is available to every individual detained within the United States. *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const. Art. I, § 9, cl. 2); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) ("The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and ... the traditional function of the writ is to secure release from illegal custody.").

19. A district court's power includes jurisdiction to hear habeas challenges to immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Furthermore, noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

20. Due process requires that if DHS seeks to re-arrest a person like the Petitioner---individuals who were released to continue removal proceedings, have lived in the United States without incident after their initial release, and have otherwise complied with the terms of their release---the government must afford a hearing before a neutral decisionmaker to determine whether any re-detention is justified because the person is a flight risk or danger to the community.

15. “Freedom from imprisonment---from government custody, detention, or other forms of physical restraint---lies at the heart of the liberty protected by the Due Process Clause.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Many courts across the country have recently recognized, this is the “the most elemental of liberty interests.” *E.A.T.-B*, 2025 WL 2402130, at *3 (citation modified); *see also Ramirez Tesara*, 2025 WL 2637663, at *3 (stating that the petitioner had “an exceptionally strong interest in freedom from physical confinement”).

16. Consistent with this principle, individuals released on parole or other forms of conditional release have a liberty interest in their “continued liberty.” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Such liberty is protected by the Fifth Amendment because, “although indeterminate, [it] includes many of the core values of unqualified liberty,” such as the ability to be gainfully employed and live with family, “and its termination inflicts a ‘grievous loss’ on the [released individual] and often on others.” *Id.*

17. To protect against arbitrary re-detention and to ensure the right to liberty, due process requires “adequate procedural protections” that test whether the government’s asserted justification for a noncitizen’s physical confinement

"outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (citation modified).

18. Due process thus guarantees notice and an individualized hearing before a neutral decisionmaker to assess danger or flight risk before the revocation of an individual's release. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) ("The fundamental requisite of due process of law is the opportunity to be heard . . . at a meaningful time in a meaningful manner." (citation modified)); *see also, e.g., Morrissey*, 408 U.S. at 485 (requiring "preliminary hearing to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed . . . a violation of parole conditions" and that such determination be made "by someone not directly involved in the case" (citation modified)). *See also United States v. Smith*, 30 F.4th 1334, 1338 (11th Cir. 2022) ("the complete denial of the opportunity to be heard on a material issue is a violation of due process which is never harmless error").

19. In *Ramirez Tesara* the Court reasoned that the petitioner had a "weighty" interest in his liberty and was entitled to the "full protections of the due process clause." 2025 WL 2637663, at *3. When examining the value of additional safeguards, the Court also noted that despite the government's allegations of ISAP violations, "the fact 'that the Government may believe it has a valid reason to detain Petitioner does not eliminate its obligation to effectuate the detention in a manner that comports with due process.'" *Id.* at *4 (quoting *E.A. T.-B*, 2025 WL 2402130, at *4). Finally, the Court reasoned that any government interest in re-detention without a hearing was "minimal." *Id.* Accordingly, there too, the Court ordered the

petitioner's immediate release. *Id.* at *5. Many other district courts across the country have agreed with this reasoning.

20. The same framework and principles apply here and compel the Petitioner's release.

CLAIMS FOR RELIEF

Violation of Fifth Amendment Right to Due Process Procedural Due Process

21. The allegations in the above paragraphs are realleged and incorporated herein.

22. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. While certain constitutional protections do not extend outside the "geographic borders" of the United States, "legal circumstances change" as soon as a noncitizen "enters the country." *Id.*; see also *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) ("[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.") (quoting *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per curiam)).

23. Due process does not permit the government to re-detain Petitioner and strip him of his liberty without written notice and a pre-deprivation hearing before a neutral decisionmaker to determine whether re-detention is warranted based on danger or flight risk. See *Morrissey*, 408 U.S. at 487–88. Such written notice and a hearing must occur *prior* to any re-detention.

24. Petitioner complied with all conditions of his Parole and subsequent ADT conditions. He has never been arrested. He applied for asylum and obtained work authorization. There was no basis for Respondents to detain Petitioner.

25. Respondents revoked Petitioner's release and deprived him of liberty without providing written notice and a meaningful opportunity to be heard by a neutral decisionmaker prior to his re-detention.

26. Accordingly, Petitioner's re-detention violates the Due Process Clause of the Fifth Amendment.

27. Under the APA, a court "shall . . . hold unlawful . . . agency action" that is "not in accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction, authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D).

PRAYER FOR RELIEF

- A. Retain jurisdiction over this action;
- B. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days pursuant to 28 U.S.C. § 2243;
- C. Declare that Petitioner's re-detention violates the Due Process Clause of the Fifth Amendment;
- D. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody immediately and permanently enjoining Petitioner's re-detention during the pendency of his removal proceedings absent written notice and a hearing prior to re-detention where Respondents must

prove by clear and convincing evidence that Petitioner is a flight risk or a danger to the community and that no alternatives to detention would mitigate those risks;

- E. Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the Court's approval;
- F. Award Petitioner attorneys' fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- G. Grant all other relief that the Court deems just and proper.

Date: 04/28/2026

/s/ Clifford Stripling

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Evelio Garcia Pena, and submit this verification on his behalf.

I hereby verify that the factual statement made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 28th day of April, 2026

s/ Clifford Stripling

Clifford Stripling, Esquire