

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Francisco Morocho Toabanda,
Petitioner,

V.

Warden , Florida Baker Correctional	X
Institute; Todd Blanche , Acting U.S.	X
Attorney General, U.S. Department of	X
Justice; Markwayne Mullin , Secretary,	X
U.S. Department of Homeland Security;	X
Garrett Ripa , Field Office Director,	X
U.S. Immigration and Customs Enforcement,	X
Miami, Florida,	X
<i>Respondents.</i>	X

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Case No.:

PETITION FOR A WRIT OF HABEAS CORPUS
REQUEST FOR EXPEDITED HEARING
REQUEST FOR ORAL ARGUMENT

This is an action for habeas corpus relief under 28 U.S.C. § 2241 and the Suspension Clause of the United States Constitution. Petitioner seeks an Order requiring either his release from the custody of U.S. Immigration and Customs Enforcement (“ICE”) or, alternatively, ordering that he receive a custody redetermination hearing before an Immigration Judge in accordance with 8 U.S.C. §1226 and 8 C.F.R. §1003.19.

Subject Matter Jurisdiction

1. That this Court has habeas corpus jurisdiction pursuant to 28 U.S.C. §2241 *et seq.*, and Article I, §9, Clause 2 of the United States Constitution (“Suspension Clause”). *See INS v. St Cyr*, 533 U.S. 289 (2001); *Demore v. Kim*, 155 L.Ed. 2d 724, 123 S.Ct. 1708 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001).
2. Petitioner is in custody for purposes of habeas corpus relief. He is currently detained in the custody of ICE at its Florida Baker Correctional Facility located in Sanderson, Florida. As will be explained in more detail, *infra*, Petitioner is currently detained under color of the authority of the United States of America.

Venue

3. That venue lies in the Jacksonville Division of the U.S. District Court for the Middle District of Florida because this is the judicial district in which Petitioner is currently detained by Respondents.

Parties

4. That Petitioner, **Francisco Morocho Toabanda** (A ) is a native and citizen of Ecuador.
5. That Respondent, **Warden**, Florida Baker Correctional Institute, is being sued in an official capacity. It is the Warden of the Florida Baker

Correctional Institute who has direct day-to-day control over the facility where Petitioner is currently detained.

6. That Respondent, **Todd Blanche**, is the Acting Attorney General of the United States. He is the cabinet level Secretary responsible for the Executive Office for Immigration Review ("EOIR"), a component agency within the United States Department of Justice ("USDOJ"). Defendant Blanche is being sued in an official capacity.
7. That Respondent, **Markwayne Mullin**, is the Secretary of Homeland Security and is being sued in an official capacity. In his official capacity, Respondent Mullin is in charge of enforcing the immigration laws of the United States. It is Respondent Mullin's refusal to release Petitioner from custody that is the subject of this petition.
8. That Respondent, **Garrett Ripa**, is the Field Office Director of ICE's Miami Field Office and is being sued in an official capacity. Respondent Ripa exercises authority over immigration enforcement matters within the Miami Field Office's jurisdiction. It is Respondent Ripa's decision to not effectuate Petitioner's release that is the subject of this petition.

Statement of Claim

9. That Petitioner is a native and citizen of Ecuador who last arrived in the United States without inspection in or about 2002.

10. That Petitioner concedes that he is an “alien” as defined at 8 U.S.C.

§1101(a)(3).

11. That on or about April 4, 2026, the Department of Homeland Security

(“Department”) issued a Form I-862, Notice to Appear (“Form I-862” or “NTA”), against Petitioner.

12. That the aforementioned Form I-862 initiated administrative removal

proceedings before the U.S. Immigration Court and charges that Petitioner is inadmissible to the United States in violation of 8 U.S.C.

§1182(a)(6)(A)(i) as “an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.”

13. That Petitioner is currently scheduled to appear before the Orlando

Immigration Court for a master calendar hearing that is currently scheduled to occur on May 29, 2026.

14. That on or about April 2, 2026, Petitioner was apprehended by ICE’s

Office of Enforcement and Removal Operations (“ERO”).

15. That upon apprehending an alien, ERO is charged with making an initial

custody determination as provided at 8 U.S.C. §1236 and 8 C.F.R. §236

et seq.

16. That as is common practice, ERO generally enters a “NO BOND” determination upon its initial apprehension of an alien who arrived in the United States without inspection and/or at a place other than designated.
17. That upon information and belief, Petitioner submits that ERO entered a “NO BOND” initial custody determination with reference to him.
18. That the Code of Federal Regulations provides a process through which an alien can seek a custody redetermination hearing before an Immigration Judge (“IJ”). *See generally* 8 C.F.R. §1003.19.
19. That on or about September 5, 2025, the Board of Immigration Appeals (“Board”) issued a precedent decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025).
20. That the question presented in Matter of Yajure Hurtado pertains to whether certain aliens who arrived in the United States without inspection can request a custody redetermination hearing in accordance with 8 U.S.C. §1226 and its implementing regulation set forth at 8 C.F.R. §1003.19.
21. That the current version of §1226 became part of the Immigration and Nationality Act (“INA” or “Act”) as a result of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, § 302(a), 110 Stat. 3009-546 (Sept. 30, 1996) (“IIRIRA”). Most of the changes made to the INA through enactment of the IIRIRA became effective on April 1, 1997.

22. That at all times beginning on April 1, 1997 and through publication of

Matter of Yajure Hurtado, Petitioner submits that he, and other similarly situated aliens, routinely requested and routinely received custody redetermination hearings in accordance with §1226 and 8 C.F.R. §1003.19.¹

23. That prior to IIRIRA's April 1, 1997 effective date, the legacy Immigration and Naturalization Service ("INS") published guidance relating to the questions presented herein. 62 Fed. Reg. 10312 (Mar. 6, 1997). This guidance includes the following passage:

"[a]s for non-criminal aliens, the rule reflects the new \$1,500 minimum bond amount specified by IIRIRA. 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....

Several commenters stated that Sec. 236 of the proposed rule as written is a reversal of long established procedure that provides that a noncriminal alien is presumptively eligible for release. The Service has been strongly criticized for its failure to remove aliens who are not detained. A recent report by the Department of Justice Inspector General shows that when aliens are released from custody, nearly 90 percent abscond and are not removed from the United States. The mandate of Congress, as evidenced by budget enhancements and other legislation, is increased detention to ensure removal. Accordingly, because the Service believes that the

¹ Petitioner notes the class-action litigation in Maldonado Bautista, et al. v. Ernesto Santacruz Jr., et al., Case No. 5:25-cv-1873-SSS-BFM (C.D. Ca.), that raises claims similar to those discussed herein. On or about December 18, 2025, the District Judge issued an *Order Granting Plaintiff Petitioners' Motion to Enforce Judgment* that requires eligible class members to be provided individualized bond hearings. On or about February 18, 2026, the District Judge issued an *Order Granting Plaintiff Petitioners' Motion to Enforce Judgment* that requires eligible class members to be identified and to be provided with information relating to this class action litigation. The government filed appeals of each order with the Circuit Court of Appeals. On or about March 6, 2026, the Ninth Circuit entered a stay of both orders to be effective outside of the Central District of California's territorial jurisdiction.

regulation as written is consistent with the intent of Congress, the interim rule has not modified the proposed rule in this regard.” *Id.* at 10323.

24. That on or about July 8, 2025, ICE issued new policy guidance entitled *Interim Guidance Regarding Detention Authority for Applicants for Admission*.

This guidance instructs those in the field that

“the only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under [8 U.S.C. §1226](a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under [8 U.S.C. §1227], with the exception of those subject to mandatory detention under [8 U.S.C. §1226](c).”

25. That Petitioner is being held indefinitely without access to an individualized bond hearing, which violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution. Petitioner’s indefinite detention is based solely on the Board’s decision in Matter of Yajure Hurtado.

26. That Petitioner submits that Matter of Yajure Hurtado was wrongly decided.

27. That upon information and belief, and in light of the Board’s publication of Matter of Yajure Hurtado, Petitioner submits that no IJ anywhere within the United States will consider Petitioner’s request seeking a custody redetermination hearing in accordance with the language at 8 C.F.R. §1003.19. Rather, an IJ is required to follow all binding Board precedent unless otherwise overruled. *See* 8 C.F.R. §1003.10(d); Matter of Anselmo, 20 I&N Dec. 25 (BIA 1989) (Immigration Judge must follow binding

Circuit precedent within that same Circuit where any Circuit Court precedent conflicts with any Board precedent decision).

28. That the Board's decision in Matter of Yajure Hurtado improperly stripped IJ's of the authority to set bond for individuals who entered the United States without inspection. In so doing, Petitioner submits that Matter of Yajure Hurtado miscategorizes individuals who entered without inspection and who have been present in the United States for an extended period of time thereafter as "applicants for admission" who are ineligible to be released on bond.

29. That the Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, 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 v. Davis, 533 U.S. 678, at 693 (2001).

30. That in Jennings v. Rodriguez, 138 S. Ct. 830, 842 (2018), Justice Alito explained that "§1225 applies primarily to aliens seeking entry into the United States." By contrast, "§1226 applies to aliens already present in the United States." Id. at 846. "Section 1226(a) creates a default rule for those aliens by permitting-but not requiring-the Attorney General to issue warrants for their arrest and detention pending removal proceedings.

Section 1226(a) also permits the Attorney General to release those aliens on bond[.]” Id. at 846.

31. That Petitioner posits that his ongoing detention, and his eligibility for consideration of release on bond is governed by §1226, not by §1225. At present, the undersigned is aware of dozens of individualized cases in which a district court has ruled that the Board misapplied §1225(b)(2)(A) to those who are not presently “seeking admission,” but who have instead been physically present in the United States for an extended time.

32. That in Hernandez Lopez v. Hardin, Case No. 2:25-cv-830-KCD-NPM (M.D. Fla. Sep. 25, 2025), Judge Dudek, sitting in the Ft. Myers Division of the U.S. District Court for the Middle District of Florida, concluded that

“[s]ection 1225 is titled: ‘Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing.’ Id. The use of ‘arriving’ indicates that the statute governs incoming noncitizens, not those present already. This is supported by the text of the statute itself, which is focused on inspections for noncitizens when they arrive via ‘crewman’ or as ‘stowaways.’ 8 U.S.C. §1225(b)(2). These limited and more specific methods of entry suggest that §1225 applies to noncitizens arriving at a border or port and are presently ‘seeking admission’ into the United States.

Context points in the same direction. Courts are meant to ‘construe statutes, not isolated provisions.’ King v. Burwell, 576 U.S. 473, 486 (2015).

As mentioned, the Supreme Court has identified §1226 as the ‘default rule’ applicable ‘to aliens already present in the United States.’ Jennings, 583 U.S. at 281, 288. ‘That Congress separated removal of arriving aliens from its more general section for ‘Apprehension and detention of aliens,’ §1226, implies that Congress enacted §1225 for a specific, limited purpose.” Pizarro Reyes, 2025 WL 2609425, at *5.”

33. That Petitioner submits that he has been denied the opportunity to receive meaningful custody review before an IJ as a result of the Board's publication of Matter of Yajure Hurtado and further submits that this denial violates well-established Due Process protections previously made available to Petitioner and to other similarly situated aliens.
34. That Petitioner's continued detention is not justified by an individualized assessment of flight risk or whether he poses a danger to the community. In so stating, Petitioner concedes that he must establish sufficient ties to the community such that he is not deemed a flight risk and would likewise be required to establish that his presence outside an immigration detention facility would not create any danger to the community at large.
35. That Petitioner submits that detention by the immigration authorities cannot be used as a punishment and should only be used when, following prescribed procedures, an alien is provided an individualized determination as to whether or not he poses either a risk of flight or may otherwise be deemed a danger to the community. Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

Causes of Action

36. **First Claim.** Petitioner's ongoing detention violates Petitioner's substantive and procedural due process rights under the Fifth Amendment of the United States Constitution. U.S. CONST. amend. V.

37. Second Claim. Petitioner's ongoing detention violates the Fourth Amendment of the United States Constitution because there are no reasonable, objective grounds for Petitioner's ongoing and indefinite detention. U.S. CONST. amend. IV.

Exhaustion

38. That Petitioner challenges the constitutionality of his ongoing, indefinite and unlawful detention. He does not challenge the Department of Homeland Security's authority to conduct removal proceedings against him or any other action taken by the federal government.

39. That the Immigration and Nationality Act ("INA" or Act") provides that

"[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. §1252(g).

40. That while Petitioner notes that the language at §1252(g) prohibits an alien from bringing an action challenging an agency decision to "commence proceedings," Petitioner submits that his continued detention without any possibility of release violates his Constitutional rights as otherwise detailed in this Petition.

41. That Petitioner has exhausted his administrative remedies. The administrative process allows for no remedy for the injuries inflicted by Respondents' actions as described herein. Rather, any IJ who receives a

request for a custody redetermination hearing from an alien who entered the United States without inspection must deny any such request as a result of the Board's publication of Matter of Yajure Hurtado and its designation as a precedent decision. *See* 8 C.F.R. §1003.1(d).² Petitioner submits that no administrative remedies exist that would allow consideration of any of the issues of concern described in this Petition before any administrative agency.

42. That to the extent that any administrative process may exist, exhaustion of administrative remedies, which is a prudential requirement, is not required here because any administrative process would be futile, and because Petitioner raises serious Constitutional questions herein.

28 U.S.C. §2242 VERIFICATION

43. That in accordance with 28 U.S.C. §2242, the undersigned, acting on behalf of Petitioner, verifies that the contents of this Petition are true and correct to the best of the undersigned's knowledge.

² "The Board shall function as an appellate body charged with the review of those administrative adjudications under the Act that the Attorney General may by regulation assign to it. The Board shall resolve the questions before it in a manner that is timely, impartial, and consistent with the Act and regulations. In addition, the Board, through precedent decisions, shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the Act and its implementing regulations."

Prayer For Relief

Petitioner respectfully prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Consider this Petition and the associated requests for relief on an expedited basis;
3. Declare that Petitioner is currently detained in the custody of Respondents in violation of the Constitution and laws of the United States and that Petitioner is being detained indefinitely without any means of seeking any custody redetermination before the Office of the Chief Immigration Judge or before any other administrative agency;
4. Grant temporary and permanent injunctive relief requiring Petitioner to be released from ICE's custody. Alternatively, Petitioner would request that this Court grant temporary and permanent injunctive relief requiring an Immigration Judge to complete a custody redetermination hearing within a time certain following issuance of any such order;

5. Award Petitioner his costs and reasonable attorneys' fees in this action as provided by 28 U.S.C. §2412 or other statute; and
6. Grant such further relief as the Court deems just and proper.

Dated: May 5, 2026

Respectfully submitted,

/s/ David Stoller /s/
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Table of Contents

Documents in Support of Petition

Francisco Morocho Toabanda v. Warden, Florida Baker Correctional Institute, et al.

- Exhibit 1: Online Detainee Locator printout relating to Petitioner;
- Exhibit 2: *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312 (Cover Page) & 10323 (Supplemental Information) (Mar. 6, 1997).
- Exhibit 3: *ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission* (July 8, 2025).