UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

ELIZALDE ORTIZ,

HUMBERTO

Petitioners/Plaintiff, v.

MATTHEW MORDANT, in their official capacity as Alligator Alcatraz Field Office Director for Enforcement and Removal Operations, United States Immigration and Customs Enforcement;

KRISTI NOEM, in their official capacity as Secretary of the United States Department of Homeland Security;

PAMELA BONDI, in their official capacity as Attorney General of the United States;

GARRET RIPA, in their official capacity as Director of Miami Field Office, U.S. Immigration and Customs Enforcement;

TODD LYONS, in their official capacity as Acting Director of Immigration and Customs Enforcement;

CHARLES PARRA, in their official capacity as Assistant Field Office Director for the Krome North Service;

Respondents-Defendants.

Case No. 25-cv-01160

A[redacted]

PETITION FOR WRIT OF HABEAS CORPUS

The Petitioner, Humberto Elizalde Ortiz, submits this Petition for 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.

INTRODUCTION

1. Petitioner respectfully petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, challenging his continued and unlawful detention by United States Immigration and Customs Enforcement ("ICE"). Petitioner seeks immediate release, or in the alternative, a constitutionally adequate bond hearing.

2. Petitioner, Humberto Elizalde Ortiz, is a Native and Citizen of Mexico. He is currently 38 years old, as his date of birth is [redacted] See **Exhibit A** – Passport and Birth Certificate.

3. Petitioner entered the United States without inspection in 2005 when he was 17 years old. He has not left the United States since that time.

4. On or about December 3, 2025, Petitioner was detained by local law enforcement while he was picking up trash on the side of the road for his employment. The Petitioner was not charged with a crime, however, local law enforcement called Immigration and Customs Enforcement ("ICE") and the Petitioner was taken into custody.

5. After ICE took the Petitioner into custody, the Petitioner was

transferred to Florida Soft Side South, also commonly referred to as Alligator Alcatraz. See **Exhibit B** – ICE Detainee Locator.

6. Petitioner lives with his United States citizen spouse and his United States citizen son in Haines City, FL. Prior to his detention, he provided financial and emotional support to his family. His ongoing detention imposes a severe hardship by depriving his family of both his financial support and his supportive presence.

7. Petitioner has no prior orders of removal from the United States.

8. Petitioner is not subject to mandatory detention for a criminal conviction under 8 U.S.C. §1226(c).

9. Petitioner's ongoing detention violates the Immigration and Nationality Act, the Due Process Clause of the Fifth Amendment, and governing Supreme Court precedent.

10. This petition challenges the government's ongoing violation of Petitioner's statutory and constitutional rights. ICE's continued detention of Petitioner violates the Immigration and Nationality Act ("INA"), which limits civil detention to reasonable periods and lawful purposes, as well as the Due Process Clause of the Fifth Amendment, which prohibits punitive or arbitrary detention.

11. Petitioner's continued detention has become punitive in nature, violating the Due Process Clause of the Fifth Amendment. Civil detention is permissible only so long as it serves a legitimate immigration purpose, such as ensuring appearance or protecting the public.

12. His prolonged detention bears no reasonable relation to those purposes and instead operates as punishment. Such punitive confinement is unconstitutional in the context of civil immigration.

13. Petitioner's continued detention is unlawful because it (1) exceeds the scope of detention authority permitted under the INA, and (2) violates the Fifth Amendment's Due Process Clause by subjecting him to punitive and indefinite confinement.

14. Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus and order Petitioner's release from custody, with appropriate conditions of supervision if necessary, without the need for alternatives to detention (ankle monitoring). In the alternative, Petitioner requests that this Court conduct or order an immigration judge to conduct a bond hearing at which (1) the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) the reviewing court considers alternatives to detention that could mitigate risk of flight. Continued detention under these circumstances serves no legitimate governmental purpose and violates the humanitarian and constitutional principles that govern civil immigration custody.

15. The Court should not dismiss this action because the Petitioner has not exhausted available administrative remedies by requesting a new bond hearing. Courts have traditionally found that a petitioner need not exhaust administrative remedies where "no genuine opportunity for adequate relief exists" or an administrative appeal would be "futile". See *Linfors v. United States*, 673 F.2d 332, 334 (11th Cir. 1982).

16. On July 8, 2025, ICE issued an internal memo to all ICE employees to take the position aliens that have entered the United States without inspection should be designated as an "applicant for admission" under INA § 235(a)(1) regardless of when and where they are detained. In addition, the memo instructs that these aliens are ineligible for a custody redetermination hearings ("bond hearing") and may not be released for the duration of their removal proceedings absent a parole by DHS. See **Exhibit C** – July 8, 2025 ICE Memo.

17. On September 5, 2025, in *Matter of Yajure Hurtado*, the Board of Immigration Appeals ("BIA") held that immigration judges have *no authority* to consider bond requests from noncitizens who entered the United States without inspection "because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." 29 I&N Dec. 216, 220 (B.I.A. 2025). See **Exhibit D** – Matter of Yajure Hurtado Decision.

18. On November 20, 2025, in *Maldonado Bautista vs. Noem*, the federal district court for the Central District of California, granted a partial summary judgment rejecting *Matter of Yajure Hurtado* and the predecessor ICE policy applying 235(b)(2)(A) detention without bond to all persons who entered without admission/inspection. (See **Exhibit E**, Partial Summary Judgement). On November 25, 2025, the same court issued a class certification. (See **Exhibit F**, attached Order of the Class Certification).

19. The Petitioner meets the requirements of the class certification in *Maldonado Bautist*a because he previously entered the United States

without inspection, was not apprehended upon arrival, and is not subject to detention under 8 U.S.C. §1226(c); § 1225(b)(1); or § 1231.

20. Despite the ruling in *Maldonado Bautista*, immigration judges in the United States, including Krome Detention Center where Petitioner would file a motion for bond, are holding that *Maldonado Bautista* does not apply and are continuing to find that respondents are not eligible for a bond hearing under *Hurtado*. See **Exhibit G**, Immigration Judge Orders.

21. Therefore, since the result of a motion for bond and subsequent appeal to the Board of Immigration Appeals would be futile, this Court should find that exhaustion of administrative remedies is not required as this Court has found in numerous similar cases in this district. See *Gabriel Cetino v. Hardin*, No. 25-cv-1037-JES-DNF, 2025 WL 3558138, at *2 (M.D. Fla. Dec 12, 2025); *Patel v. Hardin*, No. 25-cv-870-JES-NPM, 2025 WL 3442706, at *3 n.5 (M.D. Fla. Dec 1, 2025).

JURISDICTION AND VENUE

22. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in federal custody and seeks a writ of habeas corpus challenging the legality of his continued civil detention by U.S. Immigration and Customs Enforcement ("ICE") in violation of the Constitution and laws of the United States.

23. Venue is proper in this Court under 28 U.S.C. § 2241(a) because Petitioner is detained within the geographic boundaries of the Middle District of Florida, at Florida Soft Side South in Collier County, Florida, which lies within the Fort Myers Division of this District.

PARTIES

24. **HUMBERTO ELIZALDE ORTIZ** is a citizen and national of Mexico, born on [redacted] He is in custody, and under the direct control, of Respondents and their agents.

25. Respondent **GARRET RIPA** is sued in his official capacity as the Acting Director of the Miami Field Office of U.S. Immigration and Customs Enforcement. Respondent Ripa exercises authority over Petitioner's detention, transfer, and potential release.

26. Respondent **KRISTI NOEM** is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent **NOEM** is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention and custody. Respondent NOEM is a legal custodian of Petitioner.

27. Respondent **PAM BONDI** is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent BONDI is a legal custodian of Petitioner.

28. Respondent, **MATTHEW MORDANT**, is sued in his official capacity as the as Alligator Alcatraz Field Office Director for Enforcement and Removal Operations, United States Immigration

and Customs Enforcement, which is the agency directly Responsible for Petitioner's detention and custody.

29. Respondent **TODD LYONS** is sued in his official capacity as Acting Director of Immigration and Customs Enforcement.

30. Respondent, **CHARLES PARRA**, is sued in his official capacity as Assistant Field Office Director for the Krome North Service.

LEGAL FRAMEWORK

31. Federal courts possess jurisdiction to review immigration detention claims through the writ of habeas corpus under **28 U.S.C. § 2241.** The statute explicitly allows challenges by individuals who are "in custody in violation of the Constitution or laws or treaties of the United States" Habeas review is particularly appropriate where detention is arbitrary, prolonged, or otherwise unlawful.

32. Numerous courts have affirmed that immigration detainees may invoke § 2241 to test the legality of their confinement. See *INS v. St. Cyr*, 533 U.S. 289 (2001) (recognizing habeas jurisdiction for legal and constitutional claims of noncitizens); *Zadvydas v. Davis*, 533 U.S. 678 (2001) (permitting habeas relief where detention exceeds statutory or constitutional limits). Because Petitioner is detained in this District, jurisdiction properly lies with this Court.

33. The Fifth Amendment's Due Process Clause applies broadly to "all persons" within the United States, including noncitizens regardless of their immigration status. See *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). The protection of due process encompasses both liberty and bodily integrity and includes freedom from arbitrary civil detention.

34. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a binding precedent decision holding that an immigration judge lacks authority to consider bond requests for individuals who entered the United States without admission. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board concluded that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible for release on bond. As a result, Petitioner has been categorically barred from seeking custody redetermination before an immigration judge.

35. The Fifth Amendment prohibits the federal government from imposing punishment without due process of law. This principle extends to immigration detention, which is civil, not criminal, in nature. *See Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Conditions of confinement for civil detainees are unconstitutional when they rise to the level of punishment rather than regulation.

36. In this case, the Petitioner is detained by the Government as an alien who entered the United States without inspection (EWI). He has not received notice of a future court date, is being held at Alligator Alcatraz without bond, or the right to a bond hearing.

37. Petitioner's continued detention without bond or the right to a bond hearing violates the Fifth Amendment of the United States Constitution, the Immigration and Nationality Act, and the Code of Federal Regulations.

38. For the reasons mentioned previously, exhaustion of administrative remedies would be futile and Petitioner's sole legal remedy to challenge his unlawful detention is through this underlying Petition for Writ of Habeas Corpus.

COUNT 1

Violation of Fifth Amendment Right to Due Process

(against all Respondents)

39. Petitioner incorporates by reference all preceding paragraphs as it fully sets forth herein.

40. [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.*

41. To determine whether civil detention violates a detainee's due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts consider (1) the private interest 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 Government's interest, including the function involved and the fiscal administrative burdens that the additional or substitute procedural requirement would entail. *See id. At 335.*

42. Here, all three factors favor Petitioner. He has a significant private interest at stake. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (freedom from physical detention is "the most elemental of liberty interests"); *see also Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that [the

Due Process] Clause protects."). The petitioner is experiencing all the deprivations that come with physical detention, including separation from his family and the inability to work to support his family. Next, there is a large risk of the erroneous deprivation of Petitioner's liberty interest through the procedures used in the immigration court proceedings particularly with Petitioner's manner of entry. There are also alternative procedures, such as a cash bond, surrender of passport, and other measures that might mitigate risk of flight. Finally, to the extent there is any government interest in detention, it is minimal compared with Peitioner's liberty interest.

COUNT 2

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT 8 U.S.C. §§ 1226

(against all Respondents)

43. Petitioner incorporates by reference all preceding paragraphs as it fully sets forth herein.

44. The Immigration and Nationality Act authorizes immigration detention only for narrow, lawful purposes: to ensure attendance at removal proceedings and to protect the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention beyond those limited purposes violates both the statute and the Constitution.

45. Petitioner's detention exceeds the statutory limits Congress intended.

46. Petitioner is not subject to an order or removal under 8 U.S.C. § 1231.

47. Petitioner is not subject to mandatory detention under 8 U.S.C. §1226(c).

48. Petitioner is not "seeking admission" into the United States under 8 U.S.C. § 1225(a)(1). The government's argument against this conclusion has been repeatedly rejected by this district. See *Gabriel Cetino v. Hardin*, No. 25-cv-1037-JES-DNF, 2025 WL 3558138, at *2 (M.D. Fla. Dec 12, 2025); *Patel v. Hardin*, No. 25-cv-870-JES-NPM, 2025 WL 3442706, at *3 n.5 (M.D. Fla. Dec 1, 2025).

49. Therefore, Petitioner's custody and detention falls only under 8 U.S.C. §1226(a) which states that an alien may be released on a bond of at least $1,500.

50. Petitioner is not a flight risk or a danger to the community. He has lived in the United States for almost 20 years and has a minor criminal record of criminal traffic offenses.

51. The government has not shown that Petitioner's continued detention is necessary to secure his appearance or to protect the public. Reasonable alternatives to detention—such as bond, supervision, or release on recognizance— could achieve the same ends.

52. Accordingly, Petitioner's ongoing detention violates 8 U.S.C. §1226(a) because he is being detained without bond or the right to a bond hearing. He respectfully requests that this Court order his immediate release or, in the alternative, direct that he receive a

prompt bond hearing at which the Government bears the burden of establishing flight risk or dangerousness by clear and convincing evidence. Continued detention under these circumstances transforms what Congress intended to be temporary custody into indefinite civil confinement.

COUNT 3

Violation of the Bond Regulations

53. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

54. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[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 redetermination." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

55. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court assume jurisdiction over this Petition and Complaint and grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) Issue a writ of habeas corpus under 28 U.S.C. § 2241 ordering Petitioner's immediate release from immigration custody at the Florida Soft Side South Facility;

(4) In the alternative, if the Court determines that immediate release is not warranted, order Respondents to provide Petitioner with a prompt and constitutionally adequate bond hearing before an immigration judge within fourteen (14) days of this Court's order;

(5) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the Court's approval;

(6) Declare that Petitioner's continued detention without an individualized custody determination violates the Due Process Clause of the Fifth Amendment and exceeds the scope of authority permitted under the Immigration and Nationality Act, 8 U.S.C. § 1226;

(7) Award such other and further relief as the Court deems just and proper, including, if necessary, temporary or preliminary injunctive relief to ensure Petitioner's health and safety pending adjudication of this matter.

Respectfully submitted,

/s/ E.J. Hubbs, Esq.

Florida Bar No. 073843
Hubbs Law, P.A.
5975 Sunset Drive, Suite 502
Miami, Florida 33143
(305) 665-9040
ejhubbs@hubbslawfirm.com

Dated: December 12, 2025

VERIFICATION

Pursuant to 28 U.S.C. § 2242 and 28 U.S.C. § 1746. I declare under penalty of perjury that the facts set forth in the foregoing Petition for a Writ of Habeas Corpus are true and correct.

/s/ E.J. Hubbs, Esq.

Florida Bar No. 073843
Hubbs Law, P.A.
5975 Sunset Drive, Suite 502
Miami, Florida 33143
(305) 665-9040
ejhubbs@hubbslawfirm.com

Dated: December 12, 2025