

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

ERIK IVAN RODRIGUEZ FLORES,

Petitioner,

v.

Case No. 3:26-cv-00338

PAMELA BONDI, ATTORNEY
GENERAL,

KRISTI NOEM, SECRETARY, U.S.
DEPARTMENT OF HOMELAND
SECURITY,

TODD M. LYONS, ACTING
DIRECTOR OF IMMIGRATION
AND CUSTOMS ENFORCEMENT,

MARY DE ANDA-YBARRA,
ACTING FIELD OFFICE
DIRECTOR FOR THE ERO EL
PASO CAMP EAST MONTANA,

MARISA FLORES, FIELD OFFICE
DIRECTOR FOR THE EL PASO
FIELD OFFICE,

MAJOR GENERAL CURTIS
TAYLOR, COMMANDING
GENERAL, U.S. ARMY AT FORT
BLISS

Respondents.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
EXPEDITED HANDLING REQUESTED

INTRODUCTION

1. Petitioner Mr. Erik Ivan Rodriguez Flores, (“Mr. Rodriguez Flores” or “Petitioner”), by and through the undersigned attorneys, hereby files this petition for a writ of habeas corpus and a complaint for declaratory and injunctive relief to require U.S. Immigration and Customs Enforcement (“ICE”) to release Petitioner from ICE detention and return Petitioner to Minnesota. Petitioner is a Venezuelan national and Minnesota resident with no criminal history who is being unlawfully detained without bond in El Paso, Texas.

2. Despite Petitioner’s pending asylum claim, ICE is holding Petitioner without bond pursuant to its new blanket policy that all aliens who entered the United States without admission or inspection are subject to mandatory detention without bond pursuant to 8 U.S.C. § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Since the Board of Immigration Appeals (BIA) declared this blanket policy of mandatory detention, a wave of “hundreds of decisions rejecting the BIA’s analysis” has issued from district courts across the country. *Nava v. Jamison, et. al.*, No. CV-26-151, 2026 WL 126152, *1 (E.D. Pa. Jan. 16, 2026) (citing *Salinas Jaigua v. Jamison*, No. 25-7115, 2025 WL 3757076 (E.D. Pa. Dec. 29, 2025) (collecting cases)). Individuals who, like Petitioner, have lived in the United States for an extended period of time are subject to detention under a different statute, 8 U.S.C. § 1226(a), which does *not* authorize mandatory detention without bond. *Nava*, 2026 WL 126152 at *2. In these cases, due process requires an individualized bond hearing or prompt release. *Id.* at *2—3.

3. Petitioner challenges his detention as a violation of the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment. 8 U.S.C. § 1254a(d)(4). Petitioner is not subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A), and due process requires that Petitioner receive a prompt, individualized bond hearing or immediate release pursuant to 8 U.S.C. § 1226. Defendants' insistence on detaining Petitioner and Defendants' blanket policy of refusing to provide individualized bond hearings are not only statutory violations, but also violations of Petitioner's constitutional right to due process under the Fifth Amendment to the United States Constitution.

4. Because there is no meaningful dispute with respect to the facts, and this Petition only raises issues of law, this Court may grant Petitioner's requested relief without need for a hearing. *See Tijerina v. Thornburgh*, 884 F.2d 861, 866 (5th Cir. 1989) (citations omitted) (finding that although 28 U.S.C. § 2243 requires the court to "summarily hear and determine the facts," the court need not hold an evidentiary hearing "[w]here the [habeas] petitioner raises only questions of law, or questions regarding the legal implications of undisputed facts."); *Lala Barros v. Noem, et al.*, No. EP-25-cv-488-KC, 2025 WL 3154059, *1 (W.D. Tx. Nov. 10, 2025) (finding no hearing necessary to grant in part petition for habeas corpus where facts not in dispute, or resolving facts in favor of government respondents.)

JURISDICTION AND VENUE

5. Petitioner is in the physical custody of Respondents. Petitioner is detained at ERO El Paso Camp East Montana, located at 6920 Digital Road, El Paso, Texas 79936.

6. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1361 (federal employee mandamus action); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 2241 (habeas corpus); Art. I, § 9, c. 2 of the U.S. Constitution (“Suspension Clause”); 5 U.S.C. § 702 (waiver of sovereign immunity); and 28 U.S.C. § 2201 (Declaratory Judgment Act).

7. Federal question jurisdiction exists because Mr. Rodriguez Flores seeks to challenge his custody as a violation of the Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.

8. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by the Department of Homeland Security (“DHS”). *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Jennings v. Rodriguez*, 138 S. Ct. 830, 839-41 (2018); and *Nielsen v. Preap*, 139 S. Ct. 954, 961-63 (2019); *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 679 (W.D. Tex 2025) (the district court has jurisdiction to hear constitutional claim that an immigrant’s detention without a bond hearing violated his Fifth Amendment rights.)

9. Venue lies in the United States District Court for the Western District of Texas, the judicial district in which Petitioner currently is detained. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973); *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025); *Lala Barros*, 2025 WL 3154059, *3 (“because [petitioner] is detained in El Paso, Texas, his habeas petition must be heard here”).

10. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A), because Respondents are operating in this district.

REQUIREMENTS OF 28 U.S.C. § 2243

11. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

12. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . 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).

PARTIES

13. Petitioner is a citizen of Venezuela and resident of St. Paul, Minnesota. He is currently indefinitely detained by and under the direct control of Respondents in Texas without any scheduled release date.

14. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice. Attorney General Bondi shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Noem. Attorney General Bondi is a legal custodian of Petitioner.

15. Respondent Kristi Noem is being sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), routinely transacts business in the Western District of Texas, and ultimately supervises the

ERO El Paso Camp East Montana, and is legally responsible for pursuing Petitioner's detention and removal. As such, Respondent Noem is a legal custodian of Petitioner.

16. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Defendant Lyons is responsible for Petitioner's detention.

17. Respondent Mary De Anda-Ybarra is being sued in her official capacity as the Acting Field Office Director for the ERO El Paso Camp East Montana for ICE within DHS. In that capacity, Field Director De Anda-Ybarra has supervisory authority over the ICE agents responsible for detaining Petitioner.

18. Respondent Marisa Flores is being sued in her official capacity as the Field Office Director for the El Paso Field Office for ICE within DHS. In that capacity, Field Office Director Marisa Flores has supervisory authority over the ICE agents responsible for detaining Ms. Pena Basilio. The address for the El Paso Field Office is 1541 Montana Ave, Suite E, El Paso, Texas, 79936.

19. Respondent Major General Curtis Taylor is being sued in his official capacity as the Commanding General responsible for the ERO El Paso Camp East Montana Detention Center within the U.S. Army Fort Bliss. Because Petitioner is detained in the ERO El Paso Camp East Montana Detention Center, Major General Taylor has immediate day-to-day control over Petitioner.

FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

18. Petitioner is a resident of St. Paul, Minnesota and a citizen of Venezuela, and has lived in the United States since October of 2023. Petitioner lives with his cousin in St. Paul.

19. Petitioner entered the United States using CBP One. He applied for asylum in San Diego, California. His docket date is October 9, 2024. He has a pending asylum application and does not have a final order of removal. He has attended his court dates in San Diego and has an upcoming master hearing on February 5, 2026.

20. Petitioner moved to Minnesota to find work. He supports himself by driving for a ride-share service and spends a large amount of time working to support himself. When he is not working, he spends time with his cousin and rests after long hours driving for a living.

21. On January 7, 2025, Petitioner was walking from his home to his car to begin working his shift. Without warning, a number of ICE agents approached him and arrested him. Respondent ICE did not present a warrant to Petitioner at any time.

22. For 15 days, Petitioner's family did not know where he was or what had happened to him. On January 22, 2026, he was able to call his cousin for the first time. By then, ICE had already moved Petitioner from Minnesota to El Paso, Texas.

23. Petitioner has not been offered a bond hearing.

24. Mr. Rodriguez Flores respectfully seeks the opportunity to return home and continue following the legal processes set up by Congress and DHS for immigrants to seek status in this country.

STANDARD OF LAW

25. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The “Great Writ” has been referred to by US Courts 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). A petitioner may seek a writ of habeas corpus when their custody violates the US Constitution or a federal law. 28 U.S.C. § 2241(c)(3). The Constitution guarantees that the writ of habeas corpus is “available to every individual detained within the United States,” including immigration related detention. *Vieira v. Anda-Ybarra*, No. EP-25-cv-00432-DB, 2025 WL 2937880, *2 (W.D. Tex. Oct. 16, 2025) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004)).

26. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including [immigrants], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

27. In July of 2025, Respondent DHS began ignoring the decades-long consensus of how 8 U.S.C. § 1225(b)(2) should be interpreted, which the Board of Immigration Appeals (“BIA”) articulated in a subsequent ruling. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Respondents suddenly claim that individuals who have been residing within the United States for more than two years are somehow metaphorically “seeking admission,” simply because they may have pending claims for asylum or other forms of status.

28. Courts in the Western District of Texas, like their sister courts across the country, have consistently rejected Respondents’ new reading of the detention statutes and held that § 1226(a)—not § 1225(b)(2)—governs custody for long-resident noncitizens arrested in the interior, including those charged with entry without inspection. Multiple decisions from this District provide detailed reasoning that strongly supports Petitioner’s position here. *See Gonzalez Guerrero v. Noem*, No. 1:25-cv-01334-RP (W.D. Tex. Oct. 27, 2025) (preliminary injunction holding that § 1226, not § 1225(b)(2), governs custody for interior arrests because a broad reading of § 1225(b)(2) would render § 1226 superfluous); *Pereira-Verdi v. Lyons*, No. 5:25-cv-01187-XR (W.D. Tex. Oct. 10, 2025) (TRO requiring § 1226 process and enjoining re-detention without notice and a pre-deprivation hearing); *Hernandez-Ramiro v. Bondi*, No. 5:25-cv-01207-XR, 2025 WL 2976923 (W.D. Tex. Oct. 15, 2025) (TRO requiring a prompt § 1226 bond hearing with the Government bearing the burden, or release if no hearing is set); *Santiago-Santiago v. Noem*, No. 3:25-cv-361-KC, 2025 WL 2792588 (W.D. Tex. Oct. 1, 2025) (granting habeas relief for a DACA recipient misclassified under § 1225(b)); *Martinez v. Sec’y of Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025) (granting habeas and holding that the automatic stay of an IJ’s bond order violates due process); *Lopez-Arevelo v. Ripa*, 8801 F. Supp. 3d 688 (W.D. Tex. 2025) (rejecting §§ 1252(g) and 1252(b)(9) as jurisdictional bars and ordering a bond hearing with a clear-and-convincing burden on the Government); *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025) (holding that even assuming § 1225(b) applies, *Mathews* requires an individualized bond hearing); *Padron-Covarrubias v. Vergara*, 5:25-cv-00112, (S.D. Tex. October 8, 2025) (“Along with

most other courts that have considered this issue, the Court finds that Padron is not properly detained without a bond hearing under Section 1225, and instead, Section 1226 applies”); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025) (ordering a prompt bond hearing or release of petitioner); *Souza Vieira v. De-Anda Ybarra*, No. EP-25-cv-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025) (ordering a prompt bond hearing “at which the government shall bear the burden of justifying, by clear and convincing evidence, the dangerousness or flight risk for Petitioner’s continued detention” or else release him); *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025) (same).

29. Here, Petitioner was apprehended within the United States, not at a border while seeking entry, after being present within the United States for more than two years. Respondents wrongly assert 8 U.S.C. § 1225(b)(2) as a basis for detaining Mr. Rodriguez Flores without a hearing, when instead any detention could only be pursuant to 8 U.S.C. § 1226(a), which here the Respondents are not purporting to invoke.

30. Moreover, Petitioner is not required to exhaust his claims by seeking a bond hearing, because the issue presented here is one of statutory construction, and because there is an exception to exhaustion where it is not clearly mandated by statute. The issue in this case hinges on the statutory construction of Sections 1225 and 1226 of the INA. Any effort by Petitioner to exhaust administrative remedies through an immigration judge (“IJ”) and the Board of Immigration Appeals (“BIA”) would be futile, as the BIA’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 225 (BIA 2025), is binding on all immigration court proceedings and precludes an administrative remedy. Moreover, the BIA does not

have jurisdiction to adjudicate constitutional issues. *Qatani v. Att’y Gen.*, 144 F.4th 485, 500 (3d Cir. 2025). As the Petition raises a substantial constitutional question, this Court has jurisdiction to review it and exhaustion is not required. *Castillo Reyes v. Rose*, No. CV 25-7138, 2026 WL 75816, at *3 (E.D. Pa. Jan. 9, 2026); *see also Delgado v. Raycraft*, No. 1:25-CV-1723, 2026 WL 177629, at *3 (W.D. Mich. Jan. 22, 2026) (exhaustion not required where “the Government has clearly set forth its belief that all noncitizens are subject to mandatory detention during removal proceedings” and the petition raises substantial due process questions).

31. For the same reason—the Government’s blanket policy of pursuing mandatory detention under § 1225(b) even against immigrants who are entitled to an individualized bond hearing under § 1226(a)—the appropriate remedy here is immediate release, along with an injunction against future detention under § 1225(b). *See, e.g., Delgado*, 2026 WL 177629 at *9 (“The Court will order Respondents to release Petitioner from custody”); *Nava*, 2026 WL 126152, at *3 (“Petitioner’s detention without a bond hearing offends the INA and the Due Process Clause of the Fifth Amendment. Therefore, this Court grants Petitioner’s Petition, orders his immediate release, permanently enjoins the Government from re-detaining him under Section 1225(b)(2)(a), and temporarily enjoins the Government from re-detaining him under Section 1226(a) for seven days following his release.”); *H.F.S.R. v. Francis*, No. 1:26-CV-238-AT, 2026 WL 160542, at *8 (N.D. Ga. Jan. 20, 2026) (“The Court ENJOINS Petitioner’s detention by immigration enforcement officials under 8 U.S.C. § 1225, based on his current immigration status. The Court ORDERS that, should Petitioner be detained, he must be granted an individualized

bond hearing under 8 U.S.C. § 1226, which must independently assess whether he poses either a danger to the community or a flight risk. If Petitioner does not receive an individualized bond hearing within 48 hours of his detention, Respondents are ORDERED to release him.”). Petitioner asks this Court to follow this growing body of precedent and order his immediate release from custody and enjoin any future detention of Petitioner under 8 U.S.C. § 1225(b).

CLAIMS FOR RELIEF

COUNT ONE

Fifth Amendment Due Process

Respondents Deprive Petitioner of an adequate and meaningful process to challenge his ongoing confinement.

32. Petitioner realleges and incorporates by reference the allegations contained above.

33. Petitioner has due process rights as a resident of the United States. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. *See generally Reno v. Flores*, 507 U.S. 292 (1993); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).

34. Federal courts use the three-part test in *Mathews v. Eldridge* to determine whether civil detention violates a detainee’s due process rights. 424 U.S. 319 (1976). The elements of this test are: (1) the private interest that the official action affects; (2) the risk that the procedures used will result in an erroneous deprivation of the private interest, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the

Government's interest in following the existing procedures, both in achieving their objectives and in the potential burdens of an alternate procedure. *Id.* at 335.

35. Here, all three factors favor the Petitioner.

36. First, Petitioner has a significant private interest at stake. A person's interest in freedom from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004); *see also Zadvydas*, 533 U.S. at 690, 121 S.Ct. 2491 ("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."). Petitioner is wrongfully confined, a direct attack on Petitioner's liberty interests. As this Court has found, a petitioner who has spent over two years at liberty in the United States "possesses a strong interest in his continued freedom from detention." *Rojas v. Noem*, No. EP-25-cv-443-KC, 2025 WL 3038262, *3 (W.D. Tex. Oct. 30, 2025).

37. Second, Petitioner will continue to be deprived of this interest if the current procedure (detaining Petitioner without a legal basis) is followed. There is no rational explanation for detaining Petitioner. Respondents' purported basis for detaining Petitioner under 8 U.S.C. § 1225(b)(2) has been rejected time and time again in this court. *See Lala Barros*, 2025 WL 3154059, *4 ("[w]ithout an individualized determination, it cannot be said that detention is warranted in his case"); *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, *5 (W.D. Tex. Nov. 17, 2025) (same).

38. Lastly, the Government has no legitimate interest in refusing to follow its own rules. Petitioner poses no safety threats to the community. Petitioner has no criminal

record and works to support himself in Minnesota. While “the Government has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community,” those concerns can be squarely addressed, to the extent they exist, through a bond hearing. *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859 at *4-5 (to the extent the Government’s interest is in enforcing the Immigration and Naturalization Act, petitioner’s constitutional interest in his liberty exists above and apart from the INA, and thus petitioner is entitled to a bond hearing.)

39. The detention of Petitioner violates his constitutional rights to due process guaranteed in the Fifth Amendment.

40. When a habeas petitioner’s detention is without legal basis, the typical remedy is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (describing release as the “typical remedy” for “unlawful executive detention”).

41. To the extent the appropriate remedy in this case is a bond hearing, the burden of proof at such hearing should be on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk. *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d at 688 (consistent with the “overwhelming consensus” of courts granting habeas petitions, placing the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or a flight risk); *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, *5 (W.D. Tex. Nov. 17, 2025) (weight of authority holds that when ordering a bond hearing as a habeas remedy, the burden of proof should be on the Government to prove by clear and convincing evidence that the detainee poses a danger or a flight risk).

COUNT TWO

Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)

Petitioner's Ongoing Detention Pursuant to 8 U.S.C. § 1225(b)(2) is Unlawful because Petitioner is not Seeking Admission and therefore cannot be held under that Authority

42. Petitioner realleges and incorporates by reference each and every allegation contained above.

43. Respondents violate the Immigration and Nationality Act by attempting to apply mandatory detention through 8 U.S.C. § 1225(b)(2), to Petitioner. Petitioner was nowhere near the border and was not “seeking admission.” Petitioner was detained in St. Paul Minnesota, which is over 1400 miles from the nearest border with Mexico. Petitioner has been present in the United States since October 2023, more than two years before he was unlawfully detained.

44. When a habeas petitioner's detention is without legal basis, the typical remedy is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (describing release as the “typical remedy” for “unlawful executive detention”).

45. To the extent the appropriate remedy in this case is a bond hearing, the burden of proof at such hearing should be on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk. *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d at 688 (consistent with the “overwhelming consensus” of courts granting habeas petitions, placing the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or a flight risk); *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, *5 (W.D. Tex. Nov. 17, 2025) (weight of authority holds that when ordering a bond hearing as a habeas remedy, the burden of proof should be on

the Government to prove by clear and convincing evidence that the detainee poses a danger or a flight risk).

COUNT THREE

Violation of the Administrative Procedure Act, 5 U.S.C. § 706

Detaining Petitioner Pursuant to an Unlawful Interpretation of 8 U.S.C. § 1225(b)(2) violates the Administrative Procedure Act

46. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

47. The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

48. The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

49. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens could properly be detained under § 1226(a), but would then be eligible for release on bond unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

50. Nonetheless, the Board has adopted a policy and practice of applying § 1225(b)(2) to Petitioner and others in the same position.

51. Respondents through its recent administrative decision failed to articulate any reasoned explanations for new interpretation of the Act. The Board's decision represents a change in the agencies' policies and positions that negates the plain language of the Act, the will of Congress, and decades of administrative precedent.

52. The application of § 1225(b)(2) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

53. When a habeas petitioner's detention is without legal basis, the typical remedy is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (describing release as the "typical remedy" for "unlawful executive detention").

54. To the extent the appropriate remedy in this case is a bond hearing, the burden of proof at such hearing should be on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk. *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d at 688 (consistent with the "overwhelming consensus" of courts granting habeas petitions, placing the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or a flight risk); *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, *5 (W.D. Tex. Nov. 17, 2025) (weight of authority holds that when ordering a bond hearing as a habeas remedy, the burden of proof should be on the Government to prove by clear and convincing evidence that the detainee poses a danger or a flight risk).

55. Here, where detention is unlawfully based on 8 U.S.C. § 1225(b)(2), which does not apply to Petitioner, release is an appropriate remedy.

PRAYER FOR RELIEF

WHEREFORE, Mr. Rodriguez Flores prays that this Court grant the following relief;

- (1) Assume jurisdiction over this matter;
- (2) Order that Petitioner shall not be removed from the United States or transferred outside of the Western District of Texas while this habeas petition is pending;
- (3) Issue an Order requiring Respondents to show cause within three days as to why this petition should not be granted;
- (4) Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner to Minnesota unless they provide a bond hearing under 8 U.S.C. § 1226(a) within three days at which time the burden of proof will be on the Government to prove by clear and convincing evidence that Petitioner poses a danger or flight risk;
- (5) If the Court sees fit to order Petitioner's release, specified relief to ensure a safe return home, including release:
 - (a) Inside of Minnesota
 - (b) At a safe time and place communicated in advance to counsel; and
 - (c) With all of Petitioner's personal effects, such as driver's license, immigration papers, passport, cell phone, wallet, and keys.

- (6) Enjoin Respondents from implementing any condition of release, including ICE's "Alternatives to Detention" measures, which include ankle-monitors, body-worn GPS, telephonic tracking, or use of the SmartLINK Mobile Application;
- (7) Declare that Petitioner's detention violates the Immigration and Nationality Act;
- (8) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
- (9) Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
- (10) Grant any other and further relief that this Court may deem just and proper.

Date: February 5, 2026

/s/ Jennifer Rappoport
Jennifer Rappoport
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María Amelia Calaf
State Bar No. 24081915
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Attorneys for Petitioner

Verification
Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am Petitioner's attorney and acting on Petitioner's behalf. I have discussed the factual assertions in this petition with Petitioner's Minnesota representative, who is also acting on Petitioner's behalf and who I understand to have personal knowledge of the facts alleged herein based on his conversations with Petitioner's family. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's detention status, are true and correct to the best of my knowledge.

Date: February 5, 2026

/s/ Jennifer Rappoport

Jennifer Rappoport

Attorney for Petitioner

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Erik Ivan Rodriguez Flores

(b) County of Residence of First Listed Plaintiff Ramsey
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Botkin Chiarello Calaf PLLC, 1209 Nueces St, Austin, TX 78701

DEFENDANTS

Pamela Bondi, Attorney General, et al.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

700 E San Antonio Ave STE 200, El Paso, TX 79901

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark ☐ 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☒ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC § 2241

Brief description of cause:
Writ of Habeas Corpus

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

Feb 5, 2026

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jennifer Rappoport

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.