UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

EDUAR COLINDRES, Petitioner(s) v. HERIBERTO TELLEZ, Warden, Metropolitan Detention Center; TODD LYONS, Acting Director, U.S. Immigrations and Customs Enforcement; PAMELA BONDI, U.S. Attorney General; and KRISTI NOEM, U.S. Secretary of Homeland Security Respondents(s).	)	Case No. 1:26-cv-663

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

1. Noncitizens subject to administratively final orders of removal must be detained during the "removal period." *See* 8 U.S.C. § 1231(a)(2)(A).
2. If a noncitizen has been ordered removed and an appeal of the order is pending with the Board of Immigration Appeals ("BIA"), the "removal period" begins the date the order becomes administratively final. *See* 8 U.S.C. § 1231(a)(1)(B)(i).
3. An order of removal becomes administratively final upon dismissal of an appeal by the Board of Immigration Appeals. *See* 8 C.F.R. § 1241.1(a).
4. Petitioner Eduar Colindres (A#[redacted]) has been detained by Immigration and Customs Enforcement ("ICE") since February 2, 2026.
5. On December 4, 2019, Petitioner was ordered removed from the United States. Petitioner appealed to the BIA on December 23, 2019. That appeal remains pending.

6. Petitioner cannot be detained pursuant to 8 U.S.C. § 1231. Petitioner can only properly be detained pursuant to 8 U.S.C. § 1226(a).

7. For the past three decades, 8 U.S.C. § 1226(a) has applied to noncriminal noncitizens that have been present in the United States for over two years without admission or parole. *See Rodriguez v. Bostock,* 779 F. Supp. 3d 1239, 1260-1 (W.D. Wash. 2025) (discussing legislative history and longstanding agency practice behind 8 U.S.C. § 1226(a)) *quoting* H.R. Rep. No. 104-469, pt. 1, at 229 *and* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997); *see also* 8 U.S.C. § 1225(b)(1)(B)(iii)(II) (noncitizens who have not been admitted or paroled and have not been physically present in the United States for two years are subject to mandatory detention).

8. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a decision entitled *Matter of Yajure Hurtado.* In that decision, the BIA concluded any noncitizen present in the United States who has not been admitted or paroled, is subject to detention under 8 U.S.C. § 1225(b) and may not be released from ICE custody except through humanitarian parole. *See Yajure Hurtado*, 29 I&N Dec. 216, 219-220 (BIA 2025) *quoting* 8 U.S.C § 1225(b)(2)(A).

9. On January 13, 2026, Chief Immigration Judge Teresa L. Riley issued nationwide guidance instructing all immigration judges that *Yajure Hurtado* is binding precedent.[1]

10. Over 350 cases decided by more than 160 different District Court judges across the United States have concluded *Yajure Hurtado* was decided in error. *See Barco Mercado v. Francis*, No. 25-CV-6582 (LAK, 2025 WL 3295903 (S.D.N.Y. Nov. 26, 2025).

[1] *See* "Practice Alert:EOIR Issues Nationwide Guidance on *Maldonado Bautista*," AILA (January 16, 2026), https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista.

11. Courts have broad discretion in conditioning a judgment for Habeas Corpus relief. *See* 28 U.S.C. § 2243 ("The court shall summarily hear and determine the facts, and dispose of [the application for a Writ of Habeas Corpus] as law and justice require").

12. Therefore, as law and justice require, the Court should order Petitioner's release pursuant to the Court's broad discretionary under 28 U.S.C. § 2243.

STATEMENT OF FACTS

13. Petitioner Eduar Colindres ([redacted]) is a male, native and citizen of Honduras.

14. On October 27, 2018, Petitioner entered the United States without inspection at or near Hidalgo, Texas.

15. On October 30, 2018, Petitioner was detained by Immigration and Customs Enforcement and placed into removal proceedings. Petitioner was charged as inadmissible as an alien present in the United States without being admitted or paroled. *See* 8 U.S.C. § 1182(a)(6)(A)(i). Petitioner applied for asylum.

16. On November 1, 2018, Petitioner was released into the United States on his own recognizance.

17. Petitioner has resided in Hempstead, New York with his mother since his entrance into the United States.

18. On December 4, 2019, Petitioner's application for asylum was denied and he was ordered removed from the United States.

19. On December 23, 2019, Petitioner appealed his removal order to the Board of Immigration Appeals ("BIA")

20. On October 22, 2021, Petitioner timely submitted an appeal brief to the BIA. The Department of Homeland Security did not submit an appeal brief in response.

21. Petitioner's appeal before the BIA remains pending.

22. Upon information and belief, Petitioner is currently detained in the Metropolitan Detention Center at 80 29th St., Brooklyn, NY 11232.

23. Petitioner has never been arrested, charged for, or convicted of any crime in the United States.

PARTIES

24. Petitioner Eduar Colindres ([redacted]) is a noncitizen from the Honduras who is currently detained by ICE. On information and belief, Petitioner is currently detained in the Metropolitan Detention Center at 80 29th St., Brooklyn, NY 11232.

25. Defendant Heriberto Tellez is the warden of Metropolitan Detention Center. He is being sued in his official capacity. He is Petitioner's immediate custodian.

26. Defendant Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. He is being sued in his official capacity. He is Petitioner's legal custodian.

27. Defendant Kristi Noem is the Secretary of the U.S. Department of Homeland Security. She is being sued in her official capacity. She is Petitioner's legal custodian.

28. Defendant Pamela J. Bondi is the United States Attorney General. She is being sued in her official capacity. She oversees Immigration Judges and the Board of Immigration Appeals. She is Petitioner's legal custodian.

JURISDICTION

29. Officials and agencies of the United States have been named as defendants. The Court has personal jurisdiction over the defendants under 28 U.S.C. § 1346(a)(2).

30. The Court has subject matter jurisdiction to hear Petitioner's request for relief under 28 U.S.C. § 2241 and Article I, § 9 cl. 2 of the United States Constitution.

31. This Court may grant relief under the Habeas Corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C § 1651.

VENUE

32. Venue is proper in the Eastern District of New York because, upon information and belief, Petitioner is confined in this district at Metropolitan Detention Center at 80 29th St., Brooklyn, NY 11232. 28 U.S.C. § 1391(b)(2); *see Rumsfield v. Padilla*, 542 U.S. 426, 442 (2004) (the Writ of Habeas Corpus is "issuable only in the district of confinement.")

REQUIREMENTS OF 28 U.S.C § 2243

33. The Writ of Habeas Corpus provides a "swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963)

34. The Court must grant this Petition for Writ of Habeas Corpus or issue and 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.*

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process
(Procedural Due Process)

1. The allegations in paragraph 1 through 34 are realleged and incorporated herein.
2. Procedural Due Process guarantees fair process. *See U.S. v. Salerno*, 481 U.S. 739, 746 (1987); *see also Mathews v. Eldridge,* 424 U.S. 319, 335 (1976) (articulating factors).

3. Petitioner is being deprived of his right to liberty, the risk of deprivation is high, and there would be great value in additional procedural safeguards.
4. The Government has little interest in Petitioner's continued detention.
5. Continued detention of Petitioner is a violation of Procedural Due Process.

COUNT TWO
Violation of Fifth Amendment Right to Due Process
(Substantive Due Process)

1. The allegations in paragraph 1 through 34 are realleged and incorporated herein.
2. The Due Process Clause covers a substantive sphere "barring certain government actions regardless of the fairness of the procedures used to implement them." *See Matzell v. Annucci*, 64 F.4th 425, 436 (2d Cir. 2023)
3. ICE's decision to detain Petitioner is so arbitrary that it constitutes a gross abuse of government authority.
4. Even in the presence of procedural protections, the government's actions are wholly without justification. *See Southerland v. City of New York*, 680 F.3d 127, 152 (2d Cir. 2012)
5. Continued detention of Petitioner is a violation of Substantive Due Process.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner shall not be transferred out of New York;

(3) Declare that Petitioner's detention is unlawful;

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

(5) Order Petitioner's release pursuant to the Court's broad discretionary under 28 U.S.C. § 2243;

(6) In the alternative, hold a bail hearing and order Petitioner's release through the Court's inherent authority under *Mapp v. Reno*, pending adjudication of this Petition;

(7) In the second alternative, order the immigration court to hold a bond hearing for Petitioner pursuant to 8 U.S.C. § 1226(a);

(8) Award attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law;

(9) Order any further relief this Court deems just and proper.

Respectfully submitted this 5th Day of February 2026.

Respectfully submitted,
EDWARD J. CUCCIA, PC

/s/ Edward J. Cuccia

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

I represent Petitioner and submit this verification on their behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 5th day of February, 2026.

/s/ Edward J. Cuccia
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