AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

FILED BY PCS D.C.
MAR 26 2026
ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S.D. OF FLA. – W.P.B.

MONTILLA GRATEROL, XIOMAR JAVIER
A[redacted]
Petitioner

v.

IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY;
CALL FIELD OFFICE, BRISTOL, FL
Respondent
(name of warden or authorized person having custody of petitioner)

Case No. _____
(Supplied by Clerk of Court)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: XIOMAR JAVIER MONTILLA GRATEROL
   (b) Other names you have used: N/A
2. Place of confinement:
   (a) Name of institution: CALL FIELD OFFICE
   (b) Address: 12499 POGO STREET
   BRISTOL, FL 32321
   (c) Your identification number: A[redacted]
3. Are you currently being held on orders by:
   ☑ Federal authorities ☐ State authorities ☐ Other - explain:
4. Are you currently:
   ☐ A pretrial detainee (waiting for trial on criminal charges)
   ☐ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
   If you are currently serving a sentence, provide:
   (a) Name and location of court that sentenced you:
   (b) Docket number of criminal case:
   (c) Date of sentencing:
   ☑ Being held on an immigration charge
   ☐ Other *(explain)*:

Decision or Action You Are Challenging

5. What are you challenging in this petition:

☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

☐ Pretrial detention

☑ Immigration detention

☐ Detainer

☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)

☐ Disciplinary proceedings

☐ Other *(explain)*: _____

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: CALL FIELD OFFICE BRISTOL, FL

(b) Docket number, case number, or opinion number: A[redacted]

(c) Decision or action you are challenging *(for disciplinary proceedings, specify the penalties imposed)*:

(d) Date of the decision or action: _____

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☐ Yes ☑ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not appeal:

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes ☑ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not file a second appeal:

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes ☑ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not file a third appeal:

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes ☑ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes ☐ No

If "Yes," provide:

(1) Name of court:

(2) Case number:

(3) Date of filing:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion or a Section 2254 to petition to challenge this conviction or sentence?**

☐ Yes ☑ No

If "Yes," provide:

(1) Name of court:

(2) Case number:

(3) Date of filing:

(4) Result:

(5) Date of result:

(6) Issues raised:

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence:

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☑ Yes ☐ No

If "Yes," provide:

(a) Date you were taken into immigration custody: 03/22/2026

(b) Date of the removal or reinstatement order:

(c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes ☑ No

If "Yes," provide:

(1) Date of filing:

(2) Case number:

(3) Result:

(4) Date of result:

(5) Issues raised:

(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes ☑ No

If "Yes," provide:

(1) Name of court:

(2) Date of filing:

(3) Case number:

(4) Result:

(5) Date of result:

(6) Issues raised:

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☑ Yes ☐ No

If "Yes," provide:

(a) Kind of petition, motion, or application: ASYLUM PROCESS

(b) Name of the authority, agency, or court: USCIS

(c) Date of filing: 12/19/2023

(d) Docket number, case number, or opinion number: [redacted]

(e) Result: PENDING

(f) Date of result:

(g) Issues raised:

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Fifth Amendment Due Process – Arbitrary and Unreasonable Civil Detention Immigration detention is civil, not punitive. The Due Process Clause prohibits detention that is arbitrary or excessive in in relation to its purpose. See Zadvydas v. Davis, 533 U.S. 678 (2001). Petitioner's detention is unreasonable and arbitrary because he has no criminal history, has demonstrated long-term compliance, and USCIS's own

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

records reflect that he could safely remain in the community. Detention under these circumstances is not reasonably related to the government's civil objectives and instead operates as punishment in violation of due process.

(b) Did you present Ground One in all appeals that were available to you?

☐ Yes ☑ No

GROUND TWO: Failure to Provide Meaningful Bond Review Under INA § 236(a), Petitioner is detained under INA § 236(a), which permits release on bond. Continued detention without a prompt, meaningful, individualized bond review violates due process.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Due process requires that continued detention be justified by individualized evidence. Petitioner's compliance history, family ties, and lack of criminal history weigh strongly against detention.

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes ☑ No

GROUND THREE: Arbitrary and Unjustified Custody Determination

USCIS's own appointment records show that the applicant fully met the requirements and is awaiting a future appointment to complete the process. Despite this, ICE abruptly detained him without a new cause.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

This inconsistency demonstrates that Petitioner's detention is not reasonably related to the civil purposes of immigration custody, namely ensuring appearance or protecting the community, and is therefore unconstitutional.

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes ☑ No

GROUND FOUR: Detention No Longer Serves a Legitimate Regulatory Purpose

Civil detention must bear a reasonable relationship with its regulatory purpose. When it does not, it becomes unconstitutional. See Zadvydas, 533 U.S. at 690.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Petitioner's compliance history and ICE's own prior determinations show detention is unnecessary to achieve immigration enforcement objectives.

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes ☑ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: Interference with Ability to Defend Removal Case.

Petitioner's detention significantly impairs his ability to consult with counsel, gather supporting documentation, and prepare his immigration defense.

Request for Relief

15. State exactly what you want the court to do: I want a release under 28 U.S.C 2241 by writ of habeas corpus. No criminal history, consistently complied with any appointment requirements for pending cases. Order Respondents to provide an immediate bond hearing before an Immigration Judge where the government bears the burden of proof; or, in the alternative, order Petitioner's immediate release under reasonable conditions of supervision. Grant expedited consideration due to ongoing constitutional. Grant such other and further relief as the Court deems just.

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:
03/25/2026

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 03/25/2026

XIOMAR JAVIER MONTILLA GRATEROL

Signature of Petitioner

Signature of Attorney or other authorized person, if any

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241
Instructions

1. **Who Should Use This Form.** You should use this form if
   - you are a federal prisoner and you wish to challenge the way your sentence is being carried out (for example, you claim that the Bureau of Prisons miscalculated your sentence or failed to properly award good time credits);
   - you are in federal or state custody because of something other than a judgment of conviction (for example, you are in pretrial detention or are awaiting extradition); or
   - you are alleging that you are illegally detained in immigration custody.

2. **Who Should Not Use This Form.** You should not use this form if
   - you are challenging the validity of a federal judgment of conviction and sentence (these challenges are generally raised in a motion under 28 U.S.C. § 2255);
   - you are challenging the validity of a state judgment of conviction and sentence (these challenges are generally raised in a petition under 28 U.S.C. § 2254); or
   - you are challenging a final order of removal in an immigration case (these challenges are generally raised in a petition for review directly with a United States Court of Appeals).

3. **Preparing the Petition.** The petition must be typed or neatly written, and you must sign and date it under penalty of perjury. **A false statement may lead to prosecution.**

   All questions must be answered clearly and concisely in the space on the form. If needed, you may attach additional pages or file a memorandum in support of the petition. If you attach additional pages, number the pages and identify which section of the petition is being continued. Note that some courts have page limitations. All filings must be submitted on paper sized 8½ by 11 inches. Do not use the back of any page.

   No citation of authorities need be furnished. If a brief or additional argument is submitted. It should be submitted in the form of a separate memorandum of law, not to exceed 20 pages in length absent prior leave of Court.*

4. **Supporting Documents.** In addition to your petition, you must send to the court a copy of the decisions you are challenging and a copy of any briefs or administrative remedy forms filed in your case.

5. **Required Filing Fee.** You must include the $5 filing fee required by 28 U.S.C. § 1914(a). If you are unable to pay the filing fee, you must ask the court for permission to proceed in forma pauperis – that is, as a person who cannot pay the filing fee – by submitting the documents that the court requires.

6. **Submitting Documents to the Court.** Mail your petition and one copy to the clerk of the United States District Court for the district and division in which you are confined (see below). All copies must be identical to the original. Copies may be legibly hand written. If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.*

Miami Division	Fort Lauderdale Division	West Palm Beach Division
Clerk, U.S. District Court	Clerk, U.S. District Court	Clerk, U.S. District Court
400 N. Miami Ave., #8N09	299 E. Broward Boulevard	701 Clematis Street
Miami, FL 33128	Fort Lauderdale, FL 33301	West Palm Beach, FL 33401

7. **Change of Address.** You must immediately advise the Court of any changes of address by filing a "Notice to the Court of Change of Address." This notice should contain the address change and the effective date and must be signed. FAILURE TO NOTIFY THE COURT OF ANY CHANGE OFA DDRESS COULD RESULT IN THE DISMISSAL OF YOUR PETITION.

8. Petitioner is advised that respondent is not required to respond to the petition unless ordered by the Court and that default is inappropriate in habeas corpus proceedings. Once the Court has ordered a response and counsel for respondent has appeared in the case, any documents you file with the Court must also be sent to counsel. All filings must include a certificate of service stating the date that a copy was served or mailed to counsel.

9. After receiving notice of your case number from the clerk, you must include the case number on all documents you file with the Court. You must keep a copy of every document you send to the Court as you are not entitled to free copies from the clerk even if you are proceeding in forma pauperis.

*#3, and #6-9 were modified or added to reflect FLSD procedures
**#10 Paragraph 10(b) modified

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

XIOMAR JAVIER MONTILLA GRATEROL

(A# [redacted] | DOB: [redacted]

Petitioner.

Respondents.

IN RE: PETITION FOR WRIT OF HABEAS CORPUS

(28 U.S.C. § 2241)

Petitioner Xiomar Javier Montilla Graterol (A# [redacted], born [redacted] by and through undersigned counsel, respectfully petitions this Court for a Writ of Habeas Corpus and states:

I. JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in federal immigration custody at the Call Field Office, Florida, within the South Florida District of Florida.

The venue is proper in this District because Petitioner's immediate custodian is located within this District.

II. PARTIES

Petitioner Xiomar Javier Montilla Graterol (A# [redacted] DOB: [redacted] is currently detained at the Call Field Office, Florida, within the South Florida District of

Florida. Respondent Field Office Director, ICE Miami Field Office, is responsible for ICE custody determinations within the Fort Walton Area of Responsibility. Respondent Warden, the Call Field Office, is Petitioner's immediate custodian.

III. CUSTODY AND IMMIGRATION PROCEEDINGS

On March 22, 2026, the plaintiff was stopped while driving in Fort Walton Beach, Florida. A police officer ordered the driver to pull over, and the driver voluntarily stopped the vehicle as instructed. The officer then asked for the driver's license, which the driver did not have at the time.

Petitioner is in active Asylum Pending by the USCIS Administrative Office. He does not have a final removal order. His detention is governed by INA § 236(a), 8 U.S.C. § 1226(a), which authorizes discretionary detention and release on bond, not mandatory detention.

IV. FACTS SUPPORTING RELIEF

Petitioner has no criminal history. He has consistently complied with any appointment requirements for his pending cases. Documentation of this process is being collected and will be submitted as supplemental evidence. This unbroken record of compliance strongly confirms that Petitioner does not pose a risk of flight.

In December 19, 2023, I-797C was appointed to the Asylum process. On January 11, 2024 he was scheduled by ASC for a biometrics appointment, and ASC was appointed for the Asylum process, demonstrating continued compliance and suitability for community supervision.

Despite this administrative determination, Border Patrol Agency detained Petitioner that same day without any new criminal conduct, violation of supervision conditions, or individualized evidence that Petitioner presents a danger to the community or a risk of flight. The petitioner is also a father, the head of the household, and the primary provider and financial support for his daughter and his wife, who depend on him and whom he must care for as the head of the household.

V. GROUNDS FOR RELIEF

A. Fifth Amendment Due Process – Arbitrary and Unreasonable Civil Detention

Immigration detention is civil, not punitive. The Due Process Clause prohibits detention that is arbitrary or excessive in relation to its purpose. See Zadvydas v. Davis, 533 U.S. 678 (2001). Petitioner's detention is unreasonable and arbitrary because he has no criminal history, has demonstrated long-term compliance, and USCIS's own records reflect that he could safely remain in the community. Detention under these circumstances is not reasonably related to the government's civil objectives and instead operates as punishment in violation of due process.

B. Failure to Provide Meaningful Bond Review Under INA § 236(a)

Petitioner is detained under INA § 236(a), which permits release on bond. Continued detention without a prompt, meaningful, individualized bond review violates due process. See Jennings v. Rodriguez, 583 U.S. 281 (2018). Due process requires that continued detention be justified by individualized evidence. Petitioner's compliance history, family ties, and lack of criminal history weigh strongly against detention.

C. Arbitrary and Unjustified Custody Determination

USCIS's own appointment records show that the applicant fully met the requirements and is awaiting a future appointment to complete the process. Despite this, ICE abruptly detained

him without a new cause. This inconsistency demonstrates that Petitioner's detention is not reasonably related to the civil purposes of immigration custody, namely ensuring appearance or protecting the community, and is therefore unconstitutional.

D. Detention No Longer Serves a Legitimate Regulatory Purpose

Civil detention must bear a reasonable relationship with its regulatory purpose. When it does not, it becomes unconstitutional. See Zadvydas, 533 U.S. at 690.

Petitioner's compliance history and ICE's own prior determinations show detention is unnecessary to achieve immigration enforcement objectives.

E. Interference with Ability to Defend Removal Case

Petitioner's detention significantly impairs his ability to consult with counsel, gather supporting documentation, and prepare his immigration defense.

VI. REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A. Issue the Writ of Habeas Corpus.

B. Order Respondents to provide an immediate bond hearing before an Immigration Judge where the government bears the burden of proof; or, in the alternative, order Petitioner's immediate release under reasonable conditions of supervision.

C. Grant expedited consideration due to the ongoing constitutional.

D. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Xiomar Javier Montilla Graterol

Petitioner

EXHIBIT LIST

Exhibit A	**ASC appointment for the Asylum process 01/11/2024**	
Exhibit B	**The Asylum Acknowledgment Receipt 12/19/2023**	
Exhibit C	**Order of Release on Recognizance Form I-220A**	
Exhibit D	**Employment Authorization Card – valid until 07/10/2029**	
Exhibit E	**Venezuelan ID**	
Exhibit F	**Daughter's Birth Certificate**	
Exhibit G	**Marriage Certificate**	
Exhibit H	**Order Granting Motion for Declaratory**	