UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

MARCO ANTONIO MONTES HERNANDEZ,

Petitioner,

v. Case No.

GARRETT RIPA, Field Office Director of Enforcement and Removal Operations, Miami, Field Office, Immigration and Customs Enforcement; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement, MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; TODD BLANCHE, U.S. Attorney General; ALLAN CROSBY, Jail Administrator, Liberty County Jail;

Respondents.
_____/

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

This is a Petition for Writ of Habeas Corpus filed on behalf of **MARCO ANTONIO MONTES HERNANDEZ** ("Petitioner"), to seek relief of his unlawful detention with Immigration and Customs Enforcement ("ICE"). Petitioner was previously issued a bond determination and was released on bond. On or about November 14, 2025, Respondent was ordered removed from the United States. He timely appealed this decision and his appeal remains pending with the Board of Immigration Appeals ("BIA" or "Board"), and has no final order of removal. Accordingly, to vindicate Petitioner's constitutional rights,

this Court should grant the instant petition for a writ of habeas corpus, and order release of Petitioner. Petitioner asks this Court to find Respondents' actions to detain Petitioner after being released on bond to be arbitrary and capricious and in violation of the law, and to immediately issue an order preventing Petitioner's transfer out of this Northern District.

JURISDICTION

1. Petitioner is in the physical custody of Respondents and ICE, an agency within the Department of Homeland Security ("DHS" or "Department"). He is being held at the Liberty County Jail, in Bristol Florida, under the direct control of Respondents.
2. This action arises under the United States Constitution ("USCON"), and the Immigration and Nationality Act ("INA" or "Act") as codified at 8 U.S.C. § 1101 *et seq*.
3. This Court has jurisdiction pursuant to 28 U.S.C. § 2241(c)(5) ("Habeas Corpus"), 28 U.S.C. § 1331 ("Federal Question"), and Article I, § 9, clause 2 of the USCON ("Suspension Clause"), and the Immigration and Nationality Act ("INA" or "Act") as codified at 8 U.S.C. § 1101 *et. Seq*.
4. This Court may grant the relief sought pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., 28 U.S.C. § 1651, and 8 U.S.C. § 1252(e)(2).
5. Federal district courts possess jurisdiction to adjudicate habeas corpus petitions filed by noncitizens challenging both the legality and constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

VENUE

6. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Northern District of Florida, the judicial district in which Petitioner is currently detained.

7. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) as Respondents are employees, officers, and agencies of the United States, and as a substantial part of the events or omissions giving rise to the claims occurred in the Northern District of Florida.

REQUIREMENTS OF 28 U.S.C. §§ 2241 and 2243

8. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the 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.*

9. 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) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

10. Petitioner is "in custody" for purposes of 28 U.S.C. § 2241, as Petitioner is presently detained by Respondents.

EXHUASTION

11. In the instant case, exhaustion is not required as the administrative process cannot provide any relief. Precedent of the U.S. Supreme Court confirms exhaustion is excused under such circumstances. *See McCarthy v. Madigan*, 503 U.S. 140, 146-49 (1992); and *Booth v. Churner*, 532 U.S. 731 (2001) (holding exhaustion is not required where it would cause "undue prejudice to subsequent assertion of a court action" or "irreparable harm" to petitioner, or where "the administrative body is shown to be biased or has otherwise predetermined the issue before it").

12. Respondents will likely argue Petitioner failed to exhaust administrative remedies as he did not first seek custody review before the Immigration Judge. However, this argument is incorrect for several reasons. First, an Immigration Judge and the Board lack jurisdiction to adjudicate the statutory basis of Petitioner's detention. Finally, the exhaustion doctrine pursuant to § 2241 is prudential, not statutory, and the Supreme Court's decision in *McCarthy v. Madigan*, squarely applies here as the agency cannot provide the relief Petitioner seeks or adjudicate the legal question raised. Accordingly, exhaustion is not required.

13. Additionally, the agency lacks jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights; therefore, requiring exhaustion of administrative remedies would be futile. *See Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999) (recognizing exhaustion is not required where it would be a "futile exercise" because the agency lacks authority to review constitutional claims).

PARTIES

14. Petitioner MARCO ANTONIO MENDES HERNANDEZ is a citizen of Mexico. Petitioner is currently detained at Liberty County Jail in Bristol, Florida.

15. Respondent, GARRETT RIPA, is the Director of the Miami Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Ripa is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. Respondent Ripa is being sued in his official capacity.

16. Respondent, TODD LYONS, is the Acting Director of ICE. He is responsible for the legal custody of individuals held in ICE detention. Respondent Lyons is being sued in his official capacity.

17. Respondent, MARKWAYNE MULLIN, is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner. Respondent Mullin is being sued in his official capacity.

18. Respondent, TODD BLANCHE, is the Acting Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. Respondent Blanche is being sued in his official capacity.

19. Respondent, ALLAN CROSBY, is the jail administrator for the Liberty County Sheriff's Office in Florida. He is responsible for overseeing the county jail, which

houses inmates being held in ICE custody. Respondent Crosby is being sued in his official capacity.

FACTUAL ALLEGATIONS

20. Petitioner, MARCO ANTONIO MONTES HERNANDEZ, is a native and citizen of Mexico. He first entered the United States in or about 2005 and remained for approximately 2-years before being detained. After this entry and detention he accepted voluntary departure in March 2007, and departed from the United States.

21. Petitioner reentered the United States in or about May 2007, and remained in the United States until approximately March 1, 2018, when he departed for about 15-days before reentering the United States. After reentering in March 2018, Petitioner has not left the United States.

22. Sometime in 2012, Petitioner met Ina Slobozian ("Ina"), a citizen of the United States ("USC"). They had a child together in [redacted], L[redacted] ("L[redacted], also a USC.

23. In or about July 2012, Petitioner was arrested for failure to appear for driving without a license. To the best of the undersigned's knowledge, he has not committed or been convicted of any other offense.

24. On or about August 2, 2012, Petitioner was detained by ICE. *See* Exhibit 2.

25. At the time of his detention, the Department, issued a Notice to Appear ("NTA"), and filed the same with the Immigration Court placing Petitioner in Removal Proceedings. *See* Exhibit 3.

26. On or about November 14, 2012, Petitioner bonded out of ICE detention paying the determined $6,000. *See* Exhibit 4.

27. Petitioner sought relief before the Executive Office of Immigration Review ("EOIR") Immigration Court, by filing a Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents ("Form EOIR-42B").

28. On or about November 14, 2025, the Immigration Judge ("IJ") denied Petitioner's EOIR-42B, and ordered Petitioner removed from the United States. *See* Exhibit 5.

29. Petitioner timely appealed the Decision of the IJ to the Board, on or about November 26, 2025. As of filing this Petition, Petitioner's appeal remains pending with the BIA and therefore, no final order of removal has been entered against Petitioner. *See* Exhibits 6 & 7.

30. Petitioner has been detained by ICE since March 24, 2026, when he was the passenger of a car for a traffic stop by Florida Highway Patrol. ICE was present and detained him during this stop. The reason Petitioner was recently detained by ICE is unclear as he has no order of removal and is currently out on bond, with an appeal pending before the Board, and is legally permitted to be in the United States.

31. At the time of filing this Petition, the Board has yet to issue a briefing schedule in his pending appeal. The likelihood of Petitioner's pending appeal being resolved within the near future is unlikely as legal briefs must be submitted and a decision must be issued, generally taking approximately 1 to 2 years after briefs are filed with the Board. *See* Exhibit 7.

LEGAL FRAMEWORK

DUE PROCESS

32. The Due Process Clause of the Fifth Amendment provides Petitioner with protections regarding his detention. The Supreme Court has held "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of liberty" protected under the Due Process Clause. *See Zadvydas v. Davis*, 522 U.S. 678 (690) (2001). "The Due Process Clause applies to all 'persons' within the United States, including noncitizens, regardless of whether their presence is lawful, unlawful, temporary, or permanent." *Id.* at 693.

33. In the immigration context, the Supreme Court has recognized civil detention serves two primary purposes (1) preventing flight and (2) protecting the community from danger. *Id.* at 690.

34. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)).

35. In determining the process due to Petitioner, the Court should apply the *Mathews* balancing test, which considers: (1) the private interest affected by the government action; (2) the risk existing procedures will result in an erroneous deprivation of that interest, and the probable value of additional or substitute safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens additional procedural requirements would entail. *Id.* at 335.

36. In *Carey v. Piphus*, the Supreme Court opined that "due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." 435 U.S. 247, 259 (1978).

CLAIMS FOR RELIEF

COUNT I: Violation of Due Process

37. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

38. Under the *Matthews*, framework, the balancing of interests provided in the 3-part test strongly favor Petitioner's release.

39. Petitioner's private interest in freedom from detention is profound. The interest in being free from physical restraint is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). *See also* Zadvydas v. Davis, 533 U.S. 678, 690 (2001) ("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.").

40. The risk of erroneous deprivation of freedom is exceptionally high. Petitioner helps support and care for his 12-year-old USC daughter, Laura. He maintains substantial family ties within the United States, possesses a valid employment authorization document, and is steadily employed.

41. Respondents' interest in detaining Petitioner without affording due process is minimal. Immigration detention is civil, not punitive, and is permissible only to prevent danger to the community or to ensure the noncitizen's appearance at immigration proceedings.

See Zadvydas, 533 U.S. at 690. Here, Petitioner was previously granted bond and his appeal with the Board remains pending.

42. Finally, the fiscal and administrative burdens of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Matthews*, 424 U.S. at 334-35. In the instant matter, Petitioner has already been granted bond and was released after submitting payment to ICE. *See* Exhibit 4.

43. For these reasons, Petitioner's detention violates the Due Process Clause of the U.S. Constitution's Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the Northern District of Florida while this habeas petition is pending;

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

d. Issue a Writ of Habeas Corpus requiring Respondents release Petitioner;

e. Declare Petitioner's detention is unlawful;

f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

g. Grant any other relief this Court deems just and proper.

Dated this 13th day of April, 2026.

Respectfully submitted,

By: */s/Rachel Krewson*
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I hereby certify I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send notice of electronic filing to all counsel in this case on April 14, 2026.

/s/Rachel Krewson
Rachel Krewson, Esq.
Florida Bar # 118765
Attorney for Petitioner

Table of Contents
Documents in Support of Writ for Habeas Corpus
Marco Antonio Montes Hernandez v. Garrett Ripa, *et al.*

Exhibit 1: Location of Petitioner's ICE Detention;

Exhibit 2: Evidence of Petitioner's Detention on August 2, 2012;

Exhibit 3: Copy of Petitioner's NTA;

Exhibit 4: Evidence of Petitioner's bond payment on August 15, 2012;

Exhibit 5: Copy of the Decision of the Immigration Judge November 14, 2025;

Exhibit 6: Copy of Petitioner's Appeal to the Board of Immigration Appeals;

Exhibit 7: Printout of EOIR Automated System page as evidence of pending appeal with BIA.