

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

COSME ABEL DE LEON MAZARIEGOS

Petitioner,

v.

MARKWAYNE MULLIN, in their official
capacity as Secretary of the United States
Department of Homeland Security;

TODD BLANCHE, in their official capacity as
Acting Attorney General of the United States;

WARDEN OF BROWARD TRANSITIONAL
CENTER, in their official capacity;

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

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

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT (ICE);

Respondents.

Case No. _____

**Verified Petition for Writ of Habeas
Corpus**

Oral Argument Requested

PETITION FOR WRIT OF HABEAS CORPUS

The Petitioner, Cosme Abel De Leon Mazariegos, submits this Petition for Writ of Habeas Corpus and for Related Relief, by and through undersigned counsel and alleges as follows:

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"). The Petitioner seeks immediate release, or in the alternative, a constitutionally adequate bond hearing.
2. Petitioner is a native and citizen of Guatemala, who entered the United States on or about July 2009, when he was twenty-two years old.
3. Petitioner was detained by Respondents on or about April 2, 2026, while attended a scheduled Biometrics appointment with the U.S. Citizenship and Immigration Service ("USCIS").
4. Petitioner has not been afforded a bond hearing or any notice or opportunity to be heard on his detention and custody.
5. Respondents' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and implementing regulations. Petitioner brings this action for habeas relief and 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 or a constitutionally adequate bond hearing.

JURISDICTION AND VENUE

6. 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.

7. Venue is proper in this Court under 28 U.S.C. § 2241(a) because Petitioner is detained within the geographic boundaries of the Southern District of Florida, at Broward Transitional Center, in Broward County, Florida.

PARTIES

8. Petitioner, Cosme Abel De Leon Mazariegos, entered the United States on or about July 2009, fleeing from Guatemala, and has continuously resided in this country for the last seventeen years. He is currently detained at Broward Transitional Center. He is in custody of ICE, and under the direct control, of Respondents and their agents.

9. Respondent MARKWAYNE MULLIN is sued in his official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Mullin 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 Mullin is a legal custodian of Petitioner.

10. Respondent TODD BLANCHE is sued in his official capacity as the Acting Attorney General of the United States and the senior official of the U.S. Department of

Justice (DOJ)). In that capacity, he 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 Blanche is a legal custodian of Petitioner.

11. Respondent TODD LYONS is sued in their official capacity as the Acting Director of Immigration and Customs Enforcement.

12. 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.

13. Respondent WARDEN of BROWARD TRANSITIONAL CENTER is sued in their official capacity as the warden of the facility where Petitioner is detained.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

14. Petitioner is a married native and citizen of Guatemala, who entered the United States on or about July 2009, when he was twenty-two years old. *See* Exhibit A-Marriage Certificate, Birth Certificate and translation.

15. Petitioner was issued a Notice to Appear ("NTA") dated June 1, 2010, and charged with inadmissibility pursuant to Section 212(a)(6)(A)(i) of the INA after having been arrested for driving without a license.

16. On December 9, 2010, Petitioner was ordered removed *in absentia*.

17. [REDACTED]
[REDACTED]. *See* Exhibit B-arrest report and newspaper articles

18. Petitioner's wife has permanent guardianship for their niece and nephew. They are raising them as their own after suffering such a tragedy. Petitioner's wife is not able to formally adopt her

niece and nephew because she hasn't obtained legal status in the United States. She cannot obtain passports for her niece and nephew either until she formally adopts them. See Exhibit C-birth certificates for children and guardianship documents

19. On December 5, 2025, Petitioner and his wife filed Petitions with USCIS for "U nonimmigrant status," after cooperating with the investigation into [REDACTED] See Exhibit D-I-918 forms and receipt notice.

20. Petitioner and his spouse were scheduled for biometrics appointments pursuant to the pending I-918 petition on April 2, 2026. The couple attended their biometrics appointment and Petitioner was taken into ICE custody.

21. The Petitioner is currently detained at Broward Transitional Center.

22. On April 9, 2026, the Petitioner filed a motion to reopen the *in absentia* removal order with the Immigration Court in Annadale, Virginia.

23. On April 21, 2026, the Immigration Judge reopened removal proceedings. See Exhibit E

24. Petitioner and his wife also have two (2) U.S. Citizen children. One of their children, J [REDACTED] is autistic, speech delayed, developmentally delayed and has ADHD. Their other child, D [REDACTED] has severe ADHD. They both seek ABA therapy. See Exhibit F-children's birth certificates and records.

25. Petitioner's niece has ADHD and behavioral disorders, and the children are receiving therapy. See Exhibit G- Evaluation for niece

26. Petitioner does not have any criminal convictions and is not a danger to the community.

27. Once the U Visa is approved, the Petitioner and his spouse will be able to apply for residence.

28. The Respondent's spouse has been suffering since he has been detained trying to raise all four children alone.

29. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order (EO) setting out a series of interior immigration enforcement actions.

30. On July 8, 2025, the DHS issued a notice to all ICE employees, indicating that any noncitizen in the United States who has not been formally admitted or paroled shall be considered an applicant for admission and shall be subject to § 1225(b)(2). *See, e.g., Merino v. Ripa*, 2025 WL 2941609, at *3 (citing ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission, AILA Doc. No. 25071607 (July 8, 2025)).

31. Following this interpretation, the BIA held in *Matter of Yajure Hurtado* that an immigration judge had no authority to provide a bond hearing to a noncitizen, who had been living in the United States for years without admission or parole, because he is an applicant for admission under § 1225(b)(2), subject to mandatory detention. 29 I&N Dec. 216 (BIA 2025).

32. On information and belief, Petitioner has no criminal history and has not been afforded a bond hearing post detention.

LEGAL FRAMEWORK

Due Process

33. "The Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citation modified). "Freedom from

imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Id.* at 690.

34. Under substantive due process doctrine, a restraint on liberty like civil detention is only permissible if it serves a “legitimate nonpunitive objective.” *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92 (discussing constitutional limitations on civil detention).

35. “Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty,” like the decision to detain a non-citizen. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). “The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* at 333 (citation modified).

Statute and Regulations Governing Removal and Detention

36. Under the INA, 8 U.S.C. § 1225 and § 1226 govern the detention of noncitizens before a final order of removal. *Puga v. Assistant Field Off. Dir., Krome N. Serv. Processing Ctr.*, No. 25-24535-CIV, 2025 WL 2938369, at *3 (S.D. Fla. Oct. 15, 2025)

37. Section 1225 covers “applicants for admission” who are noncitizens “present in the United States who [have] not been admitted.” *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at *2 (D. Mass. July 7, 2025) (alteration in original; citation and footnote call number omitted). Section 1225(a)(3) requires all applicants for admission to be inspected by an immigration officer. 8 U.S.C. § 1225(a)(3). Certain applicants for admission may be

subject to removal proceedings under § 1225(b). *See id.* § 1225(b); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108–09 (2020) (citations omitted). “Because section 1225 is mandatory, a ‘noncitizen detained under section 1225(b)(2) may be released only if he is paroled for urgent humanitarian reasons or significant public benefit.’ ” *Puga*, 2025 WL 2938369, at *3 (quoting *Barrera v. Tindall*, No. 25-cv-541, 2025 WL 2690565, at *2 (W.D. Ky. Sept. 19, 2025)). Section 1225(b)(2) applies where an alien is “seeking admission” into the United States. 8 U.S.C. § 1225(b)(2)(A).

38. Unlike § 1225, § 1226 “authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings[.]” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Section 1226(a) sets out a discretionary detention framework for noncitizens arrested and detained “[o]n a warrant issued by the Attorney General,” and authorizes the Attorney General to “continue to detain the arrested alien[.]” release him on a “bond of at least \$1,500[.]” or release him on “conditional parole[.]” 8 U.S.C. § 1226(a)(1)–(2). While the arresting immigration officer makes an initial custody determination, noncitizens detained under § 1226(a) may appeal that determination in a bond hearing before an immigration judge. *See* 8 C.F.R. §§ 1236.1(c)(8), (d)(1). “Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention.” *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)); *see also Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *13 (S.D.N.Y. Aug. 13, 2025) (“To be sure, a noncitizen detained under § 1226(a) is undoubtedly entitled to a bond hearing before an immigration judge.”).

Exhaustion of Administrative Remedies

39. The exhaustion requirement under 8 U.S.C. § 1252(d)(1) “is not jurisdictional,” but prudential. *Kemokai v. U.S. Att’y Gen.*, 83 F.4th 886, 891 (11th Cir. 2023).

40. Generally, “exhaustion is not required where no genuine opportunity for adequate relief exists...or an administrative appeal would be futile[.]” *Linfors v. United States*, 673 F.2d 332, 334 (11th Cir. 1982) (alterations added; citations omitted); *see also United States v. Barbieri*, No. 18-cr-20060, 2021 WL 2646604, at *2 (S.D. Fla. June 28, 2021) (Scola, J.) (“The Court recognizes...that administrative exhaustion may be unnecessary where the administrative process would be incapable of granting adequate relief.” (alteration added; citation omitted)).

41. 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 because they are now considered mandatory pursuant to § 1225(b)(2) instead of eligible for a bond pursuant to §1226. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

42. The BIA issued *Matter of Yajure Hurtado* as a published decision, and such decisions “serve as precedents in all proceedings involving the same issue or issues.” 8 C.F.R. § 1003.1(g)(2); *see id.* § 1003.1(d)(1). Thus, considering *Matter of Yajure Hurtado*, it is obvious that an alien in Petitioner's situation, who has resided in the United States for years prior to his recent detention, but has not been admitted or paroled, will be subject to mandatory detention without bond under Section 1225(b)(2) upon review by the BIA. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. at 221.

CLAIMS FOR RELIEF

Count One

Violation of the Fifth Amendment of the U.S. Constitution Substantive Due Process

43. Petitioner realleges all paragraphs above as if fully set forth here.

44. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

45. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

46. Because the denial of the right to apply for bond can result in serious deprivation of liberty, the statutory right to apply is robust and meaningful.

47. Mandatory detention, in contrast, severely limits the availability of such rights. Interviews occur on an exceedingly fast timeline; review of a negative interview decision by an immigration judge must occur within seven days of the decision. *See* 8 C.F.R. § 1003.42.

48. Here, the Petitioner was apprehended by ICE and is being held without a bond without authority. This violated due process. *See generally Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest).

Count Two

Violation of the Fifth Amendment of the U.S. Constitution Procedural Due Process

49. Petitioner realleges all paragraphs above as if fully set forth here.

50. Courts balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

51. The first factor, the private interest at issue, favors Petitioner. "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 [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690.

52. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioner. To safeguard against erroneous deprivations of liberty, the statute specifies the classes of individuals subject to mandatory detention. Regulations specify who may lawfully be subject to mandatory detention and who may not. Respondents violated those laws here, leaving the risk of erroneous deprivation of liberty not just high, but certain. Requiring Respondents to follow the statute, give notice and an opportunity to respond prior to detention without release is of great value because it reduces the probability of needless detention of a person, like Petitioner, who is neither dangerous nor a flight risk.

53. The third factor, the government's interest, also favors Petitioner. When the government ignores law, it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law, requiring Respondents to instead follow the statute and regulations to reduce fiscal and administrative burdens on the government.

54. For these reasons, detaining the Petitioner without release violated procedural due process under the Fifth Amendment to the U.S. Constitution.

Count Three
Violation of the Immigration and Nationality Act and Regulations governing
Removal and Detention

55. Petitioner realleges all paragraphs above as if fully set forth here.

56. The statutory question is whether § 1225(b)(2) applies to all aliens who, like Petitioner, are already in the country but entered without inspection. If so, § 1225(b)(2) makes Petitioner's detention mandatory. If not, § 1226(a) applies, Petitioner's detention is discretionary, and he is entitled to a bond hearing if he remains detained.

57. Petitioner, who has been living in the United States since 2009, is governed by § 1226(a) and not § 1252(b)(2). Petitioner is therefore entitled to a bond hearing under § 1226(a).

58. Section 1226(a) states that a noncitizen already present in the United States "may be arrested and detained pending a decision on whether the alien is to be removed from

the United States” and may be released on bond. 8 U.S.C. § 1226(a)(2). Thus, this statute “establishes a discretionary detention framework,” *Gomes*, 2025 WL 1869299, at *2, unlike the mandatory detention framework of § 1225(b)(2). Importantly, “[f]ederal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention.” *Jennings*, 583 U.S. at 306.

59. The language at § 1225(b)(2) is also clear. It states, “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for” removal proceedings. 8 U.S.C. § 1225(b)(2)(A).

60. In other words, § 1225(b)(2) requires detention if three conditions are met:

- (1) the alien is an “applicant for admission”;
- (2) the alien is “seeking admission”; and
- (3) an “examining immigration officer determines” the alien “is not clearly and beyond a doubt entitled to be admitted.

Id.; see, e.g., *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025).

61. Here, the first condition is met. The term “applicant for admission” includes an alien “present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1). “The terms ‘admission’ and ‘admitted’ mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” *Id.* § 1101(a)(13)(A). Because Petitioner is present in the United States and has not “lawful[ly] ent[ered] . . . after inspection and authorization by an immigration officer,” he is an “applicant for admission.” *Id.*

§§ 1101(a)(13)(A); 1225(a)(1).

62. But at the time of Petitioner's re-detention, he was not "seeking admission." Again, admission refers to "lawful entry . . . into the United States after inspection and authorization by an immigration officer." *Id.* § 1101(a)(13)(A). When ICE detained him on April 2, 2026, Petitioner was not seeking entry, much less "lawful entry . . . after inspection and authorization." Because Petitioner is not "seeking admission," ICE may not detain him under § 1225(b)(2).

63. If that were not enough, the Supreme Court recently discussed the relationship between § 1225 and § 1226: "In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under § 1226(a) and (c)." *Jennings*, 583 U.S. at 289.

64. The Court clarified how these provisions applied to different categories of aliens: "§ 1226 applies to aliens already present in the United States." *Id.* at 303. On the other hand, "the language of §§ 1225(b)(1) and (b)(2) is quite clear": "§ 1225(b) applies primarily to aliens seeking entry into the United States ('applicants for admission' in the language of the statute)." *Id.* at 297, 303. So § 1225(b)(2) applies to aliens "seeking admission," and § 1226 applies to aliens "already in the country." Respondents may not detain Petitioner pursuant to § 1225(b)(2).

65. District Courts have overwhelmingly rejected the BIA's interpretation. "DHS's interpretation of the applicability of § 1225(b)(2), rather than § 1226, to noncitizens who have resided in the country for years and were already in the United States when

apprehended, runs afoul of the statutes' legislative history, plain meaning, and interpretation by courts in the First, Second, Fifth, Sixth, Eighth, and Ninth Circuits." *Merino*, 2025 WL 2941609, at *3 (citing cases); *see also Puga*, 2025 WL 2938369, at *2 ("As explained, the statutory text, context, and scheme of section 1225 do not support a finding that a noncitizen is 'seeking admission' when he never sought to do so. Additionally, numerous courts that have examined the interpretation of section 1225 articulated by Respondents – particularly following the BIA's decision in *Matter of Yajure Hurtado* – have rejected their construction and adopted Petitioner's."); *Nguyen*, 2025 WL 3451649, at *3; *Ardon-Quiroz*, 2025 WL 3451645, at *7

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that this Court:

- a. Exercise jurisdiction over this matter;
- b. Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;
- c. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations
- d. Order Petitioner's immediate release or a bond hearing;
- e. Award Petitioner costs and reasonable attorneys' fees; and
- f. Order such other relief as this Court may deem just and proper.

Respectfully submitted,

 /s/ Carolina A. Collado
Attorney for Petitioner
JIMENEZ MAZZITELLI MORDES

9350 S. Dixie Highway, PH 5
Miami, FL 33156
Carolina@jmmlawfirm.com
305-461-3077

8 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.