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NORTHERN DISTRICT OF OHIO CLEVELAND

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

3:26 CV 02097

JOSE EDUARDO MONTANO PALOMINO,

Petitioner,

v.

KEVIN RAYCRAFT, in his official capacity as Acting Field Office Director, Detroit Field Office, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations,

Respondent.

Case No. _____

Judge JUDGE KNEPP

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

EXPEDITED RELIEF REQUESTED

MAG JUDGE GRIMES

Petitioner José Eduardo Montaño Palomino, through counsel, petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 and alleges as follows:

INTRODUCTION

(a) Petitioner is detained by Immigration and Customs Enforcement ("ICE") at the Seneca County Jail in Tiffin, Ohio. He challenges the statutory and constitutional basis for his continued detention without an individualized merits hearing at which an immigration judge determines whether detention is necessary because he presents a danger to the community or a risk of flight.

(b) This petition is narrow. Petitioner does not ask this Court to decide whether he is removable, whether he is entitled to asylum or other protection, or whether any removal order is valid. He asks only that the Court identify the statute governing his present detention and require the process that 8 U.S.C. § 1226(a) and the Fifth Amendment demand.

PARTIES

(c) Petitioner José Eduardo Montaño Palomino is a native and citizen of Venezuela. His Alien Registration Number is [redacted]. He is presently confined at the Seneca County Jail, 3040 South State Route 100, Tiffin, Ohio 44883.

(d) Respondent Kevin Raycraft is the Acting Field Office Director of the Detroit Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations. Although Petitioner is housed at the Seneca County Jail, Raycraft exercises legal control over Petitioner's continued ICE detention and has authority to cause his release or provide the requested custody process. He is sued in his official capacity and is the proper habeas custodian. *Roman v. Ashcroft*, 340 F.3d 314, 320, 322 (6th Cir. 2003); see also *Kumar v. Stevens*, No. 3:26-cv-00132, slip op. at 12, ECF No. 20 (N.D. Ohio July 29, 2026) (dismissing the Seneca County Sheriff as a respondent in a § 2241 challenge brought by an ICE detainee housed at the Seneca County Jail).

JURISDICTION AND VENUE

(e) This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) because Petitioner is in custody in violation of the Constitution and laws of the United States. The Court also has federal-question jurisdiction under 28 U.S.C. § 1331.

(f) This petition challenges only Petitioner's present physical detention. It does not seek review of a removal order, challenge the commencement, adjudication, or execution of removal proceedings, or challenge the process used to determine removability. Sections 1252(b)(9) and 1252(g) therefore do not bar review of this detention claim. See *Jennings v. Rodriguez*, 583 U.S. 281, 292–95 (2018); *Kumar v. Stevens*, No. 3:26-cv-00132, slip op. at 4–7, ECF No. 20 (N.D. Ohio July 29, 2026).

(g) Venue is proper in this District because Petitioner is confined in Seneca County and Respondent exercises detention authority over him there. Seneca County is assigned to the Western Division at Toledo under Northern District of Ohio Local Civil Rule 3.8(a).

FACTUAL ALLEGATIONS

(h) On April 20, 2024, Petitioner arrived at Miami International Airport, presented himself for inspection, and was paroled into the United States through the Venezuelan humanitarian parole process. His VHP parole was authorized through April 19, 2026.

(i) After his parole, Petitioner lived in Reynoldsburg, Ohio. He established a fixed residence, obtained employment authorization, worked, and supported his spouse and three children, who remain in Venezuela.

(j) Petitioner has filed Form I-589 and requests asylum, withholding of removal under 8 U.S.C. § 1231(b)(3), and protection under the Convention Against Torture. Those applications for protection remain pending in his removal proceedings. Immigration Judge Richard Drucker has scheduled an individual merits hearing for September 4, 2026, at 3:00 p.m.

(k) Petitioner reports that [redacted]. That history is part of his pending protection claim; this Court need not adjudicate the merits of the protection claim to decide the legality of his present detention.

(l) On July 13, 2026, ICE arrested Petitioner in the interior of the United States and confined him at the Seneca County Jail. DHS issued and personally served its Notice to Appear that same day. Petitioner has remained in ICE custody there since that arrest. Exhibit B.

(m) The Notice to Appear places Petitioner in regular removal proceedings under 8 U.S.C. § 1229a, classifies him as an arriving alien, and alleges inadmissibility under 8 U.S.C. § 1182(a)(7)(A)(i)(I). Petitioner is represented in those proceedings and has no administratively final order of removal. Exhibit B.

(n) The available state-court record reflects a pending misdemeanor OVI case, Franklin County Municipal Court Case No. 2026-TRC-128094. There has been no conviction or final disposition. After Petitioner's ICE custody prevented his appearance, the state court recalled the resulting warrant on August 12, 2026.

(o) Petitioner filed a motion for custody redetermination under 8 U.S.C. § 1226(a). Immigration Judge Richard Drucker convened a custody-redetermination hearing on August 25, 2026, at 9:00 a.m.

(p) At that hearing, Petitioner requested an individualized determination of danger and flight risk. Judge Drucker denied custody redetermination for "No jurisdiction." The written order records that DHS waived appeal and Petitioner reserved appeal. The immigration judge did not reach the merits of danger or flight risk. Exhibit A.

(q) Petitioner thereafter timely filed an appeal from the custody ruling with the Board of Immigration Appeals. The bond appeal remains pending. Exhibit C.

(r) Petitioner remains detained. As of August 25, 2026, he has spent forty-three days in ICE custody. No immigration judge has conducted an individualized merits hearing that addresses, on evidence, whether Petitioner poses a danger to the community or a risk of flight, and no judicial officer has found that either consideration requires his detention.

(s) Petitioner has a fixed Ohio residence, a pending application for humanitarian protection, a multi-year employment authorization, a history of working in Ohio, and close family obligations. He does not ask this Court to decide the ultimate bond question; he asks for a prompt hearing before the tribunal Congress authorized to decide it.

CLAIM ONE

PETITIONER'S DETENTION IS GOVERNED BY 8 U.S.C. § 1226(a)

(t) Section 1226(a) authorizes the arrest and detention of a noncitizen "pending a decision on whether the alien is to be removed from the United States," and it permits release on bond or conditional parole. By contrast, 8 U.S.C. § 1225(b)(2)(A) addresses an applicant for admission whom an examining immigration officer determines is seeking admission and is not clearly and beyond a doubt entitled to be admitted.

(u) The Sixth Circuit has held that an "applicant for admission" is not necessarily "seeking admission" and that § 1225(b)(2)(A) does not supply a perpetual mandatory-detention rule for every unadmitted person found in the interior. *Lopez-Campos v. Raycraft*, 175 F.4th 713, 732 (6th Cir. 2026). Section 1226 governs persons arrested and detained while a decision on removability is pending unless a specified mandatory-detention provision applies. *Id.* at 717–18, 732.

(v) Petitioner's present detention followed an interior arrest more than two years after DHS inspected and paroled him into the country. He was not arrested while requesting entry at a port. DHS placed him in regular § 1229a removal proceedings, and he now seeks asylum and protection from removal. Exhibit B. Section 1226(a)'s text directly describes that present custody.

(w) Section 1182(d)(5)(A) provides that parole is not an admission and that, when the purposes of parole have been served, the parolee is returned to custody and the case continues to be dealt with in the same manner as that of any other applicant for admission. But the statute does not say that every former parolee is necessarily and presently "seeking admission" within § 1225(b)(2)(A). *Lopez-Campos* expressly rejected the proposition that § 1182(d)(5)(A) makes every applicant for admission necessarily a person "seeking admission." 175 F.4th at 729–32.

(x) Although DHS charges Petitioner as inadmissible under § 1182(a)(7)(A)(i)(I), mandatory detention under § 1226(c)(1)(E) applies only when both subsections (E)(i) and (E)(ii) are satisfied. Subsection (E)(ii) requires an arrest, charge, conviction, or admission concerning burglary, theft, larceny, shoplifting, assault of a law-enforcement officer, or a crime resulting in death or serious bodily injury to another person. Petitioner's pending misdemeanor OVI charge alleges none of those offenses. The OVI incident caused no injury to any person and involved no violent offense. Accordingly, the OVI arrest and charge do not bring Petitioner within § 1226(c)(1)(E). The record identifies no other statutory basis for mandatory detention under § 1226(c).

(y) The Northern District has applied the same statutory reasoning to a closely analogous parolee. In *Auguste v. Attorney General of the United States*, the petitioner appeared at a port of entry in June 2024, was paroled into the United States, later was detained, and then was placed through a new notice to appear into regular § 1229a proceedings. The court held that § 1226(a) governed and ordered an individualized bond hearing within seven days or release. No. 3:26-cv-00971, slip op. at 2–5, ECF No. 10 (N.D. Ohio May 27, 2026).

(z) Although DHS labels Petitioner an "arriving alien," that classification does not itself answer which statute governs his present interior custody. *Lopez-Campos*, 175 F.4th at 729–32; *Auguste*, No. 3:26-cv-00971, slip op. at 2–5, ECF No. 10. Because § 1226(a) governs, Petitioner is entitled to a genuine custody determination under that provision rather than perpetual detention based only on a classification assigned at his earlier entry.

CLAIM TWO

CONTINUED DETENTION WITHOUT AN INDIVIDUALIZED HEARING VIOLATES DUE PROCESS

(aa) The Fifth Amendment protects every person within the United States from deprivation of liberty without due process of law. Freedom from physical restraint lies at the core of that protection. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

(bb) In *Lopez-Campos*, the Sixth Circuit affirmed that detention without bond under § 1226(a) deprived the petitioners of liberty without due process and that they were entitled to individualized bond hearings in light of the significant time they had spent within the United States. 175 F.4th at 736.

(cc) Petitioner has lived in the United States since April 2024 and was allowed to reside and work in Ohio while his protection application remained pending. He has now been detained for forty-three days without any merits determination of danger or flight risk. That detention creates an intolerable risk of erroneous loss of liberty.

(dd) An individualized bond hearing permits an immigration judge to assess whether the noncitizen presents a flight risk or danger, thereby reducing the risk of an erroneous deprivation of liberty. *Hernandez-Cine v. Voorhies*, No. 4:26-cv-00421, 2026 WL 972364, at *6 (N.D. Ohio Apr. 10, 2026).

(ee) At that hearing, due process requires the Government to justify continued detention by clear and convincing evidence of danger or flight risk. *Auguste*, No. 3:26-cv-00971, slip op. at 4–5, ECF No. 10. If the Government does not provide that hearing promptly, release is the appropriate conditional habeas remedy.

EXHAUSTION

(ff) No applicable statute or rule mandates exhaustion of this detention claim. *Echavarria Morales v. Noem*, No. 3:25-cv-02691, 2026 WL 100583, at *2 (N.D. Ohio Jan. 14, 2026). In the absence of a statutory mandate, exhaustion is prudential and governed by sound judicial discretion. *Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013).

(gg) Petitioner presented the precise custody-jurisdiction issue to Immigration Judge Richard Drucker at the August 25, 2026 custody-redetermination hearing. Judge Drucker denied custody redetermination for "No jurisdiction" and did not reach danger or flight risk. Petitioner then timely appealed that ruling to the Board of Immigration Appeals, where the bond appeal remains pending. Exhibits A and C.

(hh) A pending BIA bond appeal does not make exhaustion jurisdictional or require this Court to postpone review of ongoing physical detention. In *Echavarria Morales*, the Northern District waived prudential exhaustion while a bond appeal remained pending because the dispute was legal, the Government's position made further administrative review unlikely to provide timely relief, the BIA lacked authority to adjudicate the constitutional challenge, and continued detention imposed hardship. 2026 WL 100583, at *2–4.

(ii) The same conclusion follows here. Petitioner did not bypass the administrative process; he invoked it. But the appeal supplies no automatic custody hearing or release while it remains pending, the statutory question is controlled by *Lopez-Campos*, and continued detention without any danger-or-flight-risk determination causes an ongoing loss of liberty. The September 4, 2026 merits hearing will address asylum, withholding of removal, and Convention Against Torture protection; it is not a substitute for the custody determination requested here.

REQUEST FOR EXPEDITED REVIEW AND RELIEF

(jj) Section 2243 directs the Court to award the writ or issue an order directing Respondent to show cause "forthwith" unless the petition itself demonstrates that relief is unavailable. Because the petition concerns ongoing physical detention and requests only a focused bond determination, Petitioner respectfully asks for expedited preliminary review and an order directing Respondent to show cause on a shortened schedule.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Issue an order under 28 U.S.C. § 2243 directing Respondent to show cause promptly why the writ should not be granted;
2. Conditionally grant the writ and declare that Petitioner's present detention is governed by 8 U.S.C. § 1226(a);
3. Order Respondent, within seven days, to afford Petitioner an individualized bond hearing before an immigration judge at which the Government bears the burden of proving by clear and convincing evidence that continued detention is necessary because Petitioner presents a danger to the community or a risk of flight, or release Petitioner;

4. Order Respondent to file a status report within forty-eight hours after the bond hearing or Petitioner's release, certifying compliance and stating the result; and

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

Respectfully submitted,

/s/ William Todd Drown
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOSE EDUARDO MONTANO PALOMINO, **Petitioner,** **v.** **KEVIN RAYCRAFT, in his official capacity as Acting Field Office Director, Detroit Field Office, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations,** **Respondent.**	**Case No. _____** **CLIENT VERIFICATION UNDER 28 U.S.C. § 1746**

I, José Eduardo Montaño Palomino, am the Petitioner in this action. I have read the foregoing Verified Petition for Writ of Habeas Corpus, or it has been read and explained to me in Spanish, and I understand its contents. I authorize my attorney to file this petition.

I declare under penalty of perjury that the factual allegations in the foregoing petition are true and correct.

Executed on 8-25-26, 2026, at Tiffin, Ohio.

Lori E. Montano Palomino

José Eduardo Montaño Palomino, Petitioner

INDEX OF EXHIBITS

Exhibit	Description
A	August 25, 2026 IJ custody-redetermination order
B	July 13, 2026 Notice to Appear (Form I-862), including continuation page
C	Form EOIR-26 bond appeal and proof of filing or acceptance by the Board of Immigration Appeals