UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

IN THE MATTER OF:

Rider Bustamante Cabrera

Petitioner,

vs.

Kevin Raycraft in his official capacity as Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement;

Markwayne Mullin, in his official capacity as Secretary, U.S. Department of Homeland Security;

David Venturella, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;

Todd Blanche, in his official capacity as Attorney General of the United States;

Sheriff Richard Jones, in his official capacity as Petitioner's immediate custodian at Butler County Jail

Respondents.

Case No.

JUDGE

MAGISTRATE

DHS FILE NO. A[redacted]

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. §2241 AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Mr. Rider Bustamante Cabrera has been in removal proceedings since December 31, 2022, and he has been in ICE detention since December 19, 2025, in violation of the Due Process Clause of the Fifth Amendment. This case presents a highly unusual fact-pattern, potentially of first impression for this Court. Since last December while *pro se*, Mr. Bustamante Cabrera has been ordered removed to Honduras, physically taken to Honduras, refused entry to Honduras by the Honduran government, returned to the United States, and then the DHS reopened removal proceedings against Mr. Bustamante Cabrera, now starting his removal case over again.

2. Mr. Bustamante Cabrera is a citizen and national of Peru, born on [redacted]. On or about December 31, 2022, Mr. Bustamante Cabrera applied for admission to the United States at the Brownsville, Texas, port of entry to seek asylum.

3. On December 31, 2022, Mr. Bustamante Cabrera was issued a Notice to Appear by Customs and Border Protection in Brownsville, Texas, charging him as an arriving alien inadmissible per INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I) at the time of application of admission due to not having a visa or similar document to authorize his entry into the United States.

4. Mr. Bustamante Cabrera was not detained by DHS upon his application for admission to the United States, other than the temporary detention necessary to process his new removal case and issue him the necessary paperwork, including a Notice to Appear requiring him to present himself at a hearing before the Cleveland Immigration Court on October 31, 2023, and

instructions to present himself to the Enforcement and Removal Operations office of ICE in Ohio.

5. Thereafter, Mr. Bustamante Cabrera appeared before the Cleveland Immigration Court as required for master calendar hearings on October 31, 2023; February 27, 2024; May 28, 2024; September 17, 2024; February 11, 2025; and November 25, 2025.

6. Meanwhile, Mr. Bustamante Cabrera attended his regularly scheduled check-in appointments at the ICE ERO office in Columbus, Ohio, as required as a condition of his parole into the United States.

7. On November 25, 2025, the DHS orally moved to pretermit Mr. Bustamante Cabrera's asylum application under an Asylum Cooperative Agreement with Honduras. The Cleveland Immigration Court then set Mr. Bustamante Cabrera's case for an all purpose hearing on January 8, 2026, to take testimony and receive evidence regarding removing Mr. Bustamante Cabrera to Honduras.

8. On approximately December 18, 2025, Mr. Bustamante Cabrera was detained by ICE.

9. On February 6, 2026, the Immigration Judge granted DHS' motion to pretermit Mr. Bustamante Cabrera's asylum application and ordered him removed to Honduras.

10. At an unknown date, employees of the DHS physically removed Mr. Bustamante Cabrera to Honduras. At an unknown date, Honduras refused Mr. Bustamante Cabrera entry. At an unknown date, Mr. Bustamante Cabrera was returned to the United States.

11. On July 27, 2026, DHS moved the Cleveland Immigration Court to reopen removal proceedings against Mr. Bustamante Cabrera, this time with Peru designated as the country of removal, to adjudicate Mr. Bustamante Cabrera's application for asylum. The certificate of service states that DHS counsel Matthew Bush served a copy of the motion to reopen upon Mr.

Bustamante Cabrera at the Winn Correctional Center, 506 Gum Springs Road, Winnfield, Louisiana 71483 via ECAS, the EOIR Courts & Appeals System.

12. On August 4, 2026, the Immigration Judge granted DHS motion to reopen removal proceedings against Mr. Bustamante Cabrera. This order was served upon Mr. Bustamante Cabrera by the Court via mail at Butler County Jail.

13. On August 6, 2026, ICE filed an I-830 Notice to EOIR: Alien Address, dated August 4, 2026, stating that Mr. Bustamante was detained at the Mahoning County Jail on December 18, 2025.

14. Also on August 6, 2026, the Cleveland Immigration Court set Mr. Bustamante Cabrera's case for master calendar hearing on August 10, 2026, at the Mahoning County Jail and served Mr. Bustamante Cabrera at the Mahoning County Jail via mail c/o custodial officer.

15. On August 10, 2026, the Cleveland Immigration Court set Mr. Bustamante Cabrera's case for master calendar hearing on August 26, 2026, at the Mahoning County Jail and served Mr. Bustamante Cabrera at the Mahoning County Jail via mail c/o custodial officer.

16. On August 17, 2026, the Immigration Court filed a non-deliverable returned mail notice for the Court's August 10, 2026, hearing notice.

17. On August 18, 2026, while Mr. Bustamante Cabrera was physically detained at the Butler County Jail, undersigned pro bono counsel filed a custody redetermination request with the Cleveland Immigration Court on Mr. Bustamante Cabrera's behalf, requesting that the Court schedule an Immigration Judge bond hearing.

18. On August 24, 2026, ICE filed an I-830 Notice to EOIR: Alien Address, dated August 4, 2026, stating that Mr. Bustamante was detained at the Butler County Jail on December 18, 2025.

19. On August 24, 2026, the Cleveland Immigration Court set Mr. Bustamante Cabrera's case for a master calendar hearing on August 31, 2026, at the Butler County Jail. The Court served Mr. Bustamante Cabrera via mail c/o custodial officer.

20. Mr. Bustamante Cabrera filed a thirty-three-page evidentiary packet in support of his request for bond. DHS made no filings in the custody redetermination case.

21. On August 27, 2026, the Immigration Court denied Mr. Bustamante Cabrera bond due to lack of jurisdiction as Mr. Bustamante Cabrera was classified as an arriving alien.

22. Mr. Bustamante Cabrera's detained removal case is ongoing.

23. Mr. Bustamante Cabrera has a diagnosed health condition for which he requires prescription medicines that have not been provided to him regularly throughout his approximately nine months of ICE detention, causing him suffering above and beyond that of a typical detained individual.

24. Mr. Bustamante Cabrera does not have a criminal record.

PARTIES

25. Petitioner, Mr. Bustamante Cabrera, is a native and citizen of Peru. If he were not detained, he would reside with his brother in Columbus, Ohio.

26. Respondent Markwayne Mullin is sued in his official capacity as 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. Markwayne Mullin has ultimate custodial authority over Petitioner.

27. Respondent Kevin Raycraft is sued in his official capacity as the ICE Acting Field Office Director of ICE's Enforcement and Removal Operations division for Detroit, Michigan,

which includes the Corrections Center of Northwest Ohio. As such, Mr. Raycraft is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal.

28. Respondent U.S. Department of Homeland Security ("DHS") is a federal agency headquartered in Washington, D.C. and the parent agency of ICE.

29. Respondent ICE is a component agency of DHS.

30. Respondent Todd Blanche is sued in his official capacity as the Attorney General. He is responsible for accurate implementation and enforcement of the INA by the Department of Justice.

31. Sheriff Richard Jones is sued in his official capacity as Sheriff of Butler County as he is Petitioner's direct physical custodian at Butler County Jail.

JURISDICTION AND VENUE

32. This Court has subject matter jurisdiction to review Petitioner's fundamentally unfair detention under 28 U.S.C. § 2241 and the Suspension Clause of the Constitution because this action is a habeas corpus petition and under 28 U.S.C. § 1331 because this action arises under federal law.

33. Venue is proper in this district because Respondents are Petitioner's immediate custodians, and under 28 U.S.C. § 1391(e)(1) because Respondents are officers of United States agencies, Petitioner currently resides within this District, and there is no real property involved in this action.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

34. Mr. Bustamante Cabrera was born on [redacted], in Cajamarca, Peru. *Ex. A,* Petitioner's Peruvian passport. On or about December 31, 2022, Mr. Bustamante Cabrera applied for admission to the United States at the Brownsville, Texas, port of entry to seek asylum. *Ex. B,*

Notice to Appear. Mr. Bustamante Cabrera was not detained by DHS and was paroled into the United States with instructions to appear before the Cleveland Immigration Court on October 31, 2023, and to report to the Columbus Ohio ICE ERO office.

35. Mr. Bustamante Cabrera presented himself to the Columbus ICE ERO office as required, and he attended six master calendar hearings before the Cleveland Immigration Court from 2023 to November 25, 2025. *Ex. C,* non-detained hearing notices. Mr. Bustamante Cabrera filed his required notice of address change with the Immigration Court when he moved residences in 2023. *Ex. D,* EOIR-33.

36. Around December 19, 2025, Mr. Bustamante Cabrera was detained by ICE. *Ex. E,* I-830 Notice to EOIR: Alien Address.

37. On February 6, 2026, the Immigration Judge granted DHS' motion to pretermit Mr. Bustamante Cabrera's asylum application and ordered him removed to Honduras. *Ex. F,* Order of the Immigration Judge.

38. On unknown dates, Mr. Bustamante Cabrera was physically taken to Honduras, refused entry to Honduras, and physically returned to the United States.

39. On July 27, 2026, DHS moved the Cleveland Immigration Court to reopen removal proceedings against Mr. Bustamante Cabrera, this time with Peru designated as the country of removal, and to adjudicate Mr. Bustamante Cabrera's application for asylum. The certificate of service states that DHS counsel Matthew Bush served a copy of the motion to reopen upon Mr. Bustamante Cabrera at the Winn Correctional Center, 506 Gum Springs Road, Winnfield, Louisiana 71483 via ECAS, the EOIR Courts & Appeals System, which is an electronic, web-based system. *Ex. G,* OPLA's motion to reopen.

40. Subsequently, in August of 2026 it appears from the filings in Mr. Bustamante Cabrera's electronic record of proceedings in EOIR that the DHS was mistakenly scheduling Mr. Bustamante Cabrera for hearings in Mahoning County Jail, while he was actually detained in Butler County Jail. *Ex. H,* detained hearing notices, returned mail, and conflicting I-830's filed with the Immigration Court.

41. Mr. Bustamante suffers from a diagnosed health condition for which he requires prescription medicines that have not been provided to him regularly throughout his approximately nine months of ICE detention, causing him suffering above and beyond that of a typical detained individual.

42. Mr. Bustamante Cabrera has not been represented by counsel until undersigned *pro bono* counsel filed a bond redetermination request for him with the Cleveland Immigration Court, along with an evidentiary packet demonstrating that he is not a danger to society nor a flight risk. *Ex. I,* bond motion and supporting exhibits.

43. Mr. Bustamante Cabrera's bond hearing was held before the Immigration Court on August 27, 2026, whereby the Immigration Judge denied bond solely due to lack of jurisdiction as Mr. Bustamante Cabrera had been classified as an arriving alien upon entry. *Ex. J,* order of the Immigration Judge.

CLAIMS FOR RELIEF

Count One

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

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

2. When DHS paroled Petitioner into the United States upon his entry on or about December 31, 2022, it found that he is neither a danger to the community nor a flight risk.

3. When ICE detained Petitioner in December of 2025, Petitioner had complied with every condition of his parole and had appeared at every required ICE appointment and hearing before the Cleveland Immigration Court. No change in circumstances warranted Petitioner's detention.

4. Petitioner's detention therefore does not bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal.

5. Because Respondents had no legitimate, non-punitive objective in revoking Petitioner's order of supervision, Petitioner's detention violates substantive due process under the Fifth Amendment to the U.S. Constitution.

Count Two

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

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

2. *Mathews v. Eldridge*, 424 U.S. 319, 333, instructs courts to 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.

3. 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. Petitioner has a protected liberty interest of freedom in the United States, as he had been free in this country for nearly three years, from December 31, 2022, until December 18, 2025, when he was suddenly and needlessly detained by ICE.

4. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, also favors Petitioner. Since the Immigration Judge does not have jurisdiction to grant Petitioner bond, there has been no review whatsoever of ICE's detention of him which has been ongoing since December of last year. Since DHS already determined that Petitioner is not a flight risk nor a danger to the United States and Petitioner had been free in the United States from December 31, 2022, until December 18, 2025, Petitioner was entitled to a pre-deprivation hearing, with adequate notice given, at which the government would bear the burden of establishing that he was a flight risk and/or danger to society, as to warrant his detention.

5. The third factor, the government's interest, also favors Petitioner. When the government ignores law and detains non-criminal individuals who have previously been released, 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 provide notice and a meaningful opportunity to respond prior to detention reduces fiscal and administrative burdens on the government.

6. For these reasons, re-detaining Petitioner in 2025 after he had already been paroled from DHS custody in 2022, absent changed circumstances of Petitioner and absent notice to

Petitioner and without requiring the government to justify a legal, non-punitive purpose for the re-detention violates substantive due process under the Fifth Amendment to the U.S. Constitution.

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that this Court:

1. Exercise jurisdiction over this matter;

2. Pursuant to 28 U.S.C. § 2243, issue an order directing Respondents to show cause within three days why the writ should not be granted;

3. Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;

4. Order Petitioner's immediate release;

5. Order that Respondents cannot re-detain Petitioner without notice and a pre-deprivation hearing before this Court where the government bears the burden of justifying re-detention by clear and convincing evidence; and

6. Order such other relief as this Court may deem just and proper.

Respectfully submitted,

/s/ Amy Bittner
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VERIFICATION

Amy Bittner, under penalty of perjury, states the following:

1. I am an attorney admitted to practice before this Court. I am representing Petitioner *pro bono*.

2. I affirm the truth of the contents of the foregoing Complaint upon information and belief. The sources of my information and belief are my personal knowledge of the factual and procedural history of Petitioner's case.

Dated: Columbus, Ohio
September 4, 2026

s/ Amy Bittner