

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLORADO

BRYAN FABRICIO RAMOS HERNANDEZ, :

Petitioner :

v. :

Case No. \_\_\_\_\_

JOHN OR JANE DOE (non-government employee :  
of The Geo Group, Inc., the contractor operating the :  
Aurora Immigration Detention Center), TODD M. :  
LYONS, (Acting Director, Immigration and :  
Customs Enforcement), KRISTY NOEM (Secretary :  
of the Department of Homeland Security), and :  
PAM BONDI, (Attorney General of the United :  
States), :

Respondents. :

**PETITION FOR WRIT OF HABEAS CORPUS**

This is a petition for writ of habeas corpus filed by Bryan Fabricio Ramos Hernandez ("Mr. Hernandez") seeking relief to remedy his unlawful detention. Respondents are detaining Mr. Hernandez seeking a final removal order. Mr. Hernandez has been in the custody of the Respondents since October of 2020. To date, Respondents have been unable or unwilling to remove Mr. Hernandez and thus, he has been detained for approximately five (5) years and although initially granted a reasonable bond by the Honorable Immigration Judge, Elizabeth McGrail, has been denied a reasonable bond based on wholly unsupported allegations by Respondents. Mr. Hernandez is not a flight risk or a danger to the community. Mr. Hernandez has only a single criminal conviction of Driving While Ability Impaired, without any

aggravating factors.<sup>1</sup> His prolonged detention is no longer justified under the Constitution or the Immigration and Nationality Act (INA).

Petitioner Bryan Fabricio Ramos Hernandez (“Mr. Hernandez”) is a citizen and national of El Salvador. He entered the United States as a minor with his family in 2015. On December 17, 2015, the Department of Homeland Security (DHS) filed a Notice to Appear charging that he was removable under §212(a)(6)(A)(i) of the Immigration and Nationality Act (INA).

In 2019, Mr. Hernandez suffered a misdemeanor conviction for Driving While Ability Impaired (DWAI) in Arapahoe County, Colorado, and placed on misdemeanor probation.

On January 25, 2020, while on Mr. Hernandez was pulled over by the Denver Police Department Gang Unit and subsequently arrested for possession of a firearm. It is important to note that in the arrest report,<sup>2</sup> Brian Jeffers, an officer in the Gang Unit stated that “After developing probable cause to stop the vehicle, members of the Denver Police Department’s Gang Unit initiated a traffic stop on the vehicle.” Absent in the report is any statement as to what the probable cause was, rendering the legality of the traffic stop in question. The report references that the firearm recovered during the stop was connected to three cases involving the unlawful discharge of a firearm, none of which were ever connected to Mr. Hernandez. The report also stated that the matter would be presented to the United States Attorney prosecution, which was apparently never done. No charges by any agency, were pursued against Mr. Hernandez and the Colorado statute of limitations relating to any alleged illegal possession by Mr. Hernandez have now run. While Mr. Hernandez was not prosecuted criminally, he was almost immediately turned over to Immigration and Customs Enforcement (ICE). Mr. Hernandez was held in ICE

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<sup>1</sup> There was no accident, injury to any party, or high BAC (blood alcohol content) which was 0.05%.

<sup>2</sup> See a copy of the report, attached as Exhibit “A”.

custody even though he was already in removal proceedings before this arrest and had not committed any crimes and because he had been cooperating with ICE, the Respondents arrested Mr. Hernandez on his way to work — exactly where he said that he would be.

On April 20, 2020, the Aurora Immigration Court had conducted a custody redetermination hearing. At that hearing, evidence was presented to the Honorable Immigration Judge which assisted the Judge in ruling that the Mr. Hernandez had met his burden in demonstrating that he was neither a danger to the community nor a flight risk. The Honorable Immigration Judge granted Mr. Hernandez a reasonable bond in the amount of \$3,500.00. The family of Mr. Hernandez posted the bond and the DHS timely appealed, where Mr. Hernandez lost and he was again taken into custody in October of 2020, where he remains to this day. During the intervening six months, Mr. Hernandez committed no crimes while out on bond.

Since the inception of this instant matter in the Immigration Court, the Respondents have used the argument that the sole Driving While Ability Impaired charge, with no aggravating factors renders Mr. Hernandez a danger to the community requiring his continued confinement. The Respondents have alleged that there were federal charges relating to the alleged illegal possession of a firearm by Mr. Hernandez renders Mr. Hernandez a danger to the community, but such a charge would necessarily be brought in a Colorado State Court, and there would be no such charge prosecutable under federal law.<sup>3</sup> The Respondents have alleged in an untested report filed by ICE that Mr. Hernandez spontaneously uttered that he was a member of a gang,<sup>4</sup>

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<sup>3</sup> In fact, the Petitioner could argue that the plain text of the Second Amendment to the Constitution of the United States would allow possession of firearms by undocumented residents of the United States, just as other rights of the Constitution secured to “the people” in the Constitution.

<sup>4</sup> It should be noted that members of the Denver Police Department Gang Unit interviewed Mr. Hernandez, presumably inquiring as to whether he was or was not a member of a gang, and no reference to gang membership is alleged in the report.

although Mr. Hernandez testified in Immigration Court that this was not true and that he never made any such an utterance, which the Immigration Court found to be credible, granting him a reasonable bond of \$3,500.00. The Respondents have argued that the misdemeanor violation of his probation on the DWIA renders him a danger to the community, however, the Respondents created the condition which caused the violation by holding Mr. Hernandez in custody, rendering him unable to attend his court-ordered alcohol classes. The violation was not for “catching new charges” but because the Respondents were holding Mr. Hernandez in detention.

Despite no change in the status of Mr. Hernandez since the Honorable Immigration Judge Elizabeth McGrail initially granted him a reasonable immigration bond, the Honorable Immigration Judge has declined to grant Mr. Hernandez a reasonable bond since then, deferring to legal arguments made by the Respondents which have resulted in the unconstitutionally-long detention of Mr. Hernandez by the Respondents.

During the intervening five (5) years between his October 2020 detention to present, Respondents have not secured the necessary paperwork to remove Mr. Hernandez. Mr. Hernandez submits that his detention is in violation of his constitutional rights. His prolonged detention is no longer justified under the Constitution or the Immigration and Nationality Act (INA). Petitioner seeks an order from this Court declaring his continued and prolonged detention unlawful and ordering Respondents to release Mr. Hernandez from their custody.

#### CUSTODY

1. Mr. Hernandez is in the physical custody of the Respondents and is confined to the Aurora Immigration Detention Center in Aurora, Colorado. At the time of the filing of this petition, Mr. Hernandez is detained at the Aurora Immigration Detention Center. The Aurora Immigration Detention Center, operated by The Geo Group, Inc., contracts with the DHS to

detain aliens such as Petitioner. Mr. Hernandez is under the direct control of Respondents and their agents.

### **JURISDICTION**

2. This action arises under the Constitution of the United States, the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et. seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 1570. This Court has jurisdiction under 28 U.S.C. 2241, art. I, § 9, cl. 2 of the United States Constitution (“Suspension Clause”) and 28 U.S.C. § 1331, as Mr. Hernandez is presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, and the All Writs Act, 28 U.S.C. § 1651.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art. I § 9, cl. 2 of the U.S. Constitution (“Suspension Clause”); 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 2201, 2202 (Declaratory Judgment Act).

4. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. See, *e.g.*, *Zadvydas*, 533 U.S. at 687.

5. Federal courts also have federal question jurisdiction, through the APA, to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by “any applicable form of legal action, including actions for declaratory judgments or

writs of prohibitory or mandatory injunction or habeas corpus”). The APA affords a right of review to a person who is “adversely affected or aggrieved by agency action.” 5 U.S.C. § 702. Respondents’ continued detention of Mr. Hernandez without the granting of a reasonable bond has adversely and severely affected Mr. Hernandez’s liberty and freedom.

6. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Mr. Hernandez is detained within this district at the Aurora Immigration Detention Center. Furthermore, a substantial part of the events or omissions giving rise to this action occurred and continue to occur at ICE’s Denver Field Office in Centennial, Colorado, also within this division.

#### **PARTIES**

7. Petitioner Bryan Fabricio Ramos Hernandez (“Mr. Hernandez”) is a citizen and national of El Salvador. Mr. Hernandez has been in the custody of the Respondents since October of 2020. He remains in custody of the Respondents at the Aurora Immigration Detention Center. Mr. Hernandez is also a derivative beneficiary under his mother’s U-Visa and has already received his work authorization.

8. Respondent John or Jane Doe (“Doe”) is a non-governmental employee of The Geo Group, Inc., the contract operator of the Aurora Immigration Detention Center. He or she is sued in their capacity as the immediate custodian of Mr. Hernandez.

9. Respondent Todd M. Lyons (“Lyons”) is (according to [ice.gov/leadership](https://ice.dhs.gov/leadership)) the Acting Director of Immigration and Customs Enforcement. He is sued in his official capacity.

10. Respondent Kristi Noem (“Noem”) is the Secretary of the U.S. Department of Homeland Security (“DHS”). DHS oversees ICE, which is responsible for administering and

enforcing the immigration laws. Secretary Noem is the ultimate legal custodian of Petitioner. She is sued in her official capacity.

11. Respondent Pam Bondi (“Bondi”) is the Attorney General of the United States. She oversees the immigration court system, which is housed within the Executive Office for Immigration Review (EOIR) and includes all Immigration Judges and the Board of Immigration Appeals (BIA). She is sued in her official capacity.

#### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

12. Mr. Hernandez has exhausted his administrative remedies to the extent required by law.

13. He has fully cooperated with Respondents and has not delayed or obstructed his Detention.

14. Mr. Hernandez’s only remedy is by way of this judicial action.

#### **STATEMENT OF FACTS**

15. Petitioner Hernandez is a national and citizen of El Salvador who is a derivative beneficiary under the U-Visa that his mother has received.

16. In 2019, Mr. Hernandez was charged and convicted of Driving While Ability Impaired (DWAI), which is a misdemeanor under Colorado law. There were no aggravating factors to the DWAI such as an accident, injury, or high BAC (blood alcohol content). Mr. Hernandez had a blood alcohol content of 0.05%. He was placed on probation which in part, required mandatory attendance at alcohol classes.

17. While on probation for the DWAI, Mr. Hernandez was pulled over by members of the Denver Police Department Gang Unit, where a firearm was found in the vehicle, which according to the report was connected to three instances of “unlawful discharge” of a firearm,

which report fails to connect to Mr. Hernandez. While the report states the Gang Unit was referring this matter to the United States Attorney for possible prosecution, no evidence has been presented to indicate that such a referral was ever made. To date, no charges relating to the firearm have ever been brought against Mr. Hernandez, despite filings by the Respondent alleging that such federal charges were pending. The entire basis for this traffic stop is suspect because in the report, the Officer states “After developing probable cause to stop the vehicle”, without stating what this probable cause allegedly was.

18. In a filing by the Respondents, it is alleged that Mr. Hernandez made a spontaneous, unsolicited statement that he was in fact, a gang member. However, the report filed by the Denver Police Department Gang Unit makes no mention of such a statement and it would be incredible if a Gang Unit officer did not even make an inquiry as to whether an arrest subject was a member of a gang. The report filed by the Respondents which references this alleged utterance has never been tested in court and under oath and the report itself is not subject to cross examination, nor is the report inherently reliable.

19. Respondents claim that Mr. Hernandez is a danger to the community, requiring continued detention based on the single DWAI conviction, with no aggravating factors, Mr. Hernandez sustained, where they cite a case<sup>5</sup> which is easily distinguishable from the facts and circumstances present in the instant matter. Respondents claim that Mr. Hernandez is a danger to the community, requiring continued detention based on the arrest of Mr. Hernandez for the alleged illegal possession of a firearm, although there have been no state or federal prosecutions derived from that arrest, and where Mr. Hernandez was simply turned over to the Respondents for an unconstitutionally-long detention of what is now five (5) years in length. Respondents

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<sup>5</sup> See *Matter of Siniauskas*, 27 I&N Dec. 2018 (BIA 2018).

claim that Mr. Hernandez is a danger to the community because he was convicted of a probation violation, which the Respondents actually caused by his detention, rendering him unable to comply with his probation requirements, which probation was eventually terminated early by the state court so that Mr. Hernandez would not be repeatedly charged with violating because he has been in continued custody.

20. Despite no change in the status of Mr. Hernandez since the Honorable Immigration Judge Elizabeth McGrail initially granted him a reasonable immigration bond, the Honorable Immigration Judge has declined to grant Mr. Hernandez a reasonable bond since then, deferring to legal arguments made by the Respondents which have resulted in the unconstitutionally-long detention of Mr. Hernandez by the Respondents.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE CONSTITUTIONAL CLAIM**

21. Petitioner alleges and incorporates by reference paragraphs 1 through 20, above.

22. Petitioner's detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

#### **COUNT TWO STATUTORY CLAIM**

23. Petitioner alleges and incorporates by reference paragraphs 1 through 22 above.

24. Petitioner's continued detention violates the Immigration and Nationality Act and the U.S. Constitution.

#### **COUNT THREE ATTORNEY FEES**

25. If he prevails, Petitioner requests attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412.

**PRAYER FOR RELIEF**

WHEREFORE, based on the foregoing, your Petitioner prays for the following relief:

1. Assume jurisdiction over this matter;
2. Issue an Order to the Immigration Court presiding over the Petitioner's matter to continue the proceedings pending the outcome of the instant matter;
3. Issue a writ of habeas corpus ordering Respondents to release Mr. Hernandez on his own recognizance or under parole, a low bond or reasonable conditions of supervision;
4. Award Petitioner reasonable attorney fees and his costs in this matter;
5. Grant any such other relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED,

/s/ Gordon E. Turner  
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