

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

ARTURO SOTO HERNANDEZ,
Petitioner,

vs.

TERRENCE DICKERSON, in his
official capacity as Warden of Stewart
County Detention Center;

MARCOS CHARLES, in his official
capacity as the Acting Executive
Director of Enforcement and Removal
Operations for U.S. Immigration and
Customs Enforcement;

TODD LYONS, in his official capacity
as Acting Director of U.S. Immigration
and Customs Enforcement

KRISTI NOEM, in his official capacity
as U.S. Secretary of Homeland
Security; and

PAMELA BONDI, in his official
capacity as the U.S. Attorney General;

U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT; and

U.S. DEPARTMENT OF
HOMELAND SECURITY;
Defendants.

Civil Action No.: 4:25-cv-00269

HEARING REQUESTED

PETITION FOR WRIT OF HABEAS CORPUS BY AN ALIEN DETAINEE

To the Honorable Judges of this Court:

Petitioner, Arturo Soto Hernandez, respectfully bring this Petition for Writ of Habeas Corpus seeking relief to remedy his unlawful detention. Respondents are detaining Petitioner despite a lawful Order from an Immigration Judge with the Executive Office of Immigration Review, U.S. Department of Justice, authorizing his release on bond.

I. Factual Background

1. Petitioner is a 61-year-old Mexican national who first entered the United States in 1984 and has resided continuously in the United States since 1993. He has no criminal history besides a DUI arrest around 1996. He has 4 children born in the United States, including a minor child aged 17.

2. Petitioner was arrested by U.S. Immigration and Customs Enforcement (ICE) on June 20, 2025. Petitioner was a passenger in a vehicle that was stopped by an officer of the Banks County Sheriff's Office in Commerce, Georgia. The reason for the stop is unclear, but, upon completing a check of the driver's license of the driver, the Sheriff's Officer returned to his patrol car and contacted ICE for an ID verification. ICE officers with the Atlanta Fugitive Operations Mobile

Criminal Apprehension Team (MCAT) responded to the call and arrested Petitioner. He was then taken to the Stewart County Detention Center (SCDC) in Lumpkin, Georgia, where he remains.

3. Petitioner filed a Motion for Bond Redetermination with the Immigration Court in Lumpkin Georgia, on July 1, 2025, seeking a bond for his release from custody. A hearing was held on July 11, 2025, where Defendant ICE argued that Petitioner was an applicant for admission and, therefore, subject to mandatory detention under 8 U.S.C. § 1225(b)(2). The Immigration Judge found that he had jurisdiction and granted a bond of \$6,000. Petitioner's family tried to pay the bond amount to Defendant ICE but it was refused. On July 14, 2025, Defendant ICE filed Form EOIR-43, Notice of ICE Intent to Appeal Custody Redetermination, placing a stay on Petitioner's bond, pursuant to 8 CFR § 1003.19(i)(2). An appeal was filed by Defendant ICE on July 22, 2025 on the same grounds argued at the bond hearing. Petitioner's family tried to post the bond once more on or about August 19, 2025, with no luck. Petitioner remains detained despite having a bond.

4. A Notice to Appear placing Petitioner in Removal Proceedings under INA § 240 was filed by Defendant ICE on June 25, 2025, alleging that Respondent is inadmissible to the United States under INA § 212(a)(6)(A)(i) as an alien present

in the United States without being admitted or paroled. Despite Defendant ICE's arguments on appeal, Petitioner was not charged as an arriving alien.

II. Jurisdiction and Venue

5. This Court has original jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201-02 (declaratory relief), and Article I, Section 9, Clause 2, of the U.S. Constitution (Suspension Clause) as Petitioner is presently in custody under or by color of the authority of the United States, and he challenges his custody as in violation of the Constitution, laws, or treaties of the United States.

6. Venue is proper in the Middle District of Georgia, Columbus Division, under 28 U.S.C. §1391(e)(1) because Petitioner is being detained at SCDC in Lumpkin, Georgia, at the time of filing.

III. Parties

7. Petitioner, Arturo Soto Hernandez, is a Mexican citizen currently detained by Defendants at the SCDC.

8. Defendant Terrence Dickerson is the Warden of SDC and is being sued in her official capacity. He is responsible for the operations of the SCDC and has control over Petitioner as his immediate custodian.

9. Defendant Marcos Charles is the Acting Executive Associate Director of Enforcement and Removal Operations for Defendant ICE and is being sued in his official capacity. He is responsible for Defendant's ICE operations in the arrest, detention, and removal of aliens. He is a legal custodian of Petitioner.

10. Defendant Todd Lyons is the Acting Director of Defendant ICE and is being sued in his official capacity. He is responsible for the administration of ICE and the implementation and enforcement of immigration laws, including detention. He is a legal custodian of Petitioner.

11. Defendant Kristi Noem is the U.S. Secretary of Homeland Security and is responsible for the administration of DHS. She is being sued in her official capacity. She is a legal custodian of Petitioner.

12. Defendant Pamela Bondi is the U.S. Attorney General and is being sued in her official capacity.

13. U.S. Department of Immigration and Customs Enforcement (ICE) is a governmental agency of the United States, and part of Defendant DHS, charged with the enforcement of immigration laws. It is a legal custodian of Petitioner.

14. U.S. Department of Homeland Security (“DHS”) is a governmental agency of the United States charged, *inter alia*, with the adjudication of applications and petitions related to immigration and citizenship. It is a legal custodian of Petitioner.

IV. Writ of Habeas Corpus

15. The Constitution guarantees the right of writ of habeas corpus to every individual detained within the United States, including immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). A writ of habeas corpus must be granted if the person is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3).

16. Petitioner’s detention pursuant to the automatic stay provision of 8 C.F.R. § 1003.19(i)(2) violates his due process rights and is ultra vires.

a. Petitioner’s due process rights are being violated

17. Petitioner’s detention violates his substantial due process rights under the Fifth Amendment of the U.S. Constitution, which guarantees that no person shall be deprived of liberty without due process of law. Arbitrary civil detention is categorically unconstitutional. The Due Process Clause requires that any deprivation of Petitioner’s liberty serve, at minimum, a legitimate purpose. See *Reno v. Flores*, 507 U.S. 292, 306 (1993); see also *id.* at 302 (explaining that

infringements on fundamental liberty rights violate due process unless they are “narrowly tailored to serve a compelling state interest”).

18. Petitioner’s detention violates his procedural and substantive due-process rights under the three-part test set forth in *Matthews v. Eldridge*, 424 U.S. 319, 321 (1976), to wit:

- (1) the private interest that will be affected by the official action;
- (2) the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional procedural safeguards; and
- (3) the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail.

19. First, Petitioner’s liberty is at stake, a substantial interest. He is far from his children and unable to work.

20. Second, there is a significant risk of erroneous deprivation of Petitioner’s liberty interest, as the automatic stay permits Defendant ICE to act unilaterally, and without any review or having to show any success of winning on the merits, to deprive Petitioner of his freedom. The Immigration Judge, a neutral decision maker, found that Petitioner was not subject to mandatory detention, was a not a

danger to the community, and that a \$6000 bond would mitigate any risk of flight. Despite this ruling, Defendant ICE was able to unilaterally bypass the Immigration Judge's decision, usurping the Court's power and taking on the role of both the prosecutor and the adjudicator.

21. Finally, there is no significant government interest at stake in the continued detention of Petitioner. The government's interest in removing Petitioner from the United States is being accomplished by placing him in Removal Proceedings. The government's interest in ensuring Petitioner's attendance to any hearings is being accomplished by the \$6000 bond, as already determined by the Immigration Judge. Therefore, the government's interest, especially as compared to Petitioner's liberty interest, is minimal, if not non-existent.

b. The automatic stay is ultra vires

22. Petitioner's detention by the automatic stay filed by Defendant ICE is not supported by law and is therefore not valid.

23. 8 C.F.R. § 1003.19(i)(2) exceeds the authority given to Congress to Defendants. Congress placed the authority to release aliens on bond on the U.S. Attorney General. 8 U.S.C. § 1226(a). This authority was delegated to Immigration Judges with the Executive Office of Immigration Review of the U.S. Department

of Justice, as permitted by 28 U.S.C. 510. Defendant ICE and Defendant DHS are separated agencies, not part of the Department of Justice, and are, therefore, not authorized to determine the custody of aliens.

24. Because the automatic stay allows Defendant ICE to usurp the Department of Justice's authority, given by statute, it is ultra vires.

c. Petitioner is not subject to mandatory detention

25. Finally, Petitioner is not an applicant for admission subject to mandatory Detention. It is long settled that the statutory provision referenced by Defendant ICE's at the bond hearing, 8 U.S.C. § 1225(b)(2) applies to arriving aliens, while 8 U.S.C. § 1226(a), which allows for the release of aliens on bond, applies to aliens already in the United States. *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

Petitioner has been in the United States for almost 3 decades.

26. That Petitioner is not an arriving alien is further supported by the fact that Defendant ICE charged Petitioner as inadmissible under INA § 212(a)(6)(a), 8 U.S.C. § 1226(a)(6)(a), and not as an arriving alien.

WHEREFORE, Petitioner prays this Honorable Court:

(a) Assume jurisdiction over this matter;

- (b) Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action for habeas corpus;
- (c) Issue and order directing Defendants to show cause why a writ should not be granted;
- (d) Issue a writ of habeas corpus ordering Respondent to release Petitioner upon payment of the bond granted by the Immigration Judge;
- (e) grant such other and further relief as this Court deems proper under the circumstances; and
- (f) grant reasonable attorney's fees and costs of Court to Petitioner under the Equal Access to Justice Act.

Respectfully submitted this August 26, 2025.

/s/ Giovanna Andrea Holden
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