

CADES SCHUTTE
A Limited Liability Law Partnership

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PEDRO VICENTE GUTIERREZ ABREO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

PEDRO VICENTE GUTIERREZ
ABREO,

Petitioner,

v.

MICHAEL J.D. SMITH, WARDEN,
FEDERAL DETENTION CENTER,
HONOLULU, HAWAII; DAVID
PORTER, ACTING FIELD OFFICE
DIRECTOR, HONOLULU FIELD
OFFICE, IMMIGRATION AND
CUSTOMS ENFORCEMENT; PAM
BONDI, ATTORNEY GENERAL OF
THE UNITED STATES; KRISTI
NOEM, SECRETARY OF
HOMELAND SECURITY, IN THEIR
OFFICIAL CAPACITIES,

Respondents.

CIVIL NO. _____

**PETITION FOR WRIT OF
HABEAS CORPUS;**

**VERIFICATION PURSUANT TO 28
U.S.C. § 2242 AND 28 U.S.C. § 1746;**

**DECLARATION OF NERIBEL
CHARDON;**

EXHIBITS "A" – "G"

PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner Pedro Vicente Gutierrez Abreo (“**Petitioner**”) is an asylum seeker from Colombia who is detained at the Federal Detention Center, Honolulu, Hawai‘i. *See* Ex. A (Notice to EOIR: Alien Address); Ex. B (Respondent’s Form I-589, Application for Asylum).

2. Petitioner is not a flight risk or a danger to the community. Prior to his detention, he was reporting with the U.S. Immigration and Customs Enforcement (“**ICE**”) and had committed no crimes.

3. While he awaits a decision on his asylum application, he has maintained stable employment, integrated into the community, demonstrated good moral character, and obeyed all laws. *See* Ex. C (Letter from Austin Lyle); Ex. D (Letter from Jason Berry); Ex. E (Letter from Gustavo Tosi).

4. Nonetheless, Petitioner is unable to get a bond hearing before an Immigration judge.

5. Accordingly, Petitioner petitions this Court for a writ of habeas corpus to vindicate his right to due process.

JURISDICTION AND VENUE

6. This action arises under the Constitution of the United States and the

Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

7. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

8. Venue is proper because Petitioner resides in Hawaii, was detained in Hawaii, and is detained in the District of Hawaii.

REQUIREMENTS OF 28 U.S.C. § 2243

9. The Court must grant the petition for writ of habeas corpus or issue an order to show cause to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

PARTIES

10. Petitioner Pedro Vicente Gutierrez Abreo (“**Petitioner**”) resides in Hawaii. Petitioner is currently detained at the Federal Detention Center, Honolulu, Hawai‘i. *See* Ex. A.

11. Respondent Michael J.D. Smith is the Warden of the Federal Detention Center, Honolulu, Hawai‘i and is petitioner’s immediate custodian pursuant to the facility’s contract with ICE to detain noncitizens. Respondent Smith is a legal custodian of Petitioner.

12. Respondent David Porter is the acting Field Office Director for ICE. As such, Respondent Porter is a legal custodian of Petitioner.

13. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security (“**DHS**”). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees ICE, the agency responsible for Petitioner’s detention. Respondent Noem is a legal custodian of Petitioner.

14. Respondent Pam Bondi is the Attorney General of the United States and the senior official of the U.S. Department of Justice. In that capacity, she has the authority to interpret the immigration laws and adjudicate removal cases. She also oversees the Executive Office for Immigration Review, which administers the immigration courts and the Board of Immigration Appeals (“**BIA**”). Respondent Noem is a legal custodian of Petitioner.

15. Respondent Todd Lyons is the Acting Director for ICE and the Senior Official Performing the Duties of the Director. He is charged with administering and enforcing the immigration laws of the United States, routinely conducts business within this District, and bears legal responsibility for all efforts related to the detention and removal of the Petitioner.

16. All respondents are named in their official capacities. One or more of the respondents is Petitioner’s immediate custodian.

STATEMENT OF FACTS

17. Petitioner is a 33 year-old citizen of Colombia. *See* Ex. B at pdf pg. 8.

18. Petitioner entered the United States on or around April 20, 2023. *See* Ex. F (Department of Homeland Security Notice to Appear).

19. On information and belief, Petitioner was detained shortly after he crossed the border and was released.

20. Petitioner timely applied for asylum on or around March 22, 2024. Ex. B.

21. Petitioner has not yet received a decision on his application for asylum.

22. After applying for asylum, Petitioner received an employment authorization from the U.S. Citizenship and Immigration Services. *See* Ex. G (Employment Authorization card).

23. Prior to his detainment, Petitioner worked and lived on the island of Kauai, Hawaii, and was the sole provider for his partner and one-year-old son.

24. Petitioner formed community relationships as evidenced by his letters of support. *See* Exs. C, D, and E. His supervisors describe him as an “invaluable member of our company”, a “dedicated professional”, and someone who “has consistently demonstrated an exceptional work and ethic and reliability” and “sets an example for others”, with “impeccable integrity”; someone who “strives to do the right thing”.

25. Petitioner has been compliant with reporting to U.S. Immigration and Customs Enforcement.

26. Petitioner received a notice to report to ICE and flew from Kauai to Honolulu to comply with the notice. When he reported to ICE on September 25, 2025, Petitioner was arrested. He has remained in detention since that time.

27. Petitioner is currently being held in ICE's custody in the District of Hawai'i. Ex. A.

PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION

28. Petitioner is present in the United States and, on information and belief, DHS has alleged or will allege that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225.

29. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(1), including because Petitioner does not meet the criteria for Expedited Removal. *See Make the Road New York v. Noem*, No. 25-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025).

30. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2), including because, as a person already present in the United States, Petitioner is not presently "seeking admission" to the United States. *See Rico-Tapia v. Smith*, No. CV 25-00379 SASP-KJM, 2025 WL 2950089, at *6-7 (D. Haw. Oct. 10, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at

*11 (D. Nev. Sept. 17, 2025) (holding, “consistent with the overwhelming majority of district courts in the Ninth Circuit and across the country that have thus far considered the issue,” that § 1226, not §1225, applies to noncitizens like the petitioner who had resided in the U.S. prior to their apprehension) (citing cases).

31. Numerous courts have rejected the government’s position that noncitizens residing in the United States who are arrested and detained for potential removal are not entitled to a bond hearing with the possibility of release under 8 U.S.C. § 1226(a), but rather are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See Rodriguez v. Bostock*, 2025 WL 2782499, at *1 (W.D. Wash. Sept. 30, 2025) (“Every district court to address this question has concluded that the government’s position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice.”) (collecting cases); *Arce-Cerva, v. Noem*, 2025 WL 3017866, at *2 (D. Nev. Oct. 28, 2025) (“[T]he Government and BIA’s interpretation of the § 1225(b)(2) is both contrary to the plain meaning of the statutory text, legislative history, and decades of agency practice, and raises serious constitutional concerns under the Due Process Clause of the Fifth Amendment.”).

32. Petitioner was not, at the time of arrest, paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A), and therefore Petitioner could not “be returned” under that provision to mandatory custody under 8 U.S.C. § 1225(b) or

any other form of custody. Petitioner is not subject to mandatory detention under § 1225 for this reason as well.

33. Instead, as a person arrested inside the United States and held in civil immigration detention, Petitioner is subject to detention, if at all, pursuant to 8 U.S.C. § 1226. *See Rico-Tapia*, 2025 WL 2950089, at *6-7.

34. Petitioner is not lawfully subject to mandatory detention under 8 U.S.C. § 1226(c), including because he has not been convicted of any crime that triggers such detention. *See Demore v. Kim*, 538 U.S. 510, 513-14, 531 (2003) (allowing mandatory detention under § 1226(c) for brief detention of persons convicted of certain crimes and who concede removability).

35. Accordingly, Petitioner is subject to detention, if at all, under 8 U.S.C. § 1226(a).

36. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon his request, receive a custody redetermination hearing (colloquially called a “bond hearing”) with strong procedural protections. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022) (“Section 1226(a) and its implementing regulations provide extensive procedural protections that are unavailable under other detention provisions, including several layers of review of the agency's initial custody determination, an initial bond hearing before a neutral decisionmaker, the opportunity to be represented by counsel and to present evidence, the right to appeal,

and the right to seek a new hearing when circumstances materially change.”); *Brito v. Garland*, 22 F.4th 240, 244, 256-57 (1st Cir. 2021) (affirming class-wide declaratory judgment and explaining “noncitizens detained pursuant to 8 U.S.C. § 1226(a) are entitled to receive a bond hearing at which the Government must prove the alien is either dangerous by clear and convincing evidence or a risk of flight by a preponderance of the evidence.”) (internal quotations omitted); 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

EXHAUSTION

37. However, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals issued a decision which purports to require the Immigration Court to unlawfully deny a bond hearing to all persons such as Petitioner.¹

38. The responsible administrative agency has therefore predetermined that

¹ The BIA’s reversal and newly revised interpretation of the statute are not entitled to deference. *See Loper Bright Ent. v. Raimondo*, 603 U.S. 369, 412-13 (2024); *see also Salcedo Aceros v. Kaiser*, 2025 WL 2637503, at *9 (N.D. Cal. Sept. 12, 2025) (rejecting the BIA’s reasoning in *Matter of Yajure Hurtado* because it is inconsistent with the BIA’s earlier pronouncements and the reasoning lacks persuasive power); *Elias Escobar v. Hyde*, 2025 WL 2823324, at *3 (D. Mass. October 3, 2025) (rejecting the BIA’s reasoning in *Matter of Yajure Hurtado* because, in part, “the decision is inconsistent with other BIA decisions and with decades of the Department of Homeland Security’s practice”).

Petitioner will be denied a bond hearing.

39. The Immigration Court lacks jurisdiction to adjudicate the constitutional claims raised by Petitioner, and any attempt to raise such claims would be futile. *See, e.g., Flores-Powell v. Chadbourne*, 677 F.Supp.2d 455, 463 (D. Mass. 2010) (“[E]xhaustion is excused by the BIA’s lack of authority to adjudicate constitutional questions and its prior interpretation of the mandatory detention statute.”).

40. There is no statutory requirement for Petitioner to exhaust administrative remedies.

41. Petitioner is being irreparably harmed by his ongoing unlawful detention without a bond hearing. *See Rico-Tapia*, 2025 WL 2950089, at *8 (“[U]nlawful detention constitutes an ‘extreme or very serious damage’ that cannot be compensable in damages.”).

42. Accordingly, there is no requirement for Petitioner to further exhaust administrative remedies before pursuing this Petition. *See Sec. & Exch. Comm’n v. G. C. George Sec., Inc.*, 637 F.2d 685, 688 (9th Cir. 1981) (explaining that where a statute does not require exhaustion, administrative exhaustion is not required in situations of irreparable harm or futility).

43. At least one decision from this Court has rejected the argument that prudential exhaustion is required in a detained noncitizen’s request for a bond

hearing because it would be futile for the detained noncitizen to seek a bond hearing before an immigration judge. *See Rico-Tapia*, 2025 WL 2950089, at *4.

44. Under similar circumstances as those present here, this Court held the petitioner was entitled to a bond hearing before a neutral arbiter in immigration court. The Court concluded, *inter alia*, that petitioner had substantial private interest in remaining free from detention; the risk of an erroneous deprivation of liberty is high where the detained person has not received a bond hearing; the government's interest in detention is low, particularly considering petitioner's compliance with DHS requirements and his ability to preserve a clean record; and custody hearings in immigration court appear routine given the requirements imposed by federal regulations. *See Rico-Tapia*, 2025 WL 2950089, at *4; *see also J.O.L.R. v. Wofford*, No. 1:25-CV-01241-KES-SKO (HC), 2025 WL 2908740, at *3 (E.D. Cal. Oct. 14, 2025) (granting injunctive relief because due process requires a pre-deprivation bond hearing and explaining “[c]ivil immigration detention, which is ‘nonpunitive in purpose and effect[,]’ is justified only when a noncitizen presents a risk of flight or danger to the community.”) (citation omitted).

CLAIMS FOR RELIEF

COUNT ONE

Violation of 8 U.S.C. 1226(a) and Associated Regulations

45. Petitioner repeats and realleges the allegations set forth in the preceding

paragraphs as though set forth at length.

46. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

47. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

48. Petitioner has not been, and will not be, provided with a bond hearing as required by law.

49. Petitioner's continuing detention is therefore unlawful.

COUNT TWO

Violation of Fifth Amendment Right to Due Process (Failure to Provide Bond Hearing Under 8 U.S.C. § 1226(a))

50. Petitioner repeats and realleges the allegations set forth in the proceeding paragraphs as though set forth at length.

51. “[T]he 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).

52. Because Petitioner is a person arrested inside the United States and is subject to detention, if at all, under 8 U.S.C. § 1226(a), the Due Process Clause of the Fifth Amendment to the United States Constitution requires that Petitioner receive a bond hearing with strong procedural protections.

53. Petitioner has not been, and will not be, provided with a bond hearing as required by law.

54. Petitioner's continuing detention is therefore unlawful.

COUNT THREE

Violation of Fifth Amendment Right to Due Process (Failure to Provide an Individualized Hearing for Domestic Civil Detention)

55. Petitioner repeats and realleges the allegations set forth in the preceding paragraphs as though set forth at length.

56. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

57. The Fifth Amendment's Due Process Clause specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of law." U.S. Const. amend. V.

58. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law"); *cf. Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020) (holding noncitizens due process rights were limited where the person was not residing in the United States, but rather had been arrested 25 yards into U.S. territory,

apparently moments after he crossed the border while he was still “on the threshold”).

59. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” protected by the Due Process Clause. *Zadvydas*, 533 U.S. 678 at (2001).

60. The Supreme Court thus “repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection,” including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

61. Numerous courts have concluded that noncitizens have a protectable liberty interest in remaining out of custody on bond pending further immigration proceedings. *See Ortega v. Kaiser*, 2025 WL 1771438, at *4 (N.D. Cal. June 26, 2025) (citing cases); *G.S. v. Bostock*, 2025 WL 3014274, at *7 (W.D. Wash. Oct. 8, 2025) (“[A]s numerous courts in this circuit have held, a noncitizen released from custody pending removal proceedings has a protected liberty interest in remaining out of custody.”) (citing cases).

62. Petitioner was arrested inside the United States and is being held without being provided any individualized detention hearing.

63. Petitioner's continuing detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

COUNT FOUR

Violation of Fifth Amendment Right to Due Process (Substantive Due Process)

64. Petitioner repeats and realleges the allegations set forth in the proceeding paragraphs as though set forth at length.

65. Because Petitioner is not being provided a bond hearing, the government is not taking any steps to effectuate its substantive obligation to ensure that immigration detention bears a "reasonable relation" to the purposes of immigration detention (*i.e.*, the prevention of flight and danger to the community during the pendency of removal proceedings) and is not impermissibly punitive. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring).

66. Petitioner's detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Order that Petitioner shall not be transferred outside the District of

Hawaii;

(3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.

(4) Declare that Petitioner's detention without the opportunity for a bond hearing violates regulatory, statutory, and constitutional requirements.

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or, in the alternative, provide Petitioner with a bond hearing and order Petitioner's release on conditions the Court deems just and proper.

(6) Grant any further relief this Court deems just and proper.

DATED: Honolulu, Hawai'i, October 31, 2025.

CADES SCHUTTE
A Limited Liability Law Partnership

/s/ Lisa K. Swartzfager

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