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DETAINED AT
OTERO CTY PR CTR

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

DEIVI ORLANDO PEREZ HERNANDEZ,)

A )
Petitioner,)

v.)

PAMELA BONDI,)
Attorney General of the United States, and)

KRISTI NOEM,)
Secretary of the Department of)
Homeland Security, (DHS) and,)

TODD LYONS,)
Acting Director of Immigration &)
Customs Enforcement, (ICE), and)

DORA CASTRO,)
Warden of Otero County Processing Center,)

Respondents.)

Civil Action No.
2:25-cv-01099

Hon.

ORAL ARGUMENT
REQUESTED

VERIFIED HABEAS CORPUS PETITION

INTRODUCTION

1. The Petitioner is a 25 year old male, native and citizen of Guatemala who has been detained at the Otero County Processing Center since 11/2025. He hereby petitions the U.S. District Court to declare his detention unlawful and stay his removal outside of the New Mexico jurisdiction.
2. Respondents have unlawfully detained him and seek to unlawfully remove him from the U.S. Thus, Petitioner petitions this Court for an order declaring his detention unlawful.
3. Petitioner's removal proceedings remain pending before the immigration court ("EOIR") in Elizabeth, NJ. He is not subject to an order of removal, and will apply for asylum and other protection relief. His bond request with EOIR was denied for lack of jurisdiction. The Board of Immigration Appeals ("BIA") recently issued a precedential decision precluding success on any bond appeal.
4. Absent an order from this Court, Petitioner will continue to remain in detention unlawfully.
5. Petitioner asks the Court to find that Defendants have unlawfully detained him, and order his immediate release from custody.

CUSTODY

6. Petitioner is in the physical custody of Respondents and the Department of Homeland Security, Immigration & Customs Enforcement (“ICE”). Petitioner is currently at Otero County Processing Center, in Chaparral, New Mexico. ICE has contracted with the Management and Training Corporation to detain individuals in the immigration custody of ICE such as Petitioner. The Petitioner is under the direct control of the Respondents and their agents, and the immediate custodian is the Warden of Otero County Processing Center, Dora Castro, who is a named party in this action.

JURISDICTION

7. This action arises under the Constitution of the United States, and the Immigration & 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, and the Administrative Procedure Act (“APA”), 5 U.S.C. §701 *et seq.*

8. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I § 9, cl. 2 of the United States Constitution (“Suspension Clause”); 28 U.S.C. § 1331, as the Petitioner is presently in custody under color of the authority of the United States and such custody is in violation of the Constitution, laws, or treaties of the United States, and the Fifth Amendment of the United States Constitution.

9. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651. This Court has additional remedial authority under 28 U.S.C. §§ 2201-02 (the Declaratory Judgment Act) to grant injunctive and declaratory relief.

VENUE

10. Venue is proper and lies in this United States District Court for the District of New Mexico because a substantial part of the events or omissions giving rise to the claim arose in this judicial district. *See* 28 U.S.C. § 1391(e), and 28 U.S.C. §2241, *et seq.* Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the District of New Mexico which is the judicial district in which Petitioner is currently in immigration custody. The Petitioner is in immigration custody at Otero County Processing Center in Chaparral, New Mexico.

PARTIES

11. Petitioner is a 25 year old male, native and citizen of Guatemala who is detained at Otero County Processing Center in Chaparral, NM. He seeks a writ of habeas corpus due to his unlawful detention.

12. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. In this capacity she is responsible for administering and enforcing the immigration laws pursuant to 8 U.S.C. § 1103 and is the Petitioner's legal custodian.

13. Respondent Kristi Noem is sued in her official capacity as Secretary of DHS, the agency in charge of administering and enforcing the immigration laws in New Mexico and is the Petitioner's legal custodian.

14. Respondent Todd Lyons is sued in his official capacity as the Acting Director of ICE, the department within DHS and in this capacity he is responsible for administering and enforcing the immigration laws in New Mexico and is the Petitioner's legal custodian.

15. Respondent Dora Castro is sued in her official capacity as Warden of the Otero County Processing Center in Chaparral, New Mexico, and in this capacity she is the Petitioner's actual physical custodian.

FACTS

16. The Petitioner is a 25 year old male, native and citizen of Guatemala who has lived in United States since 2021. He entered the United States without parole or inspection on 09/2021. Petitioner has resided in Pennsylvania since 05/2023. Prior to that, he lived in New York from entry until 04/2023.

17. A Notice to Appear (“NTA”) in Removal Proceedings was issued on 10/07/2025. The NTA was issued approximately four years after Deivi’s entry in 2021.

18. The Petitioner was detained by ICE on 10/07/2025. He is currently detained at the Otero County Processing Center in Chaparral, New Mexico.

19. Petitioner will file for Asylum and other protection with the immigration court soon, as his removal proceedings have only recently been initiated.

20. Petitioner’s removal proceedings remain pending before EOIR, and his next hearing is 11/18/2025. He is not subject to an order of removal.

21. Petitioner filed a Motion for Bond with EOIR on 10/15/2025. His bond request was denied by order dated 10/16/2025. Petitioner has not appealed that order, because a recent BIA decision precludes him from succeeding on appeal. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

22. Petitioner has exhausted all administrative remedies. The immigration judge has denied his bond request and the BIA appeal is precluded by a recent decision of that administrative body.

23. Petitioner has no open warrants or negative criminal history that would change circumstances to warrant his arrest and removal outside of the District of New Mexico.

24. Petitioner's removal from United States cannot be effectuated in the reasonably foreseeable future. Absent judicial review of his custody claim, Petitioner will continue to be illegally detained by ICE. He seeks the only avenue of judicial review available to him, habeas review.

EXHAUSTION OF REMEDIES

25. Petitioner has exhausted all practicable administrative remedies. Petitioner has sought to challenge his detention before EOIR and been unlawfully denied relief.

26. Petitioner is precluded from prevailing on his EOIR bond appeal with the BIA following *Matter of Yajure Hurtado*. That decision precludes Petitioner from obtaining bond before EOIR, improperly finding Immigration Judges lack jurisdiction to issue bonds because Petitioner entered United States without being inspected and admitted or paroled. *Id.* His motion for bond redetermination was denied on 10/16/2025.

**COUNT I:
VIOLATION OF FIFTH AMENDMENT
RIGHT TO SUBSTANTIVE DUE PROCESS**

27. The allegations contained in paragraphs 1 through 26 above are repeated and realleged as though fully set forth herein.

28. Petitioner's detention violates the Due Process clause of the Fifth Amendment of the United States Constitution. Petitioner's substantive due process rights have been violated because his detention is arbitrary and unreasonable.

29. The Fifth Amendment of the Constitution guarantees civil detainees like Petitioner may not be subject to detention that infringes on his fundamental right to freedom and liberty.

**COUNT II:
VIOLATION OF FIFTH AMENDMENT
RIGHT TO PROCEDURAL DUE PROCESS**

30. The allegations contained in paragraphs 1 through 26 are repeated and realleged as though fully set forth herein.

31. Petitioner’s detention by Defendants violates his procedural due process rights under the Due Process Clause of the Fifth Amendment of the United States Constitution. The fundamental requirement of due process is the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (*internal citations omitted*). Procedural due process “imposes constraints on government decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.” *Id.* at 332.

32. Defendants have unlawfully applied provisions of the INA to Petitioner by failing to grant Petitioner a meaningful bond hearing.

**COUNT III:
VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT**

33. The allegations contained in paragraphs 1 through 26 are repeated and realleged as though fully set forth herein.

34. Petitioner’s detention by Defendants violates the APA because agency actions by EOIR and ICE are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Where a court finds agency action to violate the APA, the court shall “hold unlawful and set aside” the agency action. *Id.* Where the government has promulgated “[r]egulations with the force and effect of law,” those regulations “supplement the bare bones” of federal statutes, such that the agencies are bound to follow their own “existing valid regulations.” *United States ex rel. Accardi Shaughnessy*, 347 U.S. 260, 266, 268 (1954).

35. EOIR has unlawfully applied their regulatory authority to deny Petitioner a bond hearing.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court:

1. Assume jurisdiction over this matter;
2. Issue a Writ of Habeas Corpus directed to Respondents requiring them to immediately release Petitioner from custody;
3. Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Petitioner;
4. Grant any other and further relief this Honorable Court deems just and proper;
5. Award Petitioner costs and attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

Respectfully Submitted,

/s/ Jason Scott Camilo, Esq.
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Attorney for Petitioner

Dated: 11/05/2025

VERIFICATION

I, Deivi Orlando Perez Hernandez, declare under penalty of perjury in accordance with 28 U.S.C. § 1746 as follows:

1. I am the plaintiff-petitioner in this matter and am personally familiar with the facts of my case;
2. I was read the allegations contained in the foregoing Complaint in Spanish, the language I speak and understand the best.
3. To the best of my knowledge, those allegations are true based upon my personal knowledge, information and belief.

Executed on 10/29/2025

/s/ Deivi Orlando Perez Hernandez

DEIVI ORLANDO PEREZ HERNANDEZ

Petitioner

VERIFICATION BY COUNSEL

I, Jason Scott Camilo, declare under penalty of perjury in accordance with 28 U.S.C. § 1746 as follows:

1. I am the attorney for plaintiff-petitioner in this matter and am personally familiar with the facts of this case;
2. I have read the allegations contained in the foregoing Complaint and to the best of my knowledge, those allegations are true based upon my personal knowledge, information and belief.
3. I have also reviewed the documents attached to this habeas petition and confirm that they are true copies of the originals and that all the facts or allegations ascertained therein are true and correct to the best of my knowledge and experience.

Executed on 11/05/2025

/s/ Jason Scott Camilo, Esq.
JASON SCOTT CAMILO, ESQ.,
Attorney for Petitioner

LIST OF EXHIBITS IN SUPPORT OF HABEAS PETITION

Ex.	Document
1	ICE Form I-213, dated 10/07/2025
2	DHS Form I-862, "Notice to Appear", dated 10/07/2025
3	Petitioner's Motion for Bond in Immigration Court, filed 10/15/2025
4	EOIR Bond Order Denying Bond, filed 10/16/2025
5	EOIR Notice of Internet-Based Hearing for 11/18/2025
6	ICE Locator Search Results, accessed 11/05/2025