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UNITED STATES DISTRICT COURT FOR
SOUTHERN DISTRICT OF GEORGIA

WANNER ABIDAEI MUNOZ NAJARRO,
Petitioner

v.

PAMELA BONDI, in her official capacity as
Attorney General,

KRISTI NOEM, in her official capacity as
Secretary of the Department of
Homeland Security,

U.S. DEPARTMENT OF HOMELAND SECURITY:
JOHN DOE, in his official capacity as
Warden of Folkston ICE Detention Facility,
3026 GA-252 E, Folkston, GA 31537

JOHN DOE 2, , in his official capacity as
ICE Field Office Director,
Respondents

CASE NO.:

**VERIFIED PETITION FOR
HABEAS CORPUS AND
COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

IMMIGRATION HABEAS CASE

**ORAL ARGUMENT
REQUESTED BY VIDEO**

INTRODUCTION

This petition for a writ of habeas corpus is filed pursuant to 28 U.S.C. § 2241 to challenge the ongoing and unlawful detention of Petitioner by United

States Immigration and Customs Enforcement (“ICE”). Petitioner respectfully asserts that his continued detention violates the Constitution, federal law, and controlling precedent of the Eleventh Circuit Court of Appeals. Petitioner seeks immediate release from his detention.

JURISDICTION AND VENUE

This Court has jurisdiction over this matter under 28 U.S.C. § 2241 and Article I, Section 9, Clause 2 (Suspension Clause) of the United States Constitution. Jurisdiction is proper because Petitioner is currently detained within the territorial boundaries of the Southern District of Georgia. Venue is proper pursuant to 28 U.S.C. § 1391(e), as Respondent is an agency of the United States government and Petitioner is detained in this district. This Court also has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general federal question jurisdiction; 5 U.S.C. §§ 701 et seq., the Administrative Procedure Act (APA); 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201 (Declaratory Judgment Act); The Fourth and Fifth Amendments to the U.S. Constitution; and the common law. This action arises under the Due Process Clause of the Fifth Amendment of the U.S. Constitution and the INA. This Court may grant relief under the habeas corpus statutes, and the All-Writs Act, 28 U.S.C. § 1651.

STANDARD OF REVIEW

The Constitution guarantees that the writ of habeas corpus is available to every individual detained within the United States. *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const. Art. I, § 9, cl. 2). District courts have the

power to grant writs of habeas corpus. 28 U.S.C. § 2241(a). A district court's authority includes jurisdiction to hear habeas challenges to immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). The burden is on petitioner to show that she is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

PARTIES

Petitioner: Wanner Abidael Munmoz Najarro, an individual presently detained by ICE at the ICE Detention Center, 3026 GA-252 E, Folkston, Georgia 31537, Southern District of Georgia.

Respondents: PAMELA BONDI, in her official capacity as Attorney General, KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security, U.S. DEPARTMENT OF HOMELAND SECURITY, a governmental agent in charge of the detention of the Respondent, JOHN DOE, in his official capacity as Warden of Folkston ICE Detention Facility, 3026 GA-252 E, Folkston, GA 31537, JOHN DOE 2, , in his official capacity as Atlanta ICE Field Office Director.

STATEMENT OF FACTS

1. Petitioner is a citizen of Guatemala, who has resided in the United States since November 25, 2011.
2. On or about October 7, 2025, Petitioner was taken into custody by ICE and was detained at Delaney Hall, Newark, New Jersey until November 1st.

3. In the early morning hours of Saturday, November 1, 2025, Petitioner was taken from Delaney Hall and transferred to the ICE Detention Facility in Folkston, Georgia, in the jurisdiction of this court.
4. Petitioner has not been afforded a timely bond hearing nor has ICE demonstrated that continued detention is justified under the relevant statutes.
5. Petitioner has complied with all requests for information and has no history of flight risk or danger to the community.
6. Despite Petitioner's eligibility for release under applicable statutory and constitutional standards, ICE continues to detain Petitioner without adequate justification.
7. Respondent owns property in the City of Trenton and a business. (Documentation attached hereto)
8. Although counsel for the Defendant indicated to Immigration Judge, Tamar Wilson of his intent to file a Motion for Bond, the Immigration Judge notified counsel that pursuant to a new decision issued by the Board of Immigration Appeals, Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), her ability to hear a Motion for Bond was stripped.
9. The transfer of the Petitioner has now necessitated that this Writ of Habeas Corpus be filed in the Southern District of Georgia.
10. This Petition for Writ of Habeas Corpus and request for Injunctive and Declaratory relief is the only redress the Petitioner has at this juncture for release from ICE custody.

LEGAL GROUNDS FOR RELIEF

Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment and the Immigration and Nationality Act ("INA"). The primary Immigration and Nationality Act (INA) sections related to bond hearings are **INA § 236(a)** for discretionary detention, which allows an immigration judge to make a custody determination, and **INA § 235** for mandatory detention of arriving aliens and those subject to expedited removal. The specific right to a bond hearing is often governed by these sections, as well as the related regulations found in **8 C.F.R. § 1003.19**, which details the process for requesting and receiving a bond redetermination from an Immigration Judge. The Eleventh Circuit has recognized that prolonged immigration detention without individualized review is unlawful absent a showing of flight risk or danger to the community. See *Sopo v. U.S. Attorney General*, 825 F.3d 1199, 1217-18 (11th Cir. 2016) ("[W]hen detention becomes unreasonable or unjustified, due process demands a bond hearing."); see also *Campbell v. U.S. Attorney General*, 970 F.3d 1342, 1351 (11th Cir. 2020) (reaffirming the need for individualized review in prolonged detention cases).

The Supreme Court has held that noncitizens may not be detained indefinitely without adequate procedural protections. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Eleventh Circuit has applied this principle to require a meaningful opportunity for release when detention extends beyond a reasonable period. See *Roux v. U.S. Attorney General*, 461 F. App'x 839, 842

(11th Cir. 2012) (“Detention must be reasonably related to the government’s interest in removal.”).

ICE’s failure to provide Petitioner with a bond hearing or individualized determination violates the standards articulated in these cases and constitutes an unlawful deprivation of liberty.

Hurtado supra at p.4, a decision by Board of Immigration Appeals (BIA) unconstitutionally deprives the Respondent of his Fifth Amendment due process rights. While immigration judges believe they are bound by it, this Court is not. Hurtado effectively takes the power of the immigration judge to conduct bond hearings as codified in the INA and guaranteed under a slew of decisions out of their hands and says that anyone who entered the United States illegally is not entitled to a bond hearing. This is *contra* to U.S. Supreme Court cases involving unlawful detention and several Eleventh Circuit cases. Until Congress changes the law, Hurtado should not be enforced. It is only Congress that can change the INA not the BIA.

While the Eleventh Circuit has been silent on this decision as has the Third Circuit, U.S. District Court Judges in New Jersey, where the Respondent resides, have already released Respondents from ICE detention and not enforced Hurtado. I have attached a decision from the U.S. District Court of New Jersey for the Court’s consideration. (DIANA M. RIVERA ZUMBA, Petitioner v. PAM BONDI, *Attorney General of the United States*, KRISTI NOEM, *Secretary of the Department of Homeland Security*, TODD M. LYONS, *Acting Director, United States Immigration and Customs Enforcement*; LUIS SOTO, *Director, Delaney*

Hall Detention Facility, Respondents, Civ. No. 25-cv-14626 (KSH). I ask this Honorable Court to consider the well-reasoned decision of the Honorable Katharine S. Haydan, U.S.D.J. and follow it.

ARGUMENT

Petitioner's detention has exceeded a reasonable duration and lacks the individualized review required by both the Fifth Amendment and Eleventh Circuit precedent. In Sopo, the Eleventh Circuit held that "prolonged detention under § 1226(c) without a bond hearing raises serious constitutional concerns." 825 F.3d at 1202. Petitioner has been detained since October 7, 2025 without such a hearing. The government has not provided evidence of flight risk or dangerousness, as required by Campbell, 970 F.3d at 1351.

The touchstone of due process is protection of the individual against arbitrary action of government," Wolff v. McDonnell, 418 U.S. 539,558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective." Cnty. of Sacramento v. Lewis, 523 U.S. 833, 846 (1998). These protections extend to noncitizens facing detention, as "[i]n 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). Accordingly, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." Zadvydas, 533 U.S. at 690. Substantive due process thus requires that all forms of civil detention—

including immigration detention—bear a “reasonable relation” to a non-punitive purpose. See Jackson v. Indiana, 406 U.S. 715, 738 (1972).

The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen’s appearance at immigration proceedings and preventing danger to the community. Zadvydas, 533 U.S. at 690–92; see also Demore v. Kim, 538 U.S. 510 at 519–20, 527–28, 31 (2003).

The procedural component of the Due Process Clause prohibits the government from imposing even permissible physical restraints without adequate procedural safeguards. Generally, “the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property.” Zinermon v. Burch, 494 U.S. 113, 127 (1990).

**CAUSE OF ACTION
VIOLATION OF THE FIFTH AMENDMENT TO THE UNITED STATES
CONSTITUTION (SUBSTANTIVE DUE PROCESS – DETENTION)**

The Due Process Clause of the Fifth Amendment protects all “person[s]” from deprivation of liberty “without due process of law.” U.S. Const. amend. V. “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 protects.” Zadvydas, 533 U.S. at 690. Immigration detention is constitutionally permissible only when it furthers the government’s legitimate goals of ensuring the noncitizen’s appearance during removal proceedings and preventing danger to the community. See *id.*

Petitioner is not a flight risk or danger to the community. Respondent's detention of Petitioner is therefore unjustified and unlawful. Accordingly, Petitioner is being detained in violation of the Due Process Clause of the Fifth Amendment.

Accordingly, Petitioner is entitled to a writ of habeas corpus ordering his release or a showing by ICE to justify continued detention by clear and convincing evidence. See Sopo, 825 F.3d at 1217-18; Roux, 461 F. App'x at 842.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Honorable Court:

- Issue a writ of habeas corpus ordering Petitioner's immediate release from ICE custody;
- Issue an injunction precluding ICE from re-arresting the Respondent while his cancellation case proceeds through the proper adjudication and ultimately to trial in front of an immigration judge in Newark, New Jersey;
- Grant such other and further relief as the Court deems just and proper.

VERIFICATION

I, Keith D. Sklar, Esquire, counsel for the Respondent and Shari Lee Smith, Esquire (Local Counsel) declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Respectfully submitted,

Date: November 9, 2025

/s/ Shari Lee Smith, Esq.

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JOHN DOE 2, , in his official capacity as
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CASE NO.:

**IMMIGRATION HABEAS CASE
PROPOSED ORDER**

ORDER TO SHOW CAUSE

The Court, having reviewed the Petition for Writ of Habeas Corpus and all exhibits in support thereof, HEREBY ORDERS:

1. That Respondents appear before this Court on _____, at _____ a.m./p.m. to show cause why the relief sought should not be granted.

IT IS SO ORDERED.

Dated: _____, 2025

United States District Court
Southern District of Georgia

CERTIFICATE OF SERVICE

Counsel hereby affirms that they caused to be served on the parties below a true and correct copy of this Habeas Petition and any associated documents in support thereof by U.S. Mail, First Class or email:

OPLA Atlanta
Peachtree St
Peachtree Summit Federal Building
401 W. Peachtree Street, NW, Suite 2850
Atlanta, GA 30308

U.S. DEPARTMENT OF HOMELAND SECURITY
Warden of Folkston ICE Detention Facility
3026 GA-252 E
Folkston, GA 31537

Dated: November 9, 2025

/s/ Shari Lee Smith, Esq.
Shari Lee Smith, Esq.

TABLE DOCUMENTS

Exhibit 'A'

NTA

Exhibit 'B'

Proof Property Ownership

Exhibit 'C'

Recommendations and
Proof of Business Ownership