

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

Civil Action No. 25-3730
(To be supplied by the court)

Jose Ovidio Flores Fernandez, Applicant,

v.

Juan Baltasar, et al., Respondent.
(Name of warden, superintendent, jailer, or other custodian)

(Note: If you are attacking the validity of a state conviction or sentence and not the execution of your sentence, you must file an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. If you are attacking the validity of a judgment entered in a federal court, you must file a motion pursuant to 28 U.S.C. § 2255 in the federal court that entered the judgment.)

**APPLICATION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should not contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include only: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

A. APPLICANT INFORMATION

You must notify the court of any changes to your address where case-related papers may be served by filing a notice of change of address. Failure to keep a current address on file with the court may result in dismissal of your case.

Jose Ovidio Flores Fernandez, A 073 617 636, 3130 N Oakland Street, Aurora, CO 80010
(Applicant's name, prisoner identification number, and complete mailing address)

Indicate whether you are a prisoner or other confined person as follows: (check one)

- Pretrial detainee
 Civilly committed detainee
 Immigration detainee
 Convicted and sentenced state prisoner
 Convicted and sentenced federal prisoner
 Other: (Please explain) _____

B. RESPONDENT INFORMATION

Juan Baltasar, 3130 N Oakland Street, Aurora, CO 80010
(Respondent's name and complete mailing address)

C. STATEMENT OF CLAIMS

State clearly and concisely every claim you are asserting in this action. For each claim, specify the right that allegedly has been violated and all facts that support your claim. If additional space is needed to describe any claim or to assert additional claims, use extra paper to continue that claim or to assert the additional claim(s). Please indicate that additional paper is attached and label the additional pages regarding the statement of claims as "C. STATEMENT OF CLAIMS."

CLAIM ONE: Violation of the Substantive Due Process Protections of the Fifth Amendment of the Constitution

Supporting facts: Petitioner is detained in the Aurora ICE Processing Center, an immigration detention facility operated by Respondents, despite having been granted withholding of removal. Please see attached petition for further information.

D. PRIOR APPLICATIONS

Have you ever filed a lawsuit, other than this lawsuit, in any federal court in which you raised or could have raised the claim(s) raised in this action? ___ Yes X No (*check one*).

If your answer is "Yes," complete this section of the form. If you have filed more than one prior application, use additional paper to provide the requested information for each prior application. Please indicate that additional paper is attached and label the additional pages regarding previous lawsuits as "D. PRIOR APPLICATIONS."

Name and location of court: _____

Case number: _____

Type of proceeding: _____

List the claim(s) raised: _____

Date and result: (Attach a copy of the decision if available) _____

Result on appeal, if appealed: _____

E. ADMINISTRATIVE REMEDIES

WARNING: You must exhaust administrative and/or state remedies before filing an action in federal court pursuant to 28 U.S.C. § 2241. Your case may be dismissed if you have not exhausted administrative and/or state remedies. If additional space is needed to explain exhaustion, use extra paper to do so. Please indicate that additional paper is attached and label the additional pages regarding exhaustion as "E. ADMINISTRATIVE REMEDIES."

Explain the steps you have taken to exhaust administrative and/or state remedies:

Petitioner has requested that Respondents and their agents at the Department of Homeland Security exercise prosecutorial discretion regarding Petitioner's removal proceedings and immigration detention. Respondents are aware that Petitioner has been granted withholding of removal and they still declined to release Petitioner from their custody. Beyond that, Petitioner's continued detention in ICE custody cannot be challenged in bond proceedings before the Immigration Judge. Please see attached petition for further information.

F. REQUEST FOR RELIEF

State the relief you are requesting or what you want the court to do. If additional space is needed to identify the relief you are requesting, use extra paper to request relief. Please indicate that additional paper is attached and label the additional pages regarding relief as "F. REQUEST FOR RELIEF."

Petitioner respectfully requests that the Court assume jurisdiction over this matter; issue an order to show cause directing Respondents to file a return within three (3) days, and set the matter for a prompt hearing; prohibit Petitioner's removal from the United States and transfer outside the District of Colorado during the pendency of this action; declare that Petitioner's arrest and continued detention are unlawful; grant the writ of habeas corpus and order Petitioner's immediate release from ICE custody; in the alternative, conduct an immediate, constitutionally adequate individualized custody determination at which the government bears the burden to justify continued detention and the Court considers release on bond or other reasonable conditions of supervision; award Petitioner his costs and reasonable attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and grant such other and further relief as law and justice require.

G. APPLICANT'S SIGNATURE

I declare under penalty of perjury that I am the applicant in this action, that I have read this application, and that the information in this application is true and correct. *See* 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Under Federal Rule of Civil Procedure 11, by signing below, I also certify to the best of my knowledge, information, and belief that this application: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the application otherwise complies with the requirements of Rule 11.

(Applicant's signature)

(Date)

(Form Revised December 2017)

C. STATEMENT OF CLAIMS

CLAIM TWO: Violation of the Administrative Procedure Act

Supporting facts: Petitioner is detained in the Aurora ICE Processing Center, an immigration detention facility operated by Respondents, despite having been granted withholding of removal. Please see attached petition for further information.

CLAIM THREE: Violation of the *Accardi* Doctrine with Respect to 8 C.F.R. 236.23(d)

Supporting facts: Petitioner is detained in the Aurora ICE Processing Center, an immigration detention facility operated by Respondents, despite having been granted withholding of removal. Please see attached petition for further information.

CLAIM FOUR: Violation of Procedural Due Process Protections of the Fifth Amendment of the Constitution

Supporting facts: Petitioner is detained in the Aurora ICE Processing Center, an immigration detention facility operated by Respondents, despite having been granted withholding of removal. Please see attached petition for further information.

CLAIM FIVE: Violation of the Fourth Amendment of the Constitution and 8 U.S.C. 1357(a)(2)

Supporting facts: Petitioner is detained in the Aurora ICE Processing Center, an immigration detention facility operated by Respondents, despite having been granted withholding of removal. Please see attached petition for further information.

CLAIM SIX: Violation of the *Accardi* Doctrine With Respect to 8 C.F.R. 287.8(c)(2)(i) and (ii)

Supporting facts: Petitioner is detained in the Aurora ICE Processing Center, an immigration detention facility operated by Respondents, despite having been granted withholding of removal. Please see attached petition for further information.