

3. The current charges of deportation is _____ entering the country illegally_____

4. Petitioner has appealed before the BIA / Ninth Circuit (Circle One) and the case remains pending.

5. The Ninth Circuit has issued a Stay of Removal in the case # 25-6787.

JURISDICTION

The Jurisdiction of this Court is sought under 28 USC 2241.

QUESTION PRESENTED

1. Is the Petitioner entitled to release from the Attorney General?

2. Is alternative relief in the form of release on conditions appropriate or release on bond that is reasonable?

RELIEF REQUESTED

That the Court Order the Petitioner to be released on supervised release pending all finality or that the court orders the Agency to hold a bond hearing where individual factors are considered that can allow for the release of the Petitioner pending the conclusion of his legal matters with ICE and the District Courts and the Ninth Circuit.

ARGUMENT

An alien should not be held in custody unless there are no facts or circumstances that would guarantee his return for hearings or to be deported. In general, an alien should not be detained or required to post bond unless it is found that he is a threat to the national security or a poor bail risk. Matter of Patel, 15 I & N Dec. 666 (BIA 1976). National Center for Immigrant Rights v INS, 743 F2d 1365 (9th Cir. 1984).

Furthermore, the Ninth Circuit has recently issued guidelines regarding the release of aliens and the jurisdiction of the Immigration Judge and BIA to grant bond in these cases. In particular,

1 the Ninth Circuit, in an unpublished Order in Bromfield v Mukasey, 07-72319 made the distinction
2 regarding persons due bond and those who are held under the authority of the Attorney General.
3 The Ninth Circuit decided that Bromfield was due a bond hearing, and that, even though he was
4 being held pending the Ninth Circuit's ruling on his Petition for Review, he was entitled to bond,
5 and the BIA and IJ had authority to grant the bond.

6 The Ninth Circuit on July 25th, 2008 issued two decisions in cases that had been pending before it.
7 Those precedential cases are Preito-Romero v A. Neil Clark, 07-35458 F. 3d ; and Casas-
8 Castrillon v Lockyer, 07-56261, F. 3d . Those decisions deliberately discuss the interplay
9 between the statutes governing detention of aliens and release of aliens. In particular, the Ninth Circuit
10 issued precedents dealing with several inter-related issues: A. When bond hearing is required; B. The
11 burden of the parties in bond hearings; C. When detention remains legally authorized.

12 In this case we have a person who is currently being held by the Immigration Services where the
13 Bond is either nonexistent or where the Bond is too high to afford and is unreasonable given the
14 circumstances that the Respondent will appear for all future hearings.

15 The Respondent has equities in the United States and those equities far outweigh any adversities.
16 If the Respondent is released he will appear for all hearings and will appear if he is to be removed from
17 the country.

18 The Respondent here moves the Judge to grant a bond review in this case and to release the
19 Respondent upon conditions that is fair and just.

20 The release on bond or conditions will allow the Respondent to continue with his life, with his
21 family, and to gain evidence to use in his hearing and to gain possible assistance of counsel or other
22 adequate representative.

23 Petitioner is not held under 8 USC 1226 (c) according to the Ninth Circuit's decision on the
24 matter. The Ninth Circuit cited that the Government's interpretation was incorrect where the Agency and
25 the Government has repeatedly held that aliens are held under 8 USC 1226 (c) and ineligible for a grant of
bond. The Ninth Circuit cited that an alien who has completed the administrative process is held under 8

1 USC 1226 (a). “which gives the Attorney General general discretionary authority to detain an alien
2 ‘pending a decision on whether the alien is to be removed from the United States.’”

3 The Court in Cases-Castrillon cited, “the Supreme Court similarly recognized in *Denmore v Kim*,
4 538 US. 510 (2003) that 1226 (c) was intended only to “govern [] detention of deportable criminal aliens
5 *pending their removal proceedings*,” which the Court emphasized typically “lasts roughly a month and a
6 half in the vast majority of cases in which it is invoked and about five months in the minority of cases in
7 which the alien chooses to appeal” his removal order to the BIA. *Id.* at 527-528.

8 Importantly, the Ninth Circuit held that the conclusion of proceedings occurs upon the dismissal
9 of the alien’s appeal by the BIA.

10 Thus, under the explicit Ninth Circuit holding, the fact that the custody has changed from 1226
11 (c) to 1226 (a) means that the Agency no longer had mandatory detention of the alien, but has the
12 authority to order release on bond or upon conditions.

13 Moreover, the Ninth Circuit explicitly rejected the Government’s contention that the custody
14 again shifts once the Circuit Court issues an order of stay of removal. The Ninth Circuit also rejected that
15 the custody authority changes once the Circuit grants relief. “We therefore conclude that the mandatory,
16 bureaucratic detention of aliens under 1226 (c) was intended to apply for only a limited time and ended in
17 this case when the BIA affirmed...” *id.* See Prieto-Romero slip op. at 9295.

18 Directly contradicting the Agency’s previous holdings, the Court cited, “Even though Casas’
19 detention is permitted by statute because keeping him in custody could serve a legitimate immigration
20 purpose, **Casas may nonetheless have the right to contest before a neutral decision maker whether**
21 **the government’s purported interest is *actually served* by detention in his case.** There is a difference
22 between detention being authorized and being necessary to any particular person. We hold that the
23 government may not detain a legal permanent resident such as Casas for a prolonged period without
24 providing him a neutral forum in which to contest the necessity of his continued detention.”
25

1 This decision by the Ninth Circuit completely establishes the right of aliens to an impartial hearing
2 before a neutral decider who will take evidence on the issue and grant bond in the cases where it is amply
3 demonstrated that bond is applicable. Moreover, this finding by the Ninth Circuit is directly in line with
4 Matter of Patel, supra. This standard is the same for persons who are aliens without criminal histories as
5 for those with such a history. According to the Ninth Circuit's decision in Prieto-Romero and Casas-
6 Castrillon, both are entitled to impartial hearings before a neutral factfinder.

7 Although this Petition is not within the *Zadvydas* mold, the *Zadvydas* opinion opened by noting the
8 clear applicability of general due process standards: physical detention requires both a "special
9 justification" that "outweighs the 'individual's constitutionally protected interest in avoiding physical
10 restraint'" and "adequate procedural protections." 533 U.S., at 690, 150 L Ed 2d 653, 121 S Ct
11 2491 (quoting *Hendricks* at 356, 138 L Ed 2d 501, 117 S Ct 2072). Nowhere did the Court suggest that
12 the "constitutionally protected liberty interest" in avoiding physical confinement, even for aliens already
13 ordered removed, was conceptually different from the liberty interest of citizens considered in *Jackson*,
14 *Salerno*, *Foucha*, and *Hendricks*. On the contrary, the Court cited those cases and expressly adopted their
15 reasoning, even as applied to aliens whose right to remain in the United States had already been declared
16 forfeited. *Zadvydas*, 533 U.S., at 690, 150 L Ed 2d 653, 121 S Ct 2491.

17 Thus, this Court's review must begin by positing commonly accepted substantive
18 standards and proceeded to enquire into any "special justification" that might outweigh the aliens'
19 powerful interest in avoiding physical confinement "under [individually ordered] release conditions that
20 may not be violated." *Id.*, at 696, 150 L Ed 2d 653, 121 S Ct 2491. The Supreme Court found nothing to
21 justify the Government's position. The statute was not narrowed to a particularly dangerous class of
22 aliens, but rather affected "aliens ordered removed for many and various reasons, including tourist visa
23 violations." *Id.*, at 691, 150 L Ed 2d 653, 121 S Ct 2491. The detention itself was not subject to "stringent
24 time limitations," *Salerno*, 481 U.S., at 747, 95 L Ed 2d 697, 107 S Ct 2095, but was potentially indefinite
25 or even permanent, *Zadvydas*, 533 U.S., at 691, 150 L Ed 2d 653, 121 S Ct 2491. Finally, although both

1 Zadvydas and Ma appeared to be dangerous, this conclusion was undermined by defects in the procedures
2 resulting in the finding of dangerousness. *Id.*, at 692, 150 L Ed 2d 653, 121 S Ct 2491. The upshot was
3 such serious doubt about the constitutionality of the detention statute that the Supreme Court construed it
4 as authorizing continuing detention only when an alien's removal was "reasonably foreseeable." *Id.*, at
5 699, 150 L Ed 2d 653, 121 S Ct 2491.

6 In Demore v Kim, **538 U.S. 510; 123 S. Ct. 1708**; the Court stated, "While it is true that
7 removal proceedings are unlikely to prove "indefinite and potentially permanent," 533 US, at 696, 150 L
8 Ed 2d 653, 121 S Ct 2491, they are not formally limited to any period, and often extend beyond the time
9 suggested by the Court, that is, "an average time of 47 days" or, for aliens who exercise their right of
10 appeal, "an average of four months." *Ante*, at 155 L Ed 2d, at 742; see also Case Hearing Report 12
11 (finding that the average time from receipt of charging documents by a detained alien to a final decision
12 by the immigration judge was 54 days). However, in this case, the confinement has been for 18 months.
13 This is completely excessive and this Court has jurisdiction to order the Agency to release the Petitioner
14 or to set a bond for the Petitioner's release or that the Petitioner be released on conditions.

15 Petitioner does assert the fact that he is not able to afford a large bond, but may be able to gain
16 assistance from the community in gaining access to a low bond.

17 For the reasons that go before, the Petitioner urges that the court issues orders that does
18 substantial justice.

19 Dated: 11-20-25

20
21 Signed: 
22
23
24
25

VERIFICATION

I, Jelber Rolando Botello Hernandez, do hereby aver that the words above are the truth and the entire truth, that I will testify to those facts under penalty of perjury and I provide this information based upon personal belief that they are the facts of this matter, except where stated on personal belief. Submitted under the penalty of perjury of the laws of the United States.

//

Dated this 11-20-25



PROOF OF SERVICE

&

DECLARATION

I, Jelber Rolando Botello Hernandez, AVER THAT I AM A PARTY TO THIS ACTION DO HEREBY
AVER THAT I HAVE PROVIDED A COPY OF THE FOREGOING DOCUMENT:

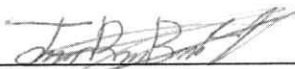
PETITION FOR WRIT OF HABEAS CORPUS

**U.S. District Court
Clerk's Office
700 Stewart Street, Suite 2310
Seattle, Washington 98101**

I WILL TESTIFY UNDER THE PENALTY OF PERJURY THAT THIS IS THE TRUTH.

THE ITEMS WERE MAILED FIRST CLASS MAIL ON THE DATE BELOW.

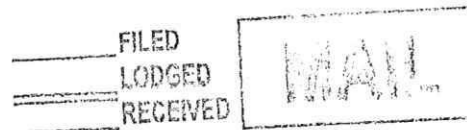
SUBMITTED ON 11-20-25

Signed: 

Jelber Rolando Botello Hernandez



1623 E J Street, G-4
Tacoma, WA 98421



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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

Jelber Rolando Botello Hernandez

[REDACTED]
1623 East J Street, G4
Tacoma, WA 98421

Opening brief,

I Jelber RONaldo Botello Hernandez in Aldea Estanzuelas Santa Maria Ixhuatan Santa Rosa Guatemala for 22 years. I lived in fear my entire childhood. When I was 11 years old a contract killer named [REDACTED] killed my father, he used a fire arm, shot him 3 times on his back on a Sunday in 1993, my fathers names is Alfonso de Jesus Botello y Botello. I suffered many threats by [REDACTED], my family recieved threats of death as well by [REDACTED]. I had to escape my country for fear of my life. I immigrated to the United States when I was 22 years old. On my way to the U.S. when I was crossing Mexico I was kidnaped in [REDACTED] by the [REDACTED] called "[REDACTED]". I was rescued by my family that lives in Sacramento CA. I entered the U.S. through Houston Texas in 2005 and I've lived in Sacramento CA for almost 20 years. I've dedicated my life to working two jobs daily and I've done my taxes year after year to the IRS. I'm a good person, honest worker, and I have two daughters who are american citizens. They are both minors, [REDACTED], [REDACTED] and [REDACTED]. I ask for this last opportunity to allow me to fight for my two daughters. I understand that I had two arrest misdeminors for drivingn under the influence of alcohol. I have taken several Alcoholic Anonymous classess and have received help from the State of California and through ICE. I've taken responsability for my actions, I have not relapsed on alcohol or drugs. I have already been approved by ICE for a "U" Visa [REDACTED]

[REDACTED]

I was in the process of becoming a resident, I was sentenced to go to prison in San Quentin for another case, the Visa "U" was cancelled then. I was released in July 30th of 2024 and ICE put a hold on me. So now I'm here trying to resolve this issue, all i ask is for one last opportunity to be able to remain in the United States of America. I've been in Tacoma Detention for a year and a half and have not gotten into any trouble with ICE or GEO staff.

Thank you

I Maria Edilsa Hernandez my address [REDACTED]

[REDACTED] I am writting you this letter to ask if you please give my brother Jelber Rolando Botello Hernandez another opportunity to remain in the united states.

My brother's life is in danger if he is to return to Guatemala especially to our native village [REDACTED]

[REDACTED] His life is being threatened by [REDACTED]

His father was murdered in plain daylight at the village plaza [REDACTED] Back then my brother Jelber was around 9 years old and even to this day the killer [REDACTED]

[REDACTED] and [REDACTED] follow the trajectory of threatening Jelber's life if he ever returns to Guatemala. People from our village have inform us that this people know that my brother Jelber might be deported back to Guatemala, and have swear to murder him once he gets there. I know my brother Jelber Rolando Botello Hernandez didn't made good desicions in this country, but I know my brother has learned a valuable lesson, I know he will proceed to a more civilized life. I also know my brother will take matter of the situation and be a better man for his life and a better father for his kids that he has in this country.

I as his sister want nothing for good things for him and I want him to have a good life here in the united states.

Maria Edilsa Hernandez [REDACTED]



The respondent's arguments on appeal do not establish any factual or legal error in the Immigration Judge's decision.⁴ Contrary to his assertions, the Immigration Judge fully considered all potential sources of torture in the aggregate, including evidence of widespread organized crime and discrimination against people with mental health disabilities in Guatemala (IJ at 11-12; Respondent's Br. at 9-12). See *Vilchez v. Holder*, 682 F.3d 1195, 1201 (9th Cir. 2012) (explaining that an Immigration Judge "does not have to write an exegesis on every contention") (citation omitted). The respondent further maintains that he suffered past torture as a child and that such harm should weigh strongly towards a conclusion that he would be tortured in the future (Respondent's Br. at 12). However, we agree with the Immigration Judge that, although the respondent's past harm  rises to the level of torture, it did not involve the necessary government action to qualify as torture within the meaning of the regulations (IJ at 10). See 8 C.F.R. § 1208.18(a)(1) (2020) (defining torture as "severe pain or suffering . . . inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity").

In addition, the respondent did not establish that any public official or person acting in an official capacity would consent to or acquiesce in his future torture. On appeal, the respondent argues that country conditions evidence reveals rampant law enforcement corruption and the Guatemalan government's inability to control drug cartels and other criminal groups (Respondent's Br. at 14-17). Yet, this generalized evidence is insufficient to show that the respondent faces a personal risk of torture or that any state actor would be willfully blind to such harm. See *Tzompantzi-Salazar v. Garland*, 32 F.4th 696, 706-07 (9th Cir. 2022) (explaining that, although country conditions evidence acknowledged general crime and police corruption and the applicant was previously kidnapped twice, he did not face a particularized or ongoing threat of torture); *B.R. v. Garland*, 26 F.4th 827, 845 (9th Cir. 2022) (stating that, while country reports showed some corrupt officials may turn a blind eye to cartel activity, they did not prove that the government would acquiesce in the torture of its citizens at the hands of cartels). Because the respondent did not meet his burden of proof to establish it is more likely than not he would be tortured, he is ineligible for deferral of removal.

Accordingly, the following order will be entered.

ORDER: The respondent's appeal is dismissed.

NOTICE: If a respondent is subject to a final order of removal and willfully fails or refuses to depart from the United States pursuant to the order, to make timely application in good faith for travel or other documents necessary to depart the United States, or to present himself or herself at the time and place required for removal by DHS, or conspires to or takes any action designed to prevent or hamper the respondent's departure pursuant to the order of removal, the respondent shall be subject to a civil monetary penalty of up to \$998 for each day the respondent is in violation. See INA § 274D, 8 U.S.C. § 1324d; 8 C.F.R. § 280.53(b)(14).

⁴ We accept the respondent's late-filed brief in the exercise of discretion, and we will consider all arguments contained therein. See 8 C.F.R. § 1003.3(c)(1).

Name: Jeffrey Hernandez
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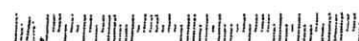


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AT SEATTLE
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WESTERN DISTRICT OF WASHINGTON
EY DEPUTY

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