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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Victor Arnulfo VILLAFAN-AGUILAR,

Petitioner

v.

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

TODD LYONS, in his official capacity as
Acting Director of Immigration and Customs
Enforcement,

JOHN CANTU, in his official capacity as ICE
Field Officer Director,

JOHN DOE, in his official capacity as the
warden of the Florence Immigration Detention
Facility,

PAMALA BONDI, in her official capacity as
the United States Attorney General,

The Executive Office for Immigration Review

United States Immigration and Customs
Enforcement.

Respondents

Civil No.: **2:25-at-99912**

VERIFIED PETITION FOR HABEAS
CORPUS

IMMIGRATION HABEAS CASE

INTRODUCTION¹

1
2 1. Victor Arnulfo VILLAFAN-AGUILAR (Petitioner), by and through his undersigned
3 counsel, hereby files this petition for a writ of habeas corpus. Upon information and belief, Petitioner
4 entered the United States over a decade ago and entered the United States without inspection. Ex. 1.
5 Petitioner is a native and citizen of Mexico. *Id.* Petitioner was arrested during a routine traffic stop by
6 ICE. Ex. 2. Petitioner has one criminal conviction of disorderly conduct.² *Id.* Upon information and
7 belief, Petitioner has a U.S. citizen child.
8

9 2. Soon after his arrest, Petitioner was moved, upon information and belief, to Wyoming and
10 had an immigration proceedings scheduled in Las Vegas, Nevada. Ex. 1. Petitioner was soon after
11 moved to Florence, Arizona and had his immigration proceedings moved to Arizona. Exs. 3 and 4.
12

13 3. Under 8 U.S.C. § 1226(a), aliens who have been apprehended within the United States and
14 placed in removal proceedings—other than arriving aliens—are generally eligible for a bond
15 redetermination before an immigration judge. This statutory framework authorizes immigration
16 officers to initially arrest and detain such individuals pending the outcome of their removal
17 proceedings, while also permitting release on bond or conditional parole based on a discretionary
18 custody determination. These provisions apply to noncitizens who have been living within the United
19 States, including those who entered without inspection or overstayed a lawful admission, and are
20 designed to provide a neutral review of custody decisions. During this process, the individual may
21 request a bond hearing before an immigration judge, who evaluates factors such as flight risk and
22 danger to the community. If the immigration judge determines that release is appropriate, the judge
23 may set bond or impose conditions of supervision. Importantly, this bond-redetermination mechanism
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27 ¹ Counsel has not yet been able to speak with Petitioner, any information not available from ICE documents was obtained
from Petitioner's partner.

28 ² Petitioner's conviction is a plea in abeyance, however, a plea in abeyance is a conviction for immigration purposes. 8
U.S.C. § 1101(a)(48)(A).

1 does not extend to arriving aliens, who remain subject to the separate parole framework under 8 U.S.C.
2 § 1182(d)(5), underscoring the distinct detention and release provisions applicable to different
3 categories of noncitizens.

4 4. Under *Matter of Hurtado*, 27 I&N Dec. 429 (BIA 2018), the Department of Justice has taken
5 the position that certain individuals who entered the United States without inspection (EWI) may be
6 classified as “arriving aliens” for custody purposes, despite their physical presence in the interior. In
7 that decision, the Board interpreted the regulatory definition of an arriving alien to include noncitizens
8 encountered after having crossed the border without lawful admission, reasoning that such individuals
9 have not been formally admitted and therefore remain applicants for admission under 8 U.S.C. § 1225.
10 This interpretation allows DHS to process these individuals under the same detention framework
11 applicable to arriving aliens, placing them in a category that is traditionally ineligible for bond
12 redetermination by an immigration judge. As a result, individuals who EWI may be treated as subject
13 to the mandatory detention and parole-only release scheme, rather than the discretionary bond review
14 available to most non-arriving respondents. Importantly, this reading highlights DOJ’s expansive view
15 of the arriving-alien classification and its impact on custody jurisdiction within removal proceedings.
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18 5. Under longstanding statutory and regulatory frameworks, the Board of Immigration Appeals’
19 interpretation in *Matter of Hurtado*—classifying individuals who entered without inspection as
20 “arriving aliens”—is clearly erroneous because it conflicts with both the plain text of the Immigration
21 and Nationality Act and the structure of the custody regulations. The INA expressly distinguishes
22 between “arriving aliens,” who present themselves at a port of entry, and individuals apprehended *after*
23 entering the United States, who are instead treated as applicants for admission under 8 U.S.C. §
24 1225(a)(1) but are processed under the detention authority of 8 U.S.C. § 1226(a). The regulations
25 reinforce this distinction by defining an arriving alien as one who is “coming to the United States” at a
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1 port of entry, not someone already present in the interior. By collapsing these categories, the BIA's
2 interpretation disregards decades of regulatory practice and nullifies the purpose of § 1226(a), which
3 is to provide a bond mechanism for individuals apprehended inside the country. Moreover, the BIA's
4 reading produces absurd and untenable results—effectively rendering non-arriving-alien custody
5 jurisdiction meaningless and undermining the statutory right to seek bond redetermination before an
6 immigration judge. This demonstrates that the Board's expansive interpretation cannot be reconciled
7 with the statutory text, regulatory definitions, or the broader scheme Congress enacted.
8

9 6. Petitioner is a member of the “Bond Eligible Class” certified in *Maldonado Bautista v.*
10 *Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025) (class certification order), 2025
11 WL 3288403. That class includes all noncitizens who entered the United States without inspection
12 (“EWI”), were not apprehended at the time of entry, and are not subject to mandatory detention under
13 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231. Petitioner meets each of these criteria. Although Petitioner
14 has not yet applied for bond, doing so would be futile because the Department of Justice, which
15 oversees the immigration courts, is unlawfully failing to follow the *Maldonado Bautista* decision and
16 is systematically denying bond to members of the Bond Eligible Class. This ongoing refusal to comply
17 with the class-wide order constitutes an unlawful detention in violation of 8 U.S.C. § 1226(a) and the
18 Due Process Clause.
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21 7. Because of the Department of Justice's and DHS's positions in *Matter of Hurtado* and *Matter*
22 *of Q Li*, 29 I.&N. Dec. 66 (BIA 2025), it is effectively futile for individuals who entered without
23 inspection to seek bond redetermination, as the policies in these cases dictate automatic ineligibility for
24 arriving aliens. Under these interpretations, aliens who EWI are treated as arriving aliens for custody
25 purposes, placing them squarely within the mandatory detention and parole-only framework of 8
26 U.S.C. § 1225(b) and outside the discretionary bond review afforded to non-arriving respondents under
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1 § 1226(a). Consequently, any attempt to request bond would almost certainly be denied by DHS, and
2 an immigration judge would lack jurisdiction to override this classification. In practice, this means that,
3 as petitioner is an EWI, pursuing a bond application would be a fruitless exercise under current DOJ
4 and DHS policy, and relief from detention must instead be sought through habeas actions.

5
6 7. Pursuant to *Loper Bright Enterprises v. Raimondo*, 603 U.S. ____ (2024), the Supreme Court
7 held that federal courts must “exercise independent judgment” when interpreting statutes and may no
8 longer defer to an agency’s reasonable interpretation simply because a statute is ambiguous. Under this
9 ruling, the BIA’s prior interpretations—such as in *Matter of Hurtado* or *Matter of Q. Li*—cannot
10 automatically command deference, particularly if those decisions rest on unexplained or arbitrary
11 reasoning. By abolishing Chevron deference, *Loper Bright* empowers reviewing courts to scrutinize
12 BIA policy choices on their merits, rather than rubber-stamping agency interpretations.

13 14 JURISDICTION AND VENUE

15 8. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general
16 federal question jurisdiction; 5 U.S.C. §§ 701 et seq., the Due Process Clause of the United States
17 Constitution and the INA. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241
18 et. seq. and the All Writs Act, 28 U.S.C. § 1651.

19
20 9. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the
21 lawfulness or constitutionality of DHS and DOJ conduct. Federal courts are not stripped of jurisdiction
22 under 8 U.S.C. § 1252. *See e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

23
24 10. Venue is proper pursuant to 28 U.S.C. § 1391(e) because Respondents are agencies of the
25 United States or officers or employees thereof acting in their official capacity or under color of legal
26 authority; Petitioner is in the custody of the Florence Detention Center, which is in the jurisdiction of
27 the Arizona District Court and there is no real property involved in this action.

1 11. There is no requirement for exhaustion of administrative remedies in the present case as
2 neither the habeas statute, 8 U.S.C. § 2241, nor the relevant sections of the INA require petitioners to
3 exhaust administrative remedies before filing petitions for habeas corpus

4 **REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

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

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11 13. Courts have long recognized the significance of the habeas statute in protecting individuals
12 from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ
13 known to the constitutional law of England, affording as it does a swift and imperative remedy in all
14 cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

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16 14. Petitioner is “in custody” for the purpose of § 2241 because Petitioner is arrested and
17 detained by Respondents.

18 **PARTIES**

19 **PETITIONER**

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21 15. Petitioner is a Mexican citizen, who is currently in the custody of the Department of
22 Homeland Security in Florence, Arizona.

23 **RESPONDENTS**

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25 16. Respondent Kristi Noem (Secretary Noem) is the Secretary of the Department of Homeland
26 Security, the parent agency of Immigration and Customs Enforcement which is currently detaining the
27 Petitioner. Respondent Kristi Noem is sued in her official capacity as an agent of the United States
28 Government.

1 17. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs
2 Enforcement, and he has authority over the actions of respondent Drew Bostock and ICE in general.
3 Respondent Lyons is a legal custodian of Petitioner.

4 18. Respondent John Cantu is the Field Office Director of Immigration and Customs
5 Enforcement. He is in charge of the custody of all Immigration and Customs Enforcement Detainees
6 in the Arizona District Court. Respondent John Cantu is sued in his official capacity as an agent of the
7 United States Government.
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9 19. Respondent Pamela Bondi is the Attorney General of the United States, and as such has
10 authority over the Department of Justice and is charged with faithfully administering the immigration
11 laws of the United States. Pamela Bondi is sued in her official capacity as an agent of the United States.
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13 20. Respondent Executive Office for Immigration Review is the federal agency responsible for
14 custody redeterminations relating to non-citizens charged with being removable from the United States.
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16 21. Respondent John Doe is the warden of the Florence Detention Center and thus has custody
17 over the Petitioner. Respondent John Doe is sued in his official capacity as an agent of the United
18 States.

19 22. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for
20 custody decisions relating to non-citizens charged with being removable from the United States,
21 including the arrest, detention, and custody status of non-citizens.

22 LEGAL FRAMEWORK

23 23. Under 8 U.S.C. § 1226(a), aliens who have been apprehended within the United States and
24 placed in removal proceedings—other than arriving aliens—are generally eligible for a bond
25 redetermination before an immigration judge. This statutory framework authorizes immigration
26 officers to initially arrest and detain such individuals pending the outcome of their removal
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1 proceedings, while also permitting release on bond or conditional parole based on a discretionary
2 custody determination. These provisions apply to noncitizens who have been living within the United
3 States, including those who entered without inspection or overstayed a lawful admission, and are
4 designed to provide a neutral review of custody decisions. During this process, the individual may
5 request a bond hearing before an immigration judge, who evaluates factors such as flight risk and
6 danger to the community. If the immigration judge determines that release is appropriate, the judge
7 may set bond or impose conditions of supervision. Importantly, this bond-redetermination mechanism
8 does not extend to arriving aliens, who remain subject to the separate parole framework under 8 U.S.C.
9 § 1182(d)(5), underscoring the distinct detention and release provisions applicable to different
10 categories of noncitizens.
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12 PROCEDURAL AND FACTUAL BACKGROUND

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14 24. Victor Arnulfo VILLAFAN-AGUILAR (Petitioner), by and through his undersigned
15 counsel, hereby files this petition for a writ of habeas corpus. Upon information and belief, Petitioner
16 entered the United States over a decade ago and entered the United States without inspection. Ex. 1.
17 Petitioner is a native and citizen of Mexico. *Id.* Petitioner was arrested during a routine traffic stop by
18 ICE. Ex. 2. Petitioner has one criminal conviction of disorderly conduct.³ *Id.* Upon information and
19 belief, Petitioner has a U.S. citizen child.
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21 25. Soon after his arrest, Petitioner was moved, upon information and belief, to Wyoming and
22 had an immigration proceedings scheduled in Las Vegas, Nevada. Ex. 1. Petitioner was soon after
23 moved to Florence, Arizona and had his immigration proceedings moved to Arizona. Exs. 3 and 4.
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28 ³ Petitioner's conviction is a plea in abeyance, however, a plea in abeyance is a conviction for immigration purposes. 8 U.S.C. § 1101(a)(48)(A).

CAUSES OF ACTION

**1. FIRST CAUSE OF ACTION:
Violation of Fifth Amendment Right to Due Process**

26. Petitioner incorporates and realleges the allegations above.

27. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.57.

28. Here, the petitioner is being deprived of due process because DHS and DOJ categorically refuse to provide him a bond hearing, despite his placement in removal proceedings and the absence of any statutory bar to custody review. Under the INA, noncitizens in § 1226(a) proceedings are entitled to an individualized bond determination before a neutral adjudicator, and the Supreme Court has emphasized that civil immigration detention must include adequate procedural safeguards to satisfy the Fifth Amendment. Nevertheless, DHS has classified the petitioner as an “arriving alien” under *Matter of Hurtado* and *Matter of Q. Li* solely because he entered without inspection, and DOJ has adopted the position that immigration judges lack jurisdiction to review his custody. As a result, petitioner is denied the opportunity to be heard on whether his detention is justified—an essential element of due process under *Mathews v. Eldridge*, which requires meaningful notice and a fair opportunity to challenge government action. 424 U.S. 319 (1976). By withholding any mechanism for custody review, DHS and DOJ have effectively imposed indefinite civil confinement without the procedural protections the Constitution demands, rendering petitioner’s continued detention a clear violation of the Fifth Amendment.

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**2. SECOND CAUSE OF ACTION:
Violation of the Immigration and Nationality Act**

29. Petitioner incorporates and realleges the allegations above.

30. The Immigration and Nationality Act (INA) sets forth specific circumstances under which the federal government may detain noncitizens. Under 8 U.S.C. § 1225(b)(1), arriving aliens may be detained pending a determination of admissibility, and under 8 U.S.C. § 1226(a), the Attorney General may take into custody aliens who are already in removal proceedings. Additionally, 8 U.S.C. § 1226(c) mandates detention for certain criminal aliens during removal proceedings. Once an alien is no longer subject to expedited removal, has completed credible fear proceedings, or does not fall within one of these statutory categories, the INA provides no authority for continued detention. *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018).

31. Matter of *Hurtado* impermissibly expands the definition of “arriving alien” beyond the limits established by Congress, and therefore cannot serve as a basis to deny petitioner a bond hearing. The INA expressly distinguishes between individuals seeking admission at the border and those apprehended inside the United States, assigning the former to the § 1225(b) detention framework and the latter to the discretionary custody-and-bond provisions of § 1226(a). By collapsing these categories and treating entry-without-inspection as functionally equivalent to presenting at a port of entry, *Hurtado* rewrites the statutory scheme and nullifies Congress’s deliberate decision to afford bond eligibility to non-arriving respondents. Because agency interpretations that contradict clear statutory text are invalid, DOJ and DHS cannot rely on *Hurtado* to deprive petitioner of custody review. Accordingly, petitioner must be placed within the statutory framework that governs his actual circumstances—§ 1226(a)—and afforded an individualized bond hearing before a neutral adjudicator, as the INA requires.

1 32. Because the petitioner does not fall within any statutory basis for mandatory detention under
2 the INA, his continued confinement is ultra vires, and he should be given a bond hearing immediately.

3 **RESERVATION OF RIGHTS**

4 Petitioner reserves the right to add additional allegations of agency error and related causes
5 of action upon receiving the certified administrative record.
6

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Petitioner requests that this Court grant the following relief:

- 9 A. Assume jurisdiction over the matter.
10 B. Declare Petitioner's detention without a possibility of bond unlawful pursuant to the due process
11 clause and the Immigration and Nationality Act.
12 C. Order Petitioner's immediate release or, in the alternative, order the Executive Office for
13 Immigration Review to hold a bond hearing immediately.
14 D. Award Petitioner costs of suit and attorney's fees under the Equal Access to Justice Act, 42
15 U.S.C. § 1988 and any other applicable law;
16 E. Enter all necessary relief, injunctions, and orders as justice and equity as appropriate to
17 remedy the harms to Petitioner;
18 F. Grant such further relief as this Court deems just and proper.
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21 DATED: December 8, 2025
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23 Respectfully submitted,

24 /S/ ALEC S. BRACKEN
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Verification by Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. 2242

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's Attorneys. I have discussed with Petitioner's family the events described in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED: December 8, 2025

Respectfully submitted,

/S/ ALEC S. BRACKEN