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UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO

Franklin HERNANDEZ HERNANDEZ,

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,

ARTHUR WILSON, in his official capacity as  
ICE Field Officer Director,

JOHNNY CHOATE, in his official capacity as  
the warden of the Aurora 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.

The Board of Immigration Appeals

Respondents

Civil No.: 1:25-cv-3983

VERIFIED PETITION FOR HABEAS  
CORPUS

IMMIGRATION HABEAS CASE

**INTRODUCTION**<sup>1</sup>

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1. Franklin HERNANDEZ HERNANDEZ (Petitioner), by and through his undersigned counsel, hereby files this petition for a writ of habeas corpus. Upon information and belief, Petitioner entered the United States over a decade ago when he was five-years-old and entered the United States without inspection. Ex. 1. Petitioner is a native and citizen of Guatemala. *Id.* Petitioner was apprehended by ICE after an arrest following an encounter with the police. Ex. 2. Petitioner has one juvenile criminal conviction of petty criminal mischief. *Id.* Petitioner has two U.S. citizen children. Ex. 3.

2. On August 14, 2025, the Immigration Judge granted a bond redetermination in the amount of \$10,000. Ex. 4. DHS appealed that bond redetermination and on September 23, 2025, the Board of Immigration Appeals vacated the bond issued by the Immigration Judge. Ex. 5. Specifically, the BIA found that the Petitioner was ineligible for bond because of the decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 (BIA 2025). In *Matter of Hurtado*, the BIA found that U.S.C. § 1225(b)(2)(A) bars individuals who entered without inspection from receiving a bond redetermination from an immigration judge.

3. Under 8 U.S.C. § 1226(a), aliens who have been apprehended within the United States and placed in removal proceedings—other than arriving aliens—are generally eligible for a bond redetermination before an immigration judge. This statutory framework authorizes immigration officers to initially arrest and detain such individuals pending the outcome of their removal proceedings, while also permitting release on bond or conditional parole based on a discretionary custody determination. These provisions apply to noncitizens who have been living within the United States, including those who entered without inspection or overstayed a lawful admission, and are

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<sup>1</sup> Counsel has not yet been able to speak with Petitioner, any information not available from ICE documents was obtained from Petitioner’s partner.

1 designed to provide a neutral review of custody decisions. During this process, the individual may  
2 request a bond hearing before an immigration judge, who evaluates factors such as flight risk and  
3 danger to the community. If the immigration judge determines that release is appropriate, the judge  
4 may set bond or impose conditions of supervision. Importantly, this bond-redetermination mechanism  
5 does not extend to arriving aliens, who remain subject to the separate parole framework under 8 U.S.C.  
6 § 1182(d)(5), underscoring the distinct detention and release provisions applicable to different  
7 categories of noncitizens.  
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9         4. Under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Department of Justice  
10 has taken the position that certain individuals who entered the United States without inspection (EWI)  
11 may be classified as “arriving aliens” for custody purposes, despite their physical presence in the  
12 interior. In that decision, the Board interpreted the regulatory definition of an arriving alien to include  
13 noncitizens encountered after having crossed the border without lawful admission, reasoning that such  
14 individuals have not been formally admitted and therefore remain applicants for admission under 8  
15 U.S.C. § 1225. This interpretation allows DHS to process these individuals under the same detention  
16 framework applicable to arriving aliens, placing them in a category that is traditionally ineligible for  
17 bond redetermination by an immigration judge. As a result, individuals who EWI may be treated as  
18 subject to the mandatory detention and parole-only release scheme, rather than the discretionary bond  
19 review available to most non-arriving respondents. Importantly, this reading highlights DOJ’s  
20 expansive view of the arriving-alien classification and its impact on custody jurisdiction within removal  
21 proceedings.  
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24         5. Under longstanding statutory and regulatory frameworks, the Board of Immigration Appeals’  
25 interpretation in *Matter of Hurtado*—classifying individuals who entered without inspection as  
26 “arriving aliens”—is clearly erroneous because it conflicts with both the plain text of the Immigration  
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1 and Nationality Act and the structure of the custody regulations. The INA expressly distinguishes  
2 between “arriving aliens,” who present themselves at a port of entry, and individuals apprehended *after*  
3 entering the United States, who are instead treated as applicants for admission under 8 U.S.C. §  
4 1225(a)(1) but are processed under the detention authority of 8 U.S.C. § 1226(a). The regulations  
5 reinforce this distinction by defining an arriving alien as one who is “coming to the United States” at a  
6 port of entry, not someone already present in the interior. By collapsing these categories, the BIA’s  
7 interpretation disregards decades of regulatory practice and nullifies the purpose of § 1226(a), which  
8 is to provide a bond mechanism for individuals apprehended inside the country. Moreover, the BIA’s  
9 reading produces absurd and untenable results—effectively rendering non-arriving-alien custody  
10 jurisdiction meaningless and undermining the statutory right to seek bond redetermination before an  
11 immigration judge. This demonstrates that the Board’s expansive interpretation cannot be reconciled  
12 with the statutory text, regulatory definitions, or the broader scheme Congress enacted.  
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15         6. Petitioner is a member of the “Bond Eligible Class” certified in *Maldonado Bautista v.*  
16 *Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025) (class certification order), 2025  
17 WL 3288403. That class includes all noncitizens who entered the United States without inspection  
18 (“EWI”), were not apprehended at the time of entry, and are not subject to mandatory detention under  
19 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231. Petitioner meets each of these criteria. Although Petitioner  
20 has not yet applied for bond, doing so would be futile because the Department of Justice, which  
21 oversees the immigration courts, is unlawfully failing to follow the *Maldonado Bautista* decision and  
22 is systematically denying bond to members of the Bond Eligible Class. This ongoing refusal to comply  
23 with the class-wide order constitutes an unlawful detention in violation of 8 U.S.C. § 1226(a) and the  
24 Due Process Clause.  
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**REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

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2 12. The Court must grant the petition for writ of habeas corpus or issue an order to show cause  
3 (OSC) to the Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243.  
4 If an OSC is issued, the Court must require Respondents to file a return “within three days unless for  
5 good cause additional time, not exceeding twenty days, is allowed.” *Id.*  
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7 13. Courts have long recognized the significance of the habeas statute in protecting individuals  
8 from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ  
9 known to the constitutional law of England, affording as it does a swift and imperative remedy in all  
10 cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).  
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12 14. Petitioner is “in custody” for the purpose of § 2241 because Petitioner is arrested and  
13 detained by Respondents.

14 **PARTIES**

15 **PETITIONER**

16 15. Petitioner is a Guatemalan citizen, who is currently in the custody of the Department of  
17 Homeland Security in Aurora, Colorado.  
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19 **RESPONDENTS**

20 16. Respondent Kristi Noem (Secretary Noem) is the Secretary of the Department of Homeland  
21 Security, the parent agency of Immigration and Customs Enforcement which is currently detaining the  
22 Petitioner. Respondent Kristi Noem is sued in her official capacity as an agent of the United States  
23 Government.  
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25 17. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs  
26 Enforcement, and he has authority over the actions of respondent Drew Bostock and ICE in general.  
27 Respondent Lyons is a legal custodian of Petitioner.  
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1 18. Respondent Arthur Wilson is the Field Office Director of Immigration and Customs  
2 Enforcement. He is in charge of the custody of all Immigration and Customs Enforcement Detainees  
3 in the Colorado District Court. Respondent Athur Wilson r is sued in his official capacity as an agent  
4 of the United States Government.

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6 19. Respondent Pamela Bondi is the Attorney General of the United States, and as such has  
7 authority over the Department of Justice and is charged with faithfully administering the immigration  
8 laws of the United States. Pamela Bondi is sued in her official capacity as an agent of the United States.

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10 20. Respondent Executive Office for Immigration Review is the federal agency responsible for  
11 custody redeterminations relating to non-citizens charged with being removable from the United States.

12 21. Respondent Johnny Choate is the warden of the Aurora Detention Center and thus has  
13 custody over the Petitioner. Respondent Johnny Choate is sued in his official capacity as an agent of  
14 the United States.

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

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19 23. Respondent The Board of Immigration Appeals is the federal agency responsible for appeals  
20 of custody redeterminations relating to non-citizens charged with being removable from the United  
21 States.

22 **LEGAL FRAMEWORK**

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24 24. Under 8 U.S.C. § 1226(a), aliens who have been apprehended within the United States and  
25 placed in removal proceedings—other than arriving aliens—are generally eligible for a bond  
26 redetermination before an immigration judge. This statutory framework authorizes immigration  
27 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 25. Upon information and belief, Petitioner entered the United States over a decade ago when  
15 he was five-years-old and entered the United States without inspection. Ex. 1. Petitioner is a native and  
16 citizen of Guatemala. *Id.* Petitioner was apprehended by ICE after an arrest following an encounter  
17 with the police. Ex. 2. Petitioner has one juvenile criminal conviction of petty criminal mischief. *Id.*  
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21 of \$10,000. Ex. 4. DHS appealed that bond redetermination and on September 23, 2025, the Board of  
22 Immigration Appeals vacated the bond issued by the Immigration Judge. Ex. 5. Specifically, the BIA  
23 found that the Petitioner was ineligible for bond because of the decision in *Matter of Yajure Hurtado*.  
24 29 I&N Dec. 216, 225 (BIA 2025). In *Matter of Hurtado*, the BIA found that U.S.C. § 1225(b)(2)(A)  
25 bars individuals who entered without inspection from receiving a bond redetermination from an  
26 immigration judge.  
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**CAUSES OF ACTION**

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

27. Petitioner incorporates and realleges the allegations above.

28. 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.

29. Here, the petitioner is being deprived of due process because DHS and DOJ have determined that he is statutorily ineligible for bond, 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 is evident from the BIA’s decision. As a result, petitioner is being held unlawfully, despite a determination from an immigration judge that he was in fact eligible for bond.

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

30. Petitioner incorporates and realleges the allegations above.

31. 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

1 detained pending a determination of admissibility, and under 8 U.S.C. § 1226(a), the Attorney General  
2 may take into custody aliens who are already in removal proceedings. Additionally, 8 U.S.C. § 1226(c)  
3 mandates detention for certain criminal aliens during removal proceedings. Once an alien is no longer  
4 subject to expedited removal, has completed credible fear proceedings, or does not fall within one of  
5 these statutory categories, the INA provides no authority for continued detention. *Zadvydas v. Davis*,  
6 533 U.S. 678, 682 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018).

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

22 33. Because the petitioner does not fall within any statutory basis for mandatory detention under  
23 the INA, his continued confinement is ultra vires, and he should be released immediately.

#### 25 RESERVATION OF RIGHTS

26 Petitioner reserves the right to add additional allegations of agency error and related causes  
27 of action upon receiving the certified administrative record.  
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**PRAYER FOR RELIEF**

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

- A. Assume jurisdiction over the matter.
- B. Declare Petitioner’s detention without a possibility of bond unlawful pursuant to the due process clause and the Immigration and Nationality Act.
- C. Order Petitioner’s immediate released on the bond he was previously granted.
- D. Award Petitioner costs of suit and attorney’s fees under the Equal Access to Justice Act, 42 U.S.C. § 1988 and any other applicable law;
- E. Enter all necessary relief, injunctions, and orders as justice and equity as appropriate to remedy the harms to Petitioner;
- F. Grant such further relief as this Court deems just and proper.

DATED: December 11, 2025

Respectfully submitted,

/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 11, 2025

Respectfully submitted,

/S/ ALEC S. BRACKEN