

ALEC S. BRACKEN (USB 17178)  
CONTIGO LAW  
PO BOX 249  
Midvale, Utah 84047  
Phone: 801-980-9430  
Email: alec@contigo.law  
Attorney for Petitioner

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-03983-DDD-NRN

PETITIONER'S MOTION FOR RELEASE  
PENDING RESOLUTION OF PETITION  
FOR WRIT OF HABEAS CORPUS

IMMIGRATION HABEAS CASE

1  
2 **PETITIONER’S MOTION FOR RELEASE PENDING RESOLUTION OF PETITION FOR**  
3 **WRIT OF HABEAS CORPUS**

4 Petitioner Franklin Hernandez Hernandez, through undersigned counsel, respectfully moves  
5 this Court for an order granting his release on conditions pending the Court’s resolution of the fully  
6 briefed Petition for Writ of Habeas Corpus. This request is grounded in the Court’s inherent habeas  
7 authority, the extraordinary liberty interests at stake, and the undisputed procedural posture of this case.

8 In support, Petitioner states as follows:

9 **I. PROCEDURAL POSTURE**

- 10 1. Petitioner filed a Verified Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241  
11 challenging the legality of his continued civil immigration detention.  
12  
13 2. The Court issued an Order to Show Cause, Respondents filed a response, and Petitioner filed a  
14 reply. Briefing is complete and the Petition is fully submitted for decision.  
15  
16 3. Petitioner subsequently moved for submission without oral argument and requested expedited  
17 consideration. The matter remains under advisement.  
18  
19 4. Petitioner has now been detained for a prolonged period while the fully briefed habeas petition  
20 awaits resolution.

21 **II. LEGAL AUTHORITY FOR RELEASE PENDING HABEAS REVIEW**

22 Federal courts possess inherent authority to order a habeas petitioner’s release pending  
23 adjudication of the petition where the case presents substantial claims and extraordinary circumstances  
24 warrant interim relief. *See, e.g., Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001) (recognizing authority  
25 to grant bail in habeas cases); *Pfaff v. Wells*, 648 F.2d 689, 693 (10th Cir. 1981) (release appropriate  
26 where circumstances are exceptional and claims are substantial).

27 Although such relief is rare, it is appropriate where:  
28

- 1 • the habeas petition raises serious constitutional or statutory questions, and
- 2 • continued detention during judicial review would cause irreparable harm not remediable after
- 3 final judgment.

4 *Pfaff v. Wells*, 648 F.2d 689, 693 (10th Cir. 1981); *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir.

5 2001). Both circumstances are present here.

6

7 **III. EXTRAORDINARY CIRCUMSTANCES WARRANT RELEASE**

8 **A. Petitioner’s Detention Rests Solely on a Pure Legal Question Fully Submitted to the**

9 **Court**

10 Petitioner’s continued confinement turns entirely on a statutory interpretation issue—whether

11 his detention is governed by 8 U.S.C. § 1225(b)(2) or § 1226(a). No factual development is required,

12 and the case is fully ripe for decision.

13 A substantial majority of courts to consider this question, including multiple courts within the

14 Tenth Circuit, have concluded that detention of long-present, non-arriving noncitizens under §

15 1225(b)(2) is unlawful and that such detention instead falls within § 1226(a)’s discretionary custody

16 framework.<sup>1</sup> This emerging consensus further underscores the substantiality of Petitioner’s habeas

17 claims.

18

19

---

20 <sup>1</sup> See *Escobar Salgado v. Mattos*, No. 2:25-cv-01872-RFB-EJY 2025 WL 3205356 (D. Nev. Nov. 17, 2025); *Herrera v.*

21 *Knight*, No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Vazquez v. Feeley*, No. 2:25-CV-

22 01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY, 2025 WL

23 2710211 (D. Nev. Sept. 23, 2025); *Carlos v. Noem*, No. 2:25-CV-01900-RFB-EJY, 2025 WL 2896156 (D. Nev. Oct. 10,

24 2025); *E.C. v. Noem*, No. 2:25-CV-01789-RFB-BNW, 2025 WL 2916264 (D. Nev. Oct. 14, 2025); *Perez Sanchez v.*

25 *Bernacke*, No. 2:25-CV-01921-RFB-MDC (D. Nev. Oct. 17, 2025); *Aparicio v. Noem*, No. 2:25-CV-01919-RFB-DJA, 2025

26 WL 2998098 (D. Nev. Oct. 23, 2025); *ominguez-Lara v. Noem*, No. 2:25-CV-01553-RFB-EJY, 2025 WL 2998094 (D.

27 Nev. Oct. 24, 2025); *Bautista-Avalos v. Bernacke*, 2:25-CV-01987-RFB-BNW (D. Nev. Oct 27, 2025); *Arce-Cervera v.*

28 *Noem*, No. 2:25-CV-01895-RFB-NJK, 2025 WL 3017866 (D. Nev. Oct. 28, 2025); *Alvarado Gonzalez v. Mattos*, No. 2:25-

CV-01599-RFB-NJK (D. Nev. Oct. 30, 2025); *Rodriguez Cabrera v. Mattos*, No. 2:25-cv-01551-RFB-EJY, 2025 WL

3072687 (D. Nev. Nov. 3, 2025); *Berto Mendez v. Noem*, No. 2:25-cv-02602-RFB-MDC, 2025 WL 3124285 (D. Nev.

Nov. 7, 2025); *Cornejo-Mejia v. Bernacke*, No. 2:25-cv-02139-RFB-BNW, 2025 WL 3222482 (D. Nev. Nov. 18, 2025);

*Lucero Ortiz v. Bernacke*, No. 2:25-cv-01819-RFB-BNW, 2025 WL 3237291 (D. Nev. Nov. 19, 2025); *Perez Sales v.*

*Mattos*, No. 2:25-cv-01819-RFB-BNW, 2025 WL 3237366 (D. Nev. Nov. 19, 2025); *Hernandez Duran v. Bernacke*, No.

2:25-cv-02105-RFB-EJY, 2025 WL 3237451 (D. Nev. Nov. 19, 2025); *Cabrera-Cortes v. Knight*, No. 2:25-cv-01976-

RFB-MDC, 2025 WL 3240971 (D. Nev. Nov. 20, 2025); *Jacobo Ramirez v. Noem*, No. 2:25-cv-02136-RFB-MDC, 2025

WL 3270137 (D. Nev. Nov. 24, 2025); *Garcia-Arauz v. Noem*, No. 2:25-cv-02117-RFB-EJY, 2025 WL 3470902 (D. Nev.

Dec. 3, 2025); *Silva Hernandez v. Noem*, No. 2:25-cv-02304-RFB-EJY, 2025 WL 3470903 (D. Nev. Dec. 3, 2025); *Reyes*

1 Where liberty depends solely on a legal question already under advisement, continued detention  
2 during judicial deliberation constitutes precisely the type of extraordinary circumstance warranting  
3 interim release.

4 **B. An Immigration Judge Already Determined Petitioner Is Neither a Danger Nor a**  
5 **Flight Risk**

6 After a full custody hearing, an Immigration Judge ordered Petitioner released on bond,  
7 necessarily determining that he poses neither a danger to the community nor a flight risk. Docs. 1 and  
8 8. Those findings reflect the core individualized considerations that govern discretionary civil  
9 immigration detention and release. *See* 8 U.S.C. § 1226(a) (authorizing release on bond or conditional  
10 parole based on individualized custody determinations); *Jennings v. Rodriguez*, 583 U.S. 281, 296  
11 (2018) (recognizing § 1226(a) as the statutory framework providing discretionary custody review,  
12 including bond). Where a neutral adjudicator has already concluded that continued detention is  
13 unwarranted on public-safety and flight-risk grounds, the government's interest in confinement is  
14  
15

16  
17 

---

*Cristobal v. Bernacke*, No. 2:25-cv-02231-RFB-EJY, 2025 WL 3485770 (D. Nev. Dec. 4, 2025); *Carrillo Fernandez v.*  
18 *Knight*, No. 2:25-cv-02221-RFB-BNW, 2025 WL 3485800 (D. Nev. Dec. 4, 2025); *Pilar Torres v. Bernacke*, No. 2:25-cv-  
19 02270-RFB-EJY, 2025 WL 3514615 (D. Nev. Dec. 8, 2025); *Nolasco-Gomez v. Noem*, No. 2:25-cv-02217-RFB-DJA,  
20 2025 WL 3514758 (D. Nev. Dec. 8, 2025); *Ramirez-Contreras v. Noem*, No. 2:25-cv-02218-RFB-EJY, 2025 WL 3514681  
21 (D. Nev. Dec. 8, 2025); *Rodas v. Noem*, No. 2:25-cv-02216-RFB-BNW, 2025 WL 3514680 (D. Nev. Dec. 8, 2025);  
22 *Perdomo-Gonzalez v. Noem*, No. 2:25-cv-02121-RFB-EJY, 2025 WL 3514758 (D. Nev. Dec. 8, 2025); *Hernandez Isidoro*  
23 *v. Bernacke*, No. 2:25-cv-02312-RFB-NJK, 2025 WL 3524773 (D. Nev. Dec. 8, 2025); *Serrano Gonzalez v. Knight*, No.  
24 2:25-cv-02081-RFB-BNW, 2025 WL 3524774 (D. Nev. Dec. 9, 2025); *Morales Rondon v. Bernacke*, No. 2:25-cv-01979-  
25 RFB-BNW, 2025 WL 3527246 (D. Nev. Dec. 9, 2025); *Marquez v. Knight*, No. 2:25-cv-02203-RFB-NJK, 2025 WL  
26 3527244 (D. Nev. Dec. 9, 2025); *Flores-Garcia v. Bernacke*, No. 3:25-cv-00688-RFB-CSD, 2025 WL 3527247 (D. Nev.  
27 Dec. 9, 2025); *Garcia Soto v. Knight*, No. 2:25-cv-02138-RFB-BNW, 2025 WL 3537405 (D. Nev. Dec. 10, 2025);  
28 *Quinonez Orosco v. Lyons*, No. 2:25-cv-02240-RFB-EJY, 2025 WL 3539275 (D. Nev. Dec. 10, 2025); *Gallegos Rangel v.*  
*Knight*, No. 2:25-cv-02161-RFB-BNW, 2025 WL 3539303 (D. Nev. Dec. 10, 2025); *Salguero v. DHS*, No. 2:25-cv-02328-  
RFB-NJK, 2025 WL 3539276 (D. Nev. Dec. 10, 2025); *Mejia Soto v. DHS*, No. 2:25-cv-02281-RFB-EJY (D. Nev. Dec.  
11, 2025); *Perez Gonzalez v. Noem*, No. 2:25-cv-02137-RFB-DJA (D. Nev. Dec. 11, 2025); *Ramirez v. Noem*, No. 2:25-  
cv-02110-RFB-DJA (D. Nev. Dec. 12, 2025); *Reyes v. Henkey*, No. 2:25-cv-02206-RFB-NJK (D. Nev. Dec. 12, 2025);  
*Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240 (W.D. Wash.); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK (D. Mass.);  
*Diaz Martinez v. Hyde*, No. CV 25-11613-BEM (D. Mass.); *Sarmiento v. Perry*, No. 1:25-cv-01644 (E.D. Va.); *Salazar v.*  
*Dedos*, No. 1:25-cv-00835-DHU-JMR (D.N.M.); *Nava Hernandez v. Baltazar*, No. 1:25-cv-03094-CNS (D. Colo.);  
*Ernesto Gonzalez Ramos v. Dedos*, No. 1:25-cv-00975-MLG-KRS (D.N.M.); *Pu Sacvin v. De Anda-Ybarra*, No. 2:25-cv-  
01031 (D.N.M.); *Espinoza Ruiz v. Baltazar*, No. 1:25-cv-03642-CNS (D. Colo.); *Arauz v. Baltazar*, No. 1:25-cv-03260-  
CNS (D. Colo.); *Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS (D. Colo.); *Aguilar Tanchez v. Noem*, No. 2:25-cv-1150-  
TC (D. Utah Jan. 16, 2026).

1 substantially diminished, and ongoing detention rests solely on a disputed legal interpretation rather  
2 than any individualized necessity. In such circumstances, continued physical confinement during  
3 judicial review implicates the “fundamental” liberty interest protected by the Due Process Clause,  
4 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), and constitutes the type of extraordinary circumstance  
5 that can justify interim release in habeas proceedings where substantial claims are presented. *See Pfaff*  
6 *v. Wells*, 648 F.2d 689, 693 (10th Cir. 1981) (release appropriate where petitioner shows substantial  
7 claim and exceptional circumstances); *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001). Here,  
8 Petitioner’s continued detention flows not from any individualized custody determination, but solely  
9 from the contested statutory question presently under advisement before this Court, further  
10 underscoring the appropriateness of temporary release pending resolution of the habeas petition.  
11  
12

13 **C. Continued Detention During Habeas Deliberation Causes Irreparable Harm**

14 Civil immigration detention constitutes a profound and ongoing deprivation of physical  
15 liberty—“the most elemental of liberty interests”—protected by the Due Process Clause. *Zadvydas v.*  
16 *Davis*, 533 U.S. 678, 690 (2001); *see also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (“Freedom  
17 from bodily restraint has always been at the core of the liberty protected by the Due Process Clause.”).  
18 Because habeas corpus exists to provide a swift and imperative remedy for unlawful confinement,  
19 continued detention during the pendency of judicial review inflicts a harm that cannot be repaired after  
20 the fact. Every additional day of unconstitutional or unauthorized custody is itself an irretrievable loss  
21 of liberty, and “[t]he interest of the habeas petitioner in release pending appeal is always substantial.”  
22 *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987).  
23

24  
25 Federal courts therefore consistently recognize that loss of physical liberty alone constitutes  
26 irreparable injury sufficient to justify interim relief. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976)  
27 (plurality op.) (loss of constitutional freedoms, “for even minimal periods of time, unquestionably  
28

1 constitutes irreparable injury”); *Roman v. Ashcroft*, 340 F.3d 314, 329 (6th Cir. 2003) (civil  
2 immigration detention implicates a “substantial liberty interest”); *Jones v. Cunningham*, 371 U.S. 236,  
3 243 (1963). In the habeas context specifically, courts authorize interim release where continued  
4 detention would undermine the effectiveness of the writ itself. See *Pfaff v. Wells*, 648 F.2d 689, 693  
5 (10th Cir. 1981) (recognizing inherent authority to grant release where substantial claims and  
6 exceptional circumstances exist); *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001) (extraordinary  
7 circumstances include detention that would render habeas relief ineffective).  
8

9 Here, the Petition has been fully briefed and is under advisement. Continued confinement  
10 during this period imposes precisely the irreparable, non-compensable injury the writ of habeas corpus  
11 is designed to prevent—ongoing loss of bodily liberty that no later judicial ruling can restore. This  
12 enduring deprivation strongly supports interim release pending resolution of the Court’s merits  
13 determination.  
14

15 **IV. CONDITIONS CAN ADEQUATELY SECURE PETITIONER’S APPEARANCE**

16 If the Court grants release, Petitioner is willing to comply with any reasonable conditions,  
17 including:  
18

- 19 • release on the previously set immigration bond;
- 20 • reporting requirements;
- 21 • electronic monitoring if deemed necessary; and
- 22 • any other condition the Court considers appropriate.

23 These measures fully mitigate any conceivable governmental interest while preserving  
24 Petitioner’s fundamental liberty during adjudication of the habeas petition.  
25  
26  
27  
28

