

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS Federico Reyes Vasquez</p> <p>(b) County of Residence of First Listed Plaintiff <u>Utah</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Alec S. Bracken, Contigo Law, PO Box 249, Midvale, UT 84047, 801-980-9430</p>	<p>DEFENDANTS Kristi Noem, Et. Al.</p> <p>County of Residence of First Listed Defendant <u>Prince County</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) Unknown</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td>PTF</td> <td>DEF</td> <td></td> <td>PTF</td> <td>DEF</td> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: [Nature of Suit Code Descriptions.](#)

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>INTELLECTUAL PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application</p> <p><input type="checkbox"/> 840 Trademark</p> <p><input type="checkbox"/> 880 Defend Trade Secrets Act of 2016</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)</p> <p><input type="checkbox"/> 485 Telephone Consumer Protection Act</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 2241

Brief description of cause:
Habeas Corpus Petition for an Immigration Detainee

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____ **CHECK YES only if demanded in complaint:**
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 12/19/2025 SIGNATURE OF ATTORNEY OF RECORD: /s/ Alec S. Bracken

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 - United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.
 - Original Proceedings. (1) Cases which originate in the United States district courts.
 - Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 - Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 - Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 - Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 - Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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Email: alec@contigo.law
Attorney for Petitioner

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Federico Reyes Vasquez,

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,

Michael Bernacke, in his official capacity as
ICE Field Officer Director and Warden in
current custody of Pettioner,

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-cv-1146**

VERIFIED PETITION FOR HABEAS
CORPUS

IMMIGRATION HABEAS CASE

INTRODUCTION¹

1
2 1. Federico Reyes Vasquez (Petitioner), by and through his undersigned counsel, hereby files
3 this petition for a writ of habeas corpus. Petitioner entered the United States in 2005 and entered the
4 United States without inspection. Petitioner is a native and citizen of Mexico. Petitioner was arrested
5 by ICE on December 19, 2025. Based on information and belief, Petitioner is currently detained at the
6 ICE field office in West Valley City, Utah.
7

8 2. Under 8 U.S.C. § 1226(a), aliens who have been apprehended within the United States and
9 placed in removal proceedings—other than arriving aliens—are generally eligible for a bond
10 redetermination before an immigration judge. This statutory framework authorizes immigration
11 officers to initially arrest and detain such individuals pending the outcome of their removal
12 proceedings, while also permitting release on bond or conditional parole based on a discretionary
13 custody determination. These provisions apply to noncitizens who have been living within the United
14 States, including those who entered without inspection or overstayed a lawful admission, and are
15 designed to provide a neutral review of custody decisions. During this process, the individual may
16 request a bond hearing before an immigration judge, who evaluates factors such as flight risk and
17 danger to the community. If the immigration judge determines that release is appropriate, the judge
18 may set bond or impose conditions of supervision. Importantly, this bond-redetermination mechanism
19 does not extend to arriving aliens, who remain subject to the separate parole framework under 8 U.S.C.
20 § 1182(d)(5), underscoring the distinct detention and release provisions applicable to different
21 categories of noncitizens.
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25 3. Under *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 (BIA 2025), the Department of
26 Justice has taken the position that certain individuals who entered the United States without inspection
27

28 ¹ Counsel has not had the opportunity to speak with the Petitioner and all of the information is based on information and belief and information given to counsel by Petitioner’s family.

1 (EWI) may be classified as “arriving aliens” for custody purposes, despite their physical presence in
2 the interior. In that decision, the Board interpreted the regulatory definition of an arriving alien to
3 include noncitizens encountered after having crossed the border without lawful admission, reasoning
4 that such individuals have not been formally admitted and therefore remain applicants for admission
5 under 8 U.S.C. § 1225. This interpretation allows DHS to process these individuals under the same
6 detention framework applicable to arriving aliens, placing them in a category that is traditionally
7 ineligible for bond redetermination by an immigration judge. As a result, individuals who EWI may be
8 treated as subject to the mandatory detention and parole-only release scheme, rather than the
9 discretionary bond review available to most non-arriving respondents. Importantly, this reading
10 highlights DOJ’s expansive view of the arriving-alien classification and its impact on custody
11 jurisdiction within removal proceedings.
12

13
14 4. Under longstanding statutory and regulatory frameworks, the Board of Immigration Appeals’
15 interpretation in *Matter of Hurtado*—classifying individuals who entered without inspection as
16 “arriving aliens”—is clearly erroneous because it conflicts with both the plain text of the Immigration
17 and Nationality Act and the structure of the custody regulations. The INA expressly distinguishes
18 between “arriving aliens,” who present themselves at a port of entry, and individuals apprehended *after*
19 entering the United States, who are instead treated as applicants for admission under 8 U.S.C. §
20 1225(a)(1) but are processed under the detention authority of 8 U.S.C. § 1226(a). The regulations
21 reinforce this distinction by defining an arriving alien as one who is “coming to the United States” at a
22 port of entry, not someone already present in the interior. By collapsing these categories, the BIA’s
23 interpretation disregards decades of regulatory practice and nullifies the purpose of § 1226(a), which
24 is to provide a bond mechanism for individuals apprehended inside the country. Moreover, the BIA’s
25 reading produces absurd and untenable results—effectively rendering non-arriving-alien custody
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1 jurisdiction meaningless and undermining the statutory right to seek bond redetermination before an
2 immigration judge. This demonstrates that the Board’s expansive interpretation cannot be reconciled
3 with the statutory text, regulatory definitions, or the broader scheme Congress enacted.

4 5. Because of the Department of Justice’s and DHS’s positions in *Matter of Hurtado* and *Matter*
5 *of Q Li*, 29 I.&N. Dec. 66 (BIA 2025), it is effectively futile for individuals who entered without
6 inspection to seek bond redetermination, as the policies in these cases dictate automatic ineligibility for
7 arriving aliens. Under these interpretations, aliens who EWI are treated as arriving aliens for custody
8 purposes, placing them squarely within the mandatory detention and parole-only framework of 8
9 U.S.C. § 1225(b) and outside the discretionary bond review afforded to non-arriving respondents under
10 § 1226(a). Consequently, any attempt to request bond would almost certainly be denied by DHS, and
11 an immigration judge would lack jurisdiction to override this classification. In practice, this means that,
12 as petitioner is an EWI, pursuing a bond application would be a fruitless exercise under current DOJ
13 and DHS policy, and relief from detention must instead be sought through habeas actions.

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

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25 **JURISDICTION AND VENUE**

26 8. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general
27 federal question jurisdiction; 5 U.S.C. §§ 701 et seq., the Due Process Clause of the United States
28

1 Constitution and the INA. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241
2 et. seq. and the All Writs Act, 28 U.S.C. § 1651.

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

7 10. Venue is proper pursuant to 28 U.S.C. § 1391(e) because Respondents are agencies of the
8 United States or officers or employees thereof acting in their official capacity or under color of legal
9 authority; Petitioner is in the custody of the Salt Lake City ICE field office in West Valley City, Utah,
10 which is in the jurisdiction of the Utah District Court and there is no real property involved in this
11 action.

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

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

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

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

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

3 **PARTIES**

4 **PETITIONER**

5
6 15. Petitioner is a Mexico citizen, who is currently in the custody of the Department of
7 Homeland Security in West Valley City, Utah.

8 **RESPONDENTS**

9
10 16. Respondent Kristi Noem (Secretary Noem) is the Secretary of the Department of Homeland
11 Security, the parent agency of Immigration and Customs Enforcement which is currently detaining the
12 Petitioner. Respondent Kristi Noem is sued in her official capacity as an agent of the United States
13 Government.

14
15 17. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs
16 Enforcement, and he has authority over the actions of respondent Drew Bostock and ICE in general.
17 Respondent Lyons is a legal custodian of Petitioner.

18
19 18. Respondent Michael Bernacke is the Field Office Director of Immigration and Customs
20 Enforcement. He is in charge of the custody of all Immigration and Customs Enforcement Detainees
21 in the Federal District of Utah. Based on information and belief, he is also the current warden of the
22 Petitioner. Respondent Michael Bernacke is sued in his official capacity as an agent of the United States
23 Government.

24
25 19. Respondent Pamela Bondi is the Attorney General of the United States, and as such has
26 authority over the Department of Justice and is charged with faithfully administering the immigration
27 laws of the United States. Pamela Bondi is sued in her official capacity as an agent of the United States.
28

1 20. Respondent the Executive Office for Immigration Review is the federal agency responsible
2 for custody redeterminations relating to non-citizens charged with being removed from the United
3 States.

4 22. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for
5 custody decisions relating to non-citizens charged with being removable from the United States,
6 including the arrest, detention, and custody status of non-citizens.
7

8 **LEGAL FRAMEWORK**

9 23. Under 8 U.S.C. § 1226(a), aliens who have been apprehended within the United States and
10 placed in removal proceedings—other than arriving aliens—are generally eligible for a bond
11 redetermination before an immigration judge. This statutory framework authorizes immigration
12 officers to initially arrest and detain such individuals pending the outcome of their removal
13 proceedings, while also permitting release on bond or conditional parole based on a discretionary
14 custody determination. These provisions apply to noncitizens who have been living within the United
15 States, including those who entered without inspection or overstayed a lawful admission, and are
16 designed to provide a neutral review of custody decisions. During this process, the individual may
17 request a bond hearing before an immigration judge, who evaluates factors such as flight risk and
18 danger to the community. If the immigration judge determines that release is appropriate, the judge
19 may set bond or impose conditions of supervision. Importantly, this bond-redetermination mechanism
20 does not extend to arriving aliens, who remain subject to the separate parole framework under 8 U.S.C.
21 § 1182(d)(5), underscoring the distinct detention and release provisions applicable to different
22 categories of noncitizens.
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1 **PROCEDURAL AND FACTUAL BACKGROUND**

2 24. Petitioner entered the United States in 2005 without inspection. Petitioner is a native and
3 citizen of Mexico.

4 25. Based on information and belief, Petitioner was arrested by ICE on December 19, 2025 and
5 has no criminal history.
6

7 **CAUSES OF ACTION**

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

10 26. Petitioner incorporates and realleges the allegations above.

11 27. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the
12 federal government from depriving any person of “life, liberty, or property, without due process of
13 law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States, including
14 [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*,
15 533 U.S. at 693.57.
16

17 28. Here, the petitioner is being deprived of due process because DHS and DOJ categorically
18 refuse to provide him a bond hearing, despite his placement in removal proceedings and the absence
19 of any statutory bar to custody review. Under the INA, noncitizens in § 1226(a) proceedings are entitled
20 to an individualized bond determination before a neutral adjudicator, and the Supreme Court has
21 emphasized that civil immigration detention must include adequate procedural safeguards to satisfy the
22 Fifth Amendment. Nevertheless, DHS has classified the petitioner as an “arriving alien” under *Matter*
23 *of Hurtado* and *Matter of Q. Li* solely because he entered without inspection, and DOJ has adopted the
24 position that immigration judges lack jurisdiction to review his custody. As a result, petitioner is denied
25 the opportunity to be heard on whether his detention is justified—an essential element of due process
26 under *Mathews v. Eldridge*, which requires meaningful notice and a fair opportunity to challenge
27
28

1 government action. 424 U.S. 319 (1976). By withholding any mechanism for custody review, DHS and
2 DOJ have effectively imposed indefinite civil confinement without the procedural protections the
3 Constitution demands, rendering petitioner's continued detention a clear violation of the Fifth
4 Amendment.

5
6 **2. SECOND CAUSE OF ACTION:
Violation of the Immigration and Nationality Act**

7 29. Petitioner incorporates and realleges the allegations above.

8
9 30. The Immigration and Nationality Act (INA) sets forth specific circumstances under which
10 the federal government may detain noncitizens. Under 8 U.S.C. § 1225(b)(1), arriving aliens may be
11 detained pending a determination of admissibility, and under 8 U.S.C. § 1226(a), the Attorney General
12 may take into custody aliens who are already in removal proceedings. Additionally, 8 U.S.C. § 1226(c)
13 mandates detention for certain criminal aliens during removal proceedings. Once an alien is no longer
14 subject to expedited removal, has completed credible fear proceedings, or does not fall within one of
15 these statutory categories, the INA provides no authority for continued detention. *Zadvydas v. Davis*,
16 533 U.S. 678, 682 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018).

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

4 32. Because the petitioner does not fall within any statutory basis for mandatory detention under
5 the INA, his continued confinement is ultra vires, and he should be given a bond hearing immediately.
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7 **RESERVATION OF RIGHTS**

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

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Petitioner requests that this Court grant the following relief:
12

- 13 A. Assume jurisdiction over the matter.
- 14 B. Declare Petitioner's detention without a possibility of bond unlawful pursuant to the due process
15 clause and the Immigration and Nationality Act.
- 16 C. Order the Executive Office for Immigration Review to hold a bond hearing immediately.
- 17 D. Award Petitioner costs of suit and attorney's fees under the Equal Access to Justice Act, 42
18 U.S.C. § 1988 and any other applicable law;
- 19 E. Enter all necessary relief, injunctions, and orders as justice and equity as appropriate to
20 remedy the harms to Petitioner;
- 21 F. Grant such further relief as this Court deems just and proper.
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1 DATED: December 19, 2025

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Respectfully submitted,

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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 19, 2025

Respectfully submitted,

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Certificate of Service

I, Alec S. Bracken, certify that a true and complete copy of this Petition was served on Respondents via email to the United States Attorney's Office for the District of Utah at:

Joel Ferre - joel.ferre@usdoj.gov

Andrew Choate - Andrew.Choate@usdoj.gov

Dated: December 19, 2025

Respectfully submitted,

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