

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

# UNITED STATES DISTRICT COURT

for the

Southern District of Florida

ERIK GUTIERREZ MARTINEZ

*Petitioner*

v.

MIAMI ICE FIELD OFFICE DIRECTOR

*Respondent*


*(name of warden or authorized person having custody of petitioner)*

Case No. \_\_\_\_\_

*(Supplied by Clerk of Court)*

## PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

### Personal Information

1. (a) Your full name: ERIK GUTIERREZ MARTINEZ  
 (b) Other names you have used: \_\_\_\_\_
2. Place of confinement:  
 (a) Name of institution: KROME NORTH SERVICE PROCESSING CENTER  
 (b) Address: 18201 SW 12th Street Miami, FL 33194  
 \_\_\_\_\_  
 (c) Your identification number: 
3. Are you currently being held on orders by:  
 Federal authorities     State authorities     Other - explain: \_\_\_\_\_
4. Are you currently:  
 A pretrial detainee (waiting for trial on criminal charges)  
 Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime  
 If you are currently serving a sentence, provide:  
 (a) Name and location of court that sentenced you: \_\_\_\_\_  
 \_\_\_\_\_  
 (b) Docket number of criminal case: \_\_\_\_\_  
 (c) Date of sentencing: \_\_\_\_\_  
 Being held on an immigration charge  
 Other *(explain)*: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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**Decision or Action You Are Challenging**

5. What are you challenging in this petition:

How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

Pretrial detention

Immigration detention

Detainer

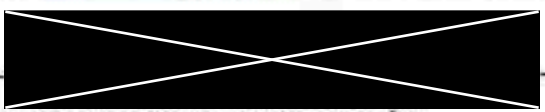
The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)

Disciplinary proceedings

Other (explain):

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: Krome/Miami

(b) Docket number, case number, or opinion number: 

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

immigration detention without a bond hearing. Bond denied twice under agency decision, Matter of Yajure Hurtado. An amended petition will be filed as soon as practicable after this form is filed and a case is generated. The amended petition will have additional information and context.

(d) Date of the decision or action: 09/17/2025

**Your Earlier Challenges of the Decision or Action**

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

Yes

No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

(b) If you answered "No," explain why you did not appeal: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**8. Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

Yes  No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_  
\_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) If you answered "No," explain why you did not file a second appeal: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**9. Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

Yes  No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_  
\_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(b) If you answered "No," explain why you did not file a third appeal: \_\_\_\_\_  
\_\_\_\_\_

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

Yes  No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

Yes  No

If "Yes," provide:

- (1) Name of court: \_\_\_\_\_
  - (2) Case number: \_\_\_\_\_
  - (3) Date of filing: \_\_\_\_\_
  - (4) Result: \_\_\_\_\_
  - (5) Date of result: \_\_\_\_\_
  - (6) Issues raised: \_\_\_\_\_
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion or a Section 2254 to petition to challenge this conviction or sentence?\*

Yes  No

If "Yes," provide:

- (1) Name of court: \_\_\_\_\_
  - (2) Case number: \_\_\_\_\_
  - (3) Date of filing: \_\_\_\_\_
  - (4) Result: \_\_\_\_\_
  - (5) Date of result: \_\_\_\_\_
  - (6) Issues raised: \_\_\_\_\_
- \_\_\_\_\_  
\_\_\_\_\_

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- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: \_\_\_\_\_

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

- Yes  No

If "Yes," provide:

- (a) Date you were taken into immigration custody: \_\_\_\_\_  
(b) Date of the removal or reinstatement order: \_\_\_\_\_  
(c) Did you file an appeal with the Board of Immigration Appeals?

- Yes  No

If "Yes," provide:

- (1) Date of filing: \_\_\_\_\_  
(2) Case number: \_\_\_\_\_  
(3) Result: \_\_\_\_\_  
(4) Date of result: \_\_\_\_\_  
(5) Issues raised: \_\_\_\_\_

- (d) Did you appeal the decision to the United States Court of Appeals?

- Yes  No

If "Yes," provide:

- (1) Name of court: \_\_\_\_\_  
(2) Date of filing: \_\_\_\_\_  
(3) Case number: \_\_\_\_\_

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(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

Yes  No

If "Yes," provide:

(a) Kind of petition, motion, or application: \_\_\_\_\_

(b) Name of the authority, agency, or court: \_\_\_\_\_

(c) Date of filing: \_\_\_\_\_

(d) Docket number, case number, or opinion number: \_\_\_\_\_

(e) Result: \_\_\_\_\_

(f) Date of result: \_\_\_\_\_

(g) Issues raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Grounds for Your Challenge in This Petition**

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:** Petitioner's detention without a bond hearing under 8 U.S.C. 1225(b)(2) is in violation of the Immigration and Nationality Act, because he should be properly classified as subject to discretionary detention under 8 U.S.C. 1226(a).

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(a) Supporting facts *(Be brief. Do not cite cases or law.):*

Petitioner entered without inspection in 2021 and was released on an order of recognizance. He was detained again on 9-17-2025 at an ICE check-in, despite the fact that he had not violated the terms of his release at all. Immigration Judge twice denied his bond, citing to an erroneous agency decision, Matter of Yajure Hurtado, and misclassifying him as someone who is "arriving" despite his apprehension well within the interior of the U.S. four years after his entry.

(b) Did you present Ground One in all appeals that were available to you?

Yes

No

**GROUND TWO:** Petitioner's detention violates his due process rights

(a) Supporting facts *(Be brief. Do not cite cases or law.):*

Petitioner should be afforded procedural and substantive due process during the course of his removal proceedings following the balancing test in *Mathews v. Eldridge*.

(b) Did you present Ground Two in all appeals that were available to you?

Yes

No

**GROUND THREE:** \_\_\_\_\_

(a) Supporting facts *(Be brief. Do not cite cases or law.):*

(b) Did you present Ground Three in all appeals that were available to you?

Yes

No

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**GROUND FOUR:**

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

(b) Did you present Ground Four in all appeals that were available to you?

Yes

No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

**Request for Relief**

15. State exactly what you want the court to do: order Petitioner's immediate release by a date certain or direct the Krome immigration court to conduct a bond hearing under 8 U.S.C. 1226(a).

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT  
TO 28 U.S.C. § 2242**

I, Felix Montanez, am submitting this verification on behalf of the Petitioner, Erik Gutierrez Martinez, because I am the attorney for Petitioner. I have discussed with his immigration attorney and family the events described in this Petition. Based on those discussions, 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 22, 2025

Respectfully submitted,

/s/ Felix A. Montanez

Felix A. Montanez

Florida Bar No. 102763

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