Kaitlin Johnson (CO SB 57389)
Campos Law Firm, LLC
6020 Greenwood Plaza Blvd., Suite B
Greenwood Village, CO 80111
Phone: 720-925-2511
Email: kaitlin@camposlawfirm.com
Attorney for Petitioner

UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLORADO

CRISTHIAN LEOPOLDO TREJO ARENAS,

Petitioner

v.

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

TOO 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

Case No. _____

VERIFIED PETITION FOR HABEAS CORPUS

IMMIGRATION HABEAS CASE

INTRODUCTION

Cristhian LEOPOLDO TREJO ARENAS (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 in November 2022, without parole or inspection. *Ex. 1.* Petitioner is a native and citizen of Mexico. *Id.* Petitioner was apprehended by the Department of Homeland Security (DHS) on or about September 26th, 2025. *Ex. 2.* It does not appear that Petitioner has any notable criminal history.

Petitioner filed an application for bond determination on December 13th, 2025, requesting bond relief from over two months in immigration detention. A hearing was subsequently set for December 17th, 2025. On December 17th, 2025, the Immigration Court determined that it lacked jurisdiction pursuant to the decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 (BIA 2025). The relevant decision in *Matter of Hurtado* dictates that U.S.C. § 1225(b)(2)(A) bars individuals who entered without inspection from receiving a bond redetermination from an immigration judge, thereby depriving the Immigration Court of relevant jurisdiction for bond determination.

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 a determination in the relevant removal proceedings, but also providing and permitting release or bond or conditional parole based on a discretionary custody determination. This also circumvents prolonged detention as a result of nonexistent relief for individuals like Petitioner. The provisions articulated in 8 U.S.C. § 1226(a) apply to noncitizens who have been living within the United States, including those who entered without inspection or overstayed a lawful admission, and were designed with the intention of providing a neutral review of custody decisions. During this process, the individual may request a bond hearing before an immigration judge, who is tasked with evaluating relevant factors such as flight risk and danger to the community. Where the immigration judge ascertains that the relevant bond redetermination factors have been satisfactorily proven, the judge may subsequently set bond or impose conditions of supervision. However, at-issue, is the bond

redetermination mechanism does not extend to arriving aliens, who remain subject to a separate parole framework under 8 U.S.C. § 1182(d)(5). This distinct and separate classification underscores detention and release provisions that are otherwise applicable to different categories of noncitizens.

In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Department of Justice has articulated its position that certain individuals who entered the United States without inspection (EWI) may be classified as "arriving aliens" for custody determination purposes, despite their physical presence in the interior of such. In the decision, the Board affirmed the same- holding that the regulatory definition of an arriving alien includes noncitizens encountered, in the United States, after having crossed the border without lawful admission. In its holding, the Board reasoned that individuals who have crossed the border without lawful admission have not been formally admitted and therefore remain applicants for admission under 8 U.S.C. § 1225. The problematic nature of the ruling allows DHS to process these individuals under the same detention framework applicable to arriving aliens, thereby remitting them to a category of individuals traditionally ineligible for bond redetermination by an immigration judge. As a result, individuals who EWI may be- and are- treated as subject to the mandatory and perpetual detention and parole-only release scheme, rather than the more favorable but simultaneously discretionary bond review available to most non-arriving respondents. Importantly, this reading highlights the DOJ's increasingly expansive view of the arriving-alien classification and its problematic and disproportionate impact on custody jurisdiction in the confines of removal proceedings.

The Board of Immigration Appeals' classification of individuals who entered without inspection as "arriving aliens" is erroneous in its expansive and unlawful application to individuals like Petitioner, who are otherwise eligible for bond redetermination under the plain text of the Immigration and Nationality Act, as well as the existent structure of the custody regulations. The Immigration and Nationality Act (INA) makes a point to expressly distinguish between "arriving aliens"- defined as those individuals who present themselves at a port of entry- and "applicants for admission" under 8 U.S.C. § 1225(a)(1)- who are individuals apprehended only *after* entering the United States. These applicants for admission- like Petitioner- are

processed under the detention authority articulated in 8 U.S.C. § 1226(a). The INA made certain to draw the distinction, perhaps in anticipation that DHS might seek a more expansive and overbroad application of bond ineligibility to otherwise eligible applicants under the code. In further assertion of its plain text, the INA regulations reinforce the critical distinction by clearly defining an "arriving alien" as "one who is coming to the United States" at a port of entry, but not someone already present within the interior- regardless of lawfulness at the point therein. The statutory and regulatory purpose of 8 U.S.C. § 1226(a) provides a bond relief mechanism for individuals apprehended within the country; the BIA's decision in *Matter of Hurtado* subsequently seeks to collapse the relevant statutory and regulatory distinctions and thereby deprive otherwise eligible individuals of their entitled relief. While the collapse and nullification of decades of regulatory practice is problematic, the BIA's holding creates a mechanism to collapse non-arriving-alien custody jurisdictions, thereby rendering bond redetermination an effectively meaningless gesture only situated to produce prolonged detention and mitigated relief. While the Board's holding certainly cannot be rectified with existing statutory text, regulatory definitions, or the broader Congressional scheme, perhaps that is void of the point. Perhaps the point is to void decades of an existing regulatory scheme to reinforce the prolonged detention of individuals like Petitioner.

The "Bond Eligible Class" certified in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025) (class certification order), 2025 WL 3288403, includes all noncitizens who entered the United States without inspection ("EWI"), who were not apprehended at the time of entry, and who are not subject to mandatory detention under 8 U.S.C. § 1226(c), 1225(b)(1), or 1231. Based on Petitioner's status, he is a member of the foregoing "Bond Eligible Class" certified in *Maldonado Bautista*, as petitioner meets each of the relevant criteria therein certified. The denial of Petitioner's bond application highlights a futile attempt at exercising the relief articulated in the INA by Petitioner. More importantly, however, it highlights the Department of Justice's unlawful exercision of conflicting BIA holdings, and a subsequent commitment by the Department of Justice to hollow decades of statutory and regulatory framework, while simultaneously ignoring the *Maldonado Baustista* decision by systematically denying bond to the Bond Eligible Class. Perhaps most significantly is the Department of Justice's ongoing refusal to comply with the class-wide order, in connection with

its perpetual disregard of the INA, which constitutes unlawful detention in violation of 8 U.S.C. § 1226(a) and the Due Process Clause of the United States Constitution.

Pursuant to *Loper Bright Enterprises v. Raimondo*, 603 U.S. ____ (2024), the United States Supreme Court held that federal courts must "exercise independent judgment" when interpreting statutes, and may no longer defer to an agency's reasonable interpretation simply reliant on the ambiguity of a specific statute. This ruling suggests that the BIA's interpretation-particularly those in *Matter of Hurtado* or *Matter of Q.Li*- could find itself void of automatic command deference, particularly because those interpretations rely on fundamentally arbitrary reasoning. The abolition of deference precedent in *Loper Bright* empowers reviewing courts to scrutinize BIA policy choices on their problematic and inconsistent merits, rather than deference to unlawful agency interpretations.

JURISDICTION AND VENUE

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

Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of conduct perpetuated by DHS and DOJ. Federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252; *see Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

Venue is proper pursuant to 28 U.S.C. § 1391(e) because Respondents are agencies of the United States or officer or employees thereof acting in their official capacity or under color of legal authority. Petitioner is also in the custody of the Aurora Detention Center, which is in the jurisdiction of the Colorado District Court and there is no real property involved in this action.

There is no requirement for exhaustion of administrative remedies in the present case as neither the habeas statute, 8 U.S.C. § 2241, nor the relevant sections of the INA require petitioners to exhaust administrative remedies prior to filing petitions for habeas corpus- particularly those situated on unlawful and prolonged detention.

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

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

Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention- particularly detention that is prolonged and absent avenues for relief. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

Petitioner is "in custody" for applicability determination of 28 U.S.C. § 2241 because Petitioner is arrested and detained by Respondents.

PARTIES

PETITIONER

Petitioner is a Mexican citizen, who is currently in the custody of the Department of Homeland Security in Aurora, Colorado.

RESPONDENTS

Respondent Kristi Noem ("Secretary Noem") is the Secretary of the Department of Homeland Security, the parent agency of Immigrations and Customs Enforcement, which is

currently engaging in the prolonged and unlawful detention of the Petitioner. Respondent Kristi Noem is sued in her official capacity as an agent of the United States Government.

Respondent Todd Lyons is the acting director of the United States Immigration and Customs Enforcement, and he has authority over the actions of respondent Arthur Wilson, Johnny Choate, and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

Respondent Arthur Wilson is the Field Office Director of Immigration and Customs Enforcement. He is in charge of the custody of all Immigration and Customs Enforcement detainees currently pending removal proceedings and determinations in the Colorado District Court. Respondent Arthur Wilson is sued in his official capacity as an agent of the United States Government.

Respondent Pamela Bondi is the Attorney general of the United States and, as such, has authority over the Department of Justice and is entrusted with the pivotal task of faithfully administering the immigration laws of the United States. Pamela Bondi is sued in her official capacity as an agent of the United States.

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

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

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

Respondent The Board of Immigration Appeals is the federal agency responsible for appeals of custody redeterminations relating to non-citizens charged with being removable from the United States. Particularly, the same Board who issued the pertinent at-issue rulings in *Q Li* and *Matter of Hurtado*.

LEGAL FRAMEWORK

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 a determination in the relevant removal proceedings, but also providing and permitting release or bond or conditional parole based on a discretionary custody determination. This also circumvents prolonged detention as a result of nonexistent relief for individuals like Petitioner. The provisions articulated in 8 U.S.C. § 1226(a) apply to noncitizens who have been living within the United States, including those who entered without inspection or overstayed a lawful admission, and were designed with the intention of providing a neutral review of custody decisions. During this process, the individual may request a bond hearing before an immigration judge, who is tasked with evaluating relevant factors such as flight risk and danger to the community. Where the immigration judge ascertains that the relevant bond redetermination factors have been satisfactorily proven, the judge may subsequently set bond or impose conditions of supervision. However, at-issue, is the bond redetermination mechanism does not extend to arriving aliens, who remain subject to a separate parole framework under 8 U.S.C. § 1182(d)(5). This distinct and separate classification underscores detention and release provisions that are otherwise applicable to different categories of noncitizens.

PROCEDURAL AND FACTUAL BACKGROUND

Upon information and belief, Petitioner entered the United States nearly three years ago when he was fleeing violence, corruption, and familial murder. Petitioner is a native and citizen of Mexico. *Ex. 1.* Petitioner was apprehended by the Department of Homeland Security during

his ordinary course of life. *Ex. 2.* Petitioner does not appear to have any relevant criminal history. Petitioner has one minor child, who currently resides in Mexico.

On December 13th, 2025, Petitioner filed a bond redetermination request with the Colorado District Court, requesting relief pursuant to the INA. On December 17th, 2025, the bond redetermination request was denied by an immigration judge, who cited lack of jurisdiction pursuant to *Matter of Hurtado* and *Q Li.* 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. This was the very determination- as inconsistent and absent rectification it may have been- the immigration judge relied on in denying Petitioner's bond redetermination request.

CAUSES OF ACTION

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

Petitioner incorporates and references the above allegations herein.

The Due Process Clause of the Fifth Amendment to the United States 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. These protections extend to Petitioner, particularly in light of the prolonged unlawful detention being perpetuated by the Department of Justice and Department of Homeland Security- very agents of the federal government the Fifth Amendment seeks to protect against.

Here, the Petitioner is being deprived of due process under the Fifth Amendment to the United States Constitution because DHS and the DOJ have determined unilaterally that Petitioner is statutorily ineligible for bond, despite his placement in removal proceedings and the absence of any statutory bar to custody review. DHS and the DOJ have unilaterally undermined the very relief Petitioner would otherwise have been entitled to under the Immigration and

Nationality Act, while simultaneously refusing to rectify the statutory and regulatory inconsistencies in their conduct. Under the INA, noncitizens in § 1226(a) proceedings are entitled to an individual bond determination before a neutral adjudicator, and the United States Supreme Court has further 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 absent the very distinction the INA addresses in its plain text. The DOJ has further adopted the position that immigration judges thereby lack jurisdiction to review Petitioner's custody, depriving Petitioner from adequate protection and remedy under the INA and Fifth Amendment to the United States Constitution. As a result, Petitioner is being held unlawfully, despite meeting the plain eligibility requirements under the INA for bond.

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

Petitioner incorporates and references the above allegations herein.

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. Under 8 U.S.C. § 1226(a), the Attorney General may take into custody aliens who are already in removal proceedings. Furthermore, 8 U.S.C. § 1226(c) mandates detention for certain criminal aliens during removal proceedings (none of which are applicable to Petitioner, as there is no evident criminal history for Petitioner). 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 does not provide any authority to substantiate continued or prolonged detention. *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018).

At issue is the impermissible expansion of "arriving alien" in *Matter of Hurtado* beyond the limits established by Congress. The very impermissibility underlying the definition expansion cannot subsequently and simultaneously serve as a basis to deny Petitioner a bond hearing, or bond altogether. The INA intentionally and expressly distinguishes between

individuals seeking admission at the border ("arriving aliens") and those apprehended inside the United States ("applicants for admission"), assigning the former to the § 1225(b) detention framework and the latter to the discretionary custody-and-bond provisions of § 1226(a). The INA's specification and distinction reflects a specific intent by the INA to ensure that noncitizens are properly classified, providing avenues for relief where such are warranted, and thereby preventing unlawful deprivation of relief. Instead, the federal government seeks to collapse this framework by unliterally maintaining and treating entry-without-inspection ("EWI") as functionally equivalent to presenting at a port of entry- two mechanisms which are separate and distinct from the other. *Hurtado* rewrites the statutory scheme, thereby nullifying Congress's deliberate decision to afford bond eligibility to non-arriving respondents- like Petitioner. It is evident that agency interpretations which explicitly and inexplicably contradict clear statutory text are thereby rendered invalid, and therefore DHS and the DOJ cannot rely on *Hurtado*'s baseless inconsistency to unilaterally deprive Petitioner of custody review. Accordingly, Petitioner must be classified and 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.

Because the Petitioner does not fall within any statutory class that would substantiate a basis for mandatory detention under the INA, his continued confinement is ultra vires, and he should be released immediately.

RESERVATION OF RIGHTS

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

PRAYER FOR RELIEF

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 of the Fifth Amendment of the United States Constitution, and the Immigration and Nationality Act.
C. Order Petitioner's immediate release on bond.
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 this 18th day of December, 2025.

Respectfully submitted,

/s/*Kaitlin Johnson*
Counsel for Petitioner

VERIFICATION 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 this 18th day of December, 2025.

Respectfully Submitted,

/s/ Kaitlin Johnson