

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

Ismael Guevara Hernandez,

Petitioner,

Case No. 26-cv-52

v.

Pamela Bondi, Attorney General,

Kristi Noem, Secretary, U.S.  
Department of Homeland Security,

Todd M. Lyons, Acting Director of  
Immigration and Customs  
Enforcement,

David Easterwood, Acting Director, St.  
Paul Field Office Immigration and  
Customs Enforcement, and

Joel Brott, Sheriff of Sherburne  
County.

Respondents.

**VERIFIED PETITION  
FOR WRIT OF  
HABEAS CORPUS**

Expedited Handling Requested

**INTRODUCTION**

1. Petitioner, Ismael Guevara Hernandez (“Mr. Hernandez”), by and through the undersigned attorney, hereby files this petition for a writ of habeas corpus and a complaint for declaratory and injunctive relief to require U.S.

Immigration and Customs Enforcement (“ICE”) to release Mr. Hernandez from ICE detention or provide him with a bond hearing pending the completion of his asylum appeal.

### **JURISDICTION AND VENUE**

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1361 (federal employee mandamus action); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 2241 (habeas corpus); Art. I, § 9, c. 2 of the U.S. Constitution (“Suspension Clause”); 5 U.S.C. § 702 (waiver of sovereign immunity); and 28 U.S.C. § 2201 (Declaratory Judgment Act).

3. Federal question jurisdiction exists because Mr. Hernandez seeks to challenge his custody as a violation of the Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.

4. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by the Department of Homeland Security (“DHS”). *Denmore v. Kim*, 538 U.S. 510 516-17 (2003); *Jennings v. Rodriguez*, 138 S. Ct. 830, 839-41 (2018); and *Nielsen v. Preap*, 139 S. Ct. 954, 961-63 (2019).

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), (e)(1)(B), and 2241(d) because he is detained within the District of Minnesota.

6. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A), because Respondents are operating in this district.

**PARTIES**

7. Petitioner is a citizen of Mexico and a resident of Minneapolis, Hennepin County, Minnesota, who is currently being held at the Sherburne County detention facility in Elk River, Minnesota. Petitioner is under the direct control of the respondents and has no scheduled release date.

8. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice. Attorney General Bondi shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Noem. Attorney General Bondi is a legal custodian of Mr. Hernandez.

9. Respondent Kristi Noem is being sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), routinely transacts business in the District of Minnesota, supervises the Fort Snelling ICE Field Office, and is legally responsible for pursuing Mr. Hernandez's detention and removal. As such, Respondent Noem is a legal custodian of Mr. Hernandez.

10. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Defendant Lyons is responsible for Petitioner's detention.

11. Respondent David Easterwood is being sued in his official capacity as the Acting Field Office Director for the Fort Snelling Field Office for ICE within DHS. In that capacity, Field Director Easterwood has supervisory authority over the ICE agents responsible for detaining Mr. Hernandez. The address for the Fort Snelling Field Office is 1 Federal Drive, Fort Snelling, Minnesota 55111.

12. Respondent Sheriff Joel Brott is being sued in his official capacity as the Sheriff responsible for the Sherburne County detention facility. Because Petitioner is detained in the Sherburne County facility, Sheriff Brott has immediate day-to-day control over Petitioner.

### **FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY**

13. Petitioner is a resident of Minneapolis and a citizen of Mexico. He has lived in the United States for more than three years.

14. He and his wife have a baby together, who is about one month old and is a US Citizen.

15. Petitioner entered the United States without inspection when he arrived from Mexico three years ago, and has had no contact with immigration authorities since his arrival.

16. Mr. Hernandez has no criminal record, no history of violence, poses no threat to his community, and is well-loved by family and friends in Minneapolis.

17. On December 26, 2025, Mr. Hernandez was in a grocery store parking lot on Lake Street in Minneapolis, Minnesota to pick up a few items for his wife and infant. In the parking lot, a group of men with no badges, uniforms, or any identifying information surrounded his vehicle and ordered him out of it. Without a warrant, they placed him under arrest. These men are believed to be agents of Respondent ICE. Mr. Hernandez was peaceful and fully compliant with their orders.

18. This arrest is part of an operation in Hennepin and Ramsey counties called “Operation Metro Surge.” This operation has involved hundreds of masked, unidentified individuals in unmarked vehicles (many with illegally covered or mismatched license plates) holding themselves out as ICE agents but largely refusing to identify themselves by name or to present warrants, physically assaulting pedestrians, pepper spraying and arresting citizen observers, hitting passersby with vehicles, and generally attempting to take as

many immigrants as possible into custody regardless of the constitutionality of their actions. *See, e.g., Compl., Tincher et. al. v. Noem*, No. 0:25-cv-04669. (D. Minn. 12/17/2025).

19. Mr. Hernandez is currently being held at Sherburne County detention center in Elk River, Minnesota.

20. Mr. Hernandez poses no risk to society and has strong connections to his community in Hennepin County, including family and friends.

21. Detaining Mr. Hernandez is an expensive and pointless endeavor. Mr. Hernandez respectfully seeks the opportunity to return to his home in Minnesota and to continue following the legal processes set up by Congress and DHS for immigrants to seek status in this country. His now-stranded wife is alone with their newborn child. This detention is tragically forcing him to miss the once-in-a-lifetime experience of watching his infant meet the first month of milestones.

22. Pending the adjudication of his Petition, Mr. Hernandez further seeks an order restraining the Respondents from transferring him to a location outside of the State of Minnesota, so that he may remain within the jurisdiction of this Court and accessible to his legal counsel and family support networks.

## STANDARD OF LAW

23. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The “Great Writ” has been referred to by US Courts 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) (emphasis added). A petitioner may seek a writ of habeas corpus when their custody violates the US Constitution or a federal law. 28 U.S.C. § 22441(c)(3), which should be granted if the petitioner meets their burden of proof—a preponderance of evidence. *Aditya W. H. v. Trump*, 782 F. Supp. 3d 691, 703 (D. Minn. 2025).

24. The Court must grant a petition for writ of habeas corpus or issue an order to show cause to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause 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.*

25. Detained immigrants petitioning under 28 U.S.C. § 2241 face no statutory exhaustion requirements. *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 965 (D. Minn. 2025). Nor is a judicially imposed prudential exhaustion requirement appropriate where, as here: time is of the essence, facts are largely

undisputed, and the parties' disagreement is based on a legal conclusion. *Id.* at 967-68.

26. Other courts in the Eighth Circuit have similarly declined to require prudential exhaustion when evaluating a detained immigrant's habeas corpus petition under similar circumstances—to address a question of statutory interpretation that does not require developing a factual record, and where the agency is demonstrably unlikely to reverse its course. *Giron Reyes v. Lyons*, 2025 WL 2712427 at \*3 (N.D. Iowa Sept. 23, 2025).

27. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including [immigrants], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

28. Only under certain circumstances are immigrants subject to ongoing detention without a bond hearing. *See, e.g.*, 8 U.S.C. § 1226(c) (individuals with certain criminal convictions may be detained without a bond hearing for the pendency of removal proceedings<sup>1</sup>) and 8 U.S.C. § 1225(b)(1-2) (authorizing mandatory detention of “applicants for admission,” who are seeking physical entry to the United States).

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<sup>1</sup> Even when detained under 1226(c), immigrants retain due process rights and are entitled to a hearing if the period of detention becomes unreasonable. *See, e.g.*, *Pedro O v. Garland*, 543 F.Supp.3d 733 (D. Minn. 2021) (finding a year-long mandatory detention pursuant to 8 U.S.C. § 1226(c) without an individualized hearing to violate an immigrant's due process rights).

29. Otherwise, the “default rule” is that 8 U.S.C. § 1226(a) and its implementing regulations apply to immigrants “already present in the United States” and subject to pending removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018). Under this default rule, immigrants are constitutionally entitled to a bond hearing. *R.E. v. Bondi*, No. 25-CV-3946 (NEB/DLM), 2025 WL 3146312 (D. Minn. Nov. 4, 2025).

30. The unanimous precedent in the District of Minnesota and a solid nationwide majority reject the Federal Government’s recently fabricated posture that the term “applicants for admission” in 8 U.S.C. § 1225(b) also encompasses everyone who has already entered the United States, as opposed to 8 U.S.C. § 1226, which has long been held to govern detention and bond for noncitizens who are within the US and subject to removal proceedings. *See, e.g., Mayamu K. v. Bondi*, No. 25-3035 (JWB/LIB), 2025 U.S. Dist. LEXIS 260661 (D. Minn. Oct. 20, 2025) (holding that an immigrant detained after entry while in asylum proceedings is held pursuant to 8 U.S.C. § 1226(a), and that the recent DHS policy attempting to reclassify interior arrests under 8 U.S.C. § 1225 so as to hold asylum seekers without a bond hearing is unlawful and unconstitutional.), *Eliseo A.A. v. Olson*, Civ. No. 25-3381 (JWB/DJF) (D. Minn. filed Aug. 27, 2025), *Maldonado v. Olson*, 795 F.Supp.3d 1134 (D. Minn. 2025); *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957 (D. Minn. 2025).

31. Here, Petitioner fits the ‘default rule’ as someone without a criminal record who has been in the United States for more than two years, is now subject to removal proceedings, and is thus entitled to a bond hearing.

## **CLAIMS FOR RELIEF**

### **COUNT ONE**

#### **Fifth Amendment Due Process**

*Petitioner is being deprived of an adequate and meaningful process to challenge his ongoing confinement.*

32. Petitioner realleges and incorporates by reference the allegations contained above.

33. Mr. Hernandez has due process rights as a resident of the United States. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

34. Federal courts use the three-part test in *Mathews v. Eldridge* to determine whether civil detention violates a detainee's due process rights. 424 U.S. 319 (1976). The elements of this test are: (1) the private interest that the official action affects; (2) the risk that the procedures used will result in an erroneous deprivation of the private interest, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest in following the existing procedures, both in achieving their objectives and in the potential burdens of an alternate procedure. *Id.* at 335.

35. Here, all three factors favor the petitioner.

36. First, he has a significant private interest at stake. A person's interest in freedom from physical detention is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004); see also *Zadvydas*, 533 U.S. at 690, 121 S.Ct. 2491 (“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”). Mr. Hernandez currently experiences the gambit of deprivations that come with physical detention, including separation from his family and his community and inhibitions to participate fully in his pending immigration proceedings.

37. Second, Mr. Hernandez will continue to be deprived of this interest if the current procedure (detaining Mr. Hernandez without a hearing) is followed. With his lack of criminal record and his demonstrated pattern of following instructions and appearing for court proceedings, Mr. Hernandez has a strong likelihood of meeting the criteria for being released on bond. 8 CFR §§236.1(c)(8), 1236.1(c)(8) (2020); *In re Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999). Even if he is not subsequently released, he still has a legal and constitutional interest in the hearing itself, in being heard.

38. Lastly, the Government has no legitimate interest in refusing to follow its own rules. Mr. Hernandez poses no safety threats to the community.

Releasing Mr. Hernandez, or holding a hearing to release him on bond, would in fact *save* the government the resources and expense of continuing to imprison him.

39. The placement of Mr. Hernandez in detention pending the resolution of his asylum proceedings violates his constitutional rights to due process guaranteed in the Fifth Amendment.

## **COUNT TWO**

### **Immigration and Nationality Act, 8 U.S.C. § 1226**

*Petitioner's Ongoing Detention, without the Opportunity for a Bond Hearing, Violates his Statutory Right to a Hearing as Guaranteed by 8 U.S.C. § 1226*

40. Petitioner realleges and incorporates by reference each and every allegation contained above.

41. When a decision in an asylum application is pending on appeal and an immigrant is being detained pursuant to 8 U.S.C. § 1226(a), that immigrant is entitled to a bond hearing pursuant to 8 CFR §§236.1(c). Respondents violate the Immigration and Nationality Act by attempting to apply the mandatory detention statute 8 U.S.C. § 1225(b)(2), to Petitioner.

42. Mr. Hernandez is detained, notwithstanding his pending asylum application, without being afforded an opportunity to advocate for his release back into his community as the law requires.

**REQUEST FOR ORDER TO SHOW CAUSE**

43. Within three days, unless good cause for a delay is shown, “[a] court, justice or judge entering a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

44. Petitioner, respectfully requests that the Court issue an Order to Show Cause directing Respondents to file a return within three days of the Court’s order, showing cause, if any, why a writ of habeas corpus should not be granted.

**PRAYER FOR RELIEF**

WHEREFORE, Mr. Hernandez prays that this Court grant the following relief;

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order requiring Respondents to show cause as to why Petitioner should not be released immediately, or in the alternative afforded a bond hearing;
- (3) Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days; and
- (4) Grant any other and further relief that this Court may deem just and proper.

Date: January 6, 2026

/s/ Kira A. Kelley

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*Attorney for Petitioner*

**Verification by Someone Acting on  
Petitioner's Behalf Pursuant to 28 U.S.C. § 2242**

I am Petitioner's attorney and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing for Verified Complaint for Injunctive and Declaratory Relief are true and correct to the best of my knowledge, which knowledge comes from conversations I have had with Mr. Hernandez's wife and friends when preparing this filing.

Date: January 6, 2026

/s/ Kira A. Kelley

Kira A. Kelley, Esq.