

# 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.)

### I. (a) PLAINTIFFS

Marcos Juarez Salvador

(b) County of Residence of First Listed Plaintiff Utah  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Alec S. Bracken, P.O. Box 249, Midvale, UT 84047  
801-980-9430

### DEFENDANTS

Kristi Noem Et. Al.

County of Residence of First Listed Defendant Prince George  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Unknown

### II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

### III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                                       |   |                            |                            |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
|   | 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 checked="" 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 checked="" type="checkbox"/> 3 | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

### IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

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

### 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):  
8 U.S.C. § 2241

Brief description of cause:  
Petitioner is detained in violation of the INA

### 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

01/09/2026

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.

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 UTAH

Marcos Juarez Salvador,

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,

MARCOS CHARLES, in his official capacity  
as ICE Field Officer Director,

JOHN MATTOS, in his official capacity as the  
warden of the Nevada Southern 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.

Respondents

Civil No.: 2:26-cv-43

VERIFIED PETITION FOR HABEAS  
CORPUS

IMMIGRATION HABEAS CASE

INTRODUCTION

1  
2 1. Marcos Juarez Salvador (Petitioner), by and through his undersigned counsel, hereby files  
3 this petition for a writ of habeas corpus. Petitioner entered the United States on over ten years ago and  
4 entered the United States without inspection. Ex. 1. Petitioner is a native and citizen of Mexico. *Id.*  
5 Petitioner was arrested by ICE on December 15, 2025 after reporting to the probation office in Provo,  
6 Utah. Ex. 2.

8 2. Soon after removal proceedings were commenced against Petitioner. Ex. 1. Respondent is  
9 currently detained at the Nevada Southern Detention Facility and is being denied bond by Respondents.  
10 Ex. 3.

11  
12 3. Under 8 U.S.C. § 1226(a), aliens who have been apprehended within the United States and  
13 placed in removal proceedings—other than arriving aliens—are generally eligible for a bond  
14 redetermination before an immigration judge. This statutory framework authorizes immigration  
15 officers to initially arrest and detain such individuals pending the outcome of their removal  
16 proceedings, while also permitting release on bond or conditional parole based on a discretionary  
17 custody determination. These provisions apply to noncitizens who have been living within the United  
18 States, including those who entered without inspection or overstayed a lawful admission, and are  
19 designed to provide a neutral review of custody decisions. During this process, the individual may  
20 request a bond hearing before an immigration judge, who evaluates factors such as flight risk and  
21 danger to the community. If the immigration judge determines that release is appropriate, the judge  
22 may set bond or impose conditions of supervision. Importantly, this bond-redetermination mechanism  
23 does not extend to arriving aliens, who remain subject to the separate parole framework under 8 U.S.C.  
24 § 1182(d)(5), underscoring the distinct detention and release provisions applicable to different  
25 categories of noncitizens.  
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1           4. Under *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 (BIA 2025), the Department of  
2 Justice has taken the position that certain individuals who entered the United States without inspection  
3 (EWI) may be classified as “arriving aliens” for custody purposes, despite their physical presence in  
4 the interior. In that decision, the Board interpreted the regulatory definition of an arriving alien to  
5 include noncitizens encountered after having crossed the border without lawful admission, reasoning  
6 that such individuals have not been formally admitted and therefore remain applicants for admission  
7 under 8 U.S.C. § 1225. This interpretation allows DHS to process these individuals under the same  
8 detention framework applicable to arriving aliens, placing them in a category that is traditionally  
9 ineligible for bond redetermination by an immigration judge. As a result, individuals who EWI may be  
10 treated as subject to the mandatory detention and parole-only release scheme, rather than the  
11 discretionary bond review available to most non-arriving respondents. Importantly, this reading  
12 highlights DOJ’s expansive view of the arriving-alien classification and its impact on custody  
13 jurisdiction within removal proceedings.

14           5. 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  
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1 is to provide a bond mechanism for individuals apprehended inside the country. Moreover, the BIA's  
2 reading produces absurd and untenable results—effectively rendering non-arriving-alien custody  
3 jurisdiction meaningless and undermining the statutory right to seek bond redetermination before an  
4 immigration judge. This demonstrates that the Board's expansive interpretation cannot be reconciled  
5 with the statutory text, regulatory definitions, or the broader scheme Congress enacted.  
6

7 6. Because of the Department of Justice's and DHS's positions in *Matter of Hurtado* and *Matter*  
8 *of Q Li*, 29 I.&N. Dec. 66 (BIA 2025), it is effectively futile for individuals who entered without  
9 inspection to seek bond redetermination, as the policies in these cases dictate automatic ineligibility for  
10 arriving aliens. Under these interpretations, aliens who EWI are treated as arriving aliens for custody  
11 purposes, placing them squarely within the mandatory detention and parole-only framework of 8  
12 U.S.C. § 1225(b) and outside the discretionary bond review afforded to non-arriving respondents under  
13 § 1226(a). Consequently, any attempt to request bond would almost certainly be denied by DHS, and  
14 an immigration judge would lack jurisdiction to override this classification. In practice, this means that,  
15 as petitioner is an EWI, pursuing a bond application would be a fruitless exercise under current DOJ  
16 and DHS policy, and relief from detention must instead be sought through habeas actions.  
17  
18

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

1  
2 8. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general  
3 federal question jurisdiction; 5 U.S.C. §§ 701 et seq., the Due Process Clause of the United States  
4 Constitution and the INA. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241  
5 et. seq. and the All Writs Act, 28 U.S.C. § 1651.

6  
7 9. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the  
8 lawfulness or constitutionality of DHS conduct. Federal courts are not stripped of jurisdiction under 8  
9 U.S.C. § 1252. *See e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

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

14 11. There is no requirement for exhaustion of administrative remedies in the present case as  
15 neither the habeas statute, 8 U.S.C. § 2241, nor the relevant sections of the INA require petitioners to  
16 exhaust administrative remedies before filing petitions for habeas corpus  
17

18  
19 **REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

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

24  
25 13. Courts have long recognized the significance of the habeas statute in protecting individuals  
26 from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ  
27  
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1 known to the constitutional law of England, affording as it does a swift and imperative remedy in all  
2 cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

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

5  
6 **PARTIES**

7 **PETITIONER**

8 15. Petitioner is a Mexican citizen, who is currently in the custody of the Department of  
9 Homeland Security in Southern Nevada Detention Center in Pahrump. Petitioner entered the United  
10 States without Inspection over ten years ago and has remained in the United States since.

11 **RESPONDENTS**

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

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

19 18. Respondent Marcos Charles 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 Nevada District Court. Respondent Marcos Charles is sued in his official capacity as an agent of  
22 the United States Government.

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

4 20. Respondent Executive Office for Immigration Review is the federal agency responsible for  
5 custody redeterminations relating to non-citizens charged with being removable from the United States.  
6

7 21. Respondent John Mattos is the warden of the Southern Nevada Detention Center and thus  
8 has custody over the Petitioner. Respondent John Mattos is sued in his official capacity as an agent of  
9 the United States.

10 22. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for  
11 custody decisions relating to non-citizens charged with being removable from the United States,  
12 including the arrest, detention, and custody status of non-citizens.  
13

#### 14 **LEGAL FRAMEWORK**

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

4 **PROCEDURAL AND FACTUAL BACKGROUND**

5  
6 24. Petitioner entered the United States on over ten years ago and entered the United States  
7 without inspection. Ex. 1. Petitioner is a native and citizen of Mexico. *Id.* Petitioner was arrested by  
8 ICE on December 15, 2025 after reporting to the probation office in Provo, Utah. Ex. 2.

9  
10 25. Soon after removal proceedings were commenced against Petitioner. Ex. 1. Respondent is  
11 currently detained at the Nevada Southern Detention Facility and is being denied bond by Respondents.  
12 Ex. 3.

13 **CAUSES OF ACTION**

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

16 26. Petitioner incorporates and realleges the allegations above.

17 27. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the  
18 federal government from depriving any person of “life, liberty, or property, without due process of  
19 law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States, including  
20 [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*,  
21 533 U.S. at 693.57.

22  
23 28. Here, the petitioner is being deprived of due process because DHS and DOJ categorically  
24 refuse to provide him a bond hearing, despite his placement in removal proceedings and the absence  
25 of any statutory bar to custody review. Under the INA, noncitizens in § 1226(a) proceedings are entitled  
26 to an individualized bond determination before a neutral adjudicator, and the Supreme Court has  
27 emphasized that civil immigration detention must include adequate procedural safeguards to satisfy the  
28

1 Fifth Amendment. Nevertheless, DHS has classified the petitioner as an “arriving alien” under *Matter*  
2 *of Hurtado* and *Matter of Q. Li* solely because he entered without inspection, and DOJ has adopted the  
3 position that immigration judges lack jurisdiction to review his custody. As a result, petitioner is denied  
4 the opportunity to be heard on whether his detention is justified—an essential element of due process  
5 under *Mathews v. Eldridge*, which requires meaningful notice and a fair opportunity to challenge  
6 government action. 424 U.S. 319 (1976). By withholding any mechanism for custody review, DHS and  
7 DOJ have effectively imposed indefinite civil confinement without the procedural protections the  
8 Constitution demands, rendering petitioner’s continued detention a clear violation of the Fifth  
9 Amendment.  
10

11 **2. SECOND CAUSE OF ACTION:**  
12 **Violation of the Immigration and Nationality Act**

13 29. Petitioner incorporates and realleges the allegations above.

14 30. The Immigration and Nationality Act (INA) sets forth specific circumstances under which  
15 the federal government may detain noncitizens. Under 8 U.S.C. § 1225(b)(1), arriving aliens may be  
16 detained pending a determination of admissibility, and under 8 U.S.C. § 1226(a), the Attorney General  
17 may take into custody aliens who are already in removal proceedings. Additionally, 8 U.S.C. § 1226(c)  
18 mandates detention for certain criminal aliens during removal proceedings. Once an alien is no longer  
19 subject to expedited removal, has completed credible fear proceedings, or does not fall within one of  
20 these statutory categories, the INA provides no authority for continued detention. *Zadvydas v. Davis*,  
21 533 U.S. 678, 682 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018).  
22

23 31. *Matter of Hurtado* impermissibly expands the definition of “arriving alien” beyond the  
24 limits established by Congress, and therefore cannot serve as a basis to deny petitioner a bond hearing.  
25 The INA expressly distinguishes between individuals seeking admission at the border and those  
26 apprehended inside the United States, assigning the former to the § 1225(b) detention framework and  
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1 the latter to the discretionary custody-and-bond provisions of § 1226(a). By collapsing these categories  
2 and treating entry-without-inspection as functionally equivalent to presenting at a port of entry,  
3 *Hurtado* rewrites the statutory scheme and nullifies Congress’s deliberate decision to afford bond  
4 eligibility to non-arriving respondents. Because agency interpretations that contradict clear statutory  
5 text are invalid, DOJ and DHS cannot rely on *Hurtado* to deprive petitioner of custody review.  
6 Accordingly, petitioner must be placed within the statutory framework that governs his actual  
7 circumstances—§ 1226(a)—and afforded an individualized bond hearing before a neutral adjudicator,  
8 as the INA requires.  
9

10 32. Because the petitioner does not fall within any statutory basis for mandatory detention under  
11 the INA, his continued confinement is ultra vires, and he should be given a bond hearing immediately.  
12

13 **RESERVATION OF RIGHTS**

14 Petitioner reserves the right to add additional allegations of agency error and related causes  
15 of action upon receiving the certified administrative record.  
16

17 **PRAYER FOR RELIEF**

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

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

DATED: January 9, 2026

Respectfully submitted,

/S/ ALEC S. BRACKEN  
Alec S. Bracken (UT SBN 17178)  
Contigo Law  
P.O. Box 249  
Midvale, UT 84047  
Tel. (801) 676-6548  
Email: [alec@contigo.law](mailto:alec@contigo.law)



**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 Nevada at:

Liam Pisan - [Liam.Pisan@usdoj.gov](mailto:Liam.Pisan@usdoj.gov)

Virginia Tomova - [Virginia.Tomova@usdoj.gov](mailto:Virginia.Tomova@usdoj.gov)

Dated: January 9, 2026

Respectfully submitted,

/S/ ALEC S. BRACKEN  
Alec S. Bracken (UT SBN 17178)  
Contigo Law  
P.O. Box 249  
Midvale, UT 84047  
Tel. (801) 676-6548  
Email: [alec@contigo.law](mailto:alec@contigo.law)