

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 1:26-20257-CIV-SINGHAL

MYNOR TOBAR NAJARRO)
)
 Petitioner,)
)
 v.)
)
 ACTING FIELD OFFICE DIRECTOR,)
 US CIS MIAMI FIELD OFFICE, et al)
)
 Respondents.)
 _____)

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner, MYNOR TOBAR NAJARRO is a citizen and native of Guatemala who has been physically present in the United States since he entered without inspection on December 1, 2000. The respondent has been detained without bond by the Department of Homeland security since November 30, 2026. The petitioner is being denied a bond hearing for which he is entitled to under §1226(a), and accordingly, to vindicate Petitioner’s statutory and constitutional, this Court should grant the instant petition for a writ of habeas corpus.

2. Absent an order from this Court, Petitioner will continue to remain unlawfully detained.

3. Petitioner asks this Court to find that his detention is unlawful and order the Department of Homeland Security and the Executive office of Immigration Review conduct a bond hearing for the petitioner.

JURISDICTION

4. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

5. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Under 8 U.S.C. § 1252(e)(2), this Court has habeas authority to determine whether Petitioner is a non citizen

6. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

7. Venue is proper because Petitioner is detained at Krome Detention Center in Miami Florida which is within the jurisdiction of this District.

8. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and substantial part of the events or omissions giving rise to his claims occurred in this District. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

9. 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 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.* (emphasis added).

10. Courts have long recognized the significance of the habeas statute in protecting

individuals from unlawful detention. 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) (emphasis added).

PARTIES

11. Petitioner is a citizen of Guatemala who has resided in Florida since December 2000. Petitioner is currently detained at the Krome Detention Center in Miami Florida and is in the custody, and under the direct control, of Respondents and their agents.

12. Respondent Garrett Ripa is sued in his official capacity as the Director of the Miami Field Office of U.S. Immigration and Customs Enforcement. Respondent Ripa is a legal custodian of Petitioner and has authority to release the petitioner.

13. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement , U.S. Customs and Border Protection, the component agency responsible for Petitioner’s detention . Respondent Noem is a legal custodian of Petitioner.

14. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

15. Petitioner is a 46 year old male from Guatemala who entered the United States without inspection at the age of 20 in December 2000. He is married and has two U.S. Citizen Children. He is the beneficiary of an approved I-140 alien labor certification from the United States Citizenship and immigration services. He has filed an application for adjustment of status. He was detained by the Department of Homeland Security under the name of Mynor Trabanino, an alien from Guatemala that has an order of removal. The Petitioner is not Mynor Trabanino and provided proof to the DHS that he is not the person with an order of removal.

16. The Petitioner has been issued a notice to appear in removal proceedings dated December 9, 2025. The Petitioner has been denied a bond under *Matter of Yahure Hurtado*, 29 I&N Dec. 216 (BIA 2025)) by the Attorney General of the United States.

17. The Petitioner is a member of the class action as stated in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) . On February 19, 2026 said court issued an order vacating *Matter of Yahure Hurtado*.

18. Chief Immigration Judge Teresa L. Riley has directed all immigration judges to ignore Judge Sykes order, and to apply the *Matter of Yahure Hurtado* decision, determining all persons who entered without inspection or admission are to be treated as arriving aliens under §1225(b)(2)(A).

19. The Petitioner is not an arriving alien and should be considered detained under §1226(a). An immigration Judge has jurisdiction to conduct a bond hearing for an alien detained under §1226(a).

20. As this Honorable Court has jurisdiction over this Petition for a Writ of Habeas

Corpus, it must next determine whether Petitioner's detention is governed by the mandatory detention provisions in 8 U.S.C. § 1225(b)(2) or the discretionary detention provisions in 8 U.S.C. § 1226(a).

21. Noncitizens detained under Section 1225(b)(2) must remain in custody for the duration of their removal proceedings, while those detained under Section 1226(a) are entitled to a bond hearing before an IJ at any time before entry of a final removal order." *See Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1247 (W.D. Wash. 2025).

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

22. The allegations in the above paragraphs are realleged and incorporated herein.

23. The Petitioner has been deprived of due process under the 5th amendment.

24. The Fifth Amendment to the United States Constitution provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. This protection extends to all persons within the United States, including noncitizens, regardless of manner of entry. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). At the core of the liberty the Due Process Clause protects is freedom from physical restraint by the government, a right that may be curtailed only in the most exceptional circumstances and for purposes consistent with law. *Id.* at 690.

25. Immigration detention, though civil in form, must remain regulatory in purpose—it may not become punitive. Detention is justified only to ensure attendance at proceedings or to protect the community from danger. *Jennings v. Rodriguez*, 583 U.S. 521, 540–41 (2018).

26. When detention extends beyond the period reasonably necessary to achieve those purposes, or when it occurs without any individualized determination of necessity, it violates the substantive due process guarantee that government action not be arbitrary, excessive, or purposeless. *Demore v. Kim*, 538 U.S. 510, 528 (2003); *Zadvydas*, 533 U.S. at 690.

27. Petitioner has now been detained for a prolonged period—since November 30, 2025—without any opportunity to seek release or to demonstrate that he poses no risk of flight or danger. His continued confinement has lost any legitimate regulatory purpose and has become arbitrary and punitive in violation of substantive due process.

28. Courts across the country have recognized that prolonged detention under § 1225(b)(2) or § 1226(a) without a bond hearing offends the Constitution. In *Chogllo Chafra v. Scott*, No. 2:25-cv-00437-SDN (D. Me. Sept. 21, 2025), the court granted habeas relief to three noncitizens detained under the same circumstances, finding that detention without bond review “exceeds what due process tolerates.”

28. For these reasons, Petitioner’s detention violates the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.

- (3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately and / or schedule a bond hearing before an immigration judge and, at such hearing.
- (5) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Z. Zareefa Khan, Esquire
Zareefa Khan P.A.

Counsel for Petitioner

Dated: February 20, 2026

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, MYNOR TOBAR NAJARRO and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 20th day of February 2026 at Fort Lauderdale Florida.

s/s Z. Zareefa Khan, Esquire

CERTIFICATE OF SERVICE I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e-portal on this 20th day of February 2026 to: United States Department of Justice usafis-2255@usdoj.gov.