

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**Civil Action No.**

Enrique Castro de Santiago,

Petitioner,

v.

Kristi Noem, United States Secretary, Department of Homeland Security;  
Todd M. Lyons, Acting Director, United States Immigration and Customs Enforcement (ICE);  
Marcos Charles, Acting Executive Associate Director, ICE Enforcement and Removal  
Operations;  
Kelei Walker, ICE Denver Field Office Director;  
Juan Baltasar, Warden, GEO-ICE immigration detention facility in Aurora, CO; and  
Pamela Bondi, United States Attorney General.

Respondents.

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**WRIT OF HABEAS CORPUS**

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The Petitioner, Mr. Enrique Castro de Santiago (“Castro”) by and through his undersigned counsel, hereby respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to challenge his continued and indefinite detention by the Respondents, despite having been granted the defense of “ten-year cancellation of removal” by the Immigration Court in Aurora, Colorado on December 10, 2025.

### **I. PARTIES**

1. The Petitioner, Enrique Castro de Santiago is a citizen of Mexico, currently detained at the GEO-ICE immigration detention facility in Aurora, Colorado since September 30, 2025.
2. Respondent Kristi Noem is the Secretary of the United States Department Homeland Security (DHS).
3. Respondent Todd M. Lyons is the Acting Director of United States Immigration and Customs Enforcement (ICE).
4. Respondent Marcos Charles is the Acting Executive Associate Director of ICE Enforcement and Removal Operations (ICE-ERO).
5. Respondent Kelei Walker is the ICE Denver, CO, Field Office Director.
6. Respondent Juan Baltasar is the Warden at the GEO-ICE Immigration Detention Facility in Aurora, Colorado, where Castro is currently detained.
7. Respondent Pamela Bondi is the United States Attorney General.
8. Suit is brought against each Respondent in their official capacity.

### JURISDICTION & VENUE

9. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 because Castro is in custody within this District under the authority of the United States.
10. Jurisdiction is proper because Castro challenges the legality of his detention.
11. Venue is proper pursuant to 28 U.S.C. § 1391(e) because Castro is in custody within this District and the Respondents are exercising authority over him.

### FACTS

12. Castro is a single father of three American children, ages 20, 17 and 14. Children are classified as under 21 years of age in the immigration laws.<sup>1</sup>
13. Castro was previously granted a \$10,000 immigration bond by an Immigration Judge (“IJ”) in Aurora, Colorado on January 3, 2018.<sup>2</sup>
14. Castro was previously successful in the defense to removal (“deportation”) called “10-year cancellation of removal” when an Immigration Judge (“IJ”) in Denver, Colorado “reserved” a decision on his application on October 23, 2023.<sup>3</sup>
15. A “reserved decision” means the IJ, though finding him eligible for the grant of the defense, could not grant it immediately because a statutory annual cap of 4,000 grants as been reached for the fiscal year. Currently IJs appear to be granting reserved cancellation grants from 2017 due to the backlog in available grant numbers.

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<sup>1</sup> See, 8 U.S.C. § 1101(b)(1)

<sup>2</sup> **Exhibit 1-1**, Castro’s valid and pending immigration bond Order (01/03/2018) and **Exhibit 1-2**, Castro’s proof of bond posted (01/05/2018)

<sup>3</sup> **Exhibit 1-3**, Notice of Individual (final or merits) Hearing in Immigration Court in Denver, CO (10/23/2023)

16. Castro won a reserved decision in October 2023 because he demonstrated that his three American children would suffer extreme and unusual hardship if he were to be deported from the United States. The children were abandoned by their biological mother, and one child was suicidal, and the other children suffered similar extreme emotional anguish.
17. On September 30, 2025, Castro was arrested by ICE while he was leaving his home for work early in the morning.
18. It appears, though there is no formal concession, that Castro was arrested by ICE because at the time he had a pending citation for owning a dangerous dog in Weld County, Colorado.
19. To date Castro has been detained at the GEO-ICE facility in Aurora, Colorado for 108 days, or three months and 17 days.
20. Since Castro's detention on September 30, 2025, his three American children are living on the edge, struggling to put food on the table or pay for rent. This has caused extreme hardship: emotional, financial, psychological, in school performance, and more, to each of the children, daily. They visit their father at the GEO facility weekly and try to speak with him by phone every day, when possible.
21. The Respondents are fully aware of the plight of the children since Castro's detention, yet his repeated pleas for his release from detention have fallen on deaf ears.
22. Castro presented anew, while detained, his same defense of ten-year cancellation of removal to the IJ at the Immigration Court in Aurora, Colorado, on December 10, 2025,

and he won the defense again. The IJ found he had proven “extreme and unusual hardship” to his three American citizens in the event of his deportation from the United States.<sup>4</sup>

23. DHS reserved appeal of Castro’s (second) grant of cancellation of removal, and the IJ ordered the DHS appeal to be filed on or by January 9, 2026, to the Board of Immigration Appeals (BIA). The Executive Office for Immigration Review’s (EOIR) electronic case platform (“ECAS”) noted that the government’s appeal to the IJ’s order was due on January 12, 2026.
24. ECAS is the EOIR Courts & Appeals System, the United States Department of Justice’s electronic platform for managing immigration court cases. ECAS filing is mandatory for DHS and attorneys for eligible cases, including Castro’s. ECAS provides automatic service notifications.<sup>5</sup>
25. On December 22, 2025, after multiple unsuccessful pleas to DHS for release from detention, Castro formally served DHS with Form 95 – Claim for Damage, Injury, or Death.<sup>6</sup>
26. On January 13, 2026, Castro confirmed that no appeal was pending on the ECAS platform.<sup>7</sup>
27. When Castro attempted to confer with ICE at GEO for his release on January 13, 2026, he was informed that “an appeal had been timely filed, though not yet pending on ECAS.”

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<sup>4</sup> Exhibit 1-4, IJ Grant of Cancellation of Removal (12/10/2025)

<sup>5</sup> See, <https://www.justice.gov/eoir/ECAS> (last visited 01/15/2026)

<sup>6</sup> Exhibit 1-5, Form 95 – Claim for Damage, Injury or Death (12/22/2025)

<sup>7</sup> Exhibit 1-6; Castro ECAS platform (01/13/2026)

28. DHS has to date only provided an email purporting to confirm the appeal filing. Castro has not received a copy of the alleged filing.
29. At the time of filing this petition, ECAS does not yet reflect that an appeal has been filed.
30. No discernible reason exists as to why the ECAS system has not automatically updated to reflect an alleged appeal filed by the DHS over a week ago, when all other filings are instantaneous and made visible in real time on the platform.
31. Castro is not challenging the duration of his detention, he is challenging the legality of his detention given that he has an active immigration bond that has not been challenged or canceled by the DHS, and he was successful in his defense to removal before the IJ.

#### ARGUMENT

##### **I. CASTRO HAS A VALID IMMIGRATION BOND IN PLACE AND HE IS NOT SUBJECT TO MANDATORY DETENTION.**

32. A noncitizen who has been granted cancellation of removal pursuant to 8 U.S.C. § 1229b is eligible for release from detention during the pendency of the appeal, subject to the discretionary authority of the Attorney General pursuant to 8 U.S.C. § 1226(a).
33. 8 U.S.C. § 1226(b) permits the Attorney General to revoke a bond. Bond revocation is to include bond cancelation. 8 C.F.R. § 1236.1(c)(9).
34. Castro's immigration bond has never been revoked or canceled by the DHS. It remains in place.
35. Castro is not subject to mandatory detention. 8 U.S.C. § 1226(c) (mandatory detention for certain criminal convictions).

36. Castro is not an “arriving alien” who can be denied bond. 8 U.S.C. § 1225 (seeking entry into the United States).
37. Because he has not been ordered deported, he is not subject to detention pursuant to 8 U.S.C. § 1231 (detention and removal post an order of removal).
38. Castro’s immigration bond demonstrates that he is not a flight risk or danger to the community.

**II. CASTRO IS SUFFERING IRREPERABLE HARM DUE TO THE RESPONDENTS’ *ULTRA VIRES* ACTIONS.**

39. Because he is detained, Castro’s three American children are living alone, unsupervised, unable to pay the rent and put food on the table at the same time.
40. Because Castro demonstrates statutory and discretionary eligibility for release from detention pending a DHS appeal, his continuing detention is cruel, arbitrary and capricious.
41. To date Castro cannot confirm that DHS in fact filed a timely appeal of the IJ decision granting him relief from removal on December 10, 2025.
42. Except when certified to the BIA, the decision of the IJ becomes final upon waiver of appeal or expiration of the time to appeal if no appeal is taken, whichever occurs first. 8 C.F.R. § 1003.39.

**III. THE APA PROHIBITS THE RESPONDENTS' *ULTRA VIRES* CONDUCT.**

43. The Respondents' continuing detention of Castro is *ultra vires*. No legal grounds justify his continuing detention.
44. The Administrative Procedures Act (APA) states in relevant part: "Actions Reviewable: Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review." 5 U.S.C. § 704.
45. The Supreme Court interprets the APA authority as creating a "cause of action" for parties who have been adversely affected by agency action. *See Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230, n.4 (1986) (noting that § 704 expressly creates a "'right of action'...absent some clear and convincing evidence of legislative intent to preclude review").
46. The APA instructs that a person who is "suffering [a] legal wrong because of agency action," or who is "adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702.
47. "[A]gency action" is defined to include "the whole or part of agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13).
48. Because Castro has a valid bond, and he does not fall into any mandatory detention grounds, the Respondents are without legal authority to detain him while they attempt to appeal the IJ Order granting his defense to removal to the BIA.

49. This Court should “hold unlawful and set aside agency actions, findings and conclusions” when they are: 1) arbitrary, capricious, and not in accordance with the law; 2) contrary to constitutional right; 3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; 4) without observance of procedures required by law; 5) unsupported by substantial evidence; and 6) unwarranted by the facts. 5 U.S.C. § 706(2)(A)-(F); *see also, Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 413-14 (1971) (citing 5 U.S.C. § 706(2)(A)-(D)) (“In all cases agency action must be set aside if the action was ‘arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law’ or if the action failed to meet statutory, procedural, or constitutional requirements.”).
50. This Court should hold unlawful and set aside the Respondents’ detention of Castro because every factor anticipated by the APA for so holding is satisfied in this case.
51. Castro is within the “zone of interest” protected by the underlying statutes and regulations concerning detention of noncitizens. *See, e.g., Hernandez-Avalos v. I.N.S.*, 50 F.3d 842, 846 (10th Cir. 1995) (APA “zone of interest” analysis).
52. The Respondents’ continuing detention of Castro, particularly considering the significant resulting harm to his three American children due to his detention, is cruel, arbitrary, and capricious.

**PRAYER FOR RELIEF**

53. Because the Respondents have no legal grounds to detain him, Castro seeks immediate release from detention.

54. Because he fears the Respondents may attempt to divest this court of *in personam* jurisdiction, he requests declaratory and injunctive relief pursuant to the All Writs Act against his removal from Colorado to another state or country during the pendency of this Court's review of his claims. 28 U.S.C. § 1651.
55. If the Court finds that the Respondents' position in this case is erroneous and without legal justification, pursuant to the Equal Access to Justice Act ("EAJA"), Castro seeks attorneys' fees and costs if he is found to be the prevailing party. *See* 28 U.S.C. § 2412(d) and 5 U.S.C § 504 *et seq.*
56. The Tenth Circuit Court of Appeals agrees that the EAJA authorizes the award of fees in habeas actions challenging immigration detention. *Daley v. Choate*, 24-1191 (10th Cir. Nov. 3, 2025).
57. Award any other relief that this Court deems reasonable and proper.

January 16, 2026.

Respectfully,

/s/ Catherine A. Chan

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*Pro Bono Attorney for Mr. Enrique Castro de Santiago*

**CERTIFICATE OF SERVICE**

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