

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

**Civil Action No. 1:26-cv-00186-CYC**

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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**PETITIONER'S MOTION TO SUPPLEMENT WRIT OF HABEAS CORPUS (ECF No. 1)**

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The Petitioner, Mr. Enrique Castro de Santiago (“Castro”) by and through his undersigned counsel, hereby respectfully motions to supplement his pending writ of habeas corpus filed on January 15, 2026, with new facts and supplemental authority (ECF No. 1). He remains detained at the GEO-ICE facility in Aurora, Colorado.

### **I. The DHS BIA Appeal Fails Due Process**

1. For the first time today, on January 28, 2026, the Executive Office for Immigration Review’s (EOIR) electronic case platform (“ECAS”) demonstrates an appeal filed allegedly on January 9, 2026, by the Department of Homeland Security (DHS) to the Board of Immigration Appeals (BIA) against Castro’s grant of his defense to removal from the United States.<sup>1</sup>
2. At the same time, the Department of Homeland Security (DHS) has to date never accomplished service of process to Castro of the alleged appeal.
3. 8 C.F.R. § 1003.3(a)(1) expressly states that an appeal to the BIA must reflect proof of service of a copy of the appeal and all attachments on the opposing party. An appeal is not properly filed unless it includes this proof of service, along with other required documents. *Id.*
4. Because the BIA case is separate from the case before the Immigration Court, there is no presumption of continuing legal representation from the Immigration Court, unless and

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<sup>1</sup> Exhibit 9-1, Screenshot of Castro’s ECAS platform (01/28/2026)

until an attorney or accredited representative files a Notice of Entry of Appearance (Form E-27) on the non-citizen's behalf.

5. ECAS is not an obligatory platform for unrepresented non-citizens. Only "attorneys and fully accredited representatives" are required to utilize ECAS for electronic filing.<sup>2</sup>
6. The Immigration Court Practice Manual confirms that ECAS completes service "if all parties are using ECAS in a specific case."<sup>3</sup>
7. Because Castro has no attorney registered to him at the BIA, service of process to him via ECAS was unavailing. The DHS must have provided personal service of process to him, on or before January 12, 2026, which never occurred.
8. Even upon Castro's counsel's requests, not a single appeal document has ever been provided to him by DHS. "Parties must make the originals of all filed documents available upon request to the Board or opposing party for review." 8 C.F.R. § 1003.3(g)(2).
9. 8 C.F.R. § 1003.3(g)(6) provides that "if all parties are using EOIR's electronic filing application, the parties do not need to serve a document on the opposing party." All parties are not using the ECAS platform in the BIA case.
10. Castro has no requirement to anticipatorily hire counsel to enter an appearance at the BIA as he was not appealing his win in Immigration Court. Unless he was the one appealing,

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<sup>2</sup> USDOJ, EOIR – ECAS: Attorneys and Accredited Representatives, found at <https://www.justice.gov/eoir/ecas-attorneys-and-accredited-representatives#:~:text=courts%20and%20BIA?-Yes,application%20known%20as%20Respondent%20Access>. (last visited 01/28/2026)

<sup>3</sup> USDOJ, EOIR – Immigration Court Practice Manual, Chap. 3.2 – Service on the Opposing Party, found at <https://www.justice.gov/eoir/reference-materials/ic/chapter-3/2#:~:text=13%20%2D%20Public%20Input-Immigration%20Court%20Practice%20Manual,outside%20of%20the%20ECAS%20system>. (last visited 01/28/2026)

his attempt to file a Form E-27 would have been rejected by the BIA as he was not bringing forth a case or controversy.

11. Castro would only enter an appearance of his attorney at the BIA if he were provided notice of an appeal, which to date, has not occurred.
12. The DHS could never have effectuated proper service through ECAS alone in this case. Personal service to Castro was required. They could not have certified in the appeal that ECAS properly served Castro, because it couldn't, and in fact, didn't. Service did not occur prior to the DHS appeal deadline of January 12, 2026, and it remains incomplete, thus impotent.
13. Adequate notice, through service of process, is a fundamental requirement of due process, without which no court, including administrative bodies like the BIA, have any jurisdiction. *See, e.g., Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) (landmark Supreme Court case regarding notice requirements of a pending action), U.S. Const. amend V., amend. XIV.

## **II. The DHS has no grounds for detention**

14. Notwithstanding whether an appeal was properly made, the Respondents have no grounds to hold Castro in detention. He has a valid immigration bond issued by the Immigration Court that has never been violated or revoked, and he is not subject to mandatory detention pursuant to 8 U.S.C. § 1226(c).<sup>4</sup>

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<sup>4</sup> *Refiling Exhibit 1-1*, it was not properly uploaded previously – Order of the Immigration Judge with Respect to Custody (01/03/2018)

15. The Immigration and Nationality Act (INA) establishes the framework for immigration bond determinations in removal proceedings. 8 U.S.C. § 1229a.
16. Immigration Judges operate with delegated authority from the Attorney General in making bond determinations during removal proceedings. *Id.* This delegation of authority creates a judicial determination that differs fundamentally from purely administrative ICE bond decisions pursuant to 8 U.S.C. § 1226.
17. When an Immigration Judge grants bond during removal proceedings, this constitutes a judicial determination based on the specific facts and circumstances presented. ICE's unilateral revocation of such determinations would undermine the procedural integrity of the removal process and the independent judicial function.
18. No statute or regulation permits the revocation of a bond set by an Immigration Judge by unilateral action of ICE. The bond order could have been timely appealed pursuant to 8 C.F.R. § 1003.38, which it was not. Castro never violated his condition of bond, to wit, that he would appear before the Immigration Court whenever summoned. And he has no crimes that subject him to mandatory detention after his bond was posted.
19. It's the Immigration Court that has bond review authority over ICE, not the other way around. 8 C.F.R. § 1003.19(a). Only in limited circumstances, not present here, does ICE have sole jurisdiction over custody and bond. 8 C.F.R. § 1003.19(h)(1)(i). And even in those circumstances, a non-citizen can still request a custody review by the Immigration Court,

demonstrating the chain of command regarding immigration bond decisions. 8 C.F.R. §§ 1003.19(h)(1)(ii); (h)(3).

20. The Respondents can point to neither law nor regulation to justify Castro's continuing detention after he has specifically been found not removable by an Immigration Judge. *Cf.*, 8 U.S.C. § 1231(a) where the DHS can effectuate removal within 90-days of a removal order.

### CONCLUSION

21. Castro prays the Court grants this Motion to Supplement his pending writ of habeas corpus (ECF No. 1) as it includes updated facts since the time of his filing and includes supplemental authority for his claims.
22. He respectfully renews his request for immediate release from detention, as there are no legal grounds for his ongoing detention and his three American children shouldn't be forced to choose between eating or paying the rent in his absence any longer.<sup>5</sup>

January 28, 2026.

Respectfully,  
/s/ Catherine A. Chan

Catherine A. Chan  
Chan Law Firm, PC  
1737 Gaylord St.  
Denver, CO 80206

Phone: (303) 586-5555; Fax: (303) 586-5727

[cchan@chanimmigration.com](mailto:cchan@chanimmigration.com)

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

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<sup>5</sup> Today marks 121 days, or 3 months and thirty days since Castro was first detained by the Respondents on September 30, 2025. It is 50 days, or one month and 19 days since the Immigration Judge granted his defense to removal on December 10, 2025.

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**CERTIFICATE OF SERVICE**

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I hereby certify that on January 28, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

/s/ Catherine A. Chan

Catherine A. Chan

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