

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No.

Alois Capote Zamora,

Petitioner,

v.

The United States Department of Homeland Security,

(DHS), Kristi Noem, The United States Department of


Immigration and Customs Enforcement (ICE), Todd

Lyons,

Respondents.

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. SECTION 2241

Personal Information

1. (a) Petitioner's full name: Alois Capote Zamora
(b) Other names Petitioner has used: none.
2. Place of Confinement:
 - (a) Name of Institution: The Aurora ICE Processing Center, U.S. Immigration and Customs Enforcement – ICE - GEO
 - (b) Address: 3130 North Oakland Street Aurora, Colorado, 80010
 - (c) Petitioner's Identification Number: # 

3. Petitioner is currently being held on orders by: Federal authorities ___ State authorities ___ other: Petitioner is being held by: United States Immigration and Customs Enforcement (ICE), and the U.S. Department of Homeland Security.

4. Petitioner is currently being held due to:

___ A pretrial detainee (waiting trial on criminal charges)

___ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime. If serving a sentence provide: (a) name and location of court that sentenced you: _____, (b) Docket Number of criminal case: _____, (c) Date of sentencing: _____.

Being held on an immigration charge.

___ Other. _____.

Decision or Action You Are Challenging

5. What is being challenged in this petition:

___ How the sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

___ Pretrial detention

Immigration detention: The Petitioner is in removal proceedings

___ Detainer

___ The validity of the conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)

___ Disciplinary proceedings

___ Other:

6. Provide more information about the decision or action that is being challenged:
- (a) Name and location of the agency or court: The U.S. Department of Homeland Security, and The U.S. Department of Immigration and Customs Enforcement.
 - (b) Docket number, Case number, or opinion number: The order of the immigration judge, denying bond or conditional release, is dated 12/29/2025. The court order is found under Petitioner's alien number ~~XXXXXXXXXX~~.
 - (c) Decision or action that is being challenged: (for disciplinary proceedings specify the penalties imposed): The court denied bond, stating that respondent appears to have been paroled into the United States at a Miami, Florida port of entry and is therefore an arriving alien. The court further stated that as such, therefore the court lacks jurisdiction to address custody.
 - (d) Date of the decision or action: December 29, 2025.

Petitioner's Earlier Challenges to the Decision or Action

7. First Appeal: Did Petitioner appeal the decision, file a grievance, or seek an administrative remedy? ___ yes ___ **X** no
- (a) If "yes" provide:
- 1. Name of the authority, agency, or court:
 - 2. Date of filing:
 - 3. Docket number, case number, or opinion number:
 - 4. Result:
 - 5. Date of result:
 - 6. Issues raised:
 - 7. Other:

(b) If Petitioner answered "No" explain why Petitioner did not appeal:

Second Appeal: After the first appeal, was there a second appeal to a higher authority, agency or court? ___ yes no. There was no first nor second appeal.

8. If "yes" provide:

___ name of the authority, agency or court:

___ date of filing:

___ Docket number, case number, or opinion number:

___ Result:

___ Date of result:

___ Issues raised:

If "no" explain why you did not file a second appeal:

9. Third appeal: After the second appeal, was there a third appeal to a higher authority, agency, or court? ___ yes no

If "yes" provide:

___ name of the authority, agency or court:

___ date of filing:

___ Docket number, case number, or opinion number:

___ Result:

___ Date of result:

___ Issues raised:

If "no" explain why you did not file a third appeal: There were no first, second, nor third appeals filed.

10. Motion under 28 U.S.C. Section 2255

In this petition are you challenging the validity of your conviction or sentenced as imposed? ___ yes no.

If "yes" answer the following: (a) have you already filed a motion under 28 U.S.C. Section 2255 that challenges the conviction or sentence? ___yes
 no.

If "yes" provide:

___ Name of court:

___ Case number:

___ Date of filing:

___ Result:

___ Date of result:

___ Issues raised:

11. Has Petitioner ever filed a motion in a United States Court of Appeals under **28 U.S.C. Section 2244(b) (3) (A)** seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence? ___ yes no.

If "yes" provide:

___ Name of court:

___ Case number:

___ Date of filing:

___ Result:

___ Date of result:

___ Issues raised:

12. Explain why the remedy under 28 U.S.C. Section 2255 is inadequate or ineffective to challenge the conviction or sentence: because this involves an immigration case.

13. Appeals of Immigration Proceedings:

Does this case concern immigration proceedings? yes ___ no.

If "Yes" provide:

(a) Date Petitioner was taken into immigration custody: December 09, 2025

(b) Date of the removal or reinstatement order: no removal orders have been issued, but only the motion denying bond, as to Petitioner.

(c) Did you file an appeal with the Board of Immigration Appeals? ___ yes
 no.

If "yes" provide:

___ date of filing

___ Case number:

___ Result:

___ Date of result:

___ Issues raised:

(d) Did you appeal the decision to the United States Court of Appeals? ___ yes
 no.

If "yes" provide:

___ name of court

___ date of filing

___ Case number

__ Result

__ Date of result

__ Issues raised

14. **Other appeals**: Other than the appeals listed above, have other petitions, applications, or motions been filed about the issues raised in this petition? __
yes **X** no.

If "yes" provide:

- (a) Kind of petition, motion, or application
- (b) Name of the authority, agency, or court
- (c) Date of filing:
- (d) Docket number, case number, or opinion number
- (e) Result:
- (f) Date of result
- (g) Issues raised:

Grounds for Petitioner's Challenge in this Petition

15. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in separate memorandum.

Ground One:

- (a) Supporting facts: (be brief – do not cite cases or law): The Petitioner was born in Cuba on ~~XXXXXXXXXX~~. He arrived at and was paroled into the United States on April 16, 2024. According to his initial parole (I-94) document, he was paroled and authorized to stay in the U.S. lawfully until 04/15/2026. The Petitioner had a valid Cuban passport and a no arrest letter from Miami -Dade County, Florida. The Petitioner on or about April 24, 2025, applied for Adjustment of Status under *the Cuban Adjustment Act* using form (I-485), and this application was pending with the United States Customs and Immigration Service (USCIS).
- (b) The Petitioner was taken into custody on or about December 09, 2025, when he was a passenger in a motor vehicle which was stopped during a road-check police operation. The Petitioner was a passenger in a vehicle which was stopped, as he was heading to work. He did not violate any laws but was arrested and is being held at The Aurora ICE Processing Center, U.S. Immigration and Customs Enforcement – ICE – GEO, Aurora Colorado.
- (c) The Petitioner was issued an initial Custody Determination document and a Warrant for Arrest of Alien on December 11, 2025. He was thus placed in removal proceedings, and was later denied bond by the immigration court on December 29, 2025.
- (d) In denying bond, the immigration court in Aurora Colorado, reasoned that bond was being denied because respondent appears to have been paroled into the United States at a Miami, Florida port of entry, and is therefore "an arriving alien". The court determined that it lacked jurisdiction to address custody. The immigration court based its

determination that it lacks jurisdiction due to the case of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

(e) A person who arrives at a U.S. border or Port and lacks an entry document such as a visa, is considered an “arriving alien” and such persons, when later encountered by ICE and placed in removal proceedings, have regularly been denied bond by the immigration courts. This denial of bond to persons deemed “arriving aliens” is based upon the case of *Yajure Hurtado*, I&N Dec. 216 (BIA 2025). However, due to a recent new ruling, the Respondent may be considered for bond determination.

(f) The Respondent qualifies as a member of a class of persons who may be considered for bond determination, under *Lazaro Maldonado Bautista et al v. Ernesto Santa Cruz Jr et al*, Case 5:25-cv-01873-SSS-BFM (U.S. Dist. Ct. C.D. Calif. 2025). There, four persons were arrested in Southern California in June 2025, when they were not inspected at the U.S. border. They were held at a detention center and denied bond, following a change in Department of Homeland Security (DHS) policy that occurred in July 8, 2025. The Respondents sued for Habeas Corpus relief in Federal court at the Central District Court of California. Judge Sunshine Suzanne Sykes found the new DHS policy unlawful and unconstitutional; and the Respondents were granted hearings and released from detention. The court also entered a class action order, certifying a class of similarly eligible persons for release

on bond under Section 236 of the INA. Thus, under this new ruling, noncitizens who entered the U.S. without inspection can now seek bond relief from the courts, reversing prior mandatory detention policies.

The new ruling allows the following persons to request bond from the immigration courts:

- a. Non-citizens
- b. Entered without inspection
- c. Not apprehended at entry
- d. Not subject to mandatory detention

Section 236 of the INA governs the detention and bond process for non-citizens eligible for release, replacing Section 235 (b) (2) (A) of the INA.

Judge Sykes at the Central District Court in California, certified a class granting relief to immigrants nationwide who “who have entered or will enter the U.S. without inspection, and those who were not initially detained when they came into the country.”

The judge reasoned that the July 8, 2025 DHS policy directed ICE to treat anyone in the U.S. as an “applicant for admission” under Section 8 U.S.C. Section 1225 (b)(2) (A); and this resulted in an expansive and improper reading of the term “applicants for admission”. The judge reasoned that this resulted in treating people already living in the U.S. as if they were arriving at the border; and this tended to “collapse” 8 U.S.C. Section 1226 into “nonexistence”.

Respondent, Capote - Zamora, therefore may be considered for bond by the court.

The Respondent may be released on conditional parole or a low bond in that he is not a flight risk, is not a danger to the community, and presents a viable claim for Political Asylum and withholding of removal. See, 8 C.F.R. Section 1003.19 (d) (h).

1. Mr. Capote Zamora is not a flight risk

The Respondent is not a flight risk. He has no prior immigration or history of nonappearance at immigration proceedings. He has maintained a steady address; and if released he would be reunited with his family in Miami, Florida.

Mr. Capote Zamora has family members and friends with lawful status in the United States who will support her as she complies with the terms of his immigration process.

2. The Respondent is not a danger to Society

If released the respondent intends to pursue legal relief in the form of Political Asylum, Withholding of Removal, and protection under the Convention Against Torture. The Respondent is not a danger to the community; does not have any criminal convictions, nor has he ever been arrested by the police.

A. Conclusion

In that Respondent is not a flight risk, will not fail to appear before the court, and presents no threat to the safety of the community, then he should be allowed conditional parole; Alternatively, he should be released on a low bond.

(g) Did you present Ground One in all appeals that were available to you? __ yes
X no.

Request for Relief:

16. State exactly what you want the court to do: We want the court to order that Petitioner Alois Capote Zamora be released from detention on his own recognizance, on conditional release, or alternatively on a low bond. The Petitioner has not committed any crimes or offenses. He has been detained in very difficult conditions. The Petitioner, a Cuban native who is fleeing from the oppressive communist regime, should be released so that he can be with his wife while he waits for the hearing on his application for adjustment of status which is to be heard by the immigration court.
17. Petitioner qualifies to be released on conditional release or a low bond, being that he has committed no crimes, is not a flight risk, and has family in South Florida.

Declaration Under Penalty of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:
I declare under penalty of perjury that I am the attorney for the petitioner, I have read this petition, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: January 27, 2026

Respectfully Submitted,

By: **Juan C. Perez Esq. /s/**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Habeas Corpus has been delivered via the court's e-portal, and via U.S. mail, and/or hand delivery to The U.S. Department of Homeland Security (DHS), Kristi Noem, The U.S. Department of Immigration and Customs Enforcement (ICE), Todd Lyons, on or about January 27, 2026.

Juan C. Perez, Esq. /s/