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**UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO**

**Gilberto Quiroz Zacarias,**  
**Petitioner,**

v.

**Kristi Noem**, Secretary of the United States  
Department of Homeland Security, in her official  
capacity; **Todd Lyons**, Acting Director U.S.  
Immigration and Customs Enforcement, in his official  
capacity; **Robert Guardian**, Field Office Director for  
ICE’s Enforcement and Removal Operation’s (“ERO”)  
Field Office, in his official capacity; **Sirce Owen**,  
Acting Director of Executive Office for Immigration  
Review, in her official capacity; **Juan Baltasar**,  
Warden of the Denver Contract Detention Facility, in  
his official capacity,  
**Respondents.**

Case No.

Agency No. 

**PETITION FOR WRIT  
OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C.  
§2241**

**INTRODUCTION**

The Respondents are unlawfully detaining Petitioner Gilberto Quiroz Zacarias, at the Denver Contract Detention Facility, due to the Department of Homeland Security (DHS) recently changed its long-standing position with regard to the status of mandatory detention. *See*, ICE Memo: Interim Guidance Regarding Detention Authority for

1 Applications for Admission filed herewith as Exhibit 1. The Bureau of Immigration  
2 Appeals (BIA) issued a precedential decision on September 5, 2025, holding that all  
3 noncitizens present in the United States without admission – no matter how long they  
4 have resided here – are still “applicants for admission” under 8 U.S.C. § 1225(a) and  
5 not entitled to bond hearings because they are subject to mandatory detention under §  
6 1225(b)(2)(A). *See, Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025) filed  
7 herewith as Exhibit 2.  
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10 But this interpretation of the Immigration and Naturalization Act (INA) violates  
11 both procedural and substantive Fifth Amendment protections, ignores the plain  
12 statutory language of both § 1225 and § 1226, and is contrary to numerous recent Federal  
13 Court decisions in this District that have rejected these exact arguments.  
14

15 Critically, Respondents’ reliance on *Yajure-Hurtado* to deny Petitioner a bond  
16 hearing is legally and factually misplaced. Petitioner has lived in the United States  
17 continuously since February 2004 and is not a recent entrant or arriving alien. *See*  
18 Declaration of Counsel in Support of Petition for Writ of Habeas Corpus, filed herewith  
19 as Exhibit 4. Petitioner has no non-immigration criminal convictions and only minor,  
20 nonviolent traffic-related offenses. *Id.*  
21  
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23 Further, when Respondents initiated removal proceedings, the Notice to Appear  
24 classified Petitioner as an “alien present in the United States,” rather than as an “arriving  
25 alien,” notwithstanding that option being available on the form. *See* Petitioner’s Notice  
26 to Appear, filed herewith as Exhibit 5. This designation is consistent with the  
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1 government's own treatment of Petitioner as a non-arriving noncitizen subject to  
2 detention under § 1226, not mandatory detention under § 1225.

3  
4 In addition to BIA decisions not being binding precedent upon this Court, the  
5 Supreme Court decision last year in *Loper Bright Enterprises v. Raimondo*, 603 U.S.  
6 369, 400 (2024), made clear that federal courts must independently interpret statutes and  
7 no longer defer under so-called "Chevron deference." This Court is therefore in the best  
8 position to determine whether the Respondents are misinterpreting the relevant federal  
9 statutes and improperly denying alien detainees bond hearings on the grounds that they  
10 are all subject to mandatory detention under § 1225(b)(2)(A). The petition for writ of  
11 habeas corpus should be granted.  
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#### 14 JURISDICTION & CUSTODY

15 1. Petitioner Gilberto Quiroz Zacarias, is in the physical custody of  
16 Respondents and Immigration and Customs Enforcement (ICE), an agency within the  
17 Department of Homeland Security.  
18

19 2. Petitioner is currently detained at Denver Contract Detention Facility  
20 and is under the direct control of Respondents and their agents.  
21

22 3. This action arises under the Constitution of the United States and 8  
23 U.S.C. § 1101 et seq.

24 4. This Court has jurisdiction under 28 U.S.C. § 2241, Art. I § 9, cl. 2 of  
25 the United States Constitution, 28 U.S.C. § 1331, and the common law. This Court may  
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1 grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. §  
2 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

3  
4 5. Congress has preserved judicial review of challenges to immigration  
5 detention. *See Jennings v. Rodriguez*, 583 U.S. 122, 130-131 (2018) (holding that 8  
6 U.S.C. §§ 1226(e) and 1252(b)(9) do not bar review of challenges to prolonged  
7 immigration detention).

8  
9 6. The Court must grant the petition for writ of habeas corpus or order  
10 Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28  
11 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return  
12 “within three days unless for good cause additional time, not exceeding twenty days, is  
13 allowed.” *Id.*


14  
15 7. The Court has inherent power to release the petitioner pending review  
16 of his petition. *See Martin v. Solem*, 801 F.2d 324, 329 (8th Cir. 1986).

### 18 VENUE

19 8. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410  
20 U.S. 484, 493- 500 (1973), venue lies in this Court, the federal judicial district in which  
21 Petitioner is currently is in custody.

22  
23 9. Venue is also properly in this Court pursuant to 18 U.S.C. § 1391(e)  
24 because Respondents are employees, officers, and agencies of the United States.

### 26 PARTIES

1           10.       Petitioner Gilberto Quiroz Zacarias was born on  in  
2 Michoacán, Mexico. Petitioner is currently detained by ICE at Denver Contract  
3 Detention Facility. *See*, ICE Online Detainee Locator, filed herewith as Exhibit 3.  
4

5           11.       Respondent Kristi Noem is the Secretary of the U.S. Department of  
6 Homeland Security (“DHS”). In this capacity, Respondent Noem is a legal custodian of  
7 Petitioner. Respondent Noem is sued in her official capacity.  
8

9           12.       Respondent DHS is a federal executive agency responsible for, among  
10 other things, enforcing federal immigration laws and overseeing lawful immigration to  
11 the United States. Respondent DHS is a legal custodian of Petitioner.  
12

13           13.       Respondent Todd M. Lyons is Acting Director and Senior Official  
14 Performing the Duties of the Director of U.S. Immigration and Customs Enforcement  
15 (“ICE”). Respondent Lyons is responsible for ICE’s policies, practices, and procedures,  
16 including those relating to the detention of immigrants during their removal procedures.  
17 Respondent Lyons is a legal custodian of Petitioner. Respondent Lyons is sued in his  
18 official capacity.  
19

20           14.       Respondent ICE is a federal law enforcement agency within DHS.  
21 Respondent ICE is responsible for the enforcement of immigration laws, including the  
22 detention and removal of immigrants. Respondent ICE is a legal custodian of Petitioner.  
23

24           15.       Respondent Robert Guardian is Field Office Director for ICE’s  
25 Enforcement and Removal Operation’s (“ERO”) Field Office. Respondent Guardian is  
26 a legal custodian of Petitioner and is sued in his official capacity.  
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1 and he was subsequently transferred to the Denver Contract Detention Facility in  
2 Aurora, Colorado.

3 22. ICE issued a notice to appear on December 10, 2025. *See*,  
4 Respondent's Notice to Appear, filed herewith as Exhibit 5.

5 23. The Notice to Appear identified him as an "alien present in the United  
6 States" even though "arriving alien" was an alternate option. *Id.*

7 24. Petitioner filed a Form 42B (Application for Cancellation of Removal  
8 and Adjustment of Status for Certain Nonpermanent Residents). This application is  
9 based on his claim that his removal would result in exceptional and extremely unusual  
10 hardship to his three U.S. citizen children.

11 25. Petitioner is detained at the Denver Contract Detention Facility where  
12 he remains in custody. *See* ICE Online Detainee Locator Printout, filed herewith as  
13 Exhibit 3.

14 26. Other than civil traffic offenses, Petitioner has no non-immigration  
15 criminal history. *See*, Declaration of Counsel in Support of Petition for Writ of Habeas  
16 Corpus, filed herewith as Exhibit 4.

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22 **LEGAL FRAMEWORK**

23 27. The length of time that a petitioner has been living in the United States  
24 is a constitutionally relevant consideration, because "once an alien enters the country,  
25 the legal circumstance changes, for the Due Process Clause applies to all 'persons'  
26 within the United States, including aliens, whether their presence here is lawful,  
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1 unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). It  
2 is therefore reasonable to read these statutes “against [that] backdrop.” *See Hewitt v.*  
3 *United States*, 605 U.S. —, 145 S. Ct. 2165, 2173 (2025).  
4

5 28. Due process thus requires “adequate procedural protections” to ensure  
6 that the government’s asserted justification for a noncitizen’s physical confinement  
7 “outweighs the individual’s constitutionally protected interest in avoiding physical  
8 restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).  
9

10 29. In the immigration context, the Supreme Court has recognized only  
11 two valid purposes for civil detention: to mitigate the risks of danger to the community  
12 and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528. The government may not detain a  
13 noncitizen based on any other justification.  
14

15 30. Congress has granted the Attorney General discretion to decide  
16 whether to detain or release certain noncitizens pending a removal decision. *See* 8 U.S.C.  
17 § 1226(a). The Attorney General has delegated that authority to IJs. 8 C.F.R. §§ 1003.19,  
18 1236.1.  
19

20 31. On July 8, 2025, DHS adopted a new policy on mandatory detention  
21 for noncitizens who have been residing in the United States. *See*, ICE Memo: Interim  
22 Guidance Regarding Detention Authority for Applications for Admission filed herewith  
23 as Exhibit 1.  
24

25 32. On September 5, 2025, the BIA entered the precedential decision  
26 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), filed herewith as Exhibit 2,  
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1 which holds that all noncitizens who enter without inspection are “applicants for  
2 admission” under 8 U.S.C. § 1225(a) and therefore subject to mandatory detention under  
3 § 1225(b)(2), without regard for the length of time they have lived in the United States.  
4

5 33. Numerous courts have rejected Respondents’ contention that  
6 noncitizens present in the United States for extended periods are subject to mandatory  
7 detention under 8 U.S.C. § 1225(b)(2)(A), holding instead that discretionary detention  
8 under § 1226(a) applies. *See, e.g., Arauz v. Baltazar*, No. 1:25-cv-03260-CNS, 2025,  
9 at \*5–6 (D. Colo. Oct. 31, 2025) (collecting cases from this district and others  
10 rejecting the government’s statutory interpretation and requiring bond hearings under §  
11 1226(a)), filed herewith at Exhibit 7.  
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14 34. While a minority of courts have adopted Respondents’ interpretation  
15 of § 1225(b)(2)(A), those decisions are not binding on this Court and, respectfully, are  
16 inconsistent with the statutory text, legislative history, and the growing body of district  
17 court authority holding that § 1226(a) governs detention of long-present noncitizens  
18 apprehended within the United States. This Court must independently determine the  
19 proper statutory framework and constitutional limits applicable to Petitioner’s detention.  
20  
21

22 35. In 1997, after Congress amended the INA through the Illegal  
23 Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), EOIR and  
24 the then-Immigration and Naturalization Service issued an interim rule to interpret and  
25 apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and  
26 Detention of Aliens,” the agencies explained that:  
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1 Despite being applicants for admission, aliens who are  
2 present without having been admitted or paroled (formerly  
3 referred to as aliens who entered without inspection) *will be*  
*eligible* for bond and bond redetermination.

4 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that  
5 individuals who had entered without inspection *were* eligible for consideration for  
6 bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing  
7 regulations.  
8

9 36. Thus, for almost 30 years, all participants in the immigration system  
10 have understood that people arrested inside the United States generally fall within §  
11 1226 for detention purposes and are therefore required to receive a bond hearing upon  
12 request—even if they initially entered the country without permission. *See Martinez v.*  
13 *Hyde*, No. 25-11613, 2025 WL 2084238, at \*4 n.9 (D. Mass. July 24, 2025) (citing the  
14 United States Solicitor General’s representation to the Supreme Court at oral argument  
15 that “DHS’s long-standing interpretation has been that 1226(a) applies to those who  
16 have crossed the border between ports of entry and are shortly thereafter apprehended”).  
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19 37. Despite the overwhelming number of federal cases that have ruled  
20 against the government’s position, DHS and DOJ are continuing to systemically  
21 misclassify people and unlawfully deny them access to bond hearings and release on  
22 bond during the pendency of their immigration proceedings.  
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25 **CLAIMS FOR RELIEF**  
26 **FIRST CLAIM FOR RELIEF**  
27 **Violation of Fifth Amendment – Substantive Due Process**  
28

1 38. Petitioner realleges and incorporates herein the allegations contained  
2 in the preceding paragraphs of the petition as if fully set forth herein.

3  
4 39. The Due Process Clause of the Fifth Amendment forbids the  
5 government from depriving any “person” of liberty “without due process of law,”  
6 including noncitizens. U.S. Const. amend. V.

7  
8 40. Substantive due process asks whether a person’s life, liberty, or  
9 property is deprived without sufficient purpose. There is no question that Petitioner has  
10 been deprived of liberty in this case.

11  
12 41. The government’s continued detention of Petitioner is not supported  
13 by any special interest or compelling justification that outweighs liberty interest.

14  
15 42. Petitioner’s ongoing detention when so many federal courts have held  
16 that he is entitled to be considered for release upon posting an appropriate bond under §  
17 1226 constitutes prolonged detention and violates substantive due process rights.

18 **SECOND CLAIM FOR RELIEF**  
19 **Violation of Fifth Amendment Right - Procedural Due Process**

20  
21 43. Petitioner realleges and incorporates herein the allegations contained  
22 in the preceding paragraphs of the petition as if fully set forth herein.

23  
24 44. The Due Process Clause of the Fifth Amendment guarantees Petitioner  
25 the right to procedural due process in seeking a bond redetermination and the  
26 government may not unreasonably restrict this right.

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LIST OF EXHIBITS	
Exhibit 1	<u>ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission</u> (last visited September 8, 2025).
Exhibit 2	<i>Matter of Yajure Hurtado</i> , 29 I&N Dec. 216 (B.I.A. 2025).
Exhibit 3	ICE Online Detainee Locator Printout
Exhibit 4	Declaration of Counsel in Support of Petition for Writ of Habeas Corpus
Exhibit 5	Notice to Appear
Exhibit 6	Cover: Application for 42B Cancellation of Removal
Exhibit 7	Order granting habeas in <i>Arauz v Baltazar et al.</i> , Case No. 1:25-cv-03260-CNS (D. Colo. Oct. 31, 2025)