

Nicole Hope Nelson, OSB No. 975343
e-mail: nicole@visaoregon.com
Philip James Smith, OSB No. 981032
e-mail: philip@visaoregon.com
NELSON | SMITH, LLP
1123 SW Yamhill St.
Portland, Oregon 97205
Phone: 503-224-8600

Attorneys for Petitioner

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

B-R-F-,

Docket No.:

Petitioner,

Agency Case No.:

v.

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

LAURA HERMOSILLA, Seattle Field Office Director,
Immigration and Customs Enforcement and
Removal Operations ("ICE/ERO"); TODD LYONS,
Acting Director U.S. Immigration Customs
Enforcement ("ICE"); U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT; KRISTI
NOEM, Secretary of U.S. Department of Homeland
Security ("DHS"); U.S. DEPARTMENT OF
HOMELAND SECURITY; and PAMELA BONDI,
United States Attorney General;

ORAL ARGUMENT REQUESTED

Expedited Hearing Requested

Respondents.

COMES NOW Petitioner, B.R.F., by and through counsel, and pursuant to 28 U.S.C. § 2241 does hereby petition the Court for a Writ of habeas corpus. In support of this petition, Petitioner alleges as follows:

Subject Matter Jurisdiction

1. The Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241 et seq., and Article I, § 9, Clause 2 of the United States Constitution (“Suspension Clause”). Demore v. Kim, 123 S. Ct. 1708, 1714 (2003); INS v. St. Cyr, 121 S.Ct. 2271 (2001); Magana-Pizano v. INS, 200 F.3d 603, 610 (9th Cir. 1999).

2. B.R.F. is in custody for purposes of habeas corpus relief because he is currently in the custody of Immigration and Customs Enforcement, acting under color of authority of the United States.

Venue

3. Venue lies in the District of Oregon, the judicial district where Petitioner is imprisoned and held in the custody of the Immigration and Customs Enforcement, acting under color of authority of the United States and at the direction of its Field Office Director, Ms. Cammilla Wamsley.

Parties

4. Petitioner, B.R.F., a native and citizen of Guatemala, is the spouse of a U.S. citizen. Petitioner is the beneficiary of an approved I-130 Petition filed by his spouse on his behalf. *See* Exhibit A. Petitioner is also the beneficiary of an approved I-601A Application for Provisional

Unlawful Presence Waiver based on the extreme hardship to his U.S. citizen spouse. *See* Exhibit B. The U.S. Department of State has scheduled an Immigrant Visa interview for Petitioner on January 14, 2026, at the U.S. Embassy in Guatemala City, Guatemala. *See* Exhibit C.

5. Respondent, Ms. Laura Hermosillo, is the Field Office Director for the Detention and Removal Office of Immigration and Customs Enforcement and she is being sued in her official capacity. In this capacity, Ms. Hermosillo has authority over all detention matters in Oregon, and it is her decision to detain B.R.F. -- in violation of the laws and Constitution of the United States -- that is the subject of this petition.

6. Respondents, Mr. Todd Lyons, Acting Director of Immigration and Customs Enforcement, and Ms. Kristi Noem, Secretary, Department of Homeland Security, and Ms. Pamela Bondi, U.S. Attorney General, are responsible for the implementation and enforcement of the immigration laws and it is their delegation of authority to administer the immigration laws to Immigration and Customs Enforcement (ICE) that permits ICE officials to act under color of authority of the United States.

7. Respondent, Ms. Pamela Bondi, is responsible for the overall administration of the immigration laws of the United States, including the immigration court system which is housed in the Executive Office for Immigration Review, a component of the Department of Justice.

3 PETITION FOR WRIT OF HABEAS CORPUS

Facts

8. On July 20, 2019, Petitioner married his U.S. citizen spouse. On June 12, 2020, Petitioner's U.S. citizen spouse filed an I-130 Petition with the Department of Homeland Security (DHS) on his behalf. On June 12, 2020, DHS approved the I-130 Petition. *See Exhibit A.*

9. On December 9, 2022, Petitioner filed an I-601A Application for Provisional Unlawful Presence Waiver with DHS. Finding it would cause Petitioner's spouse extreme hardship if Petitioner were not allowed to remain in the United States, DHS approved the I-601A Application on April 15, 2025 pursuant to 8 U.S.C. § 1182(a)(9)(B)(v). *See Exhibit B.*

10. On November 10, 2025, the State Department notified Petitioner that he had been scheduled for his Immigrant Visa interview, the final step in his journey to lawful permanent residence, in Guatemala City, Guatemala, on January 14, 2026. *See Exhibit C.*

11. On November 20, 2025, for an unknown reason, Respondents detained Petitioner.

Claims

12. Petitioner's detention is governed by 8 U.S.C. § 1226(a) and NOT § 1225(b) (mandatory detention), and Respondents' arrest and detention of Petitioner pursuant to § 1225(b) is unlawful. Petitioner is not a flight risk or a danger to the community and absent a determination that he is, Respondents have no basis to detain him.

4 PETITION FOR WRIT OF HABEAS CORPUS

13. On September 5, 2025, the Board of Immigration Appeals (BIA) issued a precedent decision, *Matter of Yajure Hurtado*, in which it reasoned that all individuals who entered the United States without inspection or admission (EWI), regardless of how long the person has been in the United States, is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and that immigration judges do not have jurisdiction to conduct bond proceedings or grant bond to a person who is present without admission. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 216 (BIA 2025). The BIA's precedent decisions are binding on immigration judges. This drastic new interpretation of the immigration statute would render superfluous multiple statutory provisions enacted by Congress including 8 U.S.C. § 1226(c) (mandatory detention for aggravated felony convictions) and portions of the recently passed Laken Riley Act. *Laken Riley Act* ("LRA"), Pub. L. No. 119-1, 139 Stat 3 (2025), codified at 8 U.S.C. § 1226 (c)(1)I(i) and (ii). The BIA's flawed analysis has been squarely rejected by district courts throughout the country. See, e.g., *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503, at *1 (N.D. Cal. Sept. 12, 2025); *Rodriguez Vasquez v. Bostock, et al.* 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025); *Ledesma Gonzalez v. Bostock*, 2025 WL 2841574 (W.D. Wash. Oct. 7, 2025); *Garcia Domingo v. Castro*, 2025 WL 2941217 (D.N.M. Oct. 15, 2025); *Aguilar Merino v. Ripa*, 25-23845-CIV (S.D. Fla. Oct. 15, 2025); *Guerrero Lepe v. Andrews*, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025)..

Exhaustion

14. Neither the Immigration and Nationality Act nor 28 U.S.C. § 2241 "specifically require[s] petitioners to exhaust direct appeals before filing petitions for habeas corpus." Castro-

5 PETITION FOR WRIT OF HABEAS CORPUS

Cortez v. INS, 239 F.3d 1037, 1047 (9th Cir. 2001). As a prudential matter, however, habeas petitioners must exhaust available judicial remedies before seeking relief under § 2241. Id.; Laing v. Ashcroft, 370 F.3d 994, 997 (9th Cir. 2004).

15. No judicial remedy is available for Petitioner to challenge his unlawful detention. Petitioner has not been informed of the authority under which he is being detained.

Prayer for Relief

WHEREFORE, premises considered, Petitioner respectfully prays that this Court:

- (a) Assume jurisdiction over this matter;
- (b) Order Respondents to appear before this Court and show cause, if any there is, why Petitioner is being detained in violation of law;
- (c) Enjoin Respondents from depriving Petitioner of his liberty by incarcerating him during the pendency of this litigation given the serious legal questions raised in this Petition;
- (d) Issue a Writ of habeas corpus requiring Respondents to release Petitioner immediately on reasonable conditions;
- (e) Grant such further relief as the Court deems just and proper.

Respectfully submitted this 20th day of November 2025.

s/Nicole H Nelson
Nicole Hope Nelson, OSB No. 975343

NELSON | SMITH, LLP
1123 SW Yamhill Street
Portland, Oregon 97205
Phone: 503-224-8600

DECLARATION OF NICOLE HOPE NELSON

I, Nicole Hope Nelson, do solemnly declare as follows:

1. I am an attorney duly licensed to practice in the State of Oregon and I am admitted to practice before the United States District Court for the District of Oregon.
2. I am the attorney for Petitioner in this cause.
3. I have prepared the foregoing petition for Writ of habeas corpus and all facts and allegations contained therein are true and accurate to the best of my knowledge and belief.
4. I declare under penalty of perjury that the foregoing declaration is true and accurate to the best of my knowledge and belief.

Signed this 20th day of November 2025 at Portland, Oregon.

s/Nicole H Nelson

Nicole Hope Nelson for
B.R.F.