UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Walfer Milton AGUILAR DELGADO,
Petitioner,

v. CASE NO.:

Kristi Noem, Secretary,
Department of Homeland Security;
Pamela Jo Bondi, U.S. Attorney General,
U.S. Department of Justice;
Garrett Ripa, Field Office Director, U.S.
Immigration and Customs Enforcement,
Office of Enforcement and Removal Operations,
Miami, Florida,
Respondents.
_____/

PETITION FOR WRIT OF HABEAS CORPUS

REQUEST FOR EXPEDITED HEARING

This is an action for habeas corpus relief under 28 U.S.C. §2241 and the Suspension Clause of the U.S. Constitution. Petitioner seeks an Order requiring Respondents to release Petitioner from the custody of U.S. Immigration and Customs Enforcement, or, alternatively, ordering that he receive a custody redetermination hearing before an Immigration Judge in accordance with 8 U.S.C. §1226(a) and 8 C.F.R. §1003.19 within seven days.

JURISDICTION

1. This Court has habeas corpus jurisdiction under 28 U.S.C. §2241 *et seq.*, 28 U.S.C. §1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

2. Petitioner is in custody for purposes of habeas corpus relief. He is currently detained at the Florida Soft Side South detention facility ("Alligator Alcatraz") located in Ochopee, Florida, and is in the custody of Immigration and Customs Enforcement ("ICE") and the U.S. Department of Homeland Security ("DHS"), acting under color of authority of the United States.

VENUE

3. Pursuant to Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Middle District of Florida, the judicial district in which Petitioner is currently detained by Respondent ICE.

4. Venue is also properly in this Court pursuant to 28 U.S.C. §1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Middle District of Florida.

REQUIREMENTS OF 28 U.S.C. §2243

5. The Court should grant the petition for writ of habeas corpus "forthwith," as the legal issues have already been resolved for class members in Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) and Jennings v. Rodriguez, 138 S. Ct. 830 (2018).

6. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." Fay v. Noia, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

7. Petitioner, **Walfer Milton Aguilar Delgado (**[redacted]**)**, is a citizen of Guatemala who has been in immigration detention since January 21, 2026.

8. Respondent **Kristi Noem** is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

9. Respondent **Pamela Jo Bondi** is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive

Office for Immigration Review and the Immigration Court system it operates is a component agency. She is sued in her official capacity.

10. Respondent **Garrett Ripa** is the Field Office Director of U.S. Immigration and Customs Enforcement ("ICE") in Miami, Florida and he is being sued in his official capacity. As such, Respondent Ripa is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal.

CLAIM FOR RELIEF
Violation of the Immigration and Nationality Act

11. Petitioner is a citizen and national of Guatemala and concedes that he is an "alien" as defined at 8 U.S.C. §1101(a)(3).

12. Petitioner entered the United States without inspection on or about November 3, 2023, at or near Santa Teresa, New Mexico. DHS apprehended Petitioner at the time of his initial entry to the United States and released him on November 14, 2023, under and Order of Release on Recognizance ("OREC"). The OREC states the respondent is released "[i]n accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations…"

13. On November 14, 2023, the Department of Homeland Security ("DHS") issued a Form I-862, Notice to Appear, against Petitioner.

14. The Notice to Appear initiated removal proceedings before the Immigration Court and charges that Petitioner is inadmissible to the United States in

violation of 8 U.S.C. §1182(a)(6)(A)(i) as "an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General."

15. On January 21, 2026, ICE agents re-arrested Petitioner near Florida Interstate I-75. ICE did not set bond and is holding Petitioner at Alligator Alcatraz, an ICE detention facility.

16. Upon apprehending an alien, ERO is charged with making an initial custody determination as provided at 8 U.S.C. §1236 and 8 C.F.R. §236 *et seq*. As is common practice, ERO generally enters a "NO BOND" determination upon its initial apprehension of an alien who arrived in the United States without inspection and/or at a place other than designated.

17. Upon information and belief, Petitioner submits that ERO entered a "NO BOND" initial custody determination with reference to him at the time of his arrest on January 21, 2026. The issue in this case is whether 8 U.S.C. §1225(b)(2) or §1226(a) of the Immigration and Nationality Act ("INA") applies to Petitioner.

18. The Code of Federal Regulations provide a process through which an alien can seek a custody determination hearing before an Immigration Judge. *See generally* 8 C.F.R. §1003.19.

19. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedent decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA

2025). The question presented in Yajure Hurtado pertains to whether certain aliens who arrived in the United States without inspection can request a custody redetermination hearing in accordance with 8 U.S.C. §1226 and its implementing regulation set forth at 8 C.F.R. §1003.19. The BIA held Immigration Judges lack authority to hear bond requests or grant bond to aliens who are present in the United States without admission.

20. At all times beginning on or after April 1, 1997, with the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C. §302(a), 110 Stat. 3009-546 (September 30, 1996) ("IIRIRA"), and through publication of Matter of Yajure Hurtado, Petitioner submits that he, and other similarly situated aliens, routinely requested and routinely received custody (bond) redetermination hearings in accordance with §1226 and 8 C.F.R. §1003.19.

21. Prior to IIRIRA's April 1, 1997 effective date, the legacy Immigration and Naturalization Service ("INS") published guidance relating to the questions presented herein. 62 Fed. Reg. 10312 (Mar. 6, 1997). This guidance includes the following passage:

> "[a]s for non-criminal aliens, the rule reflects the new $1,500 minimum bond amount specified by IIRIRA. Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination....

> Several commenters stated that Sec. 236 of the proposed rule as written is a reversal of long established procedure that provides that a noncriminal alien is presumptively eligible for release. The Service has been strongly criticized for its failure to remove aliens who are not detained. A recent report by the Department of Justice Inspector General shows that when aliens are released from custody, nearly 90 percent abscond and are not removed from the United States. The mandate of Congress, as evidenced by budget enhancements and other legislation, is increased detention to ensure removal. Accordingly, because the Service believes that the regulation as written is consistent with the intent of Congress, the interim rule has not modified the proposed rule in this regard." Id. at 10323.

22. Or about July 8, 2025, ICE issued new policy guidance entitled *Interim Guidance Regarding Detention Authority for Applicants for Admission.* This guidance instructs those in the field that

> "the only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under [8 U.S.C. §1226](a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under [8 U.S.C. §1227], with the exception of those subject to mandatory detention under [8 U.S.C. §1226](c)."

23. Petitioner is being held indefinitely without access to an individualized bond hearing, which violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution. Petitioner's indefinite detention is based solely on the Board's decision in Matter of Yajure Hurtado.

24. Petitioner respectfully submits that the BIA's decision in Matter of Yajure Hurtado was wrongly decided. This decision improperly stripped Immigration Judges of the authority to set bond for individuals who entered the

United States without inspection. In so doing, Petitioner submits that Matter of Yajure Hurtado miscategorizes individuals who entered without inspection and who have been present in the United States for an extended period of time thereafter as "applicants for admission" who are not eligible to be released on bond.

25. Following this decision, the U.S. District Court of the Central District of California issued a decision where it granted partial summary judgment on behalf of individual plaintiffs similarly situated to Respondent, and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, -- F. Supp. 3d --, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

26. The order granting partial summary judgement in Maldonado Bautista holds Respondents violate the INA in applying the mandatory detention statute at §1225(b)(2) to class members and that Bond Denial Class members are detained under 8 U.S.C. §1226(a), and thus may not be denied consideration for release on bond under §1225(b)(2)(A). Maldonado Bautista, 2025 WL 3289861, at *11.

27. Petitioner is a member of the Bond Eligible Class, as he:

a. does not have lawful status in the United States and is currently detained at the Florida Soft Side South facility. He was apprehended by immigration authorities on January 21, 2026;

b. entered the United States without inspection on November 23, 2023, and was released on his own recognizance *cf. id.*; and

c. is not detained under 8 U.S.C. §1226(c), §1225(b)(1), or §1231.

28. Respondents are parties to Maldonado Bautista and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. §2201(a).

29. Notwithstanding, DOJ has refused to abide by this declaratory relief and on January 13, 2026, instructed Immigration Judges nationwide to ignore the District Court's order, and that instead follow the BIA's decision in Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025).

30. Petitioner has not filed a Motion for Bond Redetermination with the Immigration Court because Immigration Judges have been instructed to deny bond and follow the BIA's decision in Matter of Yajure Hurtado and deem Respondent an "applicant for admission."

31. Should this Court find that Petitioner is not a bond class member, or that the declaratory judgment of the U.S. District Court for the Central District of California is not binding on Respondents, Petitioner is still entitled to a bond redetermination hearing because he is detained under §1226(a) not §1225. In Jennings v. Rodriguez, 138 S. Ct. 830, 842 (2018), the Supreme Court held that

section 1225(b)(2) applies more narrowly, mandating detention of "applicant[s] for admission" who are "seeking admission" to the United States and are not "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). The most recent arrest of the Petitioner occurred over two years after he entered the United States.

32. In Jennings Justice Alito explained that "§1225 applies primarily to aliens seeking entry into the United States." By contrast, "§1226 applies to aliens already present in the United States." Id. at 846. "Section 1226(a) creates a default rule for those aliens by permitting-but not requiring-the Attorney General to issue warrants for their arrest and detention pending removal proceedings. Section 1226(a) also permits the Attorney General to release those aliens on bond[.]" Id. at 846.

33. Petitioner submits that his ongoing detention, and his eligibility for consideration of release on bond is governed by §1226, not by §1225. At present, undersigned counsel is aware of multiple individualized cases in which a district court has ruled that the BIA misapplied "§1225(b)(2)(A) to those who are not presently seeking admission, but who have instead been physically present in the United States for an extended period of time.

34. In Hernandez Lopez v. Hardin, Case No. 2:25-cv-830-KCD-NPM (M.D. Fla. Sep. 25, 2025), Judge Dudek, sitting in the Ft. Myers Division of the U.S. District Court for the Middle District of Florida, concluded that

> "[s]section 1225 is titled: 'Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing.' Id. The use of 'arriving' indicates that the statute governs incoming noncitizens, not those present already. This is supported by the text of the statute itself, which is focused on inspections for noncitizens when they arrive via 'crewman' or as 'stowaways.' 8 U.S.C. §1225(b)(2). These limited and more specific methods of entry suggest that §1225 applies to noncitizens arriving at a border or port and are presently 'seeking admission' into the United States.
>
> Context points in the same direction. Courts are meant to 'construe statutes, not isolated provisions.' King v. Burwell, 576 U.S. 473, 486 (2015).
>
> As mentioned, the Supreme Court has identified §1226 as the 'default rule' applicable 'to aliens already present in the United States.' Jennings, 583 U.S. at 281, 288. 'That Congress separated removal of arriving aliens from its more general section for 'Apprehension and detention of aliens,' §1226, implies that Congress enacted §1225 for a specific, limited purpose." Pizarro Reyes, 2025 WL 2609425, at *5."

35. Petitioner now faces unlawful detention because he has been deprived the opportunity to receive a meaningful custody review before an Immigration Judge as a result of the BIA's decision in Yajure Hurtado, and DOJ guidance to Immigration Judges. This denial violates well-established due process protections previously made available to Petitioner and other similarly situated aliens.

36. Petitioner's continued detention is not justified by an individualized assessment of flight risk or whether he poses a danger to the community. In so stating, Petitioner concedes that he must establish sufficient ties to the community such that

he is not deemed a flight risk and would likewise be required to establish that his presence outside an immigration detention facility would not create any danger to the community at large.

37. Because Respondents are detaining Petitioner in violation of the INA this Court should accordingly order that Respondents provide Petitioner with the statutory process required under §1226, which includes a bond hearing under 8 U.S.C. §1226(a) within seven days.

38. Respondents previously released Petitioner from custody under 8 U.S.C. §1226(a) and placed him in removal proceedings under 8 U.S.C. §1229. The Order of Release on Recognizance issued to the Petitioner states that he was released "[i]n accordance with section 236 of the Immigration and Nationality Act, which corresponds with §1226(a). His initial release from custody indicates he has and is subject to detention under §1226(a). Therefore, §1226(a) governs Petitioner's detention while removal proceedings remain pending.

EXHAUSTION

39. That Petitioner challenges the constitutionality of his ongoing, indefinite and unlawful detention. He does not challenge the Department of Homeland Security's authority to conduct removal proceedings against him or any other action taken by the federal government.

40. It is futile for Petitioner to request a bond redetermination hearing before the Immigration Court because Immigration Judges have been instructed to deny bond to aliens similarly situated to Petitioner. Additionally, Given that Yajure Hurtado is binding precedent on immigration Judges and subjects Petitioner, a non-citizen who is present in the United States and has not been admitted or paroled, to mandatory detention without the possibility of bond, there is no adequate administrative remedy for Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Consider this Petition and the associated request for relief on an expedited basis.

c. Issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;

d. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. §2412, and on any other basis justified under law; and

e. Grant any other and further relief that this Court deems just and proper.

DATED: January 29, 2026.

Respectfully submitted,

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Table of Contents
Documents in Support of Petition

Walfer M. Aguilar Delgado v.

Kristi Noem, Secretary, Department of Homeland Security, *et al.*,

Exhibit 1: Notice to Appear issued on November 14, 2023;

Exhibit 2: Printout from Online Detainee Locator system relating to Petitioner;

Exhibit 3: DOJ January 13, 2026, Guidance to Immigration Judges.