UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

LUIS ROBERTO HERNANDEZ,

Petitioners/Plaintiff, v.

KRISTI NOEM, in their official capacity as Secretary of the United States Department of Homeland Security;

MATTHEW MORDANT, in their official capacity as Alligator Alcatraz Field Office Director for Enforcement and Removal Operations, United States Immigration and Customs Enforcement;

PAMELA BONDI, in their official capacity as Attorney General of the United States;

GARRET RIPA, in their official capacity as Director of Miami Field Office, U.S. Immigration and Customs Enforcement;

TODD LYONS, in their official capacity as Acting Director of Immigration and Customs Enforcement;

CHARLES PARRA, in their official capacity as Assistant Field Office Director for the Krome North Service;

Respondents-Defendants.

Case NO. _____

A# [redacted]

PETITION FOR WRIT OF HABEAS CORPUS

The Petitioner, Luis Roberto Herandez, submits this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 to compel his release from custody, as his current civil immigration detention violates the Due Process Clause of the United States Constitution and the Administrative Procedure Act.

INTRODUCTION

1. Petitioner respectfully petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, challenging his continued and unlawful detention by United States Immigration and Customs Enforcement ("ICE"). Petitioner seeks immediate release, or in the alternative, a constitutionally adequate bond hearing.

2. Petitioner, Luis Roberto Hernandez, is a Native and Citizen of Mexico. He is currently 27 years old, as his date of birth is [redacted]. **Exhibit A** – Mexican passport.

3. Petitioner was detained on or about January 22, 2026, on his way home from work, he was apprehended for driving without a valid license. He was thereafter transferred, into the Custody of the Department of Homeland Security ("DHS") and has remained in civil detention in the custody of Immigration and Customs Enforcement ("ICE") at Florida Soft Side South, also commonly referred to as Alligator Alcatraz. **Exhibit B** – ICE Detainee Locator.

4. Petitioner has resided in the United States for approximately seventeen (17) years. He entered the U.S. as a child, when he was ten (10) years old and has remaining in the U.S. since then. Prior to his detention, Petitioner lived with and provided financial and emotional support for his family in Fellsmere, Florida, including his United States Citizen wife, his three United States Citizen children, and a child that his wife had from a previous marriage, whom he has helped her rear. **Exhibit C- copy of marriage certificate; Exhibit D-copy of**

wife's United States Citizenship certificate. Exhibit E-copy of United States Children Birth Certificate. His ongoing detention imposes a severe hardship on his family by depriving his family of both his financial support and his supportive presence. One of his children has significant medical health issues and was recently referred to see a specialist. **Exhibit F – copy of referral.**

5. Prior to his detention, his wife had petitioned for him. **Exhibit G- copy of I-130, Petition for Alien Relative receipt**

6. Petitioner's ongoing detention violates the Immigration and Nationality Act, the Due Process Clause of the Fifth Amendment, and governing Supreme Court precedent.

7. This petition challenges the government's ongoing violation of Petitioner's statutory and constitutional rights. ICE's continued detention of Petitioner despite his pending Asylum Application, and absence of any public safety threat violates the Immigration and Nationality Act ("INA"), which limits civil detention to reasonable periods and lawful purposes, as well as the Due Process Clause of the Fifth Amendment, which prohibits punitive or arbitrary detention.

8. Petitioner's continued detention has become punitive in nature, violating the Due Process Clause of the Fifth Amendment. Civil detention is permissible only so long as it serves a legitimate immigration purpose, such as ensuring appearance or protecting the public.

9. His prolonged detention bears no reasonable relation to those purposes and instead operates as punishment. Such punitive confinement is unconstitutional in the context of civil immigration.

10. Petitioner's continued detention is unlawful because it (1) exceeds the scope of detention authority permitted under the INA, and (2) violates the Fifth

Amendment's Due Process Clause by subjecting him to punitive and indefinite confinement.

11. Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus and order Petitioner's release from custody, with appropriate conditions of supervision if necessary, without the need for alternatives to detention (ankle monitoring). In the alternative, Petitioner requests that this Court conduct or order an immigration judge to conduct a constitutional adequate bond hearing at which (1) the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) the reviewing court considers alternatives to detention that could mitigate risk of flight. Continued detention under these circumstances serves no legitimate governmental purpose and violates the humanitarian and constitutional principles that govern civil immigration custody.

12. The Court should not dismiss this action because the Petitioner has not exhausted available administrative remedies by requesting a new bond hearing. In *Matter of Yajure Hurtado*, the Board of Immigration Appeals ("BIA") held that immigration judges have no authority to consider bond requests from noncitizens who entered the United States without inspection "because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." 29 I&N Dec. 216, 220 (B.I.A. 2025).

13. On November 20, 2025, the federal district court for the Central District of California, granted a partial summary judgment rejecting Matter of Yajure Hurtado and the predecessor ICE policy applying 235(b)(2)(A) detention without bond to all persons who entered without admission/inspection. (See **Exhibit H**, Summary Judgement). On November 25, 2025, the same court issued a class certification. (See **Exhibit I**, attached Order of the Class Certification).

14. Counsel for Petitioner expects that the California judgment will be stayed.

15. The declaratory judgment in favor of the certified class to which Petitioner indisputably belongs, finding that the detention of class members under the challenged statutory and regulatory framework is unlawful. That judgment conclusively establishes that Petitioner's ongoing detention violates federal law.

16. Accordingly, and pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests that this Court grant the writ forthwith, as Petitioner is a class member whose detention has now been judicially declared unlawful.

17. The Plaintiff need not exhaust administrative remedies if "the administrative body is shown to be biased or has otherwise predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992); see also *Shalala v. Ill. Counsel on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000). In the instant case, the Immigration Judges are following Board precedent in *Matter of Yajure Hurtado*, determining they do not have jurisdiction over any alien who has entered the United States without inspection.

JURISDICTION AND VENUE

18. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in federal custody and seeks a writ of habeas corpus challenging the legality of his continued civil detention by U.S. Immigration and Customs Enforcement ("ICE") in violation of the Constitution and laws of the United States.

19. Venue is proper in this Court under 28 U.S.C. § 2241(a) because Petitioner is detained within the geographic boundaries of the Middle District of Florida, at Florida Soft Side South in Collier County, Florida, which lies within the Fort Myers Division of this District.

PARTIES

20. **Luis Roberto Hernandez** is a citizen and national of **Mexico,** born on [redacted]. He entered the United States on or about seventeen (17) years ago and has continuously resided in this country for more than four years. He is in custody, and under the direct control, of Respondents and their agents.

21. Respondent **GARRET RIPA** is sued in his official capacity as the Acting Director of the Miami Field Office of U.S. Immigration and Customs Enforcement. Respondent Ripa exercises authority over Petitioner's detention, transfer, and potential release.

22. Respondent **KRISTI NOEM** is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent **NOEM** is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention and custody. Respondent NOEM is a legal custodian of Petitioner.

23. Respondent **PAM BONDI** is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent BONDI is a legal custodian of Petitioner.

24. Respondent, **MATTHEW MORDANT**, is sued in his official capacity as the as Alligator Alcatraz Field Office Director for Enforcement and Removal Operations, United States Immigration and Customs Enforcement, which is the agency directly Responsible for Petitioner's detention and custody.

25. Respondent **TODD LYONS** is sued in his official capacity as Acting Director of Immigration and Customs Enforcement.

26. Respondent, **CHARLES PARRA**, is sued in his official capacity as Assistant Field Office Director for the Krome North Service.

LEGAL FRAMEWORK

27. Federal courts possess jurisdiction to review immigration detention claims through the writ of habeas corpus under **28 U.S.C. § 2241.** The statute explicitly allows challenges by individuals who are "in custody in violation of the Constitution or laws or treaties of the United States" Habeas review is particularly appropriate where detention is arbitrary, prolonged, or otherwise unlawful.

28. Numerous courts have affirmed that immigration detainees may invoke § 2241 to test the legality of their confinement. See *INS v. St. Cyr, 533* U.S. 289 (2001) (recognizing habeas jurisdiction for legal and constitutional claims of noncitizens); *Zadvydas v. Davis*, 533 U.S. 678 (2001) (permitting habeas relief where detention exceeds statutory or constitutional limits). Because Petitioner is detained in this District, jurisdiction properly lies with this Court.

29. The Fifth Amendment's Due Process Clause applies broadly to "all persons" within the United States, including noncitizens regardless of their immigration status. See *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). The protection of due process encompasses both liberty and bodily integrity and includes freedom from arbitrary civil detention.

30. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a binding precedent decision holding that an immigration judge lacks authority to consider bond requests for individuals who entered the United States without admission. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The

Board concluded that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible for release on bond. As a result, Petitioner has been categorically barred from seeking custody redetermination before an immigration judge, leaving habeas corpus as his sole available remedy to challenge continued detention.

31. The Fifth Amendment prohibits the federal government from imposing punishment without due process of law. This principle extends to immigration detention, which is civil, not criminal, in nature. *See Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Conditions of confinement for civil detainees are unconstitutional when they rise to the level of punishment rather than regulation.

32. In this case, the Petitioner has not been issued a Notice to Appear since his detainment on January 23, 2026.

COUNT 1

Violation of Fifth Amendment Right to Due Process
(against all Respondents)

33. Petitioner incorporates by reference all preceding paragraphs as if fully set forth herein.

34. [T]he Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas,* 533 U.S. at 693. While certain constitutional protections do not extend outside the "geographic borders" of the United States, "legal circumstances change" as soon as a noncitizen "enters the country." *Id.*

35. To determine whether civil detention violates a detainee's due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews,* courts consider (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute

procedural safeguards; and (3) the Government's interest, including the function involved and the fiscal administrative burdens that the additional or substitute procedural requirement would entail. *See id. At 335.*

36. Here, all three factors favor Petitioner. He has a significant private interest at stake. *Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004) (freedom from physical detention is "the most elemental of liberty interests"); *see also Zadvydas,* 533 U.S. at 690 ("Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that [the Due Process] Clause protects."). The petitioner is experiencing all the deprivations that come with physical detention, including separation from his family and the inability to work to support his family. Next, there is a large risk of the erroneous deprivation of Petitioner's liberty interest through the procedures used in the immigration court proceedings particularly with Petitioner's manner of entry. There are also alternative procedures, such as a cash bond, turn over of his passport, and other measures that might mitigate risk of flight. Finally, to the extent there is any government interest in detention, it is minimal compared with Petitioner's liberty interest.

COUNT 2

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT 8 U.S.C. §§ 1226

(against all Respondents)

37. Petitioner incorporates by reference all preceding paragraphs as it fully set herein.

38. The Immigration and Nationality Act authorizes immigration detention only for narrow, lawful purposes: to ensure attendance at removal proceedings and to protect the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention beyond those limited purposes violates both the statute and the Constitution.

39. Petitioner's detention exceeds the statutory limits Congress intended.

40. He is not subject to a final order of removal and therefore falls under §1226, which does not authorize indefinite or punitive custody. Petitioner has resided in the United States for over seventeen (17) years, and has no violent criminal record. His arrest are due to traffic violations such as driving without a valid license.

41. The government has not shown that Petitioner's continued detention is necessary to secure his appearance or to protect the public. Reasonable alternatives to detention—such as bond, supervision, or release on recognizance— could achieve the same ends.

42. Accordingly, Petitioner's ongoing detention violates 8 U.S.C. §1226 and the Due Process Clause of the Fifth Amendment. He respectfully requests that this Court order his immediate release or, in the alternative, direct that he receive a prompt bond hearing at which the Government bears the burden of establishing flight risk or dangerousness by clear and convincing evidence. Continued detention under these circumstances transforms what Congress intended to be temporary custody into indefinite civil confinement.

COUNT 3

Violation of the Bond Regulations

43. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

44. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been

admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

45. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court assume jurisdiction over this Petition and Complaint and grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within five days;

(3) Issue a writ of habeas corpus under 28 U.S.C. § 2241 ordering Petitioner's immediate release from immigration custody at the Florida Soft Side South Facility;

(4) In the alternative, if the Court determines that immediate release is not warranted, order Respondents to provide Petitioner with a prompt and constitutionally adequate bond hearing before an immigration judge within fourteen (14) days of this Court's order;

(5) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the Court's approval;

(6) Declare that Petitioner's continued detention without an individualized custody determination violates the Due Process Clause of the Fifth Amendment and exceeds the scope of authority permitted under the Immigration and Nationality Act, 8 U.S.C. § 1226;

(7) Award such other and further relief as the Court deems just and proper, including, if necessary, temporary or preliminary injunctive relief to ensure Petitioner's health and safety pending adjudication of this matter.

Respectfully submitted,

/s/ Christina M. Coello, Esq.

Florida Bar No. 111425
Law Office of Gonzalez and Associates, LLC.
999 Ponce de Leon Blvd. Suite 625
Coral Gables, FL 33134
(305) 444-0099
christina.coello@ngonzalezlaw.com

Dated: January 30, 2025

VERIFICATION

Pursuant to 28 U.S.C. § 2242 and 28 U.S.C. § 1746. I declare under penalty of perjury that the facts set forth in the foregoing Petition for a Writ of Habeas Corpus are true and correct.

/s/ Christina M. Coello, Esq.

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Dated: January 30, 2026