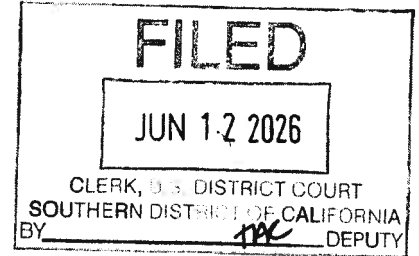


UNITED STATES DISTRICT
COURT SOUTHERN DISTRICT OF CALIFORNIA



HENRY ALBERTO GONZALEZ COLOCHO

Proceeding Pro Se,
Petitioner,

v.

_____, Warden, Otay Mesa Detention Center; _____, Field
Office Director, ERO San Diego Field Office; TODD M.
LYONS, Acting Director, United States Immigration
and Customs Enforcement; MARKWAYNE MULLIN,
Secretary of Homeland Security; PAM BONDI, United
States Attorney General,
Respondents.

Civil Action No.:

PETITION FOR WRIT OF HABEAS
CORPUS

PETITION FOR A WRIT OF HABEAS CORPUS

(Verified Petition Pursuant to 28 U.S.C. § 2241)

INTRODUCTION

Petitioner HENRY ALBERTO GONZALEZ COLOCHO respectfully petitions this Honorable Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, challenging his unlawful and unconstitutional civil immigration detention by the United States Department of Homeland Security and Immigration and Customs Enforcement (ICE). Petitioner's detention is a grave injustice. He entered the United States on August 3, 2023, seeking asylum and protection. He has worked lawfully, possessing a work permit

and a Social Security Number, to support his two children, ages 14 and 17, who reside in the United States and depend entirely on him. On February 10, 2026, he was arrested by ICE in Buffalo, New York, while simply buying food. Although he presented his work authorization, he was taken into custody.

Following an Immigration Judge's order of removal on April 21, 2026, Petitioner timely filed an appeal to the Board of Immigration Appeals (BIA), which is currently pending. His removal order is not final. Despite this, Respondents have transferred Petitioner across the entire country, from a facility in New York to the Otay Mesa Detention Center in California, thousands of miles from his prior legal counsel and community ties. This transfer is punitive and severely obstructs his ability to meaningfully pursue his BIA appeal.

Petitioner has no criminal history in the United States or Guatemala. His continued detention serves no legitimate civil purpose; it is punitive and arbitrary. It violates his rights under the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment.

Freedom from arbitrary physical restraint is a cornerstone of liberty. Detaining a non-criminal asylum-seeker with a pending BIA appeal, who has a history of lawful employment and is the sole provider for his two children, is a fundamental violation of due process. Because Petitioner's detention is statutorily and constitutionally infirm,

habeas relief is necessary. Petitioner respectfully requests that this Court grant the writ and order his immediate release, or, in the alternative, order an immediate individualized bond hearing where the Government bears the burden of justifying his continued detention.

CUSTODY

Petitioner is in the physical custody of Respondents at the Otay Mesa Detention Center, 7488 Calzada de la Fuente, San Diego, CA 92154. He is under the direct control of:

- Warden, Otay Mesa Detention Center;
- Field Office Director, ERO San Diego Field Office;
- Acting Director, United States Immigration and Customs Enforcement;
- Secretary, Department of Homeland Security;
- Attorney General, United States.

JURISDICTION

1. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 2241 (writ of habeas corpus).
2. Personal jurisdiction attaches to the named respondents in their official capacities.
3. The Court's jurisdiction is further supported by the Due Process Clause of the Fifth Amendment and the Suspension Clause of the United States Constitution.

VENUE

1. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 2242

because:

2. Petitioner is detained in San Diego, California;

3. The Facility and the Respondents' custodial officers are located in this District.

PARTIES

Party	Description
Petitioner	I, Henry Alberto Gonzalez Colocho, A-Number  citizen of Guatemala, presently detained at the Otay Mesa Detention Center.
Respondent 1	Warden, Otay Mesa Detention Center, named in official capacity.
Respondent 2	Field Office Director, ERO San Diego Field Office, named in official capacity.
Respondent 3	Acting Director, United States Immigration and Customs Enforcement, named in official capacity.
Respondent 4	Secretary, Department of Homeland Security, named in official capacity.
Respondent 5	Attorney General, United States, named in official capacity.

STATEMENT OF FACTS

1. Petitioner HENRY ALBERTO GONZALEZ COLOCHO is a native and citizen of Guatemala, 

2. He entered the United States on or about August 3, 2023, crossing the border and immediately presenting himself to immigration officials to seek asylum and protection.

3. On February 10, 2026, Petitioner was arrested by ICE agents in Buffalo, New York. At the time of his arrest, he was leaving a Walmart after buying food. He presented his valid work permit and Social Security information, but the agents arrested him anyway.

4. Prior to his arrest, Petitioner was gainfully employed for two years in the field of flooring and dock equipment, installing commercial rolling doors and related equipment.

5. Petitioner is the sole financial provider for his two children, ages 14 and 17, who reside in the United States and are completely dependent on his support. He also provides financial support to his mother in Guatemala.

6. Petitioner has no criminal history in the United States or in his native Guatemala. He is a law-abiding person.

7. On April 21, 2026, an Immigration Judge in Batavia, New York, ordered Petitioner removed.

8. Petitioner timely appealed this decision. His Notice of Appeal (Form EOIR-26) was filed on or about April 27, 2026, and the BIA appeal was received on April 29, 2026. This appeal remains pending.

9. Because his appeal is pending, Petitioner does not have an administratively final order of removal.

10. Sometime after his appeal was filed, Respondents transferred Petitioner from the Buffalo Service Processing Center in Batavia, New York, to his current location at the Otay Mesa Detention Center in San Diego, California.

11. This interstate transfer has moved him thousands of miles from his prior legal counsel in Baltimore, Maryland, and his community ties in New York, severely prejudicing his ability to pursue his BIA appeal.

12. The stress and uncertainty of his prolonged detention and cross-country transfer have caused Petitioner to suffer from depression and anxiety.

13. Petitioner's continued detention is causing irreparable financial and emotional harm to his two children in the United States, who have been deprived of their father and sole provider.

LEGAL FRAMEWORK

1. **Statutory Basis for Detention.** Petitioner's detention is governed by 8 U.S.C. § 1226. Because Petitioner does not have a final order of removal and has not been

convicted of any crime, he is not subject to mandatory detention under § 1226(c). Instead, his custody is governed by § 1226(a), which provides for discretionary release on bond and requires an individualized custody determination. His prolonged detention without bond, while his case is on appeal, is arbitrary and violates the statute.

2. **Due Process Clause.** The Fifth Amendment prohibits the government from depriving any "person" within the United States of liberty without due process of law. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). This protection applies to all individuals within the United States, regardless of their immigration status.

3. **Bond-Hearing Requirement.** The Ninth Circuit has held that due process requires the government to provide individualized bond hearings where it must prove by clear and convincing evidence that a non-citizen is a flight risk or a danger to the community. *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). A non-criminal asylum seeker with a pending appeal, deep family ties, and a history of lawful employment cannot be constitutionally detained without such a hearing.

4. **Best Interests of the Child.** Federal courts have recognized the government's interest in policies that avoid unnecessarily separating children from their parents. Petitioner's detention directly contravenes this interest by cruelly removing the sole financial and emotional provider from his two children. An individualized custody determination must weigh the "best interests of the child" as a significant factor.

5. *Mathews v. Eldridge* Balancing. Applying the three-part test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), confirms that Petitioner's detention violates due process. First, Petitioner has a fundamental private interest in his liberty and in the care and custody of his children. Second, the risk of erroneous deprivation is extremely high, as his continued detention is punitive and fails to account for his pending BIA appeal and lack of criminal history. Third, the governmental interest in providing a bond hearing is minimal compared to the severe and irreversible harm to both Petitioner and his family.

CLAIMS FOR RELIEF

COUNT ONE – VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT (INA)

1. Petitioner realleges and incorporates by reference each allegation set forth above.
2. Petitioner is being detained without a meaningful custody determination. As he has not been convicted of any crime and does not have a final order of removal, his detention is governed by 8 U.S.C. § 1226(a).
3. Section 1226(a) and its implementing regulations (8 C.F.R. § 236.1, § 1003.19) require that Petitioner be afforded a prompt and individualized bond hearing. His

prolonged detention without any such hearing since his BIA appeal was filed is a violation of the statute.

4. Respondents' continued detention of Petitioner is arbitrary, serves no legitimate purpose, and violates the INA.

5. Accordingly, Petitioner is entitled to an order requiring Respondents to provide him with an immediate and constitutionally adequate bond hearing.

COUNT TWO – VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

1. Petitioner realleges and incorporates by reference each allegation set forth above.

2. The Due Process Clause requires that any deprivation of liberty be accompanied by fair procedures, including a meaningful hearing before a neutral decision-maker. *Zadvydas*, 533 U.S. at 690.

3. Detaining Petitioner for a prolonged period while his BIA appeal is pending, especially after transferring him across the country away from his legal support system, constitutes punitive detention that violates his substantive and procedural due process rights.

4. Petitioner has therefore suffered an unconstitutional deprivation of his liberty and his fundamental right to parentage and is entitled to relief.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

1. Issue an immediate Temporary Restraining Order enjoining Respondents from transferring, removing, or deporting Petitioner pending resolution of this application.
2. Assume jurisdiction over this matter.
3. Order Respondents to show cause why a writ of habeas corpus should not be granted, within three (3) days, and set a hearing on this petition within five (5) days of the return, as required by 28 U.S.C. § 2243.
4. Declare that Petitioner's continued detention violates 8 U.S.C. § 1226(a) and the Due Process Clause of the Fifth Amendment.
5. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from the Otay Mesa Detention Center.
6. In the alternative, order Respondents to provide Petitioner with an immediate, new bond hearing before an Immigration Judge, at which the Government must prove by clear and convincing evidence that his continued detention is necessary, and at which the Immigration Judge must properly consider his pending BIA appeal, his

extensive family ties, the devastating harm to his children, and alternative conditions of release.

7. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412.

8. Grant such further relief as this Court deems just and proper.

VERIFICATION

I, Henry Alberto Gonzalez Colacho, being the petitioner, hereby certify under penalty of perjury that the statements set forth herein are true and correct to the best of my knowledge and belief.

Date: June 9, 2026.

/s/ Henry Alberto Gonzalez Colacho

Henry Alberto Gonzalez Colacho
Pro Se