UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

FLAVIO BLADIMIR CHOGLLO CHAFLA Petitioner, v. RODNEY S. SCOTT, Commissioner of Customs and Border Protection, TODD LYONS, Acting Director U.S. Immigrations and Customs Enforcement, and KRISTI NOEM, U.S. Secretary of Homeland Security, Respondents.	Case No. 2:25-cv-00437-SDN **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner Flavio Bladimir Chogllo Chafla is a citizen of Ecuador. He resides at [redacted]

2. Petitioner suffers from epilepsy and suffers from seizures due to his neurological condition. He requires Diazepam, a prescription medication, to control his seizures.

3. Petitioner has been continuously present in the United States for more than two years. He entered the United States in February of 2019. Petitioner is now in the custody of Customs and Border Protection ("CBP").

4. Ordinarily, people arrested by ICE are served an NTA and placed into removal proceedings in the Immigration Court. Removal proceedings contain certain procedural protections required by the applicable statutes and regulations. The person attends hearings before an Immigration Judge and, if he or she is found removable, may apply for various forms of relief from removal. The decision of the Immigration Court is subject to appellate review by

the Board of Immigration Appeals (the "BIA") and then via a petition for review to U.S. Court of Appeals. While the removal proceeding is pending, people without a criminal record or involvement in terrorism are constitutionally entitled to a bond hearing with certain procedural protections, which may result in their release for the pendency of the proceeding. *See* 8 U.S.C. § 1226; *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021) (for Section 1226(a) detainees, due process requires a bond hearing in which government bears burden of proof to show flight risk or dangerousness); *Brito v. Garland*, 22 F.4th 240, 256-57 (1st Cir. 2021) (affirming class-wide declaratory judgment of same).

5. In certain narrow circumstances, there is an alternative process called Expedited Removal. *See* 8 U.S.C. § 1225(b). Expedited Removal orders are issued without the typical process in the Immigration Court. Expedited removal orders are issued by an immigration enforcement official, not by an Immigration Judge. Expedited removal orders are not subject to appeal to the BIA and U.S. Court of Appeals. The potential forms of relief from the expedited removal process are much narrower and essentially require a showing of credible fear of return to the destination country, and adverse findings on credible fear are subject only to a limited review by an Immigration Judge without further review by the BIA. On information and belief, the government takes the position that people in expedited removal proceedings are not eligible for a bond hearing, but are rather mandatorily detained. *See* 8 U.S.C. § 1225. Full removal proceedings are mutually exclusive with expedited removal proceedings. *See* 8 U.S.C. § 1229a(a)(3)("a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States.").

6. Based on information and belief, DHS has detained Petitioner pursuant to the Expedited Removal statue, 8 U.S.C. § 1225. Because Petitioner has effected an entry to the United States, has been present in the United States for longer than two years, it is unlawful for the Respondents to order him to be subjected to Expedited Removal or detain him on that basis. 8 U.S.C. § 1226 is the default statute that applies when the Department of Homeland Security arrests a noncitizen that is already in the United States. *See Jennings v. Rodriguez*, 583 U.S. 281 (2018).

7. Because Respondents have unlawfully detained Petitioner under 8 U.S.C. § 1225, he will be unlawfully denied all required process in the Immigration Court, all potential appeals from that process, and access to certain forms of relief from removal that would be potentially available in the Immigration Court.

8. Based on information and belief, Respondents intend to transport Petitioner to Texas on September 3, 2025, for the duration of his removal proceedings. **Petitioner's epilepsy condition renders him acutely vulnerable to seizures during his transportation to Texas.**

9. Furthermore, Petitioner's transportation to Texas will deprive Petitioner of the right to a bond hearing in which the government bears the burden of proof. The First Circuit held in *Hernandez-Lara* that the Fifth Amendment's Due Process clause requires the government to provide detained noncitizens awaiting removal proceedings a bond hearing. *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021). The government must prove the noncitizen is a danger by clear and convincing evidence, or flight risk by preponderance of evidence. See *id.* If the government cannot meet its burden, it must offer bond or conditional parole. See *id.* The decision expanded the due process rights of noncitizens. The court also asserted that the decision ameliorates the "substantial societal costs" of unnecessary detention.

VENUE AND JURISDICTION

10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).

11. Venue is proper because Petitioner resides in Maine, and on information and belief is detained in Fort Fairfield, Maine, in the District of Maine.

12. Respondent Rodney S. Scott is the Commissioner of U.S. Customs and Border Protection.

13. Respondent Todd Lyons is the Acting Director for U.S. Immigration and Customs Enforcement.

14. Respondent Kristi Noem is the U.S. Secretary of Homeland Security.

15. All respondents are named in their official capacities. One or more of the respondents is Petitioner's immediate custodian.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process

16. On information and belief, Petitioner is currently being detained and subjected to 8 U.S.C. § 1225 in violation of his constitutional right to due process of law.

17. Petitioner cannot be detained for, or subjected to, 8 U.S.C. § 1225 because he has effected an entry into the United States and has been continuously present in the United States for greater than two years.

18. The Expedited Removal statute, 8 U.S.C. § 1225, largely "precludes judicial review," and therefore challenges to "confinement and removal" under that statute fall within the "core" of the writ of habeas corpus. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1006-07 (2025); *cf. Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, (2020) (holding attempt "to obtain additional

administrative review of his asylum claim" after Expedited Removal order was outside the "core" of habeas relief).

19. Accordingly, to the extent 8 U.S.C. § 1252(e)(2) purports to preclude habeas review of whether Petitioner is ineligible for detention and removal via Expedited Removal due to the length of his presence in the United States, that limitation violates the Suspension Clause and is void and without effect.

20. Indeed, if there were no judicial review whatsoever of the immigration agencies' determinations that people have been present for less than two years, then the immigration agencies would be free to find that essentially any arrested noncitizen without status is subject to Expedited Removal, in direct violation of the procedures and safeguards required for removal proceedings by the laws and Constitution of the United States.

21. Even assuming Petitioner is eligible for detention for removal proceedings, he has not been provided any opportunity to receive a bond hearing to which he is entitled during any such proceedings pursuant to *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021). The only current basis for Petitioner's detention and potential deportation—8 U.S.C. § 1225—is one that categorically does not apply to him.

22. "[A] district court entertaining a petition for habeas corpus has inherent power to release the petitioner pending determination of the merits." *Gomes v. U.S. Dep't of Homeland Sec.*, 460 F. Supp. 3d 132, 144 (D.N.H. 2020) (quoting Woodcock v. Donnelly, 470 F.2d 93, 94 (1st Cir. 1972)). In a recent habeas corpus case, Judge Brian E. Murphy ordered the respondents to release the petitioner because their proffered basis for the petitioner's detention did not apply to the petitioner. *See Martinez v. Hyde et al.*, No. 1:25-cv-11613-BEM, slip op. at 4 (D. Mass. June 17, 2025) (ordering that the Respondents release the Petitioner because 8 U.S.C. §1225 did

not apply and "Respondents identify no other basis for Petitioner's detention."). In this case, the Petitioner is seeking precisely the same relief that Judge Murphy granted in *Martinez v. Hyde*.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) **Issue a preliminary injunction ordering that Petitioner shall not be transferred outside the District of Maine during the pendency of the instant case;**

(3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.

(4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.

(6) Grant any further relief this Court deems just and proper.

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Name, and submit this verification on his/her/their behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.
Dated this 2 day of September, 2025.

Respectfully submitted,

Shantanu Chatterjee

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