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Attorney for Petitioner (Pro Hac Vice Pending)

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

Jose Vladimir Hernandez Gomez

Petitioner,

v.

Richard A. Luna, Warden, FCI Berlin;
Patricia Hyde, Acting Director of Boston
Field Office, U.S. Immigration and Customs
Enforcement;
Kristi Noem, Secretary of the U.S.
Department Of Homeland Security; and
Pamela Bondi, Attorney General of the
United States, in their official capacities

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

ORAL ARGUMENT REQUESTED

INTRODUCTION AND STATEMENT OF FACTS

1. Petitioner, Jose Vladimir Hernandez Gomez (hereinafter “Mr. Hernandez” or “Petitioner”), is a native and citizen of El Salvador. Mr. Hernandez entered the United States without inspection in or around October 2002 and has lived continuously in the United States for over twenty-two years. Mr. Hernandez is the father of a U.S. citizen

son, O [REDACTED] born on [REDACTED] at Boston Medical Center. O [REDACTED] has been diagnosed with autism spectrum disorder (ASD), asthma, and congenital ear anomalies resulting from premature birth. He also suffers from depression and has a documented history of attempted suicide. O [REDACTED] depends on Mr. Hernandez as a caregiver who provides emotional and financial support. In March 2017, Mr. Hernandez filed an affirmative asylum application with United States Citizenship and Immigration Services (“USCIS”), for which he completed biometrics on or about April 14, 2017. *See Copy of I-589 Biometrics Notice with Appointment Stamp; Copy of Valid Employment Authorization.* To date, Mr. Hernandez has not been interviewed at the asylum office regarding his asylum claim.

2. On or about August 21, 2025, Mr. Hernandez was detained by ICE without a warrant while on his way to work in Chelsea, MA. *See Copy of Notice to Appear and I-200 Issued After Arrest.* He has remained in ICE custody since that date and is requesting a redetermination of his custody status in front of an IJ.
3. It is anticipated that at such a custody hearing, the court will vindicate the government’s novel interpretation of the immigration detention statutes, specifically, that the Petitioner is detained under a mandatory detention statutory scheme (8 USC § 1225(b)(2)(A)¹ and is ineligible for an immigration bond. *See e.g., Romero v. Hyde*, No. 25-cv-11631-BEM, 2025 WL 2403827, *1 (D. Mass. Aug. 19, 2025) (noting government’s position “would require the mandatory detention of hundreds of thousands, if not millions, of individuals currently residing within the United States,”

¹ In contrast with Section 226(a)’s discretionary detention scheme, Section 1225(b)(2)(A) mandates detention if an immigration officer determines that a noncitizen seeking admission to the United States “is not clearly and beyond a doubt entitled to be admitted.”

and non-exhaustively collecting more than a dozen cases from seven different districts rejecting the position).

4. Should the IJ decide in the Respondent's favor and find Mr. Hernandez ineligible for immigration bond, it would be *ultra vires*. It would deprive him of his procedural and substantive due process rights in violation of the Fifth Amendment.
5. Hernandez was arrested pursuant to 8 U.S.C. § 1226(a), which allows for ICE agents to arrest and detain an alien "pending a decision on whether the alien is to be removed from the United States." *See* Copy of I-200 Arrest Warrant. Because Hernandez is not a criminal alien, the government has the discretion to release him on bond. *See* 8 U.S.C. § 1226(a)(2). After ICE decides to detain an alien, the alien has the right to request a bond hearing to seek release pending final removal proceedings, where the government bears the burden of showing dangerousness and flight risk. 8 C.F.R. § 236.1(d)(1). *See Hernandez-Lara v. Immigration & Customs Enft*, 2019 DNH 114, 560 F. Supp. 3d 531, 534.
6. Furthermore, several courts have recognized that "[t]he country has seen a dramatic increase in the average length of detention since Demore." *Hernandez v. Decker*, No. 18-CV-2980, 2018 U.S. Dist. LEXIS 124613, 2018 WL 3579108, at *11; *Diaz-Ceja v. McAleenan*, No. 19-cv-00824-NYW, 2019 U.S. Dist. LEXIS 110545, 2019 WL 2774211, at *10. In fact, the average time aliens spend in detention during the pendency of removal proceedings has increased by at least tenfold. *Compare Demore*, 538 U.S. at 529 (relying on statistics showing that removal proceedings are completed in an average of 47 days), *with Sopo v. U.S. Attorney General*, 825 F. 3d 1199, 1213 (11th Cir. 2016) (citing statistics reporting that, in 2012, "the average amount of time an alien

with a criminal conviction spent in removal proceedings (and likely in detention) was 455 days"), vacated on other grounds 890 F.3d 952 (11th Cir. 2018). As the average detention length under § 1226 grows, so do the aliens' liberty interests. *See Hernandez*, 2018 U.S. Dist. LEXIS 124613, 2018 WL 3579108, at *11; *Diaz-Ceja*, 2019 U.S. Dist. LEXIS 110545, 2019 WL 2774211, at *10.

7. Accordingly, to vindicate Petitioner's statutory, constitutional, and regulatory rights, this Court should grant the instant petition for a writ of habeas corpus and order the release of the Petitioner on personal recognizance, or in the alternative, order the Petitioner to have a bond hearing.
8. Mr. Hernandez is currently in the custody of Respondents at FCI Berlin in Berlin, New Hampshire.
9. Absent an order from this Court, Petitioner will be forced to return to El Salvador, away from his US Citizen child with special needs and his strong community bonds.
10. Petitioner asks this Court to find that the Petitioner's detention is unlawful and order the release of the Petitioner.

JURISDICTION

11. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

13. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

14. Venue is proper because Petitioner is detained at FCI Berlin in Berlin, New Hampshire, which is within the jurisdiction of this District.

15. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States, Respondent Luna resides and detains the Petitioner in this District, a substantial part of the events or omissions giving rise to his claims occurred in this District, and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

16. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

17. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ is “perhaps the most important writ known to the constitutional law of England, 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

18. The Petitioner is an individual in the United States who has been arbitrarily detained by Immigration and Customs Enforcement (ICE). He is likely to be arbitrarily denied an immigration bond hearing, violating this court's precedent. The Petitioner is currently detained at FCI Berlin in Berlin, NH, and is a resident of Massachusetts. He is in the custody and under the direct control of the Respondents and their agents.
19. Respondent Richard A Luna is the Warden of FCI Berlin, and he has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Luna is a legal custodian of Petitioner.
20. Respondent Patricia Hyde is sued in her official capacity as the Acting Director of the Boston Field Office of U.S. Immigration and Customs Enforcement. Respondent Hyde is a legal custodian of Petitioner and has the authority to release him.
21. 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 implementing and enforcing the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.
22. Respondent Pamela 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.

CLAIMS FOR RELIEF

COUNT ONE – Violation of Fifth Amendment Right to Due Process

23. The allegations in the above paragraphs are realleged and incorporated herein.
24. The Petitioner's detention, especially given his individual circumstances, constitutes a violation of his Fifth Amendment due process rights.
25. The Fifth Amendment's Due Process Clause extends its protective scope to all "persons" within the United States, including non-citizens who have physically entered the country. A core protection afforded by this clause is the "freedom from bodily restraint". While the government possesses broad authority to detain removable aliens, this authority is not unfettered; due process considerations must inform the duration and conditions of an alien's detention. It is a fundamental principle that immigration detention is civil and regulatory in nature, not punitive.
26. The substantive component of the Due Process Clause of the Fifth Amendment to the United States Constitution protects Petitioner's liberty interests. Petitioner has a substantive liberty interest in remaining in the United States to pursue his asylum claim. The procedural component of the Due Process Clause of the Fifth Amendment to the United States Constitution prevents the Respondents from depriving Petitioner of liberty without procedural protections.
27. While *Demore v. Kim*, 538 U.S. 510 (2003), found that mandatory detention of certain aliens pending removal proceedings was facially constitutional for "relatively brief periods," lower courts have interpreted *Demore* in light of *Zadvydas v. Davis*, 533 U.S.

678 (2001), concluding that if detention becomes "prolonged," it may no longer comport with due process requirements. When detention becomes prolonged, due process often requires that aliens in removal proceedings be afforded bond hearings where the government bears the burden of proving that the alien's continued detention is justified.

28. The First Circuit, in *Hernandez-Lara v. Lyons*, No. 19-2019 (1st Cir. 2021), affirmed a district court order requiring a bond hearing where the government bore the burden of proving dangerousness by clear and convincing evidence, underscoring the importance of due process rights in prolonged detention and the government's burden to justify continued custody.
29. Applying these principles to the Petitioner's case, his detention is not mandatory under INA § 236(c) because he has no criminal history. The combination of no criminal history, prior bond release, and active pursuit of legal status in the form of asylum and cancellation of removal strongly indicates that the Petitioner is neither a danger nor a flight risk. Therefore, his continued detention serves no legitimate regulatory purpose and becomes punitive, violating his Fifth Amendment due process rights. This makes his custody unlawful under 28 U.S.C. § 2241(c)(3).
30. Immigration detention is regulatory, intended to ensure appearance and protect public safety, not to punish. The government typically justifies detention based on perceived dangerousness or flight risk. The Petitioner's complete lack of criminal history directly negates any claim of dangerousness. Having never had an interaction with ICE in the twenty-two years he has lived in the United States, and having since demonstrated strong ties and intent to legalize his status via cancellation of removal for non-

permanent residents and his currently-pending asylum application with USCIS, directly contradicts any claim of flight risk. The detention serves no legitimate purpose if the government cannot establish these justifications. When detention serves no legitimate regulatory purpose—meaning the individual is neither a danger nor a flight risk—it transforms into a punitive measure, thereby violating the Fifth Amendment's Due Process Clause, thereby rendering the detention unconstitutional and subject to habeas relief.

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Waive the exhaustion requirement, as the interests of the Petitioner weigh heavily against requiring administrative exhaustion.
- (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 or afford him a bond hearing under INA § 236(a);
- (6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (7) Grant any further relief this Court deems just and proper.

Respectfully Submitted,
Jose Vladimir Hernandez Gomez
By His Attorney

/s/ Christopher J. Somma

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

I represent Petitioner, Jose Vladimir Hernandez Gomez, and submit this verification on his 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 17th day of September 17, 2025.

/s/ Christopher J. Somma

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