UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

SIXTO HERNANDEZ HERNANDEZ,

Petitioner,

v.

JEFFREY CRAWFORD, Warden, Farmville Detention Center; MATTHEW ELLISTON, Deputy Assistant Director for Field Operations, Eastern Division, Enforcement and Removal Operations, 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,

Respondents.

Case No: 1:25-CV-1565-AJT-WBP

PETITION FOR WRIT OF HABEAS CORPUS

This is an amended petition for a writ of habeas corpus filed on behalf of Mr. Sixto Hernandez Hernandez ("Mr. Hernandez") seeking relief to remedy his unlawful detention. Respondents are detaining Mr. Hernandez in violation of his constitutional due process rights and the Department of Homeland Security's ("DHS") statutory authority. Further, by subjecting Mr. Hernandez to unlawful and indefinite detention, Respondents also violate Mr. Hernandez's Eighth Amendment rights by inflicting cruel and unusual punishment. The most important amendments are included in bold in the statement of facts and prayer for relief sections of this amended petition.

Mr. Hernandez has fully cooperated with Respondents in their pursuit of his arrest and detention. Mr. Hernandez is not a flight risk or a danger to the community. Prior to his detention, Mr. Hernandez had been working for the same employer for over five years and caring for his U.S.

citizen daughter. He only has minor traffic infractions in his record, and no criminal convictions.

On or about August 18, 2025, Mr. Hernandez was driving in Washington, D.C., to from one worksite to another. He noticed that for approximately the last 15 minutes of his drive, he was being followed. When he got close to his worksite, several cars surrounded his car. Respondents' agents approached Mr. Hernandez and requested his identification. Upon reviewing his identification, Respondents' agents detained Mr. Hernandez and placed him in the custody of U.S. DHS Immigration and Customs Enforcement ("ICE"). He was first detained at the ICE Enforcement and Removal Operations ("ERO") field office in Chantilly, Virginia. He was then transferred to the ICE Farmville Detention Center in Farmville, Virginia.

Subsequently, Mr. Hernandez, through counsel, filed a bond motion with the Annandale Immigration Court. On September 11, 2025, Immigration Judge John Cody Barnes determined that recent Board of Immigration Appeals ("BIA") precedent, namely *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), stripped him of jurisdiction to issue a bond in Mr. Hernandez's case. Thus, Mr. Hernandez's detention could be indefinite if he pursues all forms of relief available to him. In effect, Mr. Hernandez's indefinite detention creates a chilling effect to deter Mr. Hernandez from pursuing all forms of relief from removal, as litigating his case may take years. His continued detention also hinders Mr. Hernandez's ability to work with his counsel to mount a zealous defense against removal.

Mr. Hernandez submits that his prolonged detention is in violation of his constitutional rights. His detention is not justified under the Constitution or the Immigration and Nationality Act ("INA"). Mr. Hernandez seeks an order from this Court declaring his continued detention unlawful and ordering Respondents to hold a custody redetermination hearing or release Mr. Hernandez on parole or his own recognizance.

CUSTODY

1. Mr. Hernandez is in physical custody of Respondents Matthew Elliston, Field Office Director for Detention and Removal, DHS-ICE, DHS generally, and Jeffrey Crawford, Warden of the Farmville Detention Center located in Farmville, Virginia. At the time of the filing of this petition, Mr. Hernandez is detained at Farmville Detention Center in Farmville, Virginia. The Farmville Detention Center contracts with DHS to detain noncitizens like Mr. Hernandez. Mr. Hernandez is under the direct control of Respondents and their agents.

JURISDICTION

2. This action arises under the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq*., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 1570. 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), as Mr. Hernandez is presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States.

3. 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

4. Venue is proper in the United States District Court for the Eastern District of Virginia, the judicial district in which Respondents, Matthew Elliston and Jeffrey Crawford reside and where Mr. Hernandez is detained. 28 U.S.C. § 1391(e).

PARTIES

5. Petitioner Mr. Hernandez is a national and citizen of El Salvador. He is currently detained pursuant to 8 U.S.C. § 1225, which permits DHS to detain certain noncitizens pending a decision on

whether the noncitizen is removable from the United States.

6. Respondent Crawford is sued in his official capacity as the Warden of the Farmville Detention Center, and he has immediate physical custody of Mr. Hernandez pursuant to the facility's contract with DHS ICE to detain noncitizens. He is a legal custodian of Mr. Hernndez.

7. Respondent Ellis is sued in his official capacity as the Deputy Assistant Director for Field Operations, Eastern Division, for Enforcement and Removal Operations within ICE. Respondent Ellis is a legal custodian of Mr. Hernandez and has authority to release him.

8. Respondent Kristi Noem is sued in her official capacity as the Secretary of U.S. DHS. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees ICE, the component agency responsible for Mr. Hernandez's detention. Respondent Noem is a legal custodian of Mr. Hernandez.

9. 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 Mr. Hernandez.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

10. Mr. Hernandez has exhausted his administrative remedies to the extent required by law.

11. Through counsel, Mr. Hernandez submitted a bond request with the Annandale Immigration Court on September 8, 2025. Mr. Hernandez had a bond hearing on September 11, 2025, in which the immigration judge denied Mr. Hernandez a bond due to current BIA precedent. Thus, he remains detained.

12. Mr. Hernandez has fully cooperated with Respondents and has not delayed or obstructed his detention.

13. Even if Respondents contend that Mr. Hernandez has not exhausted his administrative remedies

because he did not appeal the IJ's denial of bond, the Court should waive the exhaustion requirement. Appealing the IJ's bond decision would be futile given that the BIA would consider his appeal; the BIA is the same entity that issued the case that the IJ relied on to find that the immigration court did not have jurisdiction to redetermine Mr. Hernandez's custody. Thus, appealing that decision would have created an intolerable delay and would certainly result in the BIA affirming the IJ's bond decision. *See Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000).

14. Mr. Hernandez's only remedy is by way of this judicial action.

STATUTORY FRAMEWORK

15. On September 11, 2025, Immigration Judge John Cody Barnes determined that the Immigration Court did not have jurisdiction to issue a bond in Mr. Hernandez's case in light of a decision from the BIA, *Matter of Yajure-Hurtado*, which found that any noncitizen present in the United States without having been inspected and admitted is subject to detention under 8 U.S.C. § 1225(b)(2), rather than 8 U.S.C. § 1226(a), regardless of how long they have resided in the United States and where they were encountered by immigration authorities. 29 I&N Dec. 216 (BIA 2025).

Relevant Sections of the Immigration and Nationality Act

16. **8 U.S.C. § 1225 / INA § 235**: Chapter titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing."

17. **8 U.S.C. § 1225(a)(1) / INA § 235(a)(1)**: Defines applicant for admission, "***for purposes of this chapter***" as "an alien present in the United States who has not been admitted or who arrives in the United States[.]"

18. **8 U.S.C. § 1225(b)(1) / INA § 235(b)(1)**: Lays out the class of noncitizens subject to expedited removal. Section 1225(b)(1)(A)(i) subjects to expedited removal any applicants for admission "who [are] *arriving in* the United States [("Arriving Aliens")] **or** who [are] described in clause (iii)" **and** who lack valid entry documents. 8 U.S.C. § 1225(b)(1)(A)(i) (emphases added). Clause (iii) provides

for expedited removal of applicants for admission who are not "arriving in" the United States but who have not been admitted or paroled into the United States **and** cannot establish two years of physical presence in the United States "immediately prior to the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(iii).

19. **8 U.S.C. § 1225(b)(2)(A) / INA § 235(b)(2)(A)**: A noncitizen who is an "applicant for admission" and is not clearly and beyond a doubt entitled to be admitted *must* be kept in DHS custody during the pendency of removal proceedings under 8 U.S.C. § 1229A (INA § 240). These are non-expedited proceedings and are commenced by the issuance of a charging document known as a Notice to Appear, Form I-862. Section 1225(b)(2) applies to arriving aliens and certain individuals stopped shortly after entry.

20. **8 U.S.C. § 1226 / INA § 236:** Chapter titled "Apprehension and detention of aliens."

21. **8 U.S.C. § 1226(a) / INA § 236(a)**: Allows the Attorney General, *on warrant*, to arrest and detain a noncitizen pending the outcome of their removal proceedings. Noncitizens arrested under a warrant may be released on bond or recognizance in DHS's discretion. Predecessor statutes to § 1226(a) authorized arrest, detention, and release of noncitizens inside the United States and permitted discretionary bond; when Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), it stated that § 1226 "restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond a[ ] [noncitizen] who is not lawfully present in the United States[,]" indicating continuity. H.R. Rep. No. 104-469, pt. 1, at 229.

22. **8 U.S.C. § 1226(c) / INA § 236(c)**: Creates grounds of mandatory detention for criminal and terrorist noncitizens. The Laken Riley Act (LRA) added 8 U.S.C. § 1226(c)(1)(E), which requires DHS to keep detained noncitizens who are arrested for, charged with, or convicted of certain crimes, who are also inadmissible for being present in the country without inspection or admission, for lacking

valid documentation, or for committing fraud or misrepresentation.

23. **8 U.S.C. § 1357(a) / INA § 287(a)**: Permits immigration officials to arrest noncitizens without a warrant where (1) the officer sees the noncitizen entering the country in violation of law; (2) the officer has reason to believe that the noncitizen is in the United States unlawfully and is likely to escape before a warrant can be obtained; or (3) the officer has reason to believe the noncitizen has committed a felony. The BIA construed the "reason to believe" standard with probable cause and recognized that a person in a vehicle may be deemed likely to escape before a warrant can be secured. *Matter of Mariscal-Hernandez*, 28 I&N Dec. 666 (BIA 2022).

Longstanding Interpretation of 8 U.S.C. §§ 1225 and 1226

24. Since 1996, the immigration courts, Board of Immigration Appeals, and federal courts recognized the plain text of these two sections, accepting that § 1225(b) only covers a narrow subset of detainees, with the rest subject to discretionary detention under the "catch-all" provision of § 1226(a). A longstanding practice of the government applying the law in a certain way can inform the court's determination of what the law is. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 386 (2024).

25. The U.S. Supreme Court added temporal and geographical confines to treating a noncitizen as an applicant for admission. In *Department of Homeland Security v. Thuraissigiam,* the Court noted that DHS historically treated noncitizens as applicants for admission only when encountered within 14 days of entry, and within 100 miles of the border. 591 U.S. 121, 134 n.2 (2020) (citing 69 Fed. Reg. 48879 (2004)). When the Court analyzed the constitutionality of expedited removal proceedings, it noted that the broad definition of an applicant for admission contained in § 1225 applies *for the purposes of those subject to expedited removal. Id.* at 124.

26. Indeed, in *Jennings v. Rodriguez*, the seminal case analyzing §§ 1225 and 1226, the United States Supreme Court maintained that § 1225(b) concerns "primarily [those] seeking entry," and is

generally applicable "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." 583 U.S. 281, 297, 287 (2018). On the other hand, § 1226 "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Id.* at 289 (emphasis added).

27. The discretionary detention provision in § 1226 has been referred to as a catch-all provision, with the Supreme Court dubbing it a "default rule" that "applies to [noncitizens] already present in the United States." *Id.* at 288, 301.

28. In *Matter of Akhmedov*, the BIA acknowledged that noncitizens arrested within the interior of the United States and placed into removal proceedings with the issuance of a Notice to Appear (NTA) are detained under § 1226(a) and therefore the Immigration Judge had jurisdiction to consider their bond request. 29 I&N Dec. 166 (BIA 2025). *Matter of Q. Li* held that the detention of a noncitizen who is detained and arrested at or near the border and placed into *expedited* removal proceedings is not governed by § 1226(a) but rather by § 1225(b). 29 I&N Dec. 66, 69 (BIA 2025).

Matter of Yajure-Hurtado and DHS Policy on Detention

29. In July 2025, DHS issued a policy alert laying out a novel interpretation of these two sections unsupported by the above case law: 8 U.S.C. § 1225(b)(2) requires mandatory detention of all noncitizens present without admission, and that Immigration Judges therefore lack jurisdiction to grant them bond.

30. In *Matter of Yajure-Hurtado*, the BIA upheld DHS's policy and departed from three decades of statutory interpretation, holding that the detention of any noncitizen who is in the United States without being admitted is governed by § 1225(b)(2), irrespective of whether the noncitizen's encounter with immigration officials was when they were "arriving" or whether they have been physically present in the United States for more than two years. 29 I&N Dec. 216 (BIA 2025).

31. Accordingly, the decision held that Immigration Judges effectively only have jurisdiction over

deciding bond for noncitizens who have been inspected and admitted, and that all noncitizens present in the United States without admission or parole must be detained during the pendency of their removal proceedings. *Id.* at 218, 223. It was on this decision that the Immigration Judge denied Mr. Hernandez's request for bond and custody redetermination in the instant case, finding that the Immigration Court lacked jurisdiction over the request.

32. Respondents continue to subject Petitioner to what is effectively mandatory detention based on this flawed logic.

Chevron Overruled – Independent Statutory Interpretation Required

33. For decades, courts deferred to reasonable agency interpretations of ambiguous statutes under *Chevron* deference. On June 8, 2024, the U.S. Supreme Court overturned *Chevron U.S.A., Inc. v. NRDC* in *Loper Bright Enterprises v. Raimondo*, holding that the Administrative Procedure Act requires courts to exercise their own independent judgment in deciding whether an agency has acted within its statutory authority. 603 U.S. 369 (2024). In its decision, the Court emphasized that judges may not defer to an agency interpretation merely because a statute is ambiguous; instead, the courts must decide the best interpretation, giving respectful consideration - but not deference - to the Executive Branch. *Id.*

STATEMENT OF FACTS

34. Mr. Hernandez is a national and citizen of El Salvador who most recently entered the United States through the southern U.S. border in February 2017. He was a minor at the time and entered with his mother and younger sister. They crossed the Rio Grande River and U.S. Customs and Border Protection agents encountered them in Eagle Pass, Texas. He was detained for approximately one day before being released on his own recognizance. Mr. Hernandez, his mother, and his sister were placed in removal proceedings under 8 U.S.C. § 1229a.

35. Notably, DHS ordered Mr. Hernandez's release on recognizance on Form I-220A, which

specifically states that DHS is releasing a noncitizen pursuant to 8 U.S.C. § 1226. *See* ICE Form I-220A, available at https://www.ice.gov/doclib/detention/checkin/I_220A_OREC.pdf. Further, Mr. Hernandez's 2017 Form I-862, Notice to Appear, which initiates removal proceedings, makes no mention of Mr. Hernandez ever being in expedited removal proceedings pursuant to 8 U.S.C. § 1225.

36. Mr. Hernandez was a "rider", or derivative applicant, on his mother's asylum application before the immigration court. In 2022, DHS exercised its prosecutorial discretion and agreed to dismiss the removal proceedings against Mr. Hernandez and his family.

37. On or about August 18, 2025, Respondents' agents arrested Mr. Hernandez. Mr. Hernandez started his workday at one location on [redacted] in Washington, DC. He then traveled to his next location near H Street NW, Washington, DC. Beginning approximately 15 minutes before being detained, Mr. Hernandez noticed that he was being followed by two unmarked black Chevrolet SUVs. He did not commit any traffic infraction, and his vehicle registration was valid.

38. While driving near his second worksite, approximately seven vehicles boxed him in on a small street. None of the cars were marked as law enforcement. Several men approached his car, some masked and some not. Mr. Hernandez partially lowered his window. One of the men asked for Mr. Hernandez's identification. Mr. Hernandez gave the man his Washington, DC driver's license; notably, the driver's license does not state where Mr. Hernandez was born or his country of citizenship. After glancing at the driver's license, the men ordered Mr. Hernandez to get out of the car. One man then reached into his car through the partially opened window to open the car door from the inside. They ordered Mr. Hernandez not to resist, which he did not. The men grabbed Mr. Hernandez's personal belongings out of his car to take with them. They put Mr. Hernandez in one of their cars. The men did not say if they had a warrant for Mr. Hernandez's arrest.

39. While on the way to the Chantilly Field Office, the men in the car told Mr. Hernandez that they

knew he had a prior immigration court case and that he needed to provide his fingerprints, pay for a bond if he could, and then he would not be deported. The men *never* identified themselves.

40. Mr. Hernandez was in Chantilly for approximately two days. He arrived at around 10:00 AM the same day he was arrested. He received two tacos upon arrival but did not receive any other meal the rest of the day. The second day he received another small meal before being transferred to the Farmville Detention Center.

41. Mr. Hernandez is being held at the Farmville Detention Center in Farmville, Virginia.

42. Mr. Hernandez is not a danger to the community or a flight risk. He has no criminal convictions. Mr. Hernandez also has a strong interest in remaining in the area to pursue relief in immigration court, which if granted, could eventually permit him to pursue permanent residence status. Additionally, Mr. Hernandez provides for and has a close relationship with his U.S. citizen daughter, Darling.

43. Prior to his arrest, Mr. Hernandez was working and paying his taxes based on a lawfully issued Social Security number. He has worked for the same employer for over five years.

44. Mr. Hernandez has filed his own application for asylum and withholding of removal based on political changes in El Salvador. *See generally* 8 U.S.C. § 1158. **Mr. Hernandez is scheduled for an individual hearing (merits hearing or trial) on October 22, 2025, before the Annandale Immigration Court, to resolve his pending application for relief from removal.**

45. Respondents' decision to detain Mr. Hernandez is not legally justifiable and is capricious and arbitrary. There is no better time for the Court to consider the merits of Mr. Hernandez's request for release.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Substantive and Procedural Due Process

46. Mr. Hernandez incorporates by reference all preceding paragraphs.

47. Mr. Hernandez's detention under 8 U.S.C. § 1225 violates his substantive due process rights under the Fifth Amendment to the United States Constitution as it subjects him to arbitrary detention.

48. "Government detention violates the Fifth Amendment "unless the detention is ordered in a *criminal proceeding* with adequate procedural protections or, in certain special and narrow nonpunitive circumstances where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas v. Davis*, 553 U.S. 678, 690 (2001) (internal citations and quotations omitted).

49. Here, there is no "special justification" which allows the Respondents to deny Mr. Hernandez the liberty to which he is entitled. Respondents have not alleged any "special justification" to support Mr. Hernandez's continued detention.

50. Further, the BIA's decision in *Matter of Yahure Hurtado* claims that the immigration judge lacks the jurisdiction to grant bond to any noncitizen who has entered the United States without being inspected and admitted or paroled based on 8 U.S.C. § 1225. According to the BIA, anyone who entered without inspection or parole, no matter how long present in the United Sates before encountering immigration authorities, are essentially subject to mandatory detention. 29 I&N Dec. at 228.[1]

[1] Importantly, several federal district courts have rejected this argument as well as the arguments from *Matter of Yahure Hurtado*'s predecessor, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). *See Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court's disagreement with BIA's analysis in *Yajure Hurtado*); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Orellana Juarez v. Moniz*, 2025 WL 1698600 (D. Mass. June 11,

51. However, DHS itself previously released Mr. Hernandez pursuant to 8 U.S.C. § 1226(a) and never claimed that he was in expedited removal proceedings. *See generally* 8 U.S.C. § 1225(b); ***Hasan v. Crawford*, --- F. Supp. 3d --- 2025 WL 2682255 (E.D. Va. Sept. 19, 2025).**

52. Substantive due process also affords Mr. Hernandez "a right to adequate food, shelter, clothing, and medical care . . . [and to] safety and freedom from bodily restraint." *See Youngberg v. Romeo*, 457 U.S. 307, 315-18 (1982).

53. Without federal court action, Mr. Hernandez will likely remain detained for months. Given that as of the third quarter for fiscal year 2025 the BIA has 186,473 cases pending and only 16 appellate immigration judges (11 permanent members and five temporary members), immediate action from this court is required to prevent Mr. Hernandez's long-term detention. *See Executive Office for Immigration Review Adjudication Statistics*, U.S. DEP'T OF JUSTICE, https://www.justice.gov/eoir/media/1344986/dl?inline (last updated July 31, 2025); *Board of Immigration Appeals*, U.S. DEP'T OF JUSTICE, https://www.justice.gov/eoir/board-of-immigration-appeals (last updated Sept. 16, 2025).

COUNT TWO

Violation of Eighth Amendment Right to Protection from Cruel and Unusual Punishment

54. Mr. Hernandez incorporates all preceding paragraphs by reference.

55. Mr. Hernandez has a history of major depressive disorder. Certainly, prolonged detention, along with separation from his young U.S. citizen daughter, could cause Mr. Hernandez to fall into

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2025); *Lopez Benitez v. Francis,* 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025); *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Escalante v. Bondi*, 2025 WL 2212104 (D. Minn. July 31, 2025); *Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Vasquez Garcia et al. v. Noem*, 25025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

depression. It is doubtful that Mr. Hernandez could receive proper mental health treatment in detention, as his surroundings would be the cause of his depression. He also had eye surgery a few years ago. The lights in the Farmville Detention Center are never fully turned off, even during the hours when detainees should be sleeping. Therefore, Mr. Hernandez is forced to sleep with lights on, which causes him to feel pressure around his eyes.

56. The Eighth Amendment to the U.S. Constitution prohibits the government from inflicting cruel and unusual punishment on individuals.

57. To state a cognizable claim under the Eighth Amendment, Mr. Hernandez must allege acts or omissions sufficiently harmful to show deliberate indifference to his needs. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

58. Even if no harm has occurred, the lack of safety in Mr. Hernandez's detention conditions is sufficient for judicial intervention. *See Helling v. McKinney*, 509 U.S. 25, 33 (1993) (explaining that the Supreme Court and Courts of Appeals have recognized a remedy for unsafe conditions where a tragic event has not yet occurred, i.e. one need not wait for a traffic event to occur to file a claim for future harm under the Eighth Amendment).

59. Mr. Hernandez's continued unlawful detention also constitutes cruel and unusual punishment under the Eighth Amendment because Mr. Hernandez is subject to mandatory, indefinite detention based solely on Respondents' erroneous interpretation of 8 U.S.C. § 1225(b)(2).

60. Detainees may challenge their confinement's unconstitutional conditions through writs of habeas corpus, an avenue which the U.S. Supreme Court has never explicitly foreclosed. *See Preiser v. Rodriguez*, 411 U.S. 475, 499-500 (1973) (stating that when "a prisoner is put under additional and unconstitutional restraints during his lawful custody, it is arguable that habeas corpus will lie to remove the restraints making the custody illegal.").

61. Respondents' continued custody of Mr. Hernandez has transformed civil immigration

detention into cruel and unusual punishment. Mr. Hernandez has no criminal record in this country. He is also eligible for multiple forms of relief from removal yet is indefinitely held in detention solely due to his manner of entry into the United States.

COUNT THREE

62. If he prevails, Mr. Hernandez requests attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412.

PRAYER FOR RELIEF

WHEREFORE, Mr. Hernandez respectfully requests that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Issue an order directing Respondents to show cause why the writ should not be granted;
3. **Issue a writ of habeas corpus ordering Respondents to release Mr. Hernandez on his own recognizance or under parole;**
4. **Order the Respondents to not re-detain Mr. Hernandez unless for a legal violation subjecting him to mandatory detention under 8 U.S.C. 1226(c);**
5. Order Respondents to provide undersigned counsel notice of the government's intention to remove Mr. Hernandez to a third country if he is ultimately ordered removed to provide Mr. Hernandez the opportunity to object to his relocation, and,
6. Grant any other relief which this Court deems just and proper.

Respectfully submitted,

//S// Doran Michelle Shemin
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09/29/2025
Date

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

I represent Petitioner, Sixto Hernandez Hernandez, 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 29th day of September 2025.

//S// Doran Michelle Shemin