UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

ALVARO LARA MARTINEZ,

A [redacted]

Petitioner

v.

RAPHAEL VERGARA, Warden, Adams County Correctional Center,

Respondent

Civil Action No. 5:25-cv-00105-DCB-LGI

ORAL ARGUMENT REQUESTED

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION AND NEED FOR AMENDMENT

1. Petitioner, Alvaro Lara Martinez initially filed a verified Habeas Petition on October 1, 2025 with the New York Western District Court. Petitioner correctly identified the warden of the Batavia Detention center as the primary respondent. However, on October 8, 2025 the parties stipulated to a transfer of the case to the Southern District of Mississippi because the Petitioner was transferred to the Adams County Correctional Center. Petitioner now seeks to amend this Petition pursuant to Fed. R. Civ. P. 15 and add Raphael Vergara as the warden who has direct control over his person and the sole Respondent in this matter.

2. Petitioner, Alvaro Lara Martinez is a 51-year-old native and citizen of Mexico who entered the United States without inspection on or about 2002, Mr. Lara Martinez remained in the United States without authorization until 2011. He then re-entered the United States without inspection in or around April 17, 2023.

3. He is unmarried with two children who live with him in New Jersey. Mr. Lara

Martinez was forcibly separated from his children and family when crossing into the United States by illegal human traffickers.

4. Mr. Lara Martinez is currently in removal proceedings. He is seeking relief through suppression and a pending T-Visa based upon him and his family's victimization at the hands of smugglers who illegally trafficked him and his family across the border, forcing them into involuntary servitude among other things.

5. During the week of September 15, 2025, Petitioner, was visiting Buffalo, New York for work. Sometime over the weekend of September 20, 2025, Mr. Lara Martinez and some colleagues were shopping at a local Walmart in Buffalo, New York, when a U.S. Customs and Border Patrol agent arrested Mr. Lara and his colleagues. Mr. Lara is currently detained in Natchez, Mississippi.

6. Recently, the Board of Immigration Appeals (the "Board") has issued decisions, including *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which have said that that those who are classified as "entry without inspection" are now "applicants for admission" under 8 U.S.C. § 1225(b) and not eligible to apply for bond in front of an immigration judge, even if they are not caught near the border and have been in the United States for an extended period of time. Historically, these individuals were subject to the detention rules under 8 U.S.C. § 1226(a), which permitted them to apply for a bond in front of an immigration judge.

7. When DHS issued Mr. Lara Martinez, who has been in the United States since 2023, his Notice to Appear on or about October 20, 2025, they designated him as falling under 8 U.S.C. 1226(a) by marking the box on his NTA that reads, "You are an alien present in the United States who has not been admitted or paroled."

8. Mr. Lara Martinez, who would otherwise be eligible to apply for a bond in front of

an immigration judge, is now not eligible for any bond and must stay detained for the duration of his immigration court proceedings, including any appeal if he loses.

9. In addition, DHS violated Mr. Lara Martinez's due process rights under the Fifth Amendment of the U.S. Constitution by detaining him without conducting an individualized assessment to determine if there was a change in his circumstances. Detention for those detained under 8 U.S.C. § 1226(a) is used to ensure that an individual will show up to court and is not a danger to persons or property. DHS has not demonstrated that Mr. Lara Martinez, who did not require detention before under either of those categories now poses a flight risk or is a danger to persons or property while his immigration court case is pending.

10. For these reasons, Mr. Lara Martinez requests that the Court declare that Mr. Lara Martinez is detained under 8 U.S.C. § 1226(a) and either (1) order his immediate release as DHS has violated his due process rights, (2) order that he receive a bond hearing with the burden on the government to prove by clear and convincing evidence that he is either a danger persons or property and/or a flight risk and that there is no combination of alternatives to detention that could mitigate those risks.

JURISDICTION

11. This action arises under the Constitution of the United States, the APA, 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 the Adams County Correctional Center in Natchez, Mississippi, which is within the jurisdiction of the Southern District of Mississippi.

REQUIREMENTS OF 28 U.S.C. § 2243

15. 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).

16. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "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).

EXHAUSTION OF ADMINSTRATIVE REMEDIES

17. To the extent required, Petitioner has exhausted his administrative remedies as required by law and his only remedy is by way of this judicial action. *Mathon v. Feeley*, No. 20 CV-07105-FPG, 2021 U.S. Dist. LEXIS 260853, at *6-7 (W.D.N.Y. Oct. 13, 2021). In addition, the administrative agency has already predetermined that Petitioner is not eligible for any relief through the agency. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Therefore, any

attempt to seek relief through the agency would be futile.

PARTIES

18. Petitioner is currently detained by the Department of Homeland Security at Adams County Correctional Center. He is currently in removal proceedings.

19. Respondent, Raphael Vergara, is the Warden of Adams County Correctional Center. As such, Mr. Vergara is responsible for the operation of the Correctional Center where Petitioner is detained. Because ICE contracts with detention centers such as Adams to house immigration detainees such as Petitioner, Respondent has immediate physical custody of the Petitioner.

STATEMENT OF FACTS

20. Petitioner is a native and citizen of Mexico.

21. Petitioner entered the United States without inspection on or about April 17, 2023.

22. On or about October 20, 2025, DHS issued Petitioner a Notice to Appear ("NTA"). A true and accurate copy of this NTA is attached as **Exhibit A**.

23. Upon information and belief, on or about September 20, 2025, Petitioner was arrested in Buffalo by U.S. Immigration and Customs Enforcement ("ICE") and/or other federal agents acting on ICE's behalf on or about.

24. Upon information and belief, Petitioner is currently being held in ICE's custody in the Western District of New York at the Buffalo Federal Detention Facility or was at the Adams County Correctional Center when this habeas petition was required.

25. He is unmarried and has two children who reside with him in New Jersey.

26. Upon information and belief, Petitioner does not have a criminal record.

27. Upon information and belief, neither the Department of Homeland Security nor its

sub-agencies have made any claim that he is a danger to persons or property or a flight risk.

28. Upon information and belief, DHS did not perform an individual assessment prior to or contemporaneously with the decision to detain Petitioner.

29. Upon information and belief, prior to his arrest in September 2025, there was no change in circumstances between the time DHS decided not to detain Petitioner after issuing his NTA and his re-arrest and detention.

LEGAL BACKGROUND

PETITIONER'S DETENTION VIOLATES PETITIONER'S DUE PROCESS RIGHTS UNDER THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION.

I. This Court has jurisdiction to hear this matter.

30. As noted above, "Federal courts have jurisdiction to review habeas petitioners filed by immigration detainees who assert that they are 'in custody in violation of the Constitution or laws or treaties of the United States.'" *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 U.S. Dist. LEXIS 196847, at *8 (E.D.N.Y. Oct. 5, 2025) quoting 28 U.S.C. § 2241(c)(3). Therefore, this Court has jurisdiction to hear this matter.

II. Petitioner is not required to exhaust his administrative remedies.

31. Petitioner is not required to exhaust his administrative remedies by seeking a bond or requesting discretionary parole.

32. While courts generally require exhaustion of administrative remedies before detainees may challenge their detention in court via a petition for a writ of habeas corpus, exhaustion is a prudential matter, not a statutory requirement. *Artiga*, 2025 U.S. Dist. LEXIS 196847, at *8-9.

33. Exhaustion of administrative remedies in certain circumstances, including when

"(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) citing *Able v. U.S.*, 88 F.3d 1280, 1288 (2d Cir. 1996).

34. Here, two of these exceptions apply. First, any attempt to seek administrative remedy will be futile. In *Matter of Yajure Hurtado*, the Board of Immigration Appeals (the "Board") ruled for the first time that anyone who is classified as an "inadmissible alien who establishes that he or she has been present in the United States for over 2 years" can be detained under 8 U.S.C. § 1225(b)(2) and "shall be detained for a proceeding under section 240." *Id.* at 219-220. The consequence of this decision is that individuals who were historically classified as entry without inspection or EWI and eligible to apply for a bond before an immigration judge under 8 U.S.C. 1226(a) are now ineligible for an immigration judge-issued bond. Therefore, any attempt to seek release before an immigration judge would be futile.

35. Second, this petition raises a substantial constitution question, i.e., whether DHS has violated his due process rights under the U.S. Constitution in detaining him. Therefore, Petitioner should not be required to exhaust his administrative remedies.

III. PETITIONER IS DETAINED UDNER 8 U.S.C. § 1226(a).

36. The next issue is to determine what section of the Immigration and Nationality Act ("INA") governs Petitioner's detention.

37. Petitioner's detention is governed by 8 U.S.C. § 1226(a).

A. Background of 8 U.S.C. §§ 1225 and 1226.

38. Two sections of Immigration and Nationality Act govern detention of non-citizens

who have not received a final order of removal: 8 U.S.C. § 1225 and 8 U.S.C. § 1226.

39. 8 U.S.C. § 1225 governs those who are considered "applicants for admission." 8 U.S.C. § 1225(a)(1). This section states that "[a]n alien present in the United States who has not been admitted or who arrives in the United States. . . shall be deemed for purposes of this chapter an applicant for admission." Applicants for admission under 8 U.S.C. § 1225 are divided into two categories: those covered by 8 U.S.C. § 1225(b)(1) and hose covered by 8 U.S.C. § 1225(b)(2).

40. 8 U.S.C. § 1225(b)(1) generally applies to those noncitizens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." This section also applies to other aliens who receive a special designation by the Attorney General of the United States. 8 U.S.C. § 1225(b)(1)(A)(iii). This is known more commonly as "expedited removal."

41. Noncitizens who fall under 8 U.S.C. § 1225(b)(1) are subject to immediate removal unless they make a fear-based claim. Upon making that claim, if they pass a credible fear interview, they are put into removal proceedings where their fear-based application is considered. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Noncitizens who either do not make a fear-based claim or do not make a credible fear-based claim are detained until removal. 8 U.S.C. §§ 1225(b)(1)(A)(ii), (B)(iii)(IV). Those who make a fear-based claim are detained while an immigration court considers the non-citizen's claim. *Jennings*, 583 U.S. at 287 citing 8 U.S.C. § 1225(b)(1)(B)(ii).

42. 8 U.S.C. § 1225(b)(2) is a general "'catchall provision' that applies to all other applicants." *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 U.S. Dist. LEXIS 191630, at *12 (E.D.N.Y. Sep. 29, 2025) quoting *Jennings*, 583 U.S. at 285. Those detained under this section are commonly known as "arriving aliens."

43. 8 U.S.C. § 1225(b)(2)(A) provides that: "in the case of an alien who is an applicant

for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained" while the non-citizen is in removal proceedings under 8 U.S.C. § 1229a.

44. Detention is mandatory under 8 U.S.C. § 1225. But DHS may grant anyone who falls under 8 U.S.C. § 1225(b) temporary parole on a case-by-case and individualized basis. But when the purposes of the parole have been accomplished and/or the terms of that parole are concluded, the individual is returned to detention. *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *13-14. Those designated as applicants for admission are not eligible to apply for a bond before an immigration judge.

45. Those who fall under 8 U.S.C. § 1226, non-citizens can fall under one of two subsections here as well: 8 U.S.C. § 1226(a) and 8 U.S.C. § 1226(c).

46. "Section 1226(a) governs a separate non-mandatory detention scheme and provides for the 'default rule' for detaining and removing aliens 'already present in the United States.'" *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *14 quoting *Jennings*, 583 U.S. at 303.

47. This section provides that "on a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a).

48. "While that decision is pending, the Attorney General may "continue to detain the arrested alien," "release the alien on bond of at least $1,500," or "release the alien on conditional parole." 8 U.S.C. § 1226(a)(1)-(2).

49. Finally, 8 U.S.C. § 1226(c) contains several "exceptions for persons 'who fall[ ] into one of the enumerated categories involving criminal offenses and terrorist activities.'" *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *14 quoting *Jennings*, 583 U.S. at 303. Detention is mandatory

for those who fall under 8 U.S.C. § 1226(c).

50. But even those detained under 8 U.S.C. § 1226(c) are entitled to a bond hearing under the Due Process Clause of the Fifth Amendment to the U.S. Constitution after the individual has experienced prolonged detention. *See Black v. Dir. Thomas Decker*, 103 F.4th 133 (2d Cir. 2024); *Cantor v. Freden*, 761 F. Supp. 3d 630, 635-41 (W.D.N.Y. 2025).

51. An NTA issued by the DHS can indicate the non-citizen's detention status. The NTA has specific boxes for those who fall under 8 U.S.C. § 1225(b)(1) and (b)(2). Those under 8 U.S.C. § 1225(b)(1) fall under the box that states, "Section 235(b)(1) order was vacated pursuant to: [ ] 8 CFR 208.30 [ ] 8 CFR 235.3(b)(5)(iv)." Those under 8 U.S.C. 1225(b)(2) fall under the box that states, "You are an arriving alien." Finally, those who fall under 8 U.S.C. § 1226(a) fall under the box entitled "You are an alien present in the United States who has not been admitted or paroled."

B. Petitioner is detained pursuant to 8 U.S.C. § 1226(a).

52. Petitioner is detained pursuant to 8 U.S.C. § 1226(a) for several reasons.

53. First, Petitioner has been in the United States since 2023. He was given an NTA in October 2025 with the box marked "You are an alien present in the United States who has not been admitted or paroled." *See J.U.*, 2025 U.S. Dist. LEXIS 191630, at *2-3 (noting that this is evidence of classification under 8 U.S.C. 1226(a).

54. In addition, the NTA charges him with removal under INA § 212(a)(6)(A)(i), codified at 8 U.S.C. § 1182(a)(6)(A)(i). *See J.U.*, 2025 U.S. Dist. LEXIS 191630, at *2-3 (noting that this is evidence of classification under 8 U.S.C. 1226(a).

55. In addition, Petitioner does not have a criminal record. Therefore, he cannot be detained pursuant to 8 U.S.C. § 1226(c). Therefore, pursuant to DHS's own determination, he is

detained under 8 U.S.C. § 1226(a). *See J.U.*, 2025 U.S. Dist. LEXIS 191630, at *19 citing *Mahamudul Hasan v. Crawford*, No. 1:25-cv-1408 (LMB/IDD), 2025 U.S. Dist. LEXIS 184734, 2025 WL 2682255, at *8 (Ed. Va. Sept. 19, 2025) ("Given the significant distinction between being paroled into the United States under § 1182(d)(5)(A) and being released on recognizance under § 1226(a)(2)(B), DHS's consistent citations to § 1226(a) on [petitioner's] paperwork does not support the argument that the federal respondents actually intended for him to be paroled into the United States pursuant to § 1182(d)(5)(A).").

56. In addition, Petitioner does not fall into any other category.

57. DHS makes no allegation that he ever was under expedited removal under 8 U.S.C. § 1225(b)(1), which is referred to generally as "expedited removal." In addition, since he arrived on or around April 17, 2023, he cannot be subject to expedited removal as a noncitizen must be in the country for less than two years to qualify for expedited removal. *See Make the Road New York v. Noem*, No. 25-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025).

58. In addition, Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2), including because, as a person already present in the United States, Petitioner is not presently "seeking admission" to the United States. *See Materano v. Arteta*, 2025 U.S. Dist. LEXIS 179608, at *30-31 (S.D.N.Y. Sep. 9, 2025) (explaining that the terms "arriving" and "seeking admission" are present-tense words and do not apply to an individuals who have been in the country for several years) citing *Benitez v. Francis*, 2025 U.S. Dist. LEXIS 157214, at *21-23 (S.D.N.Y. Aug. 8, 2025) (also holding that expanding detention under 1225(b) would greatly expand mandatory detention beyond what how DHS has traditionally treated this statute and that enforcing it this way would negate 8 U.S.C § 1226(a)).

59. To the extent that Respondent argues that Petitioner is detained under 8 U.S.C. §

1225(b) as an applicant for admission pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and is therefore ineligible for bond, this argument fails.

60. In *Yajure Hurtado*, for the first time, the Board of Immigration Appeals (the "Board") held that anyone who is classified as an "inadmissible alien who establishes that he or she has been present in the United States for over 2 years" can be detained under 8 U.S.C. § 1225(b)(2) and "shall be detained for a proceeding under section 240." *Id.* at 219-220. The consequence of this decision is that individuals who were historically classified as entry without inspection or EWI and eligible to apply for a bond before an immigration judge under 8 U.S.C. 1226(a) are now ineligible for an immigration judge-issued bond. But the Board's reversal and newly revised interpretation of the detention statutes are not entitled to any deference. *See Loper Bright Ent. v. Raimondo*, 603 U.S. 369, 412-13 (2024). Numerous courts around the country have rejected the reasoning in Yajure Hurtado and held that those who have been in the United States longer than two years are classified under 8 U.S.C. § 1226(a) were, at minimum, entitled to a bond hearing before an immigration judge. *Artiga*, 2025 U.S. Dist. LEXIS 196847, at *15-24; *Orellana v. Moniz*, Civil Action No. 25-cv-12664-PBS, 2025 U.S. Dist. LEXIS 196282, at *13-14 (D. Mass. Oct. 3, 2025) (collecting cases).

61. Furthermore, the government's policy in *Yajure Hurtado* renders other statutes, e.g., the Laken Riley Act, superfluous. *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *22-24.

62. Upon information and belief, Petitioner was not, at the time of arrest, paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A), and, therefore, Petitioner could not "be returned" under that provision to mandatory custody under 8 U.S.C. § 1225(b). Petitioner is therefore not subject to mandatory detention under § 1225 for this reason as well.

63. In addition, Petitioner is not lawfully subject to mandatory detention under 8 U.S.C.

§ 1226(c), including because he has not been convicted of any crime that triggers such detention. *See Demore v. Kim*, 538 U.S. 510, 513-14, 531 (2003) (allowing mandatory detention under § 1226(c) for brief detention of persons convicted of certain crimes and who concede removability).

64. Accordingly, Petitioner is subject to discretionary detention under 8 U.S.C. § 1226(a) based on Respondents' treatment of Petitioner and the plain text of the statue.

65. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon his request, receive a custody redetermination hearing (colloquially called a "bond hearing") with strong procedural protections. 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

66. If the Court does not release Petitioner outright, Petitioner respectfully requests a bond hearing with the burden on the government to prove by clear and convincing evidence that he is not a danger to the public or property and not a flight risk and to likewise demonstrate by clear and convincing evidence that no alternatives to detention can mitigate the risk of flight or danger. *Cantor v. Freden*, 761 F. Supp. 3d 630, 635-41 (W.D.N.Y. 2025).

IV. Petitioner's Detention Violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution.

67. The Due Process Clause of the Fifth Amendment of the U.S. Constitution prevents the "Government from depriving any person of 'life liberty or property, without due process of law.'" *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *27. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

68. It is well-established that the 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.

69. Respondents' detention of Petitioner without an individualized assessment as to

whether he is a flight risk and/or a danger to the community violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution.

70. The Second Circuit has applied the *Mathews v. Eldridge* three-factor balancing test applies to determine whether there is adequate due process in civil immigration confinement. *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). This test requires courts to consider (1) the private interest that will be affected by the government action; (2) the risk of erroneous deprivation of that interest through the procedures used; and (3) the government's interest. *Mathews*, 424 U.S. at 335.

71. Because Petitioner is detained under 8 U.S.C. § 1226(a), he is not subject to mandatory detention.

72. With respect to the first factor, "the most significant liberty interest there is, is the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851.

73. Petitioner was detained without an individualized determination. A DHS agent saw him at a Walmart and detained him without any assessment of his individualized case.

74. Upon information and belief, Mr. Lara Martinez's detention was approved by a statutorily authorized individual.

75. Therefore, Petitioner has established his liberty interest, and this factor weighs heavily in favor of Petitioner.

76. As to the second factor, again, DHS is detaining him with an individualized assessment either prior to or contemporaneously made with the decision by the DHS agent to detain him. In addition, Respondents cannot show any meaningful change in circumstances between the time it issued Petitioner his NTA and the time it detained him. In addition, upon information and belief, no authorized individual approved his detention.

77. Given DHS's complete disregard of Petitioner's due process rights, Petitioner can show a high risk of erroneous deprivation. This factor also weighs heavily in favor of Petitioner.

78. As to the third factor, the government has a high interest in ensuring that individuals in removal proceedings are not a danger to the public and not a flight risk.

79. But the government cannot show that he is either as he has lived in the United States since April 17, 2023. Upon information and belief, he does not have a criminal record. And the government cannot demonstrate that he is flight risk.

80. He has strong family ties in New Jersey, including his sister and two children.

81. Therefore, Petitioner is not a danger or a flight risk, and his detention cannot be justified. Therefore, this factor also heavily favors Petitioner as well.

82. As all three factors strongly favor the Petitioner, DHS's ongoing detention of Petitioner violates his due process rights.

83. The proper remedy here is Petitioner's immediate release.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process

84. Petitioner alleges and incorporates all prior paragraphs above.

85. DHS detained Petitioner with no process, no showing of changed circumstances and no opportunity to respond to its decision to detain Petitioner.

86. This violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution.

87. Petitioner's arrest and continued detention is therefore unlawful.

88. Petitioner's continuing detention is therefore unlawful.

89. Therefore, Petitioner requests immediate release from custody.

COUNT TWO

Violation of Fifth Amendment Right to Due Process
(Failure to Provide Bond Hearing Under 8 U.S.C. § 1226(a))

90. Petitioner alleges and incorporates all prior paragraphs above.

91. Because Petitioner is a person arrested inside the United States and is subject to detention, if at all, under 8 U.S.C. § 1226(a).

92. Petitioner has not been, and will not be, provided with a bond hearing as required by law.

93. Petitioner's continued detention is therefore unlawful.

94. Under the Due Process Clause of the Fifth Amendment to the United States Constitution, 8 U.S.C. § 1226(a), and 8 C.F.R. 236.1(d) & 1003.19(a)-(f), if the Court does not order Petitioner's immediate release, he is entitled to receive a bond hearing before an immigration judge with strong procedural protections.

95. Therefore, if the Court does not release Petitioner outright, he is entitled to a bond hearing in front of an immigration judge with the burden on the government to prove by clear and convincing evidence that he is not a danger to the public or property and not a flight risk and to likewise demonstrate by clear and convincing evidence that no alternatives to detention can mitigate the risk of flight or danger or on conditions the Court deems just and proper. See Cantor v. Freden, 761 F. Supp. 3d 630, 635-41 (W.D.N.Y. 2025).

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;

2. Order that Petitioner shall not be transferred outside this District;

3. Adjudicate this petition pursuant to 28 U.S.C. § 1657 which requires that the Court expedite consideration of any action brought under 28 U.S.C. Chapter 153, which governs habeas petitions.

4. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days pursuant to 28 U.S.C. § 2243.

5. Declare that Petitioner's detention is unlawful.

6. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or, in the alternative, to provide Petitioner with a bond hearing with the burden on the government to prove by clear and convincing evidence that he is not a danger to the public or property and not a flight risk and to likewise demonstrate by clear and convincing evidence that no alternatives to detention can mitigate the risk of flight or danger or on conditions the Court deems just and proper.

7. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

8. Grant any further relief this Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted this the 2nd day of December, 2025.

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