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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

RONALDO V.,

Petitioner

-against-

Pam BONDI, in her official capacity as the Attorney General of the United States; Kristi NOEM, in her official capacity as Secretary for the United States Department of Homeland Security; Joseph EDLOW, in his capacity as Director for United States Citizenship and Immigration Services, Robert Lynch, in his capacity as Field Office Director, ERO Detroit and Kevin GRATHWOHL, in his capacity as warden at Butler County Jail.

Respondents.

Agency File No. 240-570-871
Case No. 1:25-cv-00747

PETITIONER'S REPLY BRIEF

U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

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U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO
ARGUMENT

1. This Court has jurisdiction to hear Petitioner's Writ.

Petitioner's petition for writ addressed the jurisdiction of this Court to hear his petition. However, Petitioner briefly responds to Respondents' jurisdictional arguments.

a. 1252(e)(3) does not deprive the Court of jurisdiction.

Respondents argue that § 1252(e)(3) deprives this Court of jurisdiction because it provides the U.S. District Court for the District of Columbia with exclusive authority to review "determinations under section 1225(b) of this title and its implementation."[1]

> First, section 1252(e)(3) is titled "Challenges on validity of the system."[2] Petitioner does not raise any systemic challenges, nor does he challenge the implementation of section 1225(b)(2). Petitioner challenges the lawfulness of his detention without a bond hearing, not the validity of the statutory scheme itself. Second, section 1252(e)(3) only applies to determinations of "(i) whether such section, or any regulation issued to implement such section, is constitutional; or (ii) whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General to implement such section, is not consistent with applicable provisions of this subchapter or is otherwise in violation of law."[3] Petitioner does not challenge the lawfulness of any particular statute, regulation, written policy or procedure. Rather, Petitioner asserts that Respondents lack authority to detain him under section 1225(b)(2)'s mandatory detention scheme because his detention is governed by section 1226(a), which entitles noncitizens such as Petitioner to a bond hearing, not 1225(b)(2). Finally, section 1252(e)(3) is inapplicable as it is limited, by its express terms, to determinations under section 1225(b) and, as explained below, section 1225(b) does not apply here. For these reasons, the Court concludes, as have numerous courts in this Circuit and around the country, that section 1252(e)(3) does not deprive this Court of jurisdiction over Petitioner's claims.[4]

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[1] Return, ECF 16, PageID #129, p. 5.
[2] 8 U.S.C. § 1252(e)(3).
[3] 8 U.S.C. § 1252(e)(3)(A)(i), (ii).
[4] *Ardon-Quiroz v. Assistant Field Director*, 25-cv-25290-JB, citing Rojano Gonzalez v. Sterling, No. 25-cv-6080, 2025 WL 3145764, at *3 (N.D. Ga. Nov. 3, 2025); J.A.M. v. Streeval, No. 4:25-cv-342, 2025 WL 3050094, at * 1 (M.D. Ga. Nov. 1, 2025); Mata Velasquez v. Kurzdorfer, No. 25-cv-493, 2025 WL 1953796, at *6-7 (W.D.N.Y. July 16, 2025); Orozco-Martinez v. Lynch, No. 25-cv-1353, 2025 WL 3223786, at * 2 (W.D. Mich. Nov. 19, 2025); Morales Rodriguez v. Arnott, No. 6:25-cv-00836, 2025 WL 3218553, at * 2 (W.D. Mo. Nov. 18, 2025); Cardona-

b. 8 U.S.C. § 1252(g) does not bar Petitioner's claim.

Next, Respondents argue that section 1252(g) bars review of Petitioner's claims.[5] Respondents' position is not supported by either a plain reading of the statute or the applicable case law:

> Section 1252 is "Congress's comprehensive scheme for judicial review of removal orders." Canal A Media Holding, LLC v. USCIS, 964 F.3d 1250, 1256–57 (11th Cir. 2020). To be sure, this provision bars judicial review over "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien[.]" 28 U.S.C. § 1252(g)...Here, Petitioner's claim does not implicate the Attorney General's decision to commence proceedings, adjudicate cases, or execute removal orders. Rather, Petitioner challenges the legality of his detention. Such claim is reviewable [by this Court].[6]

c. 8 U.S.C. § 1252(b)(9) does not bar review of Petitioner's claims.

Finally, Respondents argue that § 1252(b)(9) bars this Court's review of Petitioner's request,[7] given that §1252(b)(9) provides that the Courts of Appeals are the exclusive

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Lozano v. Noem, No. 25-cv-1784, 2025 WL 3218224, at *2 (W.D. Tex. Nov. 14, 2025); Munoz Materano v. Arteta, No. 25-cv-6137, 2025 WL 2630826, at * 10 (S.D.N.Y. Sept. 12, 2025).

[5] Return, ECF 16, PageID #130, p. 6.

[6] Id. at 7-9, citing "Canal A Media Holding, LLC, 964 F.3d at 1257–58 (claim was not barred by § 1252(g) where action did not fall into one of three categories as "[w]hen asking if a claim is barred by § 1252(g), courts must focus on the action being challenged."); see also Maldonado v. Olson, No. 25-cv-3142, 2025 WL 2374411, at *6 (D. Minn. Aug. 15, 2025) (petitioner's due process challenge was not barred by § 1252(g) as it did not "challenge the actions of Respondents in commencing proceedings, adjudicating cases, or executing removal orders."); Vazquez v. Feeley, No. 25-cv-01542, 2025 WL 2676082, at *8 (D. Nev. Sept. 17, 2025) ("[B]ecause Petitioner challenges the lawfulness of his detention during the pendency of his removal proceedings, it is not a challenge to one of the 'three discrete events along the road to deportation' that § 1252(g) applies to."); Leal-Hernandez v. Noem, No. 25-cv-02428, 2025 WL 2430025, at *5 (D. Md. Aug. 24, 2025) ("Petition[er] mounts a challenge solely to his continued custody. None of the cases the Government relies on pertain to cases in which a petitioner . . . pursued judicial review of his allegedly unconstitutional custody. In accordance with Supreme Court precedent and the plain language of the text, § 1252(g) does not bar [jurisdiction]."); Sanchez v. LaRose, No. 25-cv-2396, 2025 WL 2770629, at *2 (S.D. Cal. Sept. 26, 2025) ("Petitioner seeks only review of the legality of her detention, which does not require judicial intervention into the Attorney General's decisions to commence proceedings, adjudicate cases, and execute removal orders. . . . Adopting [the government's] interpretation of 8 U.S.C. § 1252(g) . . . would eliminate judicial review of immigration detainee's claims of unlawful detention[.]"); Campos Leon v. Forestal, No. 25-cv-01774, 2025 WL 2694763, at *1–2 (rejecting respondents' § 1252(g) argument and concluding that the court had jurisdiction to hear a habeas petition challenging DHS' refusal to abide by the IJ's bond order)."

[7] Return, ECF 16, PageID #132, p. 8.

forum for judicial review "of all questions of law . . . including interpretation and application of constitutional and statutory provisions, arising from any action taken . . . to remove an alien from the United States."[8] Respondents assert that Petitioner's challenge to the basis of his detention "arise[s] from [an] action taken . . . to remove an alien from the United States."[9]

Petitioner does not challenge the action attempting to remove him, rather, Petitioner is challenging his mandatory detention, allegedly under §1225(b), and his entitlement to a bond hearing **on the merits**.

2. Exhaustion is not a requirement for jurisdiction to vest in this case, and if it were, such exhaustion would be futile, given the Board of Immigration Appeals' ("BIA") binding case law subjecting Petitioner to mandatory detention.

The exhaustion requirement under 8 U.S.C. § 1252(d)(1) "is not jurisdictional," but prudential.[10] Administrative "exhaustion is not required where[,]" as here, "an administrative appeal would be futile[.]"[11]

a) Exhaustion is excused as appeal of the bond issue would be futile.

As outlined in Petitioner's petition for writ, the entire reason Petitioner has filed for a writ of habeas corpus is the futility of the appeals process on the issue of mandatory detention and the Board's predetermination on the subject. As explained previously, the BIA in *In re Yajure Hurtado* incorrectly and unconstitutionally held that individuals who entered the United States without being "admitted" by an immigration officer remain "applicants for admission," and therefore the border detention statute, INA § 1225(b)(2), applies when they are in removal proceedings.[12] Were

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[8] 8 U.S.C. § 1252(b)(9).
[9] *Ardon-Quiroz* at 10.
[10] *Ardon-Quiroz* citing Kemokai v. U.S. Att'y Gen., 83 F.4th 886, 891 (11th Cir. 2023).
[11] Id. at 10-11, citing Linfors v. United States, 673 F.2d 332, 334 (11th Cir. 1982) (citing Von Hoffberg v. Alexander, 615 F.2d 633, 638 (5th Cir. 1980)).
[12] Matter of Yajure Hurtado, 29 I. & N. Dec. 216, 220-21 (BIA 2025).

Petitioner to have timely appealed this issue, he would remain in detention to date nonetheless, awaiting a briefing schedule, given the Board's current estimated wait times for bond appeals, which can take over one year.

b) Respondent has not been issued a final appealable order of removal.

Respondent cannot appeal the denial of his motion to terminate, as the Board has recently dismissed an identical interlocutory appeal, supposedly permitting interlocutory appeals only in instances of (or apparently when the government appeals an unfavorable decision[13]).

Respondent's brief also states, "Petitioner has been detained for two months, and Respondent is not aware that he has filed a motion to reopen or motion to stay with the BIA."[14]

Petitioner has been in jail for six months total, held under an ICE holder for three months. No final appealable order of removal has been issued, though one is likely impending, without relief filed with the immigration court (one basis of Petitioner's emergency motion). Therefore, Petitioner cannot at this time file an appeal to the Board of Immigration Appeals of any removal order. Petitioner restates that the Board of Immigration Appeals has already incorrectly determined in *In re Yajure Hurtado* that he is subject to mandatory detention, making any appeal of bond moot.

3. Federal courts have made clear that individuals in Petitioner's position are not applicants for admission, and therefore are not detained subject to 8 U.S.C. §1225,[15] but rather 8. U.S.C. §1226.

Though initially addressed in the petition, this issue merits a response given recent and extremely late-breaking instructive federal case law,[16] supportive of Petitioner's request for writ.

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[13] See, e.g., *Matter of Cahuec Tzalam*, 29 I&N Dec. 300 (BIA 2025).

[14] Return, ECF 16, PageID #138, p. 5.

[15] Respondents misstate that Petitioner challenges "his detention under §1225(b)(2)(A)," Return, ECF 16, PageID 129, p. 4. Petitioner does not challenge detention under §1225(b)(2)(A). Petitioner rather asserts that he is *not* detained under §1225(b)(2)(A), as incorrectly and unconstitutionally determined by the immigration judge. It is Respondents who assert that Petitioner is detained under §1225(b)(2)(A), a position with which federal judges have overwhelmingly disagreed.

[16] See *Moyao Roman v. Olson et al*, No. 2:2025cv00169 (E.D. Ky Nov. 24, 2025); See also Bautista v. Santacruz, Case No. 5:25-cv-1873, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025), which granted class certification, namely: Bond

Federal courts have made clear that Petitioner is not detained pursuant to §1225 (mandatory detention under which IJ's are without authority to grant bond requests), but rather §1226, under which IJ's do have the authority to redetermine bond. The instant case is repeated in varying iterations of the same set of facts in habeas petitions around the country. One such instructive example is *Ardon-Quiroz v. Assistant Field Director*:

> From the outset of Petitioner's case, both CBP and DHS proceeded under section 1226. Specifically, both the original and superseding NTAs that DHS issued to Petitioner did not classify him as an "arriving alien." Instead, the NTAs charged him as someone "present in the United States who has not been admitted or paroled." This classification places him squarely within section 1226. See, e.g., Pizarro Reyes, 2025 WL 2609425, at *8 (emphasizing ICE's selection of "present" rather than "arriving" on the NTA as evidence that § 1226 applied); see also Hyppolite v. Noem, No. 25-4304, 2025 WL 2829511, *8 (E.D.N.Y. Oct. 6, 2025) (respondent's initial classification of petitioner "certainly is relevant to the Court's assessment of the credibility and good faith of 'Respondents' new position as to the basis for [Hyppolite's] detention, which was adopted post hoc and raised for the first time in this litigation.'") (citation omitted); Perez v. Berg, No. 25-cv-494, 2025 WL 2531566, at *2 (D. Neb. July 24, 2025) ("The Court notes that the government itself charged Petitioner as an alien present in the United States who has not been admitted or paroled rather than an arriving alien.") (quotations omitted). In addition, "[w]hereas [section] 1225 governs removal proceedings for 'arriving aliens,' [section] 1226(a) serves as a catchall." Pizarro Reyes, 2025 WL 2609425, at *5. As the Supreme Court stated in Jennings, section 1226 "creates a default rule" that "applies to aliens already present in the United States." Jennings, 583 U.S. at 303. The inclusion of a "catchall" provision in section 1226, particularly following the more specific provision in section 1225, is "likely no coincidence, butrather a way for Congress to capture noncitizens who fall outside of the specified categories." Pizarro Reyes, 2025 WL 2609425, at *5; see also Barrera, 2025 WL 2690565, at *4 (citation omitted). The circumstances surrounding Petitioner's detention align with section 1226(a), not section 1225(b)(2). Indeed, other Courts in this Circuit and District have uniformly rejected Respondents' expansive interpretation of section 1225.[17]

Similarly, in the Eastern District of Kentucky, the court there explained:

Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. As Respondent is a member of this class, he is entitled to a bond redetermination hearing on the merits of the bond request, and to a reasonable bond in the Court's discretion, as he is not a flight risk nor a danger to the community.

[17] *Ardon-Quiroz* at 15.

> With the parties disagreeing about which statute applies to Petitioner's detention, the issue before the Court is clearly one of statutory interpretation. The Court notes that the matter before this Court is not whether the executive branch has the authority to direct ICE/DHS to detain and deport noncitizens. The question before the Court is whether those noncitizens—specifically Petitioner Moyao Roman—are entitled to a bond hearing before an immigration judge prior to their removal hearing pursuant to 8 U.S.C. § 1226(a) or must be mandatorily detained pursuant to 8 U.S.C. § 1125(b)(2)(A). Section 1225(a)(1) states that an "applicant for admission" is "an alien present in the United States who has not been admitted or who arrives in the United States." Under § 1225(b)(2) any applicant for admission who "is not clearly and beyond a doubt entitled to be admitted" must be detained. Respondents take the position that for a noncitizen to qualify as an "applicant for admission" one must merely be (1) present in the United States, and (2) not be admitted by an immigration officer...Respondents' interpretation of § 1225(b)(2)(A), therefore, would call for mandatory detention of every noncitizen present in the United States who has not been lawfully admitted. The Court finds this interpretation much too broad.[18]

Respondents fail to address the point that, if §1225(b)(2) applies to every single noncitizen's detention proceedings, when § 1226 would ever, if at all, come into effect.[19] For what purpose could § 1226 exist, if all aliens are subject to §1225(b)(2)?

Identically as in *Ardon-Quiroz*, both the original and superseding NTAs that the Department issued to Petitioner did not classify him as an "arriving alien," rather, the NTAs charged him as someone "present in the United States who has not been admitted or paroled."[20] And identically as in *Ardon-Quiroz*, this classification places his current detention squarely within §1226.

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[18] See *Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411, at *12 (D. Minn. Aug. 15, 2025) ("[A]ccepting Respondents' one-size-fits-all application of 1225(b)(2) to all aliens, with no distinctions, would violate fundamental canons of statutory construction.").

[19] See *Moyao Roman v. Olson et al*, 2:25-cv-00169-DLB: "The Court finds it difficult to conceive of a situation in which Congress would enact an insignificant superfluous statute for no other reason than to add words to the page," (citing *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995) ("When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.")."

[20] Return, ECF 16, Ex. A, "NTA" at 1.

Petitioner's detention is governed by section 1226(a)'s discretionary framework, not section 1225(b)'s mandatory detention procedures, and under section 1226(a) and its implementing regulations, Petitioner is entitled to a bond hearing before an Immigration Judge.[21]

Respondents attempt to re-litigate what federal courts have already decided. The fact that the immigration courts do not, apparently, believe they have to abide by federal rulings does not make Respondents' position correct.

4. Petitioner has not, as Respondents incorrectly assert, "accepted deportation."

Confusingly, Respondents' brief states that, "Petitioner has accepted deportation."[22] In support of this incorrect statement, Respondent's brief cites "Petition, ECF 1, at PageID 7, ¶11." This actual citation reads, "Upon transfer, Ronaldo felt pressured to accept a deportation rather than request a hearing before an immigration judge. He and another detained individual were placed in a cell without a functioning toilet for two days."[23] Respondents' brief later states similarly, "He accepted that he was subject to deportation."[24]

Respondent's assertion is simply wrong. Petitioner's declaration simply intended to inform the Court that, upon his detention, Petitioner began being pressured by ICE officials to accept a removal order rather than to request a hearing before a judge. However, Petitioner did not give in to that pressure. Petitioner has at no time accepted a deportation, rather, he was stating he felt pressured to do so, but instead has fought for his right to due process at every step of the proceedings. Respondents' assertion otherwise is incorrect.

Petitioner has never accepted that he is "subject to deportation," (in fact, Petitioner is in removal proceedings, not deportation proceedings, which are commenced under a different section

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[21] *Mejia Orozco v. Lyons*, No. 1:25-cv-01762 (E.D. Va. Nov 7, 2025).
[22] Return, ECF 16, PageID 127, p. 3.
[23] Petition, ECF 1, at PageID, ¶11.
[24] Return, ECF 16, PageID 127, p. 3.

of the INA and which are distinct proceedings). He continues to vigorously pursue his constitutional right to due process.

5. **Petitioner's petition is not moot despite the upcoming bond hearing, as Petitioner requested a re-hearing on the merits and substance of his bond request, while Cleveland immigration judges continue to follow Board of Immigration case law, ignoring the holding in *Bautista* and deny bond to all individuals.**

Respondent points out that, during the pendency of Petitioner's emergency motion for temporary relief and the underlying petition for writ itself, much has occurred in Petitioner's case and regarding the issue of mandatory detention at large. Respondent is correct that after the certification of the class in *Bautista v. Santacruz*, Petitioner requested and was granted a new bond hearing.

However, the scheduling of the upcoming bond hearing does not satisfy Petitioner's requested relief. Petitioner seeks release or a bond hearing *held on the merits of the bond request*. The Cleveland immigration court appears to continue to be adhering to the Board's instruction in *In re Yajure Hurtado*, alternatively either ignoring the decision in *Bautista* or finding that those apprehended shortly after their arrival, like Petitioner, remain subject to mandatory detention.

Petitioner urges this Court to observe the outcome of the bond proceedings currently scheduled for Tuesday, December 9, 2025, which will likely not be based on the substance of Respondent's motion for bond but rather will be either again denied on (incorrect) jurisdictional bases or will be inexplicably denied finding Petitioner to be a flight risk or danger to the community, if the Cleveland detained docket is any indication.

In support of this proposition, Petitioner references an identical set of circumstances which recently played out in the Eastern District of Virginia. In *Mejia Orozco v. Lyons*, 1:25-cv-01762-AJT-WEF, after the immigration judge denied bond based on lack of jurisdiction, the court ordered

the IJ to provide a new bond hearing on the merits of the case. As in Petitioner's case, the IJ in *Mejia Orozco* scheduled a new bond hearing, but again denied the bond request due to "flight risk."

The federal court in the Eastern District of Virginia, in response to the petitioner's Motion to Enforce, had to order the IJ to either order the release of the petitioner or to *meaningfully* review the bond request in a new, fair, individualized bond hearing and report back to the court within twenty-four hours and explain, if bond was again denied, its reasoning.

Petitioner in this case likely awaits the same fate, with each day in detention compounding the violation of his rights and the harm he suffers.

6. Petitioner has not been afforded a right to be heard, in violation of due process.

Respondent's brief concedes that "The essential requirements of procedural due process are: (1) notice; and (2) an opportunity to be heard.[25] Petitioner has not been heard, however, as his bond proceedings have not been heard on the merits of the case. Rather, the immigration court's cursory review of the arguments only to deny the bond request on jurisdictional grounds *is* the violation of due process, not the result of a full and fair hearing. The continued detention of Petitioner also strips him of the right to pursue his lawful permanent residency affirmatively with USCIS, in the least restrictive means (as the Trafficking Victims' Protection Reauthorization Act affords and advocates for UAC's), and his removal from the United States will strip him of his currently-held Special Immigrant Juvenile Status approval and thus his eligibility for permanent residency at all.

The particular harm suffered by Petitioner in this case is also extremely compelling. He has lost not only months of his freedom, but he has lost access to his education (he has missed an entire semester of his senior year in high school and likely, the ability to return to his studies, should he

[25] Return, ECF 16, PageID# 138, p. 14, citing *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970); Gorman v. Univ. of R.I., 837 F.2d 7, 12 (1st Cir. 1988).

be released, due to his age). The additional mental and emotional trauma a particularly young and vulnerable individual suffers in detention, one with diagnosed depression as well as other physical ailments, can furthermore not be overstated.

Here, as in *Moyao Roman*, "the risk of erroneous deprivation of [Petitioner's due process] interest is high if he is not afforded a detention hearing."[26] And here, as in *Moyao Roman*, "Respondents have not put forth any argument whatsoever advocating for the United States' interest,"[27] as the government can demonstrate no discernible interest in maintaining a high school student with no criminal record whatsoever in detention. Respondents fail to address the fact that **the government can continue to fully pursue removal proceedings against Petitioner if he is released**. Petitioner's release changes nothing for Respondents' case, yet the government seems inexplicably intent on maintaining his detention.

7. **Petitioner has no objection to his full name being used in these proceedings.**

Respondents insist that Petitioner's full name be used in these proceedings rather than a pseudonym to protect the Petitioner (a high school senior afforded unaccompanied alien child ("UAC") status). Though Counsel for Petitioner understood this to be a privacy requirement in Petitioner's writ for habeas corpus filing with the jurisdiction of the Southern District of Ohio, Petitioner has no objection to the use of his name in these or any related proceedings. All current federal case law relating to UAC's uses, to Counsel for Petitioner's knowledge, either initials or the first name and last initial of the petitioner, ostensibly to protect the vulnerable petitioners' privacy. Moreover, clearly the use of a pseudonym did not impede the Respondents or cause prejudice in any way, who were able to identify, locate, and verify Petitioner's custodial status.[28]

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[26] *Moyao Roman* at 13.
[27] Id.
[28] Motion to Dismiss, ECF 6.

However, Petitioner has no objection to a correction on the docket to reflect Petitioner's full name, if the Court so orders.

8. **Conclusion: Respondents have articulated no reason the government has an interest in keeping Petitioner in detention.**

Petitioner highlights that, in the end, this case involves the government detaining a Lakota West High School senior, diagnosed with severe depression and physical health issues including gastritis for which he has not received adequate medical attention during his detention, with no behavioral, criminal, or traffic history aside from driving without a license. Fairfield Municipal Court Judge Zoz appeared so compelled by the underlying facts of this case, that he ordered Petitioner's immediate, early release from jail.[29] Petitioner is clearly not a flight risk (he had appeared at two prior traffic court dates and been expected to comply with probation upon his release) and is clearly not a danger to the community (Judge Zoz ordered his early release).

Petitioner urges the Court to follow the myriad federal courts across the country rejecting Respondents' argument, and to focus on the significant harm suffered by Petitioner in violation of his right to due process. The remedy Petitioner's case requires is for this Court to order his immediate release, or in the alternative, order a **substantive** review of his bond request, which the immigration court seems intent on denying him, and enjoin his transfer and removal so that he may pursue his application for the lawful permanent residency for which he is eligible.

Respectfully submitted,

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[29] Petition, ECF 1, PageID #57.