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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA**

**JOSE GOMEZ MARTINEZ,**

**Petitioner,**

**v.**

**DON JONES, Director, Kay County Detention**  
**Center;**  
**TODD M. LYONS, Acting/Director,**  
**U.S. Immigration and Customs Enforcement**  
**KRISTI NOEM, Secretary of the U.S.**  
**Department of Homeland Security; and**  
**PAM BONDI, Attorney General of the**  
**United States, in their official capacities**

**Respondents.**

**Case No. \_\_\_\_\_**

**PETITION FOR WRIT OF  
HABEAS CORPUS**

**INTRODUCTION**

1. The Petitioner, Jose Gomez-Martinez is a 49-year-old native, and citizen of Mexico, who last entered the United States without inspection in 2001 at the U.S.-Mexico border and has continuously resided in the United States for over 24 years.
2. On or about September 10, 2025, the Petitioner was detained in a warrantless

stop by CBP (U.S. Customs and Border Patrol), at the ORD airport in Chicago, IL after passing through inspection intending to travel by plane to visit relatives, in Texas.

3. Petitioner was mistaken for a person named [REDACTED] whose name was similar to the Petitioner and had the same mistaken and previously issued alien registration number – [REDACTED] as issued by USCIS, to Petitioner, [REDACTED] in 2018 (*see Exhibit B* USCIS (Citizenship and Immigration Services) Petitioner's Receipt Notice dated December 13, 2018 with [REDACTED] and *Exhibit C* USCIS "Pick-Up Notice" to appear on February 4, 2019, [REDACTED] for Petitioner both attached to the Declaration of Steven Lyons, Esq.) and who had committed a serious crime and was deported in 1996 (*see Exhibit D* EOIR (Executive Office for Immigration Review) automated case information system printout for [REDACTED] [REDACTED] who was the person that that had a similar name as Petitioner and who was deported in 2016.

4. Petitioner was later taken to the Broadview, IL processing facility in Chicago, IL by DHS (Department of Homeland Security)/ICE (U.S. Immigration and Customs Enforcement) and transferred to the Clay County Justice Center, in Clay County, Indiana, and transferred again to the Kay County Justice Center, in Kay County, Oklahoma, where he is currently being held.

5. On December 13, 2018, Petitioner filed an affirmative application for asylum on Form I-589, as an applicant for asylum, and refugee status, as defined in 8 U.S.C. §1101(a)(42)(A).

6. On February 1, 2019, the Petitioner was served by DHS with an NTA (Notice

to Appear) on Form I-862, with his correct A  charging the Petitioner under “INA § 212(a)(6)(A)(i) as an alien present in the United States without being admitted or paroled or who has arrived in the United States at a time and place other than as designated by the Attorney General” of the United States.

7. On October 11, 2019, the Petitioner filed an application for cancellation of removal on Form EOIR 42b pursuant to INA § 240A(b)(1), 8 U.S.C. § 1229b(b)(1) while in removal proceedings and his applications for asylum pursuant to INA § 208, withholding § 243(h) and related relief were withdrawn.

8. Since 2019, the Petitioner has been waiting for a final individual merits hearing on his application for relief on Form EOIR 42b Cancellation of Removal and his non-citizen spouse, Gabriela Carmargo Pasada to be scheduled. However, due to court closures, including on June 28, 2023, when the Petitioner was scheduled for an individual merits hearing, the court was closed due to unhealthy air quality and prior hearings were cancelled due to COVID-19.

9. Petitioner is currently languishing in dire conditions and is not receiving medication for chronic coughing, asthma, and medication to help him sleep and for anxiety. The Petitioner also needs to receive medication to prevent him from developing pneumonia. He has only been given Claritin and cough syrup which are insufficient and ineffective to meet his serious medical needs. His family reports that he looks gaunt.

10. Petitioner is being detained without the opportunity for a bond hearing before Immigration Judge, Jacinto Palomino, in Newkirk, Oklahoma (virtually located in Otero, NM), pursuant to a recently issued BIA (Board of Immigration Appeals) decision, *Matter*

*of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)(Immigration Judge lacks jurisdiction to hear Respondent's bond request for individuals who entered the U.S. without inspection and are therefore present without lawful admission and are considered "applicants for admission" and are subject to mandatory detention under INA § 235(b)(2)), 8 U.S.C. § 1125(b)(2)).

11. On July 8, 2025, acting Immigration and Customs Enforcement Director, Todd M. Lyons, (ICE) issued a policy memo which abruptly changed the detention and release policies that had been applied previously over several decades.

12. Prior to the July 8, 2025 Lyons memo, individuals present and apprehended within the United States were afforded bond hearings pursuant to INA § 236.

13. The policy memo directed ICE employees to apply INA § 235(b) instead of INA § 236(a) to *all* applicants seeking admission to the United States, including individuals present in the United States without admission, thus making persons, such as the Petitioner - who has resided in the United States continuously for 24 years - ineligible for release and mandatorily detained without the benefit of a bond hearing.

14. Many U.S. district courts nationwide have rejected the application of detention and release policies found in INA § 235(b), 8 U.S.C. § 1225(b) to persons such as the Petitioner, who entered the United States many years earlier without inspection and then arrested or detained by ICE many years later, and have granted habeas corpus petitions, including United States district courts in the Tenth Circuit. *See Garcia Cortes v. Noem*, No. 1:25-cv-02677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Salazar v.*

*Dedos*, No. 1:25-cv-00835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Gomez Lira v. Noem*, No. 1-25-cv-00855, (D.N.M. Sept. 24, 2025). For a comprehensive list of circuit court and district court favorable decisions finding that INA §236(a), 8 U.S.C. § 1226(a) (non detention and release) applies not INA §235(b)(2), 8 U.S.C. § 1225(b)(2)(A) (mandatory detention and no release), *see* table attached, entitled: “Favorable 1226(a) v. 1225(b)(2)(A) Caselaw” compiled by the University of Iowa as **Exhibit E** to Declaration of Steven Lyons, Esq.

15. Petitioner has no criminal history.

16. Petitioner is not a danger to the community or a national security risk

17. Petitioner is gainfully employed, has paid his taxes and has strong community ties.

18. Petitioner is married and has two children, one of whom is a U.S. citizen 21-years-old and the other child has DACA (Deferred Action for Childhood Arrivals) status.

19. Petitioner’s detention is unconstitutional, pursuant to the Fifth Amendment to the United States Constitution’s right to Due Process and is unlawful pursuant to a long-standing statutory and regulatory practice of DHS releasing from detention noncitizens under INA § 236(a), 8 U.S.C. §1226(a) for a bond hearing.

20. Petitioner’s release from custody is not reasonably foreseeable and is futile because the DHS has recently changed its policy from entertaining bond hearing requests for the release of noncitizens from detention pursuant to INA § 236(a) 8 U.S.C. § 1226(a) to a policy of asserting mandatory detention, nationwide, pursuant to INA §

235(b), 8 U.S.C. §1225(b) without a right to a bond hearing. *See, Matter of Yajure Hurtado*, 29 I&N Dec. (BLA 2025).

21. Therefore, exhaustion of Petitioner's administrative remedies would be futile and is not required.

22. Habeas corpus review is necessary and a temporary and permanent injunction is requested enjoining Respondents from detaining Petitioner unless provided a bond hearing by an Immigration Judge; or in the alternative, releasing Petitioner from custody on his own recognizance; and enjoining the Respondents from transferring, moving, relocating the Petitioner to another location or detention facility, pending a hearing on this matter

23. In addition, Respondents are in violation of the *Nava Settlement Consent Decree*, *Castanon Nava et. al. v. Department of Homeland Security et al.*, No. 1:18-cv-03757 (N.D. Ill. Oct. 7, 2025).

24. The Nava Settlement mandates release of any person detained without a warrant or probable cause and authorizes affected individuals to seek enforcement of the Nava Settlement decree through a habeas corpus petition or injunction. *See Castanon Nava v. DHS*, 435 F. Supp. 3d 885 (N.D. Ill. 2022), extended in 2025, *Castanon Nava et. al. v. Department of Homeland Security et al.*, No. 1:18-cv-03757 (N.D. Ill. Oct. 7, 2025)(order extending consent decree to February 2, 2026).

25. Accordingly, to vindicate the Petitioner's rights to Due Process and unlawful custody pursuant to the U.S. Constitution, and in violation of federal statutes and regulations, this Court should grant the instant petition for a writ of habeas corpus.

26. Absent an order from this Court, the Petitioner will be unlawfully and mandatorily detained, for the foreseeable future, in violation of his due process rights, and in violation of federal statute and regulation.

27. Petitioner has not previously sought or requested a bond hearing from the Immigration Judge, in which an initial master calendar hearing has been scheduled for October 21, 2025, before Immigration Judge Jacinto Palomino, because the same would be futile. *See, Matter of Yajure Hurtado*, 29 I&N Dec. (BIA 2025).

### **JURISDICTION**

28. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

29. 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).

30. 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**

31. Venue is proper because Petitioner is detained at Kay County Justice Center, a detention facility in Newkirk, Oklahoma, which is within the jurisdiction of this District.

32. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or

omissions giving rise to his claims occurred in this District, Petitioner resides 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**

33. The Court must grant the petition for writ of habeas corpus and issue an injunction and temporary restraining order (TRO) to the Respondents “forthwith,” unless the Petitioner is not entitled to relief.

34. If an injunction and temporary restraining order 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).

35. 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).

### **PARTIES**

36. Petitioner is a native and citizen of Mexico, who last entered the U.S. without inspection at the U.S.-Mexico border, in 2001. Petitioner has continuously resided in the U.S. for over 24 years. Petitioner is currently detained at the Kay County Justice Center detention facility, in Newkirk, Oklahoma, since about September 18, 2025. Kay County Justice Center is located in Kay County, Oklahoma. The Petitioner is a resident of Kay County Justice Center detention facility, Kay County, Oklahoma.

Petitioner is in the custody, and under the direct control, of Respondents and their agents.

37. Respondent Don Jones is the Director of Kay County Justice Center detention facility, 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 Don Jones, Director of the Kay County Justice Center detention facility has authority to release Petitioner. He is sued in his official capacity.

38. Respondent Todd M. Lyons is sued in his official capacity as the Acting Director, United States Immigration and Enforcement.

39. 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 the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, the component agency responsible for Petitioner's detention/custody. Respondent Noem is a legal custodian of Petitioner.

40. Respondent Pam 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 Noem is a legal custodian of Petitioner.

#### **STATEMENT OF FACTS**

41. Petitioner is a 49-year-old native and citizen of Mexico. Petitioner

last arrived in the United States in 2001 and has continuously resided in the United States for over 24 years.

42. Petitioner is married to a non-US citizen. He has two children one of whom is a U.S.-born child and is 21-years-old and the other child has DACA (Deferred Action for Childhood Arrivals) status.

43. On December 13, 2018, Petitioner filed the first of two applications for relief from removal. The first application was filed on December 13, 2018, pursuant to INA § 208 et. seq., 8 U.S.C. § 1158 et. seq. (asylum). Petitioner affirmatively applied for asylum on Form I-589 Application for Asylum Withholding of Removal and Relief Under the U. N. Convention Against Torture, and for refugee status as defined in 8 U.S.C. §1101(a)(42)(A).

44. On February 1, 2019, the Petitioner was served with an NTA (Form I-862, Notice to Appear), charging him with removability under INA § 212(a)(6)(A)(i) as an alien present in the U.S. without being admitted or paroled or who arrived in the U.S. at any time or place other than as designated by the Attorney General and INA § 212(a)(7)(A)(i)(I) as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card or other suitable travel document.

45. On October 11, 2019, the Petitioner filed his second application for relief from removal for Cancellation of Removal on Form EOIR 42b pursuant to INA § 240A(b)(1).

46. Petitioner is eligible for relief from removal from the United States

under INA § 208 et. seq. as a refugee for asylum 8 U.S.C. § 1158, Form I-589 and under INA §240A(b)(1) Cancellation of Removal and Adjustment of Status for Certain Non-Permanent Residents.

47. Immigration Judges across the country have been denying custody redetermination requests for noncitizens similarly situated as the Petitioner, based on lack of jurisdiction, and relying on, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)(finding that any noncitizen who is present in the United States without having been inspected and admitted is subject to detention pursuant to INA § 235(b)(2), 8 U.S.C. § 1225(b)(2) not INA § 236(a), 8 U.S.C. § 1226).

48. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) has been rejected by numerous courts, including in the Tenth Circuit: *Garcia Cortes v. Noem*, No. 1:25-cv-02677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Salazar v. Dedos*, No. 1:25-cv-00835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Gomez Lira v. Noem*, No. 1-25-cv-00855, (D.N.M Sept. 24, 2025). For a comprehensive survey of circuit court and district court decisions finding that INA §236(a), 8 U.S.C. § 1226(a) (non detention and release) applies not INA §235(b)(2), 8 U.S.C. § 1225(b)(2)(A) (mandatory detention and no release), as Respondents' assert, *see* table attached, entitled: "Favorable 1226(a) v. 1225(b)(2)(A) Caselaw" compiled by the University of Iowa as **Exhibit G** to Declaration of Steven Lyons, Esq.

49. Therefore, Petitioner seeks habeas corpus relief that is necessary for adjudication of his request for a bond hearing and release from unlawful custody.

50. Petitioner seeks a TRO preliminarily enjoining and restraining Respondents

from transferring or removing Petitioner to another jurisdiction or location outside the United States.

### **LEGAL FRAMEWORK**

51. This Court possesses jurisdiction to issue a writ of habeas corpus, to issue an order to preliminarily enjoin Respondents from removing the Petitioner, and to order the release of Petitioner on bond pursuant to § 236(a) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1226(a), when there is a violation of the U.S. Constitution’s Due Process Clause and violations of federal statute and regulation.

52. Petitioner is a noncitizen who entered the United States without inspection or parole in 2001 at the U.S.-Mexico border – 24 years ago.

53. Petitioner filed two applications for relief from removal: (1) on December 13, 2018, Petitioner filed an application for asylum on Form I-589 Application for Asylum, Withholding of Removal and Relief Under the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); INA § 208 *et. seq.*, 8 U.S.C. §1158 *et. seq.* (asylum), INA § 241(b)(3), 8 U.S.C. §1231(b)(3)(withholding of removal), and 8 C.F.R. § 208.16-208.18 (CAT) and (2) on October 11, 2019 the Petitioner filed an application on Form EOIR 42b Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents. Petitioner was not detained by DHS/ICE or CBP (U.S. Customs & Border Patrol) until on or about September 10, 2025, at the ORD airport, in Chicago, IL – being confused with another person with the same or similar name, or alien registration number.

54. For decades, DHS took the position that noncitizens like Petitioner were eligible for release on bond pursuant to INA § 236(a), 8 U.S.C. § 1226(a), unless they fell under the mandatory detention provisions of INA § 236(c), 8 U.S.C. § 1226(c).

55. However, on July 8, 2025, DHS issued an internal memo that abruptly changed its longstanding position. DHS now takes the position that *all* noncitizens who entered the U.S. without inspection or parole are actually “applicants for admission” pursuant to INA § 235(b), 8 U.S.C. § 1225(b) and therefore are ineligible for release on bond regardless of how long they have resided in the United States.

56. DHS’ new position is without legal support, and this Court should find that DHS’s new interpretation of INA § 235(b), 8 U.S.C. § 1225(b) violates the Petitioner’s right for a bond hearing under the U.S. Constitution’s Fifth Amendment Due Process Clause, and that a Writ of Habeas Corpus and a TRO and preliminary injunction should issue, enjoining Respondents from removing, transferring, relocating the Petitioner, and immediately releasing Petitioner from custody or in the alternative be afforded a bond hearing.

57. INA § 236, 8 U.S.C. § 1226 is the default rule for discretionary detention. It applies to anyone who is detained “pending a decision on whether the [noncitizen] is to be removed from the United States.” *See, Jennings v. Rodriguez*, 583 U.S. \_\_\_\_ (2018)(slip op. at 4)

58. Noncitizens detained under INA § 236, 8 U.S.C. § 1226 are eligible for custody redetermination hearings unless they fall under the mandatory detention provisions of INA § 236(c), 8 U.S.C. § 1226(c).

59. First, the carve out under INA § 236(c), 8 U.S.C. § 1226(c), including the most recent passage of the Laken Riley Act (“LRA”), Pub. L. No. 119-1, 139 Stat. 3 (2025), illustrates that Congress intended INA § 236(a), 8 U.S.C. § 1226(a) to serve as the default detention authority for individuals like Petitioner who have lived in the U.S for many years. When Congress creates specific exceptions to a statute’s applicability, it proves that absent those exceptions, the statute generally applies. LRA supports the Petitioner’s position of detention authority under INA § 236, 8 U.S.C. § 1226(c) applies rather than application of INA § 235, 8 U.S.C. § 1225 because INA § 235, 8 U.S.C. § 1225 applies mostly to noncitizens who are recently arriving noncitizens at the border (governing inspection and mandatory detention) and not to persons like Petitioner who have been arrested and detained by ICE long after the arrival in the interior of the United States, under INA § 236, 8 U.S.C. § 1226 (governing detention and bond hearings).

60. Second, canons of statutory interpretation, legislative history, and longstanding agency practice clearly demonstrate that Congress *did not* intend noncitizens like Petitioner to be subject to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b).

61. DHS’ position runs contrary to the plain meaning of the text and how INA § 235(b), 8 U.S.C. § 1225(b) has been consistently applied in the past and finds no basis in the context of the statutory schemes governing immigration detention.

62. To find otherwise would render significant parts of INA § 236(a), 8 U.S.C. § 1226(a) obsolete, redundant or superfluous, which clearly Congress did not intend to do.

63. Third, DHS’ position is not supported by its past practice and interpretation of statutes that consistently applied detention and release authority found in INA § 235(b), 8

U.S.C. § 1225(b) to those who are “arriving aliens” at the border and INA § 236(a), 8 U.S.C. § 1226(a) to those noncitizens who have resided in the U.S. for many years to be afforded bond. *See* for example, Todd M. Lyons, Acting Director Immigration, Customs and Enforcement (ICE) internal memo dated July 8, 2025, abruptly changing DHS policy directing employees to treat *all* noncitizens as “applicants for admission” and are subject to detention under INA §235(b), 8 U.S.C. § 1225(b) and not under INA § 236(a), 8 U.S.C. § 1226(a).

64. DHS’s position is not supported by any precedential Board of Immigration Appeals (“BIA” or “Board”) case law. *Matter of Q. Li* is distinguishable and concerned a noncitizen who was detained shortly after crossing the border and who was subsequently released on parole under INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A), but later re-detained.

65. Unlike the Petitioner in the instant case, who entered the U.S. in 2001 – 24 years ago and has continuously resided in the U.S. and was not arrested or detained at or near the border but was arrested and detained at ORD airport, in Chicago, IL in the interior of the U.S., the noncitizen in *Matter of Q. Li* was arrested at or near the border shortly after entry.

66. Under those circumstances, the Board found in *Matter of Q. Li* that the noncitizen was an applicant for admission and subject to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b).

67. Crucially, the Board’s holding in *Matter of Q. Li* reiterated the well-established understanding that INA § 236(a), 8 U.S.C. § 1226(a) applies to noncitizens already

present in the United States, while INA § 235(b), 8 U.S.C. § 1225(b), applies primarily to noncitizens seeking entry into the United States and authorizes DHS to detain them without a warrant at the border. However, the Board's decision in *Matter of Q. Li* is distinguishable on the facts in Petitioner's case because the noncitizen in *Matter of Q. Li* was arrested at or near and soon after entry at the border, unlike the Petitioner who was arrested and detained at ORD airport, in Chicago, IL in the interior of the United States and long after residing in the U.S. for 24 years.

68. More recently, the BIA decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) should not be given deference to statutory interpretation when the BIA's decision is contrary to agency consistency and lack of thorough reasoning. *See Chogullo Chafila v. Scott*, No. 2:25cv-00439-SDN, 2025 WL (D.Me. Sept. 18, 2025).

69. This interpretation is also supported by the Supreme Court's decision in *Jennings v. Rodriguez* and *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024)(overruling the Chevron deference doctrine and that under the Administrative Procedure Act, courts must exercise independent judgment in determining whether an agency acted within its statutory authority, rather than deferring to an agency's interpretation simply because a statute is ambiguous) and numerous recent district court decisions, including decisions of U.S. district courts from the Tenth Circuit, that have granted preliminary injunctive relief and enjoined the application of INA § 235(b), 8

U.S.C. § 1225(b) to individuals similarly situated to Petitioner.<sup>1</sup> See table attached as **Exhibit G** to Declaration of Steven Lyons, Esq.

70. The Respondents' position is further undercut by *Matter of Akhdemov*, 29 I&N Dec. 166 (BIA 2025) in circumstances much like the Petitioner, applying INA § 236(a), 8 U.S.C. § 1226(a) to noncitizens already in the U.S. and affording them a bond hearing.

71. Respondents are in further violation of the Nava Settlement Consent Decree which mandates release of any person detained without a warrant or probable cause applicable to six states in the Midwest, and authorizes affected individuals to seek enforcement of the Nava Settlement decree through a habeas corpus petition or injunction. See *Castanon Nava v. DHS*, 435 F. Supp. 3d 885 (N.D. Ill. 2022), extended in 2025, *Castanon Nava et. al. v. Department of Homeland Security et al.*, No. 1:18-cv-03757 (N.D. Ill. Oct. 7, 2025)(order extending consent decree to February 2, 2026).

72. Because the Respondents detained and arrested the Petitioner in ORD airport in Chicago, IL on about September 10, 2025, in a warrantless arrest, without probable cause, the Respondents are in violation of the Nava Settlement Consent Decree and Fourth Amendment to the U.S. Constitution which protects against unreasonable searches and seizures.

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<sup>1</sup> See supra, 4, 11.

**CLAIMS FOR RELIEF**

**COUNT ONE**

**Violation of Fifth Amendment Right to Due Process**

73. The allegations in the above paragraphs 1- 72 are realleged and incorporated herein.

74. The Petitioner is currently being detained at the Kay County Justice Center detention facility in Newkirk, OK, since about September 18, 2025, in violation of the Petitioner's rights to seek a bond hearing pursuant to INA § 236(a), 8 U.S.C. §1226(a).

75. If Petitioner were to make a motion for a bond hearing, it would be denied based on the Immigration Court's lack of jurisdiction. *See Matter Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)(Immigration Judge lacks jurisdiction to hear Respondent's bond request for individuals who entered the U.S. without inspection and are therefore present without lawful admission and are considered "applicants for admission" and are subject to mandatory detention under INA § 235(b)(2)), 8 U.S.C. § 1125(b)(2).

76. It would be futile to pursue continued administrative remedies in this case. Petitioner would be prejudiced if bond hearing relief were not immediately granted, and Petitioner would be irreparably be harmed.

77. Consequently, for these reasons, Petitioner's unlawful detention without the right to a bond hearing violates the Due Process Clause of the Fifth Amendment.

## **COUNT TWO**

### **Violation of 8 U.S.C. § 1226(a), INA § 236(a) and Implementing Regulations**

78. The allegations in the above paragraphs 1-77 are realleged and incorporated herein.

79. INA § 236(a), 8 U.S.C. § 1226(a) applies to noncitizens already present in the United States, while INA § 235(b), 8 U.S.C. § 1225(b), applies primarily to noncitizens seeking entry into the United States and authorizes DHS to detain them without a warrant at the border.

80. Because Petitioner entered the U.S. in 2001, and has been present in the U.S. for over 24 years, and was detained in the interior, the Petitioner should be afforded a bond hearing.

81. Petitioner's detention is unlawful in violation of 8 U.S.C. § 1226(a), INA § 236(a) and the writ of habeas corpus and an order to preliminarily enjoin Respondents from removing, transferring or relocating Petitioner should be granted, immediately releasing Petitioner or in the alternative afford a bond hearing.

## **COUNT THREE**

### **Violation of the Nava Settlement Consent Decree, *Castanon Nava et. al. v. Department of Homeland Security et al.*, No. 1:18-cv-03757 (N.D. Ill. Oct. 7, 2025)**

82. The allegations in the above paragraphs 1-81 are realleged and incorporated herein.

83. The Nava Settlement mandates release of any person detained without a warrant or probable cause and authorizes affected individuals to seek enforcement of the Nava Settlement decree through a habeas corpus petition or injunction. *See Castanon Nava v. DHS*, 435 F. Supp. 3d 885 (N.D. Ill. 2022), extended in 2025, *Castanon Nava et. al. v. Department of Homeland Security et al.*, No. 1:18-cv-03757 (N.D. Ill. Oct. 7, 2025)(order extending consent decree to February 2, 2026).

84. The Fourth Amendment of the United States Constitution protects against unreasonable searches and seizures. *INS v. Delgado*, 466 U.S. 210 (1984).

85. The Due Process Clause of the Fifth Amendment of the United States Constitution prohibits detention without an individualized determination. *See Zadvydas v. Davis*, 533 U.S. 678 (2001).

86. *Jennings v. Rodriguez*, 583 U.S. 830 (2018) provides for habeas corpus review for unreasonably prolonged or unlawful detention.

87. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 359 (2024) requires independent judicial review of statutory authority, eliminating the Chevron deference standard. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

#### **PRAYER FOR RELIEF**

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

- (1) Assume jurisdiction over this matter;
- (2) Declare that Respondents are in violation of the Nava Settlement Consent Decree and immediately release Petitioner from ICE custody without bond

- pursuant to the Nava Settlement Consent Decree enforcement mandates;
- (3) Issue a Temporary Restraining Order and Order to Show Cause under Fed. R. Civ. P. 65(b), enjoining and restraining the Respondents from further transferring, removing or relocating Petitioner;
  - (4) Declare that Petitioner's detention violates the Fourth Amendment to the U.S. Constitution, against unreasonable searches and seizures;
  - (5) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution, 8 U.S.C. § 1226(a), INA §236(a);
  - (6) Issue a Writ of Habeas Corpus ordering Respondents immediately release Petitioner;
  - (7) Schedule a bond hearing before an Immigration Judge and, at such hearing, affording Petitioner to be released from custody;
  - (8) That this Court retain jurisdiction of this matter;
  - (9) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
  - (10) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Steven Lyons, Esq.  
Counsel for Petitioner

Dated: October 17, 2025  
New York, NY

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

I represent Petitioner, Jose Gomez-Martinez 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 October 2025.

/s/ Steven Lyons, Esq.  
Steven Lyons, Esq.