UNITED STATES DISTRICT COURT
OF NEW JERSEY - NEWARK

Elder David Fuentes Velasquez, Petitioner, v. KRISTI NOEM, in her Official Capacity, Secretary of the U.S. Department of Homeland Security; PAMELA BONDI, in her Official Capacity, Attorney General of the United States JONATHAN FLORENTINO, Acting Newark Field Office Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement (ICE) TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement (ICE); Respondents.	Case No. **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **ORAL ARGUMENT REQUESTED**

Petitioner, Mr. Elder David Fuentes Velasquez, is a 33-year-old native and citizen of Guatemala, who has been present in the United States since February 2007. Petitioner is a DACA recipient who entered the United States at the age of 14. He entered the United States when he was 14 years old. He currently has a pending renewal application seeking deferred action from removal, as well as a pending Application for Cancellation of Removal (Form EOIR-42B) before the Immigration Court. He also intends to file a T Nonimmigrant Status (T-Visa) application with the United States Citizenship and Immigration Services ("USCIS") based on his status as a victim of human trafficking. Petitioner has two children of tender age who require his financial

support and presence as a father in their lives. He must remain lawfully present in the United States to complete adjudication of his meritorious claims for relief.

Despite his long-time presence in the United States, immigration officials arrested the Petitioner and are unlawfully detaining him pursuant to 8 U.S.C. § 1225(b)(2)(A), not the default detention statute under 8 U.S.C. § 1226(a), which has been used for decades for those apprehended in the interior of the United States.

Immigration and Customs Enforcement (ICE) also issued a Form I-862, Notice to Appear, charging the Petitioner as being present without being admitted or paroled.

On September 17, 2025, an immigration judge denied jurisdiction, citing the recent Board of Immigration Appeals decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), wherein the Board held that Immigration Judges lack jurisdiction to redetermine custody for noncitizens pursuant to § 1225(b)(2)(A).

Through this Petition, Petitioner Elder David Fuentes Velasquez respectfully asks this Court to enjoin Respondents from effectuating his removal from the United States and order his immediate release from custody, because he is unlawfully detained under § 1225(b)(2)(A). Petitioner further requests that he is not subject to detention because of his DACA status, and if any detention authority is warranted, it would be pursuant § 1226(a). The Petitioner seeks immediate release from custody. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001); *Demore v. Kim*, 538 U.S. 510, 530 (2003).

Due to the Immigration Court having expressly disclaimed jurisdiction to review or redetermine custody in light of *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), Petitioner is left without an adequate or available administrative remedy, and only this Honorable Court possesses jurisdiction under 28 U.S.C. § 2241 to review the legality of his continued

detention and to grant appropriate relief. See *INS v. St. Cyr*, 533 U.S. 289, 314 (2001) (recognizing federal habeas jurisdiction where no other judicial forum is available to test the legality of executive detention).

I. PARTIES

Elder David Fuentes Velasquez is a 33-year-old native and citizen of Guatemala who fled his country to escape from [redacted] After being subjected to human trafficking and forced labor on his journey at the age of fourteen years, Petitioner Elder Fuentes entered the United States on or about February 2007. He is currently detained at the Delaney Hall Detention Facility, 451 Doremus Avenue Newark, NJ 07105.He suffers from ongoing mental and physical trauma as a result of the violent human trafficking and forced labor he endured. In addition, he is the primary caregiver for his two United States Citizen children, whose well-being depends on his presence and support.

Respondent, Kristi Noem, is the Secretary of the U.S. Department of Homeland Security ("DHS"), the federal agency responsible for enforcing Petitioner's arrest, detention and removal. Respondent Noem's address is 2707 Martin Luther King Jr. Ave, SE Washington, DC 20528-0485.

Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review, pursuant to section 103(g) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1103(g). She routinely transacts business in the Southern District of New York, is legally responsible for administering Petitioner's removal proceedings and the standards used in those proceedings, and as such, is the legal custodian of

Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.

Respondent Jonathan Florentino is named in his official capacity as the Acting Director of the Newark, NJ, Field Office of Enforcement and Removal Operations (ERO), U.S. Immigration and Customs Enforcement (ICE). Respondent Florentino is a legal custodian of the Petitioner and has the authority to release him.

Respondent Todd M. Lyons is named in his official capacity as the Acting Director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the District of New Jersey, is legally responsible for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner. At all times relevant hereto, Respondent Lyons's address is ICE, Office of the Principal Legal Advisor,

II. JURISDICTION & VENUE

The Court has jurisdiction under the Suspension Clause. The Suspension Clause provides, "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. Art. I § 9, cl. 2. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. §§ 2241 *et seq.*, as protected under Art. I § 9, cl. 2 of the United States Constitution (Suspension Clause), and federal question jurisdiction under 28 U.S.C. § 1331. This case arises under the United States Constitution; the INA, 8 U.S.C. §§ 1101 *et seq.*; the APA, 5 U.S.C §§ 701 *et seq.*; the Due Process Clause of the Fifth Amendment and the Fourth Amendment. Petitioner's current removal order as enforced by Respondents constitutes a "severe restraint[] on [Petitioner's] individual liberty," such that Petitioner is "in custody in violation of

the . . . laws . . . of the United States." *See Hensley,* 411 U.S. at 351 (1973); 28 U.S.C. § 2241(c)(3). Petitioner is also subject to prolonged physical detention.

While the courts of appeals have jurisdiction to review removal orders directly through petitions for review, *see* 8 U.S.C. § 1252, federal district courts have jurisdiction under 28 U.S.C. § 2241(d) to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of Respondents' conduct. *See Demore v. Kim*, 538 U.S. 510, 516–517 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). No Supreme Court or Second Circuit precedent applicable to immigration detainees, nor the habeas statute, indicate that venue is not proper in Disctrict Court of Newark, New Jersey. *See* 28 U.S.C. § 2241. Venue is proper in the United States District Court for the District of New Jersey –because a substantial part of the events and omissions giving rise to this action occurred in the District. 28 U.S.C. § 1391(b)(2). Petitioner is currently being held at the Delaney Hall Detention Facility, located in Essex County, New Jersey.

III. FACTS GIVING RISE TO THE HABEAS PETITION

Petitioner, Mr. Elder Fuentes, is currently in removal proceedings before Immigration Judge Ramin Rastegar at the Elizabeth Immigration Court, located at 625 Evans Street, Elizabeth, NJ 07201. A Notice to Appear initiating these proceedings was issued on July 23, 2025 (*see* **Exhibit "A"**). Petitioner is scheduled for an individual hearing on his Application for Cancellation of Removal on October 28, 2025, at 10:30 AM. He has a pending application for Deferred Action from removal before the United States Citizenship and Immigration Services ("USCIS"). Petitioner is represented by counsel, Andrea C. Soto, who has entered a notice of appearance before this Honorable Court *pro hac vice*.

Petitioner is a citizen of Guatemala (*see* **Exhibit "B"**) and fled his country at the age of fourteen years under duress due to poverty, social instability, and threats from criminal groups.

During his journey to the United States, he was subjected to human trafficking and forced labor, resulting in lasting physical and psychological trauma. Petitioner has expressed willingness to cooperate with any investigation into the traffickers and is actively pursuing relief before the Immigration Court.

Petitioner was granted Deferred Action for Childhood Arrivals (DACA) on December 18, 2013, and subsequently received a renewal approval on November 1, 2016. On May 13, 2020, he submitted a third renewal application (**See Exhibit "C"**), further demonstrating his intent to comply with immigration processes and maintain lawful presence. These records reflect his longstanding ties to the United States and his prior eligibility for discretionary protection.

On October 15, 2025, Petitioner formally filed his Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (Form EOIR-42B) before the Immigration Court (*See* **Exhibit "D"**). This application reflects his eligibility for relief under INA § 240A(b), based on his continuous physical presence in the United States, good moral character, and the exceptional and extremely unusual hardship that his removal would cause to his U.S. citizen children. Petitioner is the primary caregiver to two minor children—one year old and eight years old—both of whom rely on him for his care, emotional support, and financial stability (see **Exhibit "E"**). His continued detention and potential removal would irreparably disrupt their well-being and deprive them of the nurturing and stability that only he can provide.

On or about September 9th, 2025 Petitioner filed a Motion for Custody Redetermination before the Immigration Court at Elizabeth, New Jersey. After a hearing on the record on September 17th, 2025, the Immigration Judge denied bond or its ability to determine the Petitioner's custody basing its decision on the ruling issued by the Board of Immigration Appeals in *Matter of Yajure-Hurtado,* 29 I&N Dec. 216 (BIA 2025, citing the holding that Immigration Judges do not have jurisdiction

to determine bond or custody determinations under a new interpretation of Section 236(a) of the Immigration and Nationality Act. (*See* **Exhibit "F"**). Specifically, the Immigration Judge held that the Petitioner was detained under Section 235(b)(2)(A), and thus, he had no jurisdiction to determine his custody.

Petitioner remains in ICE custody despite having a viable claim for Cancellation of Removal and substantial equities that warrant release, including that he is the primary caregiver to his United States citizen children. His continued detention without a bond hearing violates his constitutional rights and places undue hardship on his family, including his two children who depend on his care and support.

IV. APPLICABLE LAW

The Due Process Clause applies to all persons in the United States, "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. at 693; *see also Yick Wo v. Hopkins*, 118 U.S. 356 (1886). The Supreme Court declared "that the Due Process Clause protects individuals against two types of government action" giving rise to distinct claims of substantive and procedural due process violations. *United States v. Salerno,* 481 U.S. 739, 746 (1987). Thus, "the touchstone of due process is protection of the individual against arbitrary action of government … whether the fault lies in the denial of fundamental due process fairness [procedural due process] … or in the exercise of power without any reasonable justification in the service of a legitimate government objective [substantive due process]…" *City of Sacramento v. Lewis*, 523 U.S. 833 (1998) (citations and internal quotations omitted).

Procedural due process constrains governmental decisions that deprive individuals of property or liberty interests within the meaning of the Due Process Clause of the Fifth Amendment. *See*

Matthews v. Eldridge, 424 U.S. 319, 332 (1976); *see also Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972) (reliance on informal policies and practices may establish a legitimate claim of entitlement to a constitutionally-protected interest). Infringing upon a protected interest triggers a right to a hearing before that right is deprived, and a right to meaningful process afforded at a meaningful time. *See Bd. of Regents v. Roth*, 408 U.S. 564, 569–70 (1972). "'Substantive due process' prevents the government from engaging in conduct that 'shocks the conscience,'… or interferes with rights 'implicit in the concept of ordered liberty.'" *Salerno*, 481 U.S. at 746. (internal citations omitted).

Respondents' power to detain and deport someone is not limitless, nor is it shielded from judicial review. *See Calderon v. Sessions,* 330 F. Supp. 3d 944, 950 (S.D.N.Y. 2018) *appeal withdrawn sub nom. Villavicencio Calderon v. Sessions*, No. 18-2926, 2018 WL 6920377 (2d Cir. Oct. 5, 2018) (ordering a stay of removal and release from detention to permit the Petitioner to continue with the provisional waiver process afforded by the government); *You Xiu Qing v. Nielsen*, 321 F.Supp.3d 451 (S.D.N.Y. 2018) (ordering a stay of removal and release from detention to permit the Petitioner to continue with the provisional waiver process and a motion to reopen); *S.N.C. v. Sessions,* No. 18 2018 WL 6175902, (S.D.N.Y. Nov. 26, 2018); *Compere v. Nielsen*, 2019 WL 332193, at *9 (D.N.H. Jan. 24, 2019) (granting a stay of removal for petitioner because deportation to Haiti would vitiate his ability to pursue an appeal to the BIA of the IJ's denial for a motion to reopen); *Lin v. Nielsen*, 2019 WL 1958569 at *15 (D. Md. May 2, 2019) (court found that a preliminary injunction was "in the public interest, as it requires DHS to comport with its own rules and regulations, and bars arbitrary and capricious action towards vulnerable undocumented immigrants."); *see also Martinez v. Neilsen*, 341 F.Supp.3d 400 (D.N.J. Sept. 14, 2018); *Fatty v. Nielsen*, 2018 WL 3491278 at *2 (W.D. Wash. Jul. 20, 2018); *Gutierrez-Soto v.*

Sessions, 317 F. Supp. 3d 917, 933-35 (W.D. Tex. 2018); *Jimenez v. Nielsen*, No. CV 18-10225-MLW, 2018 WL 4539687 (D. Mass. Sept. 21, 2018); *Sied v. Nielsen*, 2018 WL 1142202 (N.D. Cal. Mar. 2, 2018); *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018); *Ibrahim v. Acosta*, No. 17-CV-24574, 2018 WL 582520 (S.D. Fla. Jan. 26, 2018); *Chhoeun v. Marin*, 306 F. Supp. 3d 1147 (C.D. Cal. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017).

"Habeas corpus is at its core, an equitable remedy." *Schlup v. Delo*, 513 U.S. 298, 319 (1995). Judges have "broad discretion" to fashion an appropriate remedy. It may extend beyond simply ordering the release of a petitioner, *Carafas v. La Vallee*, 391 U.S. 234 (1968), and is to "be administered with the initiative and flexibility essential to ensure that miscarriages of justices within its reach are surfaced and corrected." *Harris v. Nelson*, 394 U.S. 286, 291 (1969). Habeas corpus "never has been a static, narrow, formalistic remedy; its scope has been to achieve its grand purpose - the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963). At its historical core, habeas corpus "has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." *Rasul v. Bush*, 542 U.S. 466, 474 (2004) (citations omitted). These protections extend fully to noncitizens subject to an order of removal. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Martinez v, McAleenan*, 385 F.Supp.3d 349, 355 ("Due to its talismanic significance in protecting individual liberty from unlawful detention, habeas corpus is fundamentally governed by equity. The Supreme Court has granted the writ when justice has so required.") (citing *Munaf v. Grren*, 128 S.Ct. 2207 (2008) and *Carafas v. LaVallee*, 392 U.S. 234 (1968)). The Supreme Court has noted the writ's "scope and flexibility--its capacity to reach all manner of illegal detention--its ability to cut through barriers of form and procedural mazes." *Harris*, 394 U.S. at 291.

Furthermore, in *Demore,* the Supreme Court held that mandatory detention under § 1226(c) was not unconstitutional on its face, but limited its holding to a brief period of detention, stating "Congress, justifiably concerned that deportable criminal aliens who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers, may require that persons such as respondent be detained for *the brief period* necessary for their removal proceedings." 538 U.S. at 513 (emphasis added). The Court described the "brief period" that it held valid: "in the majority of cases," detention pursuant to § 1226(c) in 2003 "lasts for less than ... 90 days." *Id.* at 529.

In the present case, there is no indication that Petitioner's detention is temporary or limited to a brief period necessary to effectuate removal. To the contrary, Petitioner has been subjected to prolonged detention that may continue for an indefinite period, potentially extending for years. Petitioner has actively pursued relief from removal through multiple avenues, including the filing of an Application for Cancellation of Removal (Form EOIR-42B) and his intent to file an application for T Nonimmigrant Status (T-Visa) before the United States Citizenship and Immigration Services ("USCIS"). Petitioner also retains Deferred Action for Childhood Arrivals (DACA) protection, as his renewal application remains pending and has not been denied. A T-Visa is a specific humanitarian protection that Congress created to safeguard victims of severe forms of human trafficking**,** including individuals with pending or even final orders of removal. See 8 C.F.R. § 214.11(d)(1)(ii); see also *S.N.C. v. Sessions*, No. 18-CV-7680, 2018 WL 6175902 (S.D.N.Y. Nov. 26, 2018). However, continued presence within the United States is a statutory condition of eligibility for T-Visa relief. See 8 C.F.R. § 214.11(g).

As such, in the absence of action by the Court, Petitioner's rights will be violated either by unreasonably prolonged detention, or by interference with his T visa application, or both.

A. **REQUEST FOR RELIEF**

Pending the adjudication of this Petition, Petitioner respectfully requests that the Court use its authority under 28 U.S.C. §2243 to order the Respondents to file a return within three days, unless they can show good cause for additional time. *See* 28 U.S.C. §2243. (Order to show cause why a petition for a writ of habeas corpus should not be granted should be "returned within three days unless for good cause additional time, not exceeding twenty days, is allowed").

Petitioner respectfully requests that Respondents be restrained from removing him from the United States pending adjudication of his removal proceedings and his anticipated application for T Nonimmigrant Status, which he intends to file based on qualifying grounds. Premature removal would preclude him from pursuing this form of relief and undermine his ability to seek protection under applicable immigration laws.

Without this Court's intervention, the Respondents will seek to remove Petitioner in violation of law and inflict further cruel and unnecessary harm on Petitioner. Petitioner requests that this Court issue an order that Respondents must notify the Court and Petitioner's counsel five days prior to any removal of Petitioner.

Furthermore, Petitioner requests to be released from detention pending resolution of this matter. He has been subjected to prolonged detention despite having a bona fide Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (Form EOIR-42B) currently pending before the Immigration Court. Petitioner also intends to pursue a T Nonimmigrant Status application based on qualifying grounds. Continued detention imposes significant hardship and interferes with his ability to meaningfully prepare and present his claims for relief.

Without this Court's intervention, the Respondents will seek to remove Petitioner in violation of law and inflict further cruel and unnecessary harm. Although Petitioner has a limited criminal history, none of the offenses are serious or disqualifying. Petitioner respectfully requests that this Court issue an order requiring Respondents to notify the Court and Petitioner's counsel at least five days prior to any attempt to remove him from the United States.

EXHAUSTION OF REMEDIES

Petitioner's claims regarding the constitutionally inadequate process and unlawful deprivation of liberty are not subject to any statutory requirement of administrative exhaustion. See McCarthy v. Madigan, 503 U.S. 140, 144 (1992). To the extent that prudential concerns might lead the Court to consider exhaustion as a discretionary matter, Petitioner has taken all reasonable steps available to him within the administrative framework.

Petitioner is currently in removal proceedings before the Immigration Court and is represented by counsel. He has a scheduled individual hearing on October 28, 2025, and intends to proceed on his application for cancellation of removal under EOIR-42B. Petitioner also intends to file a T visa application with USCIS based on his experience as a victim of human trafficking and forced labor. These remedies remain pending or forthcoming, and no final order of removal has been issued.

Moreover, neither the Immigration Judge nor the Board of Immigration Appeals has jurisdiction to adjudicate the constitutional claims raised in this habeas petition. These claims fall squarely within the purview of this Court.

Finally, Petitioner faces irreparable harm in the form of continued detention, psychological trauma, and the risk of premature removal before he can pursue the legal remedies available to him. Respondents have the authority to parole Petitioner under 8 C.F.R. §§ 235.3(b)(2)(iii),

1235.3(b)(2)(iii), yet have declined to do so despite his eligibility and humanitarian circumstances. Further, because the administrative process offers no meaningful opportunity for relief due to the recent holding of the Board of Immigration Appeals in *Matter of Yajure-Hurtado,* 29 I&N Dec. 216 (BIA 2025), exhaustion of remedies is not required. See *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992) (exhaustion excused where administrative remedies are inadequate or futile); *INS v. St. Cyr*, 533 U.S. 289, 314 (2001).

V. REQUEST FOR ORAL ARGUMENT

Petitioner respectfully requests oral argument on this Petition.

VI. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;

2. Issue a Writ of Habeas Corpus on the ground that Petitioner's continued detention violates the Due Process Clause and order Petitioner's immediate release;

3. In the alternative, issue injunctive relief ordering Respondents to immediately release Petitioner on the ground that his continued detention violates the Due Process Clause;

4. Enjoin Respondents from removing Petitioner from the United States;

5. Order Respondents file a return within three days pursuant to 28 U.S.C. § 2243.

6. Declare that the process as applied to Petitioner by Respondents violates the Suspension Clause, the Due Process Clause of the Fifth Amendment, the Fourth Amendment, the INA, the APA, and federal regulations;

7. Issue a writ of habeas corpus directing Respondents to pursue a constitutionally adequate process to justify adverse immigration actions against Petitioner;

8. Stay Petitioner's removal from the United States until the adjudication of his T visa by USCIS is completed;

9. Order Respondents to provide five days of notice to the Court and Petitioner of his imminent removal;

10. Order Respondents to comply with all applicable rules, regulations, laws, and constitutional protections in relation to Petitioner's pending removal proceedings and his Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (Form EOIR-42B), as well as his intent to pursue T Nonimmigrant Status.

11. Award Petitioner his costs and reasonable attorney's fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. §2412, or other statutes;

12. Grant such further relief as the Court deems just and proper.

Dated: October 21, 2025

Respectfully submitted,

By: __*s/Veronica Cardenas*___________

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

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, on information and belief, I hereby verify that the factual statements made in the attached Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief are true and correct to the best of my knowledge.

Dated: October 25, 2025

Respectfully submitted,

By: __*s/Veronica Cardenas*__________

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