UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

ELVIN FERNANDO ROMERO GRANADOS,
[redacted]

Petitioner,

v.

KRISTI NOEM,
Secretary, U.S. Department of Homeland Security;

PAMELA BONDI,
U.S. Attorney General;

RUSSELL HOTT,
Field Office Director of Enforcement and Removal Operations, Washington, D.C. Field Office, Immigration and Customs Enforcement; and

JEFF CRAWFORD,
Warden of Farmville Detention Center.

Respondents.

Case No. 1:25-CV-01869

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Elvin Fernando Romero Granados ("Mr. Romero") is a noncitizen who entered the United States over fifteen years ago. He has resided continuously in this country since that entry. He married his U.S. citizen spouse on May 24, 2019, and has worked to obtain his lawful permanent residence since later that year.

2. Despite these ties to the United States, on September 18, 2025, Petitioner was stopped while driving and placed in immigration custody pending completion of removal proceedings.

There is no indication of probable cause for the stop. And even though Mr. Romero has no significant criminal history, arrived in the United States years ago, is married to a United States citizen and has had an application pending for almost four years to waive his unlawful status so that he can obtain a green card, the Department of Homeland Security ("DHS") and the Executive Office of Immigration Review ("EOIR") have concluded that he is subject to mandatory immigration detention under 8 U.S.C. § 1225(b)(2) as someone deemed "seeking admission" to the United States.

3. DHS's interpretation of its detention authority under 8 U.S.C. § 1225(b)(2) marks a complete reversal of the interpretation of the statute that the government has embraced since its inception three decades ago, its prior practice, Supreme Court precedent, and the plain language of the Immigration and Nationality Act ("INA").

4. Moreover, DHS's action in this case of arresting and detaining Mr. Romero are unconstitutional and unlawful. In detaining Mr. Romero and seeking his removal from the United States, DHS is preventing him from pursuing the pathway to "regularizing his immigration status with minimal disruption to his family life" that is specifically provided for by DHS's own regulations. *Calderon v. Sessions*, 330 F. Supp. 3d 944, 951 (S.D.N.Y. Aug. 1, 2018)

5. This Court should grant Mr. Romero's petition for writ of habeas corpus, stay any immigration proceedings until he receives an adjudication of his Form I-601A, Provisional Unlawful Presence Waiver, and order his release from immigration custody. In the alternative, the Court should order EOIR to conduct a bond hearing under 8 U.S.C. § 1226(a) at which DHS bears the burden to prove that continued detention is required to protect the community and/or ensure his appearance for future removal proceedings.

JURISDICTION AND VENUE

6. Mr. Romero is detained at the Farmville Detention Centr in Farmville, Virginia, and is in the physical custody of Respondents.

7. This action arises under the Due Process Clause of the Fifth Amendment and the INA, 8 U.S.C. § 1101 et seq.

8. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. §§ 2201-02 (declaratory relief). Mr. Romero's detention by Respondents is a "severe restraint" on his individual liberty "in custody in violation of the ... laws ... of the United States." *See Hensley v. Municipal Court, San Jose-Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973).

9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

10. Venue lies in the United States District Court for the Eastern District of Virginia, the judicial district in which Mr. Romero is detained when the petition was filed. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 434, 447 (2004).

REQUIREMENTS OF 28 U.S.C. § 2243

11. Under 28 U.S.C. § 2243, a court "entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant . . . is not entitled thereto." 28 U.S.C. § 2243. Once the Court issues an Order to Show Cause, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

12. Habeas corpus is "perhaps the most important writ known to the constitutional law … 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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

13. The reading of 8 U.S.C. § 1225(b)(2) offered by DHS to argue that detention is mandated by the INA has been almost universally rejected by district courts across the country, including this Court, over the past three months. Allowing Respondents to continue detaining Mr. Romero without the opportunity to seek release on bond based on a strained reading of the INA that has been overwhelmingly rejected only compounds the due process concerns in this case.

14. Mr. Romero requests the Court issue an Order to Show Cause, and direct Respondents to file a response within three days, given the significant and unlawful restraint on his liberty.

ALL WRITS ACT

15. The All Writs Act, 28 U.S.C. § 1651(a), empowers the federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

16. Courts in this district have recently invoked the All Writs Act to prevent the transfer of individuals detained within the "judicial district unless and until the Court issues a contrary order." *Garcia Guardado v. Lyons*, et al., 1:25-cv-1741-MSN-WBP (E.D. Va. Oct. 15, 2025) (citing 28 U.S.C. § 1651; *FTC v. Dean Foods Co.*, 384 U.S. 597,603 (1966) ("The All Writs Act, 28 U.S.C. § 1651 (a), empowers the federal courts to 'issue all writs necessary or

appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.'"); *see also Guevara Gomez v. Crawford*, 1:25-cv-1781-PTG-LRV (E.D. Va. Oct. 16, 2025).

17. Mr. Romero requests that this Court invoke the All Writs Act to prevent any transfer out of the Eastern District of Virginia during the pendency of his habeas action, given the likelihood that he will be ordered to appear at a bond hearing shortly after this Court rules upon the habeas petition. His counsel operate primarily out of Virginia, he will need to participate in the preparation for and attendance at his bond hearing, and he will incur additional, unnecessary expenses and difficulty in returning to his residence in Maryland should he be granted a bond hearing after he is transferred out of state. *See* https://www.tsa.gov/travel/security-screening/identification (listing documents required to board an airplane, which does not include ICE release paperwork); *see also Ozturk v. Trump*, 779 F. Supp. 3d 462, 497 (D. Vt. 2025) (noting that presence in the judicial district where an action is pending "facilitate[s]" the petitioner's "ability to work with [his or] her attorneys, coordinate the appearance of witnesses," and generally present claims related to detention); *cf. Suri v. Trump*, 785 F. Supp. 3d 128, 147-48 (E.D. Va. May 6, 2025) (discussing ICE's transfer of individuals throughout the country and the strain that places on lawyers attempting to represent them in habeas petitions).

PARTIES

18. Mr. Romero is a native and citizen of El Salvador who has been in immigration detention since September 18, 2025. Immigration and Customs Enforcement ("ICE") is currently detaining him at the Farmville Detention Center in Farmville, Virginia.

19. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees ICE, the agency responsible for Mr. Romero's detention. Secretary Noem has ultimate custodial authority over Mr. Romero and is sued in her official capacity.

20. Respondent Pamela Jo Bondi is the United States Attorney General. She has supervisory authority over the Executive Office of Immigration Review, which oversees the immigration courts and the Board of Immigration Appeals. She is sued in her official capacity.

21. Respondent Russell Hott is the Field Office Director for ICE's Washington D.C. Field Office. He oversees the operation of detention facilities within the Washington D.C. Field Office's area of responsibility, including Farmville Detention Center. Mr. Hott is sued in his official capacity.

22. Respondent Jeffe Crawford is the Warden of Farmville Detention Facility and is the immediate custodian of Mr. Romero. Mr. Crawford is sued in his official capacity.

EXHAUSTION

23. The failure to exhaust administrative remedies does not bar Mr. Romero's claims unless "Congress specifically mandates" exhaustion. *Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022) (1993) (quoting *McCarthy v. Madigan*, 503. U.S. 140, 144 (1992)).

24. Moreover, because Mr. Romero's continued detention violates his constitutional right to due process, administrative exhaustion is excused. *See Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74, 78 (1st Cir. 1997) (Recognizing "the inappropriateness of requiring exhaustion when further proceedings would be futile"); *Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992) ("Exhaustion of administrative remedies may not be required when . . . a plaintiff has raised a 'substantial constitutional question.'").

25. Although the Court may impose exhaustion requirements as a prudential matter, it should not do so in this case because seeking administrative relief from either DHS or EOIR in this case would be futile. Critically, the Board of Immigration Appeals ("Board") recently issued a precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), adopting the new interpretation of 8 U.S.C. § 1225(b)(2) that DHS announced in its recent July 8, 2025 policy memorandum. *Matter of Yajure Hurtado* holds that noncitizens who entered the United States without inspection at any point are considered to be "arriving aliens" who are "seeking admission" and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Although, as discussed below, this decision is legally erroneous, all immigration judges—including Appellate Immigration Judges at the Board of Immigration Appeals—are obligated to apply the Board's published precedent and deny any motion for a custody redetermination filed by Mr. Romero. 8 C.F.R. § 103.10(b). For this reason, Mr. Romero has not gone through the futile exercise of moving the immigration court for release on bond.

STATEMENT OF FACTS

26. Mr. Romero entered the United States at an unknown time and date about fifteen years ago without inspection or admission. He has not left the United States since that entry and prior to being detained, lived in Maryland with his U.S. citizen wife.

27. Mr. Romero and his wife have been married for six years and have been in the process of seeking a green card for Mr. Romero most of this time. Mrs. Romero filed a Form I-130, petition for alien relative in December 2019 on Mr. Romero's behalf, and the United States Citizenship and Immigration Services ("USCIS") approved the petition in October 2020. Exh. A, USCIS Documentation, at 1. Mr. Romero and his wife subsequently took the necessary steps to file a request for a waiver of his unlawful presence under 8 U.S.C. § 1182(a)(9)(B)(v)

in December 2021, also known as a 601A waiver or a provisional waiver of unlawful presence. *Id.* at 2.

28. Mr. Romero's 601A waiver application inexplicably remains unadjudicated despite a recent request by Mr. Romero for expedited processing. USCIS denied this request on August 29, 2025. *Id.* at 3.

29. Mr. Romero has no criminal convictions and is neither a danger to society or a flight risk.

30. Nonetheless, on September 18, 2025, without probable cause, the U.S. Park Police working in conjunction with ICE, pulled Mr. Romero's vehicle over on the George Washington Parkway when he was driving to work and asked about his status in the United States. When he was unable to provide lawful status, ICE proceeded to arrest him, taking him into custody and eventually transferring him to the Farmville Detention Center where he remains. *See* Exh. B, ICE Detainee Locator Search.

31. When he was processed at the Chantilly Detention Center, Mr. Romero told the ICE agents that he had applied for a 601A waiver of his unlawful presence and that this waiver remained pending for almost four years.

32. In spite of this information, ICE detained Mr. Romero and placed him removal proceedings.

33. On September 18, 2025, ICE served Mr. Romero with a Notice to Appear charging him as removable under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States who has not been admitted or paroled, and as a noncitizen not in possession of a valid entry document at the time of admission in violation of 8 U.S.C. § 1182(a)(7)(A)(i)(I). Exh. C, Notice to Appear, at 1-4. ICE also asked Mr. Romero if he would like to give up his right to a

hearing before an immigration judge and return to El Salvador on the first available transportation. *Id.* at 5. Mr. Romero requested a hearing to determine whether he could remain in the United States and is currently in removal proceedings under 8 U.S.C. § 1229a. *Id.*

LEGAL BACKGROUND

Warrantless Arrests

34. The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. amend. IV. "Except at the border and its functional equivalents," immigration officers may stop individuals in public only after identifying "specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion" of a violation of immigration law. *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975).

35. A stop, however brief, must be supported by reasonable suspicion if "a reasonable person would [believe] that he was not free to leave." *See United States v. Mendenhall*, 446 U.S. 544, 554 (1980).

36. Reasonable suspicion cannot be based "on broad profiles which cast suspicion on entire categories of people without any individualized suspicion of the particular person to be stopped." *United States v. Rodriguez Sanchez*, 23 F.3d 1488, 1492 (9th Cir. 1994). Further, "ethnicity alone cannot supply reasonable suspicion." *United States v. Lopez*, 817 F. Supp. 2d 918, 926 n.57 (S.D. Miss. 2011) (citing *Brignoni-Prince*, 422 U.S. at 885-87); *Sanchez v. Sessions*, 885 F.3d 782, 792 (4th Cir. 2018) (recognizing that "a stop based *solely* on race or ethnicity is *per se* egregious. In other words, since race or ethnicity cannot provide reasonable suspicion for a stop or seizure, where an officer relies *only* on race or ethnicity, he necessarily lacks reasonable suspicion for his actions.").

37. Like the authority to stop and question individuals, both the INA and the Fourth Amendment limit ICE's authority to arrest noncitizens without a warrant. *See* 8 U.S.C. § 1357(a); *Brignoni-Ponce*, 422 U.S. at 884 (1975).

38. Under the INA, immigration officers are generally required to obtain a warrant prior to arresting and detaining noncitizens. *See* 8 U.S.C. § 1226(a) ("*On a warrant issued by the Attorney General*, a [noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed.").

39. While the INA allows ICE officers to make warrantless arrests, its authority is limited to exigent circumstances and constrained by Fourth Amendment principles. *See* 8 U.S.C. § 1357(a).

40. Apart from noncitizens observed at the border entering or attempting to enter the United States, the statute only authorizes ICE to "arrest a [noncitizen] in the United States [without a warrant], if he has reason to believe that the [noncitizen] so arrested is in the United States in violation of any [immigration] law or regulation and is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2).

41. Courts "have consistently held that the 'reason to believe' phrase in § 1357 "must be read in light of constitutional standards, so that 'reason to believe' must be considered the equivalent of probable cause." *United States v. Varkonyi*, 645 F.2d 453, 458 (5th Cir. 1981); *see also United States v. Santos-Portillo*, 997 F.3d 159, 163 (4th Cir. 2021) (recognizing that probable cause is required for a warrantless arrest under § 1357); *United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir. 2010) ("Because the Fourth Amendment applies to arrests of illegal aliens, the term 'reason to believe' in § 1357(a)(2) means constitutionally required probable cause."); *Tejeda-Mata v. I.N.S.*, 626 F.2d 721, 725 (9th Cir. 1980) ("The

phrase 'has reason to believe' has been equated with the constitutional requirement of probable cause.") (citing *United States v. Cantu*, 519 F.2d 494, 496 (7th Cir. 1975)); *Lau v. U.S. Immigr. & Naturalization Serv.*, 445 F.2d 217, 222 (D.C. Cir. 1971) ("Reason to believe" is "considered the equivalent of probable cause.").

42. Moreover, Courts have repeatedly held, consistent with the statute's plain language, that ICE exceeds its statutory authority under 8 U.S.C. § 1357(a) when it makes a warrantless arrest without a determination that a suspected removable individual is likely to escape before a warrant can be obtained. *De La Paz v. Coy*, 786 F.3d 367, 376 (5th Cir. 2015) ("[E]ven if an agent has reasonable belief, before making an arrest, there must also be a likelihood of the person escaping before a warrant can be obtained for his arrest.") (internal quotations omitted); *Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995) ("Section 1357(a)(2) requires that the arresting officer reasonably believe that the alien is in the country illegally *and* that she 'is likely to escape before a warrant can be obtained for [her] arrest.'") (quoting 8 U.S.C. § 1357(a)(2)) (emphasis in original); *Westover v. Reno*, 202 F.3d 475, 479-80 (1st Cir. 2000) (noting that an immigration arrest was "in direct violation" of Section 1357(a)(2) because "[w]hile INS agents may have had probable cause to arrest [plaintiff] by the time they took her into custody, there is no evidence that [plaintiff] was likely to escape before a warrant could be obtained for her arrest").

43. Federal regulations track these strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii) ("A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained.").

Provisional Waivers

44. The noncitizen spouse of a U.S. citizen is eligible to become a lawful permanent resident of the United States despite previously having lived in the United States unlawfully. Accomplishing this status is no quick or easy feat and requires that the noncitizen leave the United States in order to apply for an immigrant visa at a U.S. Consulate abroad.

45. The first step of this process requires the United States citizen spouse to file a Form I-130 to petition for immediate relative status on behalf of their alien spouse. *See* 8 U.S.C. § 1154(a)(l)(A)(i).

46. Once the I-130 petition is granted, the noncitizen must next seek waiver of grounds of inadmissibility. One such ground of inadmissibility is unlawful presence in the United States. 8 U.S.C. § 1182(a)(9)(B)(i)(II). The noncitizen must file a Form I-601A "Application for Provisional Unlawful Presence Waiver" to request a provisional waiver of this inadmissibility. *See* 8 U.S.C. § 1182(a)(9)(B)(v) (waiver of inadmissibility for unlawful presence if separation from U.S.-citizen or LPR spouse or parent will cause that person extreme hardship); 8 C.F.R. § 212.7(e)(3).

47. A noncitizen with a removal order faces a separate ground of removability that must be waived through a separate waiver process. 8 U.S.C. § 1182(a)(9)(A); 8 U.S.C. § 1182(a)(9)(A)(iii) (waiver of inadmissibility for prior removal order if applicant obtains consent to reapply for admission).

48. Prior to 2013, the noncitizen spouse would need to leave the United States and wait outside the country while these waivers were processed. "As a result of the often lengthy processing times and uncertainty about whether they qualify for a waiver of the unlawful presence inadmissibility grounds, many immediate relatives who may qualify for an immigrant

visa [were] reluctant to proceed abroad to seek an immigrant visa. 78 Fed. Reg. 536-01, 536 (Jan. 3, 2013).

49. In 2013, however, the federal government enacted regulations allowing noncitizens not legally present to remain in the United States while they seek legal status arising from their valid marriages with U.S. citizens. 78 Fed. Reg. 536-01, 536 (Jan. 3, 2013). This rule was expressly promulgated to "significantly reduce the time that U.S. citizens are separated from their immediate relatives." *Id.* at 536. It was further meant to "encourage immediate relatives who are unlawfully present to initiate actions to obtain an immigrant visa to become [lawful permanent residents] . . . ." *Id.* at 568.

50. The 2013 rule allowed eligible immediate relatives to apply for a provisional unlawful presence waiver while they were still in the United States and before they leave to attend their immigrant visa interview abroad.

51. Once the waiver is approved, the individual departs from the United States and appears at an immigrant visa interview at a United Sates consulate. *See* 8 C.F.R. § 212.7(e)(3)(v). After the interview, if the Department of State determines no other ground of inadmissibility applies, it may issue an immigrant visa. 8 C.F.R. § 212.7(e)(12)(i)

52. The individual may then return to the United States with the immigrant visa and, upon admission, become a Lawful Permanent Resident.

53. A noncitizen is ineligible for a provisional unlawful presence waiver if he "is subject to an administratively final order of removal, deportation, or exclusion under any provision of law . . . unless the alien has already filed and USCIS has already granted, before the alien applies for a provisional unlawful presence waiver under 8 C.F.R. § 212.7(e), an application

for consent to reapply for admission under [8 U.S.C. § 1182(a)(9)(A)(iii)] and 8 C.F.R. § 212.2(j)."

<u>*Detention Authority*</u>

54. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, which set forth separates procedures for the removal and detention of arriving or recently arrived noncitizens and noncitizens who have entered and established a presence in the United States, even those who did so in violation of the immigration laws. *Compare* 8 U.S.C. § 1225, *with* 8 U.S.C. §§ 1226, 1229a. For individuals with an established presence in the United States, the INA mandates that "an immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of a [noncitizen]." 8 U.S.C. § 1229a(a)(1). Removal proceedings under 8 U.S.C. § 1229a(a)(1) "shall be the sole and exclusive procedure from the United States" unless otherwise specified in the INA. 8 U.S.C. § 1229a(a)(3).

55. During the pendency of standard removal proceedings under 8 U.S.C. § 1229a, § 1226 provides for the detention of noncitizens already in the United States, even those who entered illegally or without inspection. For noncitizens subject to detention under § 1226, § 1226(a) sets the default rule, giving the government the discretion to arrest and detain noncitizens "pending a decision on whether the alien is to be removed from the United States," while § 1226(c) mandates the detention of certain classes of criminal noncitizens. 8 U.S.C. § 1226(a), (c). After an initial arrest, a noncitizen subject to detention under § 1226(a) may continue to be detained, released on conditional parole, or released on a bond of at least $1,500. *Id.*

56. Once a noncitizen is detained under § 1226(a), DHS makes an initial custody determination. 8 C.F.R. §§ 1003.19(a), 1236.1(d). The noncitizen may have DHS's initial

custody determination reviewed by an immigration judge, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), and ultimately by the Board, *see* 8 C.F.R. § 1236.1(d)(3).

57. In contrast to the discretionary detention scheme established for noncitizens already in the United States, IIRIRA created a separate, expedited removal process for certain "applicants for admission" deemed to be "arriving aliens." 8 U.S.C. § 1225(b). The INA defines an applicant for admission as a noncitizen "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including a [noncitizen] who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1). The INA further clarifies that the term "application for admission" has "reference to the application for admission *into* the United States," making clear that the term applies to those applying to enter into the United States. 8 U.S.C. § 1101(a)(4) (emphasis added). Notably, individuals subject to expedited removal are not eligible for bond pending completion of their expedited removal hearings. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see id.* at 303 (distinguishing individuals subject to § 1225(b) from those "already present in the United States").

58. Critically, expedited removal proceedings do not apply to all "applicants for admission." Instead, they may be applied only to: (1) individuals who are arriving in the United States at a port of entry without valid documents; and (2) those without valid documents who have been in the United States for less than two years and have not been admitted or paroled. 8 U.S.C. § 1225(b)(1)(A)(iii)(II); *see Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020). Further, this second subset of individuals—noncitizens who have been in the United States for less than two years and have not been admitted or paroled—only become subject to expedited removal if so designated by DHS. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I)

(granting discretionary authority to apply expedited removal to any or all noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II)); *see also* Notice, Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025) (designating the entire subset of noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II) subject to expedited removal: i.e., noncitizens "determined to be inadmissible under [8 U.S.C. §§ 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown . . . that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility").

59. Noncitizens placed in expedited removal proceedings are referred to standard removal proceedings under § 1229a if they establish that they have a credible fear of persecution if removed. *See* 8 U.S.C. § 1225(b). Otherwise, the noncitizen is ordered removed "without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii). Further, any noncitizen "subject to the procedures under [8 U.S.C. § 1225(b)] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iv).

60. Finally, § 1225(b)(2) mandates the detention of certain "applicants for admission" not covered by § 1225(b)(1). Yet in keeping with the statute's focus on arriving aliens, the statute does not mandate detention for all applicants for admission. Instead, § 1225(b)(2)(A) only mandates the detention of an "applicant for admission" when "the examining immigration officer determines" that the noncitizen who is "seeking admission is not clearly and beyond a doubt entitled to be admitted."

61. Since IIRIRA was first enacted, courts and the U.S. Government have consistently taken the position that noncitizens who have entered without inspection and are encountered

in the United States years after their initial entry are entitled to removal proceedings under § 1229a and subject to detention under § 1226. *See, e.g., Jennings*, 583 U.S. at 303 ("While the language of §§ 1225(b)(1) and (b)(2) is quite clear, §1226(c) is even clearer. As noted, § 1226 applies to aliens *already present in the United States*.") (emphasis added); IIRIRA Implementing Regulation, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination."). This is because these individuals are not "seeking admission." *See also Lopez Benitez v. Francis*, No. 25-cv-5937, --- F. Supp. 3d ---, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025) (holding that a noncitizen who has been residing in the United States for more than two years cannot be classified as an "alien seeking admission"); *Martinez v. Hyde*, No. 25-cv-11613, --- F. Supp. 3d ---, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (rejecting the Government's "novel interpretation" that 1225(b) applies to noncitizens detained while present in the United States).

62. Despite amending the INA numerous times since passing IIRIRA, *see, e.g.*, REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302, Congress has never seen fit to clarify or alter this universally accepted interpretation of the statute.

63. Yet on July 8, 2025, the Government abruptly rejected the reading of 8 U.S.C. § 1226(a) and § 1225(b) that it adopted when IIRIRA was first enacted and embraced for the next three decades. In a complete reversal, "DHS, in coordination with the Department of Justice (DOJ) . . . revisited its legal position on detention and release authorities," and issued guidance instructing all ICE employees that 8 U.S.C. § 1225 rather than § 1226 "is the applicable

immigration detention authority for all applicants for admission." Exh. D, ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission.

64. On September 5, 2025, the Board adopted DHS's novel statutory reading of 8 U.S.C. § 1225(b)(2)(A) in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. The Board found no distinction between the statutory terms "applicant for admission" and "seeking admission," and concluded that § 1225(b)(2) must be read to include all noncitizens who have not been inspected and admitted at any point.[1] *Id.* at 221-22. Further, the Board asserted that legislative history supported its construction, although it did not cite any legislative history addressing the detention statutes. *Id.* at 223-25.

65. In fact, legislative history actually contradicts the Board's analysis. In February 1997, Congressman Lamar Smith, then Chair of the House Subcommittee on Immigration and Claims for the Committee on the Judiciary, wrote to the former Immigration and Naturalization Service ("INS") in response to the INS's proposed rulemaking to implement the provisions of IIRIRA. *See* Exh. E, IIRIRA Legislative History. In his comment on the proposed regulation, he explained the legislative intent behind several provisions of IIRIRA that focused on "prompt apprehension, adjudication, and removal of aliens who are not lawfully present in the United States." *Id.* at 4. Specifically, he discussed expedited removal, the concept of arriving aliens, limitations on relief, changes to proceedings before an immigration judge, and limitations of appeals. *See generally id.*

[1] Indeed, nearly 30 years of agency interpretation of the law would have provided Mr. Romero with an opportunity to seek review of DHS's custody determination in a hearing before an immigration judge under 8 U.S.C. § 1226(a). In fact, just weeks prior to *Matter of Hurtado*, the Attorney General designated for publication a decision recognizing that a noncitizen arrested in the interior of the United States and placed into removal proceedings under 8 U.S.C. § 1229a is detained under 8 U.S.C. § 1226(a) and eligible for release on bond. *See Matter of Akhmedov*, 29 I. & N. Dec. 166 (BIA 2025).

66. Relevant here, Congressman Smith explained that the definition of "arriving alien" should be limited, and noted that the legislation used the term "arriving alien" "to distinguish aliens at the border of the United States from those who have made a substantial physical entry into the United States." *Id.* at 5-6. Congressman Smith thus recommended that the proposed regulations adopt a temporally limited measure as to who is considered "arriving," because "[c]riteria based on time are preferable . . . [and] would embrace both those who remain close to the border as well as those who escape shortly after having made an entry." *Id.* at 6. Congressman Smith continued, "[b]riefly put, if the alien is caught on the day he or she arrives, the alien is an 'arriving' alien, but not otherwise. This is a common sense approach that should be easy for INS officials to understand and implement." *Id.*

67. Indeed, courts that have reviewed this issue have almost universally agreed with this "common sense approach" and overwhelmingly rejected Respondents' new reading of the statute. *Singh v. Lyons*, 1:25-cv-1606 (E.D. Va. Oct. 14, 2025); *Maldonado Merlos v. Noem*, No. 1:25-cv-1645 (E.D. Va. Oct. 9, 2025); *Singh v. Noem*, No. 1:25-cv-1525 (E.D. Va. Oct. 7, 2025); *Ortiz Ventura v. Noem*, No. 1:25-cv-01429-MSN-WBP (E.D. Va. Oct. 2, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF (E.D. Va. Sept. 30, 2025); *Hasan v. Crawford*, 1:25-cv-01408-LMB-IDD, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *see also Mendoza Gutierrez v. Baltasar*, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Alvarez-Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 at *4 (W.D. Tex., Sept. 8, 2025); *Lopez Benitez*, --- F. Supp. 3d ---, 2025 WL 2371588; *Martinez*, No. 25-cv-11613, 2025 WL 2084238.

68. Notwithstanding the resounding rejection of DHS and DOJ's policy, Respondents continue to defend the policy, as well as the practice of invoking the automatic stay in cases involving this issue. Yet this policy deprives Mr. Romero of any process by subjecting him—without criminal history and with fifteen years' residence in the United States—to the same mandatory detention provisions as applicants at the border seeking to initially enter the United States.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Procedural Due Process
(Accardi Claim – No Probable Cause for Arrest)

69. Mr. Romero reallege and incorporate by reference the paragraphs above.

70. The Supreme Court's decision in *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), established the well-settled principle that agency actions in violation of its own regulations and procedures offends due process. 347 U.S. at 267-68 (finding that the agency must exercise its judgment in a habeas case because the agency committed itself by regulation).

71. The *Accardi* doctrine applies with particular force "[w]here the rights of individuals are affected." *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). The doctrine's purpose is "to prevent the arbitrariness which is inherently characteristic of an agency's violation of its own procedures." *United States v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969).

72. Under 8 U.S.C. § 1357(a)(2), an agent may make an immigration arrest without a warrant only if they have "reason to believe" that (1) the individual "is in the United States in violation of any [immigration] law or regulation," and (2) the individual "is likely to escape

before a warrant can be obtained for his arrest." *See also* 8 C.F.R. § 287.8(c)(2)(i), (ii) (same). Reason to believe must be considered the equivalent of probable cause. *See supra*, ¶ 41.

73. In detaining Mr. Romero, ICE failed to abide by 8 U.S.C. § 1357 and its own regulations limiting the circumstances under which it may make warrantless arrests. 8 C.F.R. § 287.8(c)(2)(i) ("An arrest shall be made only when the designated immigration officer has reason to believe that the person to be arrested has committed an offense against the United States or is an alien illegally in the United States."). There is no indication that ICE had probable cause to arrest Mr. Romero in this case.

COUNT TWO

Violation of Procedural Due Process
(Accardi Claim – No Flight Risk Analysis)

74. Mr. Romero reallege and incorporate by reference the paragraphs above.

75. The Supreme Court's decision in *Accardi*, 347 U.S. 260, established the well-settled principle that agency actions in violation of its own regulations and procedures offends due process. 347 U.S. at 267-68 (finding that the agency must exercise its judgment in a habeas case because the agency committed itself by regulation).

76. The *Accardi* doctrine applies with particular force "[w]here the rights of individuals are affected." *Morton*, 415 U.S. at 235. The doctrine's purpose is "to prevent the arbitrariness which is inherently characteristic of an agency's violation of its own procedures." *Heffner*, 420 F.2d at 812 (4th Cir. 1969).

77. Under 8 U.S.C. § 1357(a)(2), an agent may make an immigration arrest without a warrant only if they have "reason to believe" that (1) the individual "is in the United States in violation of any [immigration] law or regulation," and (2) the individual "is likely to escape

before a warrant can be obtained for his arrest." *See also* 8 C.F.R. § 287.8(c)(2)(i), (ii) (same). Reason to believe must be considered the equivalent of probable cause. *See supra*, ¶ 41.

78. In detaining Mr. Romero, ICE failed to abide by its own regulations limiting the circumstances under which it may make warrantless arrests. 8 C.F.R. § 287.8(c)(2)(ii) ("A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained."). There is no indication that ICE conducted any analysis of flight risk before arresting Mr. Romero.

COUNT THREE
Violation of Procedural Due Process
Right to Seek Provisional Waiver, 8 C.F.R. § 212.7

79. Mr. Romero realleges and incorporates by reference the paragraphs above.

80. The Due Process Clause of the Fifth Amendment protects the "liberty" of "all 'persons' within the United States, including aliens, [regardless of] whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. at 678, 693 (2001).

81. The Supreme Court's decision in *Accardi*, 347 U.S. 260, established the well-settled principle that agency actions in violation of its own regulations and procedures offends due process. 347 U.S. at 267-68 (finding that the agency must exercise its judgment in a habeas case because the agency committed itself by regulation).

82. The *Accardi* doctrine applies with particular force "[w]here the rights of individuals are affected." *Morton*, 415 U.S. at 235. The doctrine's purpose is "to prevent the arbitrariness which is inherently characteristic of an agency's violation of its own procedures." *Heffner*, 420 F.2d at 812.

83. 8 C.F.R. § 212.7 provides Mr. Romero a liberty interest in remaining in the United States while he pursues his application for a provisional waiver from USCIS. This regulation

requires DHS, which includes ICE, to consider a noncitizen's eligibility for the unlawful presence waiver before initiating removal proceedings with an intent to remove the noncitizen from the United States. *Sanchez v. McAleenan*, 2024 WL 1256264, *8 (D. Md. Mar. 25, 2024); *Calderon*, 330 F. Supp. 3d at 958-59.

84. ICE intentionally violated this liberty interest when it detained Mr. Romero and placed him in removal proceedings, vitiating the purpose of the rule, which explicitly permits Mr. Romero to remain in the United States while his waiver application is pending.

85. The arrest, detention, and intention to place Mr. Romero in removal processing violates his due process rights.

COUNT FOUR
Violation of Administrative Procedure Act
5 U.S.C. § 706(2)(A) – Arbitrary and Capricious

86. Mr. Romero realleges and incorporates by reference the paragraphs above.

87. Under the Administrative Procedure Act, a "reviewing court shall (2) hold unlawful and set aside agency action, findings, and conclusions found to be--(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law…."

88. ICE's decision to arrest, detain and place Mr. Romero in removal proceedings, with the ultimate goal of removal, precludes him from the benefit that DHS's regulation seeks to protect. That is, 8 C.F.R. § 212.7(e) was specifically created to reduce the time that a U.S. citizen family member is separated from her spouse while he is seeking to obtain a visa to come a lawful permanent resident of the United States.

89. ICE has acted arbitrarily and capriciously by arresting, detaining, and placing Mr. Romero in removal proceedings. *Calderon*, 330 F. Supp. 3d at 958; *see also Sanchez*, 2024 WL 1256264, at *10.

COUNT FIVE
Violation of Substantive Due Process
Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226

90. Mr. Romero reallege and incorporate by reference the paragraphs above.

91. As an individual living within the United States for many years, Mr. Romero is entitled to due process of law. U.S. Const. amend. V; *see generally Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690.

92. The "Fifth and Fourteenth Amendments' guarantee of 'due process of law' [] include[s] a substantive component, which forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (emphasis in original). 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." *United States v. Salerno*, 481 U.S. 739, 746 (1987).

93. The substantive due process right to be free from arbitrary detention extends to noncitizens detained during removal proceedings. *Zadvydas*, 533 U.S. at 690 (permitting detention in non-punitive circumstances only where "special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint.").

94. Indeed, the liberty interest in freedom from detention "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 FU.S. 507, 529 (2004).

95. Mr. Romero has a fundamental interest in liberty and being free from official restraint. His detention without a bond hearing before a neutral arbiter to determine whether that continued detention is necessary to ameliorate any flight risk or protect the community violates his substantive due process rights.

COUNT SIX
Violation of Procedural Due Process
Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226

96. Mr. Romero realleges and incorporates by reference the paragraphs above.

97. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). While the Supreme Court has been clear that for noncitizens "on the threshold of initial entry . . . [w]hatever the procedure authorized by Congress is, it is due process." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953), this maxim does not apply to Mr. Romero.

98. After living in this country for fifteen years, Mr. Romero is not on the threshold of initial entry. Indeed, it is well established that noncitizens who "once passed through our gates, even illegally" are entitled to greater constitutional protections. *Id.*; *see also Zadvydas*, 553 U.S. at 693. Thus, even if the Court were to agree that Mr. Romero is properly detained under § 1225(b)(2)—which he is not—his mandatory detention does not comply with due process. As an individual who has "passed through our gates," Mr. Romero is entitled to greater constitutional protections than those at the threshold of initial entry for whom due process is defined by the procedures set by Congress. *Miranda*, 34 F.4th at 346-47 (recognizing due process rights for those who have entered without inspection).

99. A procedural due process challenge is governed by a three-factor balancing test

weighing: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, or additional or substitute procedural safeguards"; and (3) "the Government's interest" *United States v. White*, 927 F.3d 257, 264 (4th Cir. 2019) (citing *Mathews*, 424 U.S. at 335).

100. Each of these factors weigh in Mr. Romero's favor and support a finding that he may not be detained without an opportunity to seek release on bond before an immigration judge.

101. Mr. Romero has a strong private interest in remaining free from detention. Indeed, the Supreme Court has affirmed that even for noncitizens, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. And the Supreme Court, recognizing the strong private interest in remaining free from detention, has held "that detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow non-punitive circumstances where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (cleaned up).

102. While the government has an interest in ensuring Mr. Romero's appearance at his removal proceedings and protecting the community, *see id.*, the bond procedures established under § 1226(a) adequately serve both interests by allowing an immigration judge to make an individualized assessment of a noncitizen's flight risk and the danger he may pose to the community. And the government cannot plausibly justify denying a bond hearing based on "administrative burdens" when it has, for the past three decades, consistently provided bond hearings to noncitizens like Mr. Romero who has established a presence in the United States after previously entering without inspection.

103. Finally, this case demonstrates the high risk of erroneous deprivation that would result from allowing DHS to detain noncitizens like Mr. Romero without any opportunity to challenge his detention before the administrative agency. Without a bond hearing, there is a high probability that Mr. Romero would be detained even though his continued detention serves no non-punitive purpose as it is unnecessary to protect the community or to ensure his appearance at removal proceedings.

104. In short, denying Mr. Romero any opportunity to demonstrate that his continued detention is unnecessary to protect the community or ensure his appearance at proceedings and violates his procedural due process rights.

COUNT SEVEN
Violation of Immigration and Nationality Act
Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226

105. Mr. Romero realleges and incorporates by reference the paragraphs above.

106. Mr. Romero is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). He is properly subject to detention under § 1226(a) and entitled to a bond hearing by statute and regulation as countless district court decisions have affirmed. *See supra* ¶ 67.

107. The plain language of the INA is clear: § 1225(b)(2) "authorizes the Government to detain aliens *seeking admission into the country*," and § 1226(a) "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Jennings*, 583 U.S. at 289; *accord Sampiao v. Hyde*, No. 1:25-cv-11981, -- F. Supp. 3d --, 2025 WL 2607924, at *8 (D. Mass. Sept. 9, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025); *Mendoza Gutierrez*, 2025 WL 2962908, at *5. The titles of the two statutory sections make this distinction clear. *Compare* 8 U.S.C. § 1225 (titled

"Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing"), *with* 8 U.S.C. § 1226 ("Apprehension and detention of aliens").

108. Furthermore, to equate the term "applicant for admission" with "seeking admission," as EOIR has concluded in *Matter of Yajure Hurtado*, would render the phrase "seeking admission" superfluous because it violates the principle that Congress is presumed to have acted intentionally in choosing different words in a statute, such that different words and phrases should be accorded different meanings." *Lopez Benitez*, 2025 WL 2371588, at *6; *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant."); *accord Martinez*, 2025 WL 2084238, at *2; *Mendoza Gutierrez*, 2025 WL 2962908, at *7. Section 1225's mandatory detention regime applies to noncitizens who meet three criteria; first, the noncitizen must be "an 'applicant for admission' (a 'term of art' in the INA that includes noncitizens who 'arrive[] in the United States,' as well as those already 'present in the United States who ha[ve] not been admitted," second, the noncitizen must be "actively 'seeking admission' to the country," and third, the noncitizen must be "one whom an examining immigration officer determines 'is not clearly and beyond a doubt entitled to be admitted.'" *Lopez Benitez*, 2025 WL 2371588, at *6 (quoting *Martinez*, 2025 WL 2084238, at *2).

109. In addition, "Respondents' reading of § 1225(b)(2)(A) 'negates the plain meaning of the text.'" *Id.* (quoting *Martinez*, 2025 WL 2084238, at *6). The phrase "seeking admission," is in the present tense, connoting a current action. Yet, Mr. Romero was not *actively* seeking admission when DHS apprehended him and placed him in custody; he "ha[d] already 'entered' the country (albeit unlawfully)." *Id.*

110. Similarly, Mr. Romero cannot reasonably be described as "seeking admission" to a country they have resided in for twenty years. *Jennings*, 583 U.S. at 297, 303 (Section 1225(b)

focuses on individuals arriving at the border and ports of entry and thus are in the process of "seeking admission." *Lopez Benitez*, 2025 WL 2371588; *Jose Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025).

111. Additionally, applying § 1225(b)(2) to all noncitizens except those who have been admitted could not have been Congress's intent because it would render other mandatory detention provisions, such as § 1226(c)(1)(E) redundant. *Sampiao*, -- F. Supp. 3d --, 2025 WL 2607924, at *8; *Rodriguez Vasquez*, 779 F. Supp. 3d at 1259; *Gomes*, 2025 WL 1869299, at *7. Section 1226(c)(1) requires mandatory detention for individuals who are present in the United States without being admitted or paroled *and* who are subject to specific criminal conduct criteria. *Sampiao*, 2025 WL 2607924, at *8. Yet if all noncitizens who are inadmissible are subject to mandatory detention under § 1225(b)(2), as Respondents contend, there would be no need for Congress to identify subcategories of inadmissible noncitizens who are subject to mandatory detention under § 1226(c), rendering the provision completely redundant. *Id.* at *8 (citing the *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.").

112. Thus, this Court must find that subjecting Mr. Romero to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and denying him the bond hearing he is entitled to under § 1226(a) violates the INA.

PRAYER FOR RELIEF

Based on the foregoing, Mr. Romero requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Issue an order requiring Respondents to show cause why this Petition should not be granted within three days;

(3) Issue an order precluding Respondents from removing Mr. Romero from this district prior to the resolution of this petition;

(4) Declare that the government violated its regulations at 8 C.F.R. § 212.7(e)(3) by arresting, detaining, and placing Petitioner into removal proceedings despite actual knowledge that he had applied for a provisional unlawful presence waiver;

(5) Order that Petitioner be released from immigration custody with all of his personal belongings based on its violation of his due process rights;

(6) Declare that the government violated its regulations at 8 C.F.R. § 287.8(c)(2)(i)-(ii) and arrested Petitioner without probable cause or an analysis of flight risk;

(7) Declare that 8 U.S.C. § 1226(a) governs Petitioner's detention by U.S. immigration authorities;

(8) Order that Petitioner be released from immigration custody with all of his personal belongings based on his warrantless arrest;

(9) Alternatively, order a bond hearing as authorized under 8 U.S.C. § 1226(a) at which 8 U.S.C. § 1225(b)(2)(A) cannot be applied, DHS bears the burden of proof, and the immigration judge considers Mr. Romero' ability to pay bond as part of the factors in setting bond; and

(10) Grant any other and further relief this Court deems just and proper.

Dated: October 24, 2025

Respectfully submitted,

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Counsel for Petitioner

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242.

I am submitting the verification on behalf of Mr. Romero because I am Mr. Romero's attorney. I have discussed the events described in this Petition with Mr. Romero. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: October 24, 2025

Respectfully submitted,

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