

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Heriberto MARTINEZ ROMERO	)
Petitioner	)
	)
V.	) Case Number:
	)
Jeffrey CRAWFORD, as Warden of Farmville	) VERIFIED PETITION FOR WRIT
ICE Detention Facility; Russell HOTT, as Deputy	) OF HABEAS CORPUS AND
Director of Washington Field Office, Immigration	) COMPLAINT FOR DECLARATORY
and Customs Enforcement; Todd LYONS as	) AND INJUNCTIVE RELIEF FOR AN
Director of Immigration and Customs	) ORDER TO SHOW CAUSE
Enforcement; Erik S. SIEBERT, US Attorney	)
General for Eastern District of Virginia and, Kristi	)
NOEM, as Secretary of Homeland Security	)
	)
Respondents	)
	)
(sued in their official capacity)	)
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**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241
(Expedited Consideration Requested)**

INTRODUCTION

1. Petitioner, Heriberto Martinez Romero, is a noncitizen from Mexico. On information and belief, Petitioner entered the United States without inspection in about 1989 at the age of seven years old. He was not apprehended or detained at the time, and he has remained in the United States ever since. Together with his U.S. Citizen wife, he has three U.S. Citizen children, and he has maintained continuous employment at Supreme Aluminum Products, Inc. for approximately 20 years. The Petitioner is visibly Hispanic and speaks English fluently with no accent.
2. On October 23, 2025, agents from the Department of Homeland Security (“DHS”) detained Petitioner in what appears to be a blatant case of racial profiling. He is now being held in Respondent’s Custody at the Farmville Detention Facility located in Farmville, VA.
3. The Petitioner was detained alongside his colleague, also a Hispanic male, while riding in a privately-owned pick-up truck. The detention arose out of a roadside stop initiated by Parkway Police officers on the exit ramp from Route 202 to the Baltimore-Washington

Parkway, who indicated they pulled the truck over because it was a “commercial vehicle” and could not enter the parkway. Although the Petitioner was a passenger of the truck, Parkway Police required him to present his ID. Parkway Police conversed with both the driver and Petitioner in English, and both driver and Petitioner presented valid Maryland Driver’s Licenses. At no point was Petitioner asked any questions about his nationality or immigration status.

4. Within a few minutes, an unmarked van with New York plates, along with another unmarked vehicle, pulled directly in front of and behind the pick-up truck containing the Petitioner. Several unidentified individuals wearing vests disembarked from the vehicle and approached Petitioner and the driver of the truck, telling them “You’re coming with us, get out.” The driver of the truck hesitated and requested that the individuals identify themselves, prompting the individuals to reach for tasers that they carried on their person. At that time, the individuals identified themselves, stating, “We’re with Homeland Security, get out, you are coming with us,” and began pulling driver and the Petitioner out of the truck by their hands and arms. At no time did the Homeland Security agents present a warrant or identify the driver or Petitioner by name.
5. At that time, upon information and belief, the Petitioner attempted to comply and get out of the truck, stating “I’m trying to get out” and “My papers are in process.” Petitioner was placed in handcuffs and into one of the unmarked vehicles. Upon information and belief, he was then taken to the parking lot of a Parkway Police station where a Homeland Security agent searched the Petitioner’s information in a computer database. The search initially yielded information that did not match the Petitioner. No information about the Petitioner’s immigration status or applications was obtained until the agent searched the database for his U.S. Citizen wife’s information. The Petitioner was then taken to a Homeland Security office in Chantilly, Virginia where he was fingerprinted.
6. The Petitioner was then transferred to the Farmville Detention Center on October 23 or 24, 2025 and remains in custody there. On October 23, 2025, the Department of Homeland Security issued a Notice to Appear, placing the Respondent into removal proceedings.
7. On September 6, 2025, the Board of Immigration Appeals (BIA) released *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025). The BIA took the novel position that

all noncitizens present in the United States who entered the country without a lawful entry—which would include Petitioner—must be mandatorily detained under 8 U.S.C. § 1225(b) rather than the discretionary detention provision of 8 U.S.C. § 1226(a), regardless of the number of years that have passed since that unlawful entry. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220, 228.

8. This interpretation effectively forecloses the Petitioner from requesting a bond hearing from a neutral arbiter i.e. an immigration judge. However, many courts have disagreed with this broad interpretation. *See, e.g. Hasan v. Crawford*, 1:25-cv-1408 (LMB/IDD) (E.D. Va. Sep 19, 2025); *Flores Pineda v. Simon et al.*, No. 1:25-CV-01616-AJT-WEF, Slip op. at *2 (E.D. Va. Oct. 21, 2025); *Singh v. Lyons et al.*, No. 1:25-CV-01606-AJT-WBP, 2025 WL 2932635, at *2 (E.D. Va. Oct. 14, 2025); *Luna Quispe v. Crawford*, No. 1:25-CV-1471-AJT-LRV, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-CV-01382-MSN-WEF, 2025 WL 2783800, at *1 (E.D. Va. Sept. 30, 2025).
9. Given that Petitioner has been present in the United States for thirty years, despite his initial unlawful entry, he is entitled to a bond hearing under 8 U.S.C. § 1226(a). Under *Matter of Yajure Hurtado*, Respondents are systematically and unlawfully denying Petitioner and those in similar case postures bond hearings. Therefore, this Court should order a bond hearing under 8 U.S.C. § 1226(a). *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021) (“[W]e hold that, in order to continue detaining Hernandez under section 1226(a), due process requires the government to either (1) prove by clear and convincing evidence that she poses a danger to the community or (2) prove by a preponderance of the evidence that she poses a flight risk.”).
10. In the alternative, this Court should, in its inherent power, release Petitioner pending resolution of this Petition.

PARTIES

11. Petitioner is a noncitizen from Mexico who is currently detained by ICE. On information and belief, Petitioner is currently detained in Farmville Detention Facility located at 508 Waterworks Dr., Farmville, VA 23901.
12. Respondent Russell Hott is named in his official capacity as the Acting Field Office

Director of the Washington Field Office for Immigration and Customs Enforcement ("ICE") within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations and is a custodian of Petitioner. Respondent Hott's address is Washington ICE ERO Field Office, 14797 Murdock St, Chantilly, VA 20151.

13. Respondent Jeffrey Crawford is the Director of the Farmville Detention Center where, upon information and belief, Petitioner is detained. In this capacity, he is responsible for the immediate execution of detention over Petitioner and is the immediate custodian of Petitioner. Respondent Crawford's address is Farmville Detention Center, 508 Waterworks Dr., Farmville, VA 23901.
14. Respondent Todd Lyons is the Acting Director of ICE. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in the Eastern District of Virginia; is legally responsible for pursuing any effort to remove the Petitioner; and as such is a custodian of the Petitioner. His address is ICE, Office of the Principal Legal Advisor, 500 12th St SW, Mail Stop 5900, Washington, DC 20536-5900.
15. Respondent Erik S. Siebert, Acting U.S. Attorney for Eastern District of Virginia (EDVA). As the chief federal law enforcement officer for the District, he supervises litigation of CIS matters in which the federal government has an interest. 8 U.S.C. § 1329. This action is brought against him in his official capacity. Respondent Siebert's address is US District Court, Eastern District of Virginia, 2100 Jamieson Ave, Alexandria, VA 22314
16. Respondent Kristi Noem is sued in her official capacity as the Secretary of the US 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, the component agency responsible for Petitioner's arrest and detention. Respondent is a legal custodian of Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr Ave. SE, Washington, DC 20528-0485.

17. Respondent Pamela J. Bondi is the United States Attorney General. She is being sued in her official capacity. She oversees Immigration Judges and the Board of Immigration Appeals. She is also Petitioner's legal custodian. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington DC 20530-0001.

JURISDICTION AND VENUE

18. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.
19. 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).
20. 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. The Court has jurisdiction under 28 U.S.C. § 1331, 2241 (habeas corpus) and Article I, Section 9, Clause 2 of the U.S. Constitution ("Suspension Clause").
21. Venue is proper in the Eastern District of Virginia because, on information and belief, Petitioner is currently detained by Respondents in Farmville, VA, which is the territorial jurisdiction of this Court. 28 U.S.C. § 1391.

REQUIREMENTS OF 28 U.S.C. § 2243

22. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).
23. 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).

FACTUAL ALLEGATIONS

a. CUSTODY AND BACKGROUND

24. Petitioner is 43 years-old and was born in Mexico. Ex.1, Petitioner's Declaration. ¶ 1 He was detained by the Department of Homeland Security("DHS") on October 23, 2025, and is currently in the Respondent's custody at the Farmville Detention Facility located at 508 Waterworks Dr., Farmville, VA 23901.
25. On or about October 23, 2025, Respondents placed Petitioner in regular removal proceedings under 8 U.S.C. § 1229a. Exh. 6 (identifying Petitioner as "an alien present in the United States who has not been admitted or paroled"). Petitioner is scheduled for a Master Calendar Hearing at the Annandale Immigration Court on November 10, 2025.
26. On information and belief, Petitioner entered the United States without inspection in about 1989 at the 7 years of age. Petitioner was not apprehended or detained at that time. Id. Petitioner is the father of three U.S. Citizen Children and is married to a U.S. Citizen. Exh. 2, Marriage Certificate. He is the beneficiary of an approved I-130 Petition for Alien Relative. Exh. 3, I-130 Approval Notice. The Petitioner is visibly Hispanic and speaks English fluently with no accent. Ex.1, Pet. Dec. ¶ 2.
27. In 2001, Petitioner pled guilty in Montgomery County, Maryland, to CDS Possession of Paraphernalia. In 2012, through a petition for Coram Nobis, the charge was amended to Simple Possession of Marijuana- Less than 30 Grams with a final disposition of Probation before Judgement. Exh. 4 Criminal History Documents. On June 17, 2024, Maryland Governor Wes Moore issued an executive clemency order titled, "Full Pardons of Certain Convictions For Cannabis Possession," pardoning the Petitioner's simple possession conviction. Exh. 5 Governor Wes Moore's Executive Order.

b. LAW ENFORCEMENT STOP AND DHS ARREST

28. On October 23, 2025, agents from the Department of Homeland Security ("DHS") detained Petitioner during a roadside stop. The Petitioner was detained alongside his colleague, also a Hispanic male, while riding in a privately-owned pick-up truck. The Petitioner was not driving the truck. Ex.1, Pet. Dec. ¶ 6. The stop was initiated by Parkway Police officers on the exit ramp from Route 202 to the Baltimore-Washington Parkway, who indicated they pulled the truck over because it was a "commercial vehicle"

and could not enter the parkway. Id., ¶ 7-8.

29. Parkway Police required both driver and passenger (Petitioner) to present their IDs. Id., ¶ 8. Parkway Police conversed with both the driver and Petitioner in English, and both driver and Petitioner presented valid Maryland Driver's Licenses. At no point was Petitioner asked any questions about his nationality or immigration status. Id., ¶ 12.
30. Within a few minutes, an unmarked van with New York plates, along with another unmarked vehicle, pulled directly in front of and behind the pick-up truck containing the Petitioner. Id., ¶ 9. Several unidentified individuals wearing vests disembarked from the vehicle and approached Petitioner and the driver of the truck, telling them "You're coming with us, get out." Id., ¶ 9-10. The driver of the truck hesitated and requested that the individuals identify themselves, prompting the individuals to reach for tasers that they carried on their person. Id., ¶ 10. At that time, the individuals identified themselves, stating, "We're with Homeland Security, get out, you are coming with us" and began pulling driver and the Petitioner out of the truck by their hands and arms. Id. At no time did the Homeland Security agents present a warrant or identify the driver or Petitioner by name. Id., ¶ 15.
31. At that time, upon information and belief, the Petitioner attempted to comply and get out of the truck, stating "I'm trying to get out" and "My papers are in process." Petitioner was placed in handcuffs and into one of the unmarked vehicles. Id., ¶ 11. Upon information and belief, he was then taken to the parking lot of a Parkway Police station where a Homeland Security agent searched the Petitioner's information in a computer database. The search initially yielded information that did not match the Petitioner. Id., ¶ 16-18. Information about the Petitioner's immigration status and application was obtained when the agent searched the database for Petitioner's U.S. Citizen wife's information. The Petitioner was then taken to a Homeland Security office in Chantilly, Virginia where he was fingerprinted. Id., Pet. Dec. ¶ 19-20.

c. RESPONDENTS' NATIONWIDE POLICIES

32. Since August 2025, Respondents' agents in the DMV region have been systematically making immigration arrests without a warrant and without probable cause findings as to immigration status and flight risk. ICE has used untargeted traffic stops to arrest

individuals for alleged civil immigration violations.¹ ICE agents have arrested parents dropping off their children at school, leading neighbors to form “walking school buses” to safely escort kids to school.² People have also been arrested by federal agents on their way to church in the Columbia Heights neighborhood in D.C., where a large number of immigrants live, making people afraid to attend services.³ Federal agents have also targeted food delivery drivers in D.C., stopping and arresting them without prior knowledge about their immigration status.⁴

33. On September 6, 2025, the Board of Immigration Appeals (BIA) released *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025). The BIA took the novel position that all noncitizens present in the United States who entered the country without a lawful entry—which would include Petitioner—must be mandatorily detained under 8 U.S.C. § 1225(b). *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220, 228.

34. Since July 2025, the ICE Office of the Principal Legal Advisor has held a nationwide policy opposing bond eligibility for individuals similarly situated to Petitioner using reasoning similar to the BIA’s decision in *Matter of Yajure Hurtado*, stating that unlawful entrants must be mandatorily detained under 8 U.S.C. § 1225(b) regardless of length of residence in the United States.⁵

¹ See, e.g., Trump’s crackdown in DC leaves residents on edge as federal agents set up checkpoints, WTOPnews (Aug. 21, 2025), <https://wtop.com/dc/2025/08/trumps-immigration-crackdown-brings-checkpoints-and-new-fears-to-washington>.

² Teo Armus, They watched ICE detain their dad. Now D.C. neighbors escort them to school., Wash. Post (Sept. 11, 2025), <https://www.washingtonpost.com/immigration/2025/09/11/immigrants-school-kids-trump-dc/>; see also Federal surge has taken a toll on children of immigrants in Washington, PBS News (Sept. 17, 2025, 2:24 PM), <https://www.pbs.org/newshour/politics/federal-surge-has-taken-a-toll-on-children-of-immigrants-in-washington>.

³ Michael Sean Winters, DC Mass attendance falls after immigration arrests, The Tablet (Aug. 25, 2025), <https://www.thetablet.co.uk/news/dc-mass-attendance-falls-after-immigration-arrests>; see also Madalaine Elhabbal, ICE arrests take toll on DC churches, Cath. News Agency (Aug. 21, 2025, 6:18 PM), <https://www.catholicnewsagency.com/news/266095/ice-arrests-take-toll-on-dc-churches>.

⁴ Teo Armus et al., ICE Is Joining D.C. Police Patrols. Moped Drivers Are Getting Detained, Wash. Post (Aug. 21, 2025), <https://www.washingtonpost.com/dc-md-va/2025/08/21/dc-police-ice-moped-crackdown-delivery-drivers/>; Didi Martinez, Detentions of D.C. delivery drivers leave immigrant communities on edge, NBC News (Aug. 19, 2025, 5:00 AM), <https://www.nbcnews.com/news/us-news/dc-delivery-driver-detentions-spark-concern-fear-community-rcna225671>.

⁵ Kyle Cheney and Myah Ward, Trump’s new detention policy targets millions of immigrants. Judges keep saying it’s illegal, Politico (Sept. 20, 2025, 4:00 PM) <https://www.politico.com/news/2025/09/20/ice-detention-immigration-policy-00573850>

LEGAL FRAMEWORK AND ARGUMENT

a. The Petitioner is detained under 8 U.S.C. § 1226(a)

35. The dispositive issue with respect to the Petitioner's claim of due process violations reduces to whether Petitioner's detention is governed by the mandatory detention provisions in 8 U.S.C. § 1225(b)(2) -as mandated by the BIA's interpretation in *Matter of Yajure Hurtado*- or the discretionary detention provisions in 8 U.S.C. § 1226(a).
36. Section 1225(a) provides that "[a]n alien present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1). "Applicants for admission are either covered by Section 1225(b)(1) or 1225(b)(2)." *Rodriguez v. Bondi*, 2025 WL 2490670, at *2 (E.D. Va. June 24, 2025). Section 1225(b)(2) applies to all applicants that are not "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation," or who receive special designation by the Attorney General. See *Jennings*, 583 U.S. at 287 (explaining that § 1225(b)(2) "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)"). Both sections 1225(b)(1) and (b)(2) require the detention of persons deemed to be applicants for admission "until their asylum application is fully adjudicated or until removal proceedings conclude." *Rodriguez*, 2025 WL 2490670, at *2.
37. Applicants for admission covered by § 1225(b)(2) "shall be detained for a [removal] proceeding" if an immigration officer "determines that an alien seeking admission is not clearly and beyond doubt entitled to be admitted" into the United States. 8 U.S.C. § 1225(b)(2)(A). Section 1225(b) also allows for an applicant for admission to be released on parole "for urgent humanitarian reasons or significant public benefit." *Jennings*, 583 U.S. at 288 (quoting 8 U.S.C. § 1182(d)(5)(A)).
38. In contrast with § 1225(b), § 1226(a) sets forth "the default rule" for detaining and removing aliens "already present in the United States." *Jennings v. Rodriguez*, 583 U.S. 281 (2018) at 303; see *Abreu v. Crawford*, 2025 WL 51475, at *3 (E.D. Va Jan. 8, 2025) ("There is a statutory distinction between noncitizens who are detained upon arrival into the United States and those who are detained after they have already entered the country, legally or otherwise.").
39. Section 1226(a) provides that, "[o]n a warrant issued by the Attorney General, an alien

may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Pending the removal decision, the Attorney General may “continue to detain the arrested alien,” “release the alien on bond of at least \$1,500,” or “release the alien on conditional parole.” *Id.* § 1226(a)(1)-(2).

40. On September 6, 2025, the Board of Immigration Appeals (BIA) released *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025). The BIA took the novel position that all noncitizens present in the United States who entered the country without a lawful entry—which would include Petitioner—must be mandatorily detained under 8 U.S.C. § 1225(b) regardless of the number of years that have passed since that unlawful entry. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220, 228

41. Many courts have disagreed with the BIA’s broad interpretation. *See, e.g. Hasan v. Crawford*, 1:25-cv-1408 (LMB/IDD) (E.D. Va. Sep 19, 2025); *Flores Pineda v. Simon et al.*, No. 1:25-CV-01616-AJT-WF, Slip op. at *2 (E.D. Va. Oct. 21, 2025); *Singh v. Lyons et al.*, No. 1:25-CV-01606-AJT-WBP, 2025 WL 2932635, at *2 (E.D. Va. Oct. 14, 2025); *Luna Quispe v. Crawford*, No. 1:25-CV-1471-AJT-LRV, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-CV-01382-MSN-WF, 2025 WL 2783800, at *1 (E.D. Va. Sept. 30, 2025). *Jimenez v. FCI Berlin, Warden et al*, 2025 DNH 107 P, No. 1:25-cv-326-LM-AJ, at *7, 24 n.9 (D.N.H. Sept. 8, 2025) (8 U.S.C. § 1226(a) governs Petitioner’s detention, even though Petitioner had not been admitted to the United States); *Benitez v. Francis*, 2025 U.S. Dist. LEXIS 157214, at *7 (S.D.N.Y. Aug. 8, 2025) (holding that 8 U.S.C. § 1226 governs the detention because “(1) DHS has consistently treated Petitioner as subject to detention on a discretionary basis under § 1226(a), which is fatal to Respondents’ claim that he is subject to mandatory detention under § 1225(b); and (2) a proper understanding of the relevant statutes, in light of their plain text, overall structure, and uniform case law interpreting them, compels the conclusion that § 1225’s provision for mandatory detention of noncitizens ‘seeking admission’ does not apply to someone like Petitioner, who has been residing in the United States for more than two years.”).

b. The Respondents' Detention of the Petitioner without Custody Review Violates His Procedural Due Process Rights

42. To determine whether civil detention violates a detainee's Fifth Amendment procedural due process rights, courts apply the familiar three-part test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts weigh three factors: (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, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.
43. The first *Mathews* factor requires consideration of the private interests affected by the federal respondents' denial of Petitioner's opportunity for a neutral custody review by an immigration judge. "The interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); see *United States v. Salerno*, 481 U.S. 739, 755 (1987) ("In our society liberty is the norm, and detention ... is the carefully limited exception."). In Petitioner's case, the fundamental nature of freedom weighs in his favor, as he is married to a U.S. Citizen and is father to 3 U.S. Citizen children, has significant ties to the United States, has lived in the United States for over 30 years, and is pursuing legal status via the proper procedures.
44. Second, the risk that a noncitizen's freedom will be erroneously deprived without access to a neutral custody review is significant, as any internal process to demonstrate to ICE that release is warranted is not subject to review or challenge and indeed has no published procedural rules. All § 1225(b) detainees who seek release from custody must provide evidence to their individual ICE detention officer who reviews the evidence and makes a decision on custody. Whether that decision is subject to supervisor review is unknown, and possibly not universally enforced. And even if it were, ICE is not a neutral arbiter of whether a noncitizens' detention is necessary—indeed, one cannot be both judge and jailer and still be called neutral.
45. Finally, the proposed procedures -requiring that the Petitioner be afforded a bond hearing before an immigration judge- does not meaningfully prejudice the government's interest in detaining dangerous noncitizens during removal proceedings.

c. The Respondents' arrest of Petitioner violated the Fourth Amendment prohibition against unreasonable searches and seizures as well as statutory requirements for a warrantless immigration arrest.

46. In the immigration context, to stop an individual for brief questioning about immigration status, the Government must have reasonable suspicion that the individual is illegally present in the United States. *See United States v. Brignoni-Ponce*, 422 U. S. 873, 880–882 (1975); *United States v. Arvizu*, 534 U. S. 266, 273 (2002); *United States v. Sokolow*, 490 U. S. 1, 7 (1989). The reasonable suspicion inquiry turns on the “totality of the particular circumstances.” *Brignoni Ponce*, 422 U. S., at 885, n. 10; *Arvizu*, 534 U. S., at 273.
47. While factors such as (i) presence at particular locations such as bus stops, car washes, day laborer pickup sites, agricultural sites, and the like; (ii) the type of work one does; (iii) lack of English speaking ability or speaking English with an accent; and (iv) apparent race or ethnicity may be considered in the totality of the circumstances, apparent ethnicity alone cannot furnish reasonable suspicion; however, it can be a “relevant factor” when considered along with other salient factors. *Noem v. Vasquez Perdomo*, U.S. 606, ___, 5-6 (2025); *Brignoni Ponce*, 422 U. S., at 887.
48. Under the totality of the circumstances, there was not a reasonable suspicion to detain the Petitioner to inquire about his immigration status. Petitioner was the passenger in a privately owned pick-up truck. Although Parkway Police stated the reason for the stop was to prevent commercial vehicles from entering the Baltimore-Washington Parkway, Petitioner was not riding in a commercial vehicle. While he is visibly Hispanic, Petitioner conversed with Parkway Police in English and speaks without any accent. There is every indication that Parkway Police initiated the road-side stop based on the ethnicity of the driver and Petitioner alone, which cannot furnish reasonable suspicion required for a brief investigative stop.
49. Even where reasonable suspicion for a brief investigative stop has been established, an immigration officer may conduct a warrantless arrest of a noncitizen only when (1) the officer has “reason to believe” a person is in the United States in violation of the law; and (2) the officer has “reason to believe” the individual is likely to escape before a warrant

can be obtained for his arrest. 8 U.S.C. §1357(a)(2).

50. Courts have interpreted the "reason to believe" standard for warrantless immigration arrests authorized under Section 1357(a) to be equivalent to the Fourth Amendment's probable cause standard. See e.g. *Lau v. U.S. Immigr. & Naturalization Serv.*, 445 F.2d 217, 222 (D.C. Cir. 1971); *Morales v. Chadbourne*, 793 F.3d 208, 216–18 (1st Cir. 2015). Under this standard, courts have held that an immigration officer must have sufficient facts that would lead a reasonable person to believe, based on the circumstances, that the alien has violated federal immigration laws and is likely to escape before an ICE warrant can be obtained.
51. Here, there was no warrant for Petitioner's arrest and there was no basis for a warrantless arrest. DHS agents initiated the forcible arrest of Petitioner based solely on the Petitioner's interaction with Parkway Police moments before. The DHS agents did not conduct any additional investigation or inquiry into his nationality or immigration status; they conversed with the Petitioner in English; and the Petitioner made no attempt to evade arrest or flee from the agents. Only *after* DHS agents had initiated his arrest, the Petitioner stated that his "papers were in process." The agents did not have reason to believe the Petitioner was in violation of immigration laws based on the information available to them before initiating the arrest--his ethnicity, name and birthdate-- and they did not have reason to believe he was likely to escape before an ICE warrant could be obtained, therefore Petitioner was arrested in violation of 8 U.S.C. §1357(a)(2).

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

52. The allegations in the above paragraphs are realleged and incorporated herein.
53. The Due Process Clause of the Fifth Amendment forbids the Government from depriving any person of liberty without due process of law. U.S. Const., amend. V.
54. To determine whether civil detention violates a detainee's Fifth Amendment procedural due process rights, courts apply the three-part test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976)
55. In Petitioner's case, the fundamental nature of freedom weighs in his favor, as he is

married to a U.S. Citizen and is father to 3 U.S. Citizen children, has significant ties to the United States, has lived in the United States for over 30 years, and is pursuing legal status via the proper procedures.

56. Second, the risk that Petitioner's freedom will be erroneously deprived is significant, as the BIA has taken the position in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025) that all noncitizens present in the United States who entered the country without a lawful entry—which would include Petitioner—must be mandatorily detained under 8 U.S.C. § 1225(b). *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220, 228. Because of the BIA's decision, Petitioner will likely be found ineligible for any process to challenge his detention apart from a restricted, unreviewable, and largely informal request to ICE for mercy.
57. Finally, the proposed procedures -requiring that the Petitioner be afforded a bond hearing before an immigration judge- do not meaningfully prejudice the government's interest in detaining dangerous noncitizens during removal proceedings.
58. Respondents have no constitutional authority to deprive Petitioner of due process, and to the extent that any decision of the Attorney General, statute, or regulation conflicts with that right, the authority must be declared unconstitutional and corrective measures taken.
59. As a result of the constitutional violation against Petitioner by Respondents, he has suffered prejudice, actual and substantial hardship, and irreparable injury in fact.
60. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO

8 U.S.C. § 1226(a)

61. The allegations in the above paragraphs are realleged and incorporated herein.
62. 8 U.S.C. § 1226(a) states that "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States" and that the Attorney General may "continue to detain the arrested alien," "release the alien on bond of at least \$1,500," or "release the alien on conditional parole." 8 U.S.C. § 1226(a)(1)-(2)
63. Section 1226(a) sets forth "the default rule" for detaining and removing aliens "already present in the United States." *Jennings v. Rodriguez*, 583 U.S. 281 (2018) at 303.

64. Because the Petitioner 1) resided in the United States for thirty years; 2) was arrested while already present in the United States, and 3) there are no other grounds for mandatory detention under § 1226, his detention is governed by § 1226(a).
65. Respondent's policy categorically denying the Petitioner an opportunity for a bond hearing before an immigration judge pursuant to the BIA's decision in *Matter of Yajure Hurtado* violates 8 U.S.C. § 1226(a).

COUNT THREE

Violation of Fourth Amendment Prohibition against Unreasonable Searches and Seizures

66. The allegations in the above paragraphs are realleged and incorporated herein.
67. The Fourth Amendment prohibits government agents from conducting unreasonable searches and seizures. U.S. Const.. amend. IV.
68. In the immigration context, to stop an individual for brief questioning about immigration status, the Government must have reasonable suspicion that the individual is illegally present in the United States. See *United States v. Brignoni-Ponce*, 422 U. S. 873, 880–882 (1975); *United States v. Arvizu*, 534 U. S. 266, 273 (2002); *United States v. Sokolow*, 490 U. S. 1, 7 (1989). The reasonable suspicion inquiry turns on the “totality of the particular circumstances.” *Brignoni Ponce*, 422 U. S., at 885, n. 10; *Arvizu*, 534 U. S., at 273.
69. The totality of the circumstances indicates that neither Parkway Police officers who stopped the Petitioner for questioning nor the DHS officers who detained the Petitioner held the reasonable suspicion required to stop him for questioning regarding his immigration status. While the Supreme Court has indicated that factors such as (i) presence at particular locations such as bus stops, car washes, day laborer pickup sites, agricultural sites, and the like; (ii) the type of work one does; (iii) lack of English speaking ability or speaking English with an accent; and (iv) apparent race or ethnicity may be considered in the totality of the circumstances, the Petitioner's perceived ethnicity alone is not sufficient to give rise to a reasonable suspicion that he was in the United States in violation of immigration laws. *Noem v. Vasquez Perdomo*, U.S. 606, ___, 5-6 (2025); *Brignoni Ponce*, 422 U. S., at 887.

70. Under the totality of the circumstances, there was not a reasonable suspicion to detain the Petitioner to inquire about his immigration status. Petitioner was the passenger in a privately owned pick-up truck. While he is visibly Hispanic, Petitioner conversed with Parkway Police in English and speaks without any accent. There is every indication that Parkway Police initiated the road-side stop based on the ethnicity of the driver and Petitioner alone.
71. For these reasons, the investigative stop that led to the Petitioner's detention violates the Fourth Amendment prohibition against unreasonable searches and seizures.

COUNT FOUR

8. U.S.C. §1357 and Implementing Regulations

72. The allegations in the above paragraphs are realleged and incorporated herein.
73. Pursuant to 8 U.S.C. §1357(a)(2) an ICE officer may conduct a warrantless arrest of an individual only when (1) the officer has "reason to believe" a person is in the United States in violation of the law; and (2) the officer has "reason to believe" the individual is likely to escape before a warrant can be obtained for his arrest.
74. Courts have interpreted the "reason to believe" standard for warrantless immigration arrests authorized under Section 1357(a) to be equivalent to the Fourth Amendment's probable cause standard. See e.g. *Lau v. U.S. Immigr. & Naturalization Serv.*, 445 F.2d 217, 222 (D.C. Cir. 1971); *Morales v. Chadbourne*, 793 F.3d 208, 216–18 (1st Cir. 2015). Under this standard, courts have held that an immigration officer must have sufficient facts that would lead a reasonable person to believe, based on the circumstances, that the alien has violated federal immigration laws and is likely to escape before an ICE warrant can be obtained.
75. DHS agents initiated the forcible arrest of Petitioner based solely on the Petitioner's interaction with Parkway Police moments before, during which no information regarding his nationality or immigration status was obtained. The DHS agents did not conduct any additional investigation or inquiry into his nationality or immigration status; they conversed with the Petitioner in English; and the Petitioner made no attempt to evade arrest or flee from the agents. Only after DHS agents had initiated his arrest, the Petitioner stated that his "papers were in process." The agents did not have reason to

believe the Petitioner was in violation of immigration laws based on the information available to them at the time they initiated the warrantless arrest, and they did not have reason to believe he was likely to escape before an ICE warrant could be obtained

76. For these reasons, Petitioner's warrantless arrest violates 8. U.S.C. §1357.

PRAYER FOR RELIEF

Petitioner asks that this Court grant the following relief:

- (1). Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (3) Enjoin Respondents from transferring the Petitioner outside the jurisdiction of the Eastern District of Virginia pending the resolution of this case;
- (4) Declare that Petitioner's detention without opportunity for a neutral custody review violates the Due Process Clause of the Fifth Amendment and/or 8 U.S.C. § 1226.
- (5) Declare that the investigative stop and warrantless arrest that led to Petitioner's detention violates the Fourth Amendment prohibition against unreasonable searches and seizures as well as 8. U.S.C. §1357.
- (6). Issue a Writ of Habeas Corpus directing Respondents to provide Petitioner a bond hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a);
- (7). In the alternative, hold a bail hearing through the Court's inherent authority pending adjudication of this Petition, as Petitioner has a clear case on the law and facts given that Petitioner is properly detained under 8 U.S.C. § 1226(a). See *Gomes v. U.S. Dep't of Homeland Sec.*, 460 F. Supp. 3d 132, 144 (D.N.H. 2020) (this Court "'has inherent power to release the petitioner pending determination of the merits' . . . if (1) the petitioner has a clear case on the law and facts, or (2) exceptional circumstances are present and the petitioner demonstrates a substantial claim of constitutional error.") (citing *Glynn v. Donnelly*, 470 F.2d 95, 98 (1st Cir. 1972)) (emphasis added);
- (8). Enjoin Respondents from rearresting the Petitioner
- (9) Order any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Rebecca Walters

Dated: October 28, 2025

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EXHIBITS

Exh. 1- Petitioner's Declaration

Exh. 2- Petitioner's Marriage Certificate

Exh. 3- Petitioner's I-130 Approval Notice

Exh. 4- Petitioner Criminal History Documents

Exh. 5- Governor Wes Moore's Executive Order

Exh. 6- Notice to Appear