Onal Gallant Bayram & Amin
Enes Hajdarpasic, Esq.
(NY Bar No. 5036595)
619 River Dr., Suite 340
Elmwood Park, NJ 07407
P: (201) 508-0808
enes@ogplawfirm.com
Attorney for Petitioner

Ling Li, Attorney At Law
Ling Li, Esq.
(NY Bar No. 5016423)
9 Mott Street, #301
New York, NY 10013
P: 212-566-2064
liling.esq@gmail.com
Attorney for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[redacted]

Petitioner,

v.

KENNETH GENALO, Field Office Director of New York Immigration and Customs Enforcement; TODD LYONS, Acting Director of Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; PAMELA BONDI, Attorney General of the United States.

Respondents.

Docket No. 1:25-9116

VERIFIED PETITION FOR HABEAS CORPUS

INTRODUCTION

1. Petitioner is being unlawfully detained by Respondents at 26 Federal Plaza, New York, New York, and deprived of release on bond. Petitioner was born in China and entered the United States on or about August 7, 2024 without having been paroled or admitted. On or about August 8 2024, DHS served Petitioner with a Notice to Appear ("NTA"), which designated him as "an alien present in the United States who has not been admitted or paroled" and charged him with removability pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA") as an "alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General."

2. Petitioner timely filed a Form I-589, Application for Asylum with the immigration court. However, on October 31, 2025, Petitioner was detained by Immigration and Customs Enforcement ("ICE") and taken to 26 Federal Plaza, New York, New York. Upon information and belief, Petitioner remains detained there as of the time of this filing.

3. Petitioner is subject to pre-final order of removal detention under 8 U.S.C. § 1226(a). Noncitizens detained under section 1226(a) are subject to discretionary detention and can request a change in custody redetermination (i.e. bond hearing) with an Immigration Judge ("IJ").

4. However, on July 8, 2025, DHS issued an internal Interim Guidance ("Policy") that took the baseless position that—contrary to statutory principles and governing case law—noncitizens like Petitioner who entered the United States without permission or parole are subject to mandatory detention under 8 U.S.C. § 1225(b) instead of discretionary detention under section

1226(a). On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) that sided with DHS' position.

5. DHS' contention that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) is without merit. DHS' Policy has upended decades of DHS' own interpretation of bond eligibility under sections 1226(a) and 1225(b). The vast majority of district courts across the country that have addressed this issue have rejected DHS' arguments and found that it violates the INA and noncitizens' due process rights.

6. For the foregoing reasons, the Court should grant habeas relief and direct Respondents to release Petitioner.

JURISDICTION

7. This action arises under the Constitution of the United States and the INA, 8 U.S.C. § 1101 *et seq*.

8. 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).

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

VENUE

10. Venue is proper because Petitioner was detained and taken into custody at 26 Federal Plaza, New York, New York on October 31, 2025. As of the date of this filing, upon information and belief Petitioner remains detained at the same location. Petitioner does not appear

on the ICE Online Detainee Locator. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States. *See* 28 U.S.C. § 1391(e).

PARTIES

11. Respondent Kenneth Genalo is sued in his official capacity as the Field Office Director of the New York office for ICE's Enforcement and Removal Operations ("ERO") field office. Respondent Genalo is also the physical custodian of Petitioner as Petitioner, upon information and belief, remains detained by ERO at 26 Federal Plaza, New York, New York.

12. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of Petitioner and has authority to release him.

13. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the INA, and oversees ICE, the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.

14. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice. In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

15. Petitioner entered the United States on or about August 7, 2024.

16. Upon information and belief, Petitioner was served with an NTA on August 8, 2024, which designated him as "an alien present in the United States who has not been admitted or paroled" and charged him with removability pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA") as an "alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General."

17. Petitioner timely filed a Form I-589, Application for Asylum with the immigration court. That application remains pending in immigration court.

18. Petitioner has continuously resided in the United States. Petitioner does not have any criminal history.

19. On October 31, 2025, Petitioner was arrested by ICE agents at a routine check-in.

LEGAL FRAMEWORK

20. The INA prescribes three basic forms of detention for noncitizens in removal proceedings. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard non-expedited removal proceedings before an IJ. *See* 8 U.S.C. § 1226(a); 8 U.S.C. § 1229a. Individuals in section 1226(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

21. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under 8 U.S.C. § 1225(b)(2).

22. Finally, the INA also provides for detention of noncitizens who are subject to final orders of removal, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

23. The detention provisions at section 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(c) was most recently amended earlier this year by the Laken Riley Act ("LRA"), Pub. L. No. 119-1, 139 Stat. 3 (2025).

24. Following enactment of the IIRIRA, the EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under section 1225 and that they were instead detained under section 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). In the decades that followed, most noncitizens who entered without inspection—unless they were subject to some other detention authority—received bond hearings. This practice was also consistent with the practice prior to the enactment of the IIRIRA, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that section 1226(a) simply "restates" the detention authority previously found at section 1252(a)).

25. On July 8, 2025, DHS issued a memo to all employees of ICE stating that "[t]his message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that section

235 of the Immigration and Nationality Act (INA) [8 U.S.C. § 1225], rather than section 236 [8 U.S.C. § 1226], is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed." The memo further stated DHS' new position with regard to custody determinations as follows:

> An "applicant for admission" is an alien 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. INA § 235(a)(1) [8 U.S.C. § 1225(a)(1)]. **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)] and may not be released from ICE custody except by INA § 212(d)(5) parole**. These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)].**
>
> Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286.
>
> *See* https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (last accessed August 4, 2025) (emphasis original).

26. As a result, DHS now considers *all* noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, to be subject to mandatory detention under section 1225(b) and ineligible for release on bond. Conversely, according to DHS "[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) [8

U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)]." *Id.*

27. On September 5, 2025, the BIA issued a decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) holding that, based on the plain language of section 1225(b)(2)(A), IJs lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Substantive Due Process

28. The allegations in the above paragraphs are realleged and incorporated herein.

29. Petitioner is challenging DHS' unlawful custody determination that Petitioner is subject to detention under 8 U.S.C. § 1225(b) and is ineligible for bond, which violates Petitioner's right to substantive due process of law afforded him through the Fifth Amendment to the United States Constitution.

30. The Fifth Amendment provides in pertinent part: "No person shall be . . . deprived 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 Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

31. Petitioner is clearly detained pursuant to 8 U.S.C. § 1226(a) and is eligible for release on bond. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b).

Respondents have violated Petitioner's due process rights under the Fifth Amendment by detaining him without the possibility of release on bond.

32. As a remedy, the Court should order Petitioner released from detention, or alternatively direct that an IJ hold a constitutionally adequate bond hearing.

COUNT TWO

Violation of Petitioner's Procedural Due Process Rights

33. The allegations in the above paragraphs are realleged and incorporated herein.

34. In *Mathews v. Eldridge*, the U.S. Supreme Court set forth the factors to consider in determining if government action deprives an individual's Fifth Amendment right to procedural due process or whether the government process is constitutionally adequate. 424 U.S. 319 (1976) The *Mathews* factors are as follows: First, the private interest that will be affected by the official action; [S]econd, 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; [Third], 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.

35. As to the private interest factor, it is the "most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner "has perhaps the most acute private interest known to personkind short of life itself: bodily freedom." *Leal-Hernandez v. Noem*, No. 1:25-cv-02428, 2025 LX 327685, at *34 (D. Md. Aug. 24, 2025).

36. With respect to the second factor, erroneous deprivation of Petitioner's liberty is at risk. Petitioner is not subject to detention under 8 U.S.C. § 1225(b) as DHS claims.

37. As to the third factor, there is no significant governmental interest in continuing to hold Petitioner in custody.

COUNT THREE

Violation of the Immigration and Nationality Act ("INA")

38. The allegations in the above paragraphs are realleged and incorporated herein.

39. Application of 8 U.S.C. § 1225(b) to Petitioner is a violation of the INA because he is instead subject to discretionary detention under 8 U.S.C. § 1226(a).

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Enjoin Respondents from transferring Petitioner during the pendency of the instant action outside the Southern District of New York;

(3) Declare that Petitioner's continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1226(a); and/or the Fifth Amendment to the U.S. Constitution;

(4) Order Petitioner released from detention;

(5) Grant Equal Access to Justice Act ("EAJA") fees and costs; and

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

Onal Gallant Bayram & Amin
/s/ Enes Hajdarpasic
Enes Hajdarpasic, Esq.
(NY Bar No. 5036595)
619 River Dr., Suite 340
Elmwood Park, NJ 07407
P: (201) 508-0808
enes@ogplawfirm.com
Attorney for Petitioner

Ling Li, Attorney At Law
/s/ Ling Li
Ling Li, Esq.
(NY Bar No. 5016423)
9 Mott Street, #301
New York, NY 10013
P: 212-566-2064
liling.esq@gmail.com
Attorney for Petitioner

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

I represent Petitioner, and I submit this verification on his behalf. Because Petitioner is detained at 26 Federal Plaza, counsel verifies this petition on his behalf pursuant to 28 U.S.C. § 2242. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 3rd day of November, 2025.

/s/Ling Li
Ling Li