UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

David Kennedy
Georgia Bar Number 414377
David Kennedy & Associates
Attorneys for Petitioner

Justimiano Rebollar Suarez Petitioner, VS. **George Sterling**, Deputy Managing Director, Atlanta Field Office, Immigration and Customs Enforcement And Removal Operations ("ICE/ERO") **Jason Streeval**, Warden, Stewart Detention Center; **Todd M. Lyons,** Acting Director of U.S. Immigration and Customs Enforcement; **Kristi Noem,** Secretary of the U.S. Department of Homeland Security; and **Pamela Bondi,** Attorney General of the United States, in their official capacities, Respondents.	)	Case No. 4:25-cv-00361

PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner, Mr. Justimiano Rebollar Suarez ("Petitioner"), by and through undersigned counsel, files this Petition For Writ of Habeas Corpus under *28 U.S.C. § 2241* (habeas corpus); *28 U.S.C. § 1331* (federal question jurisdiction); *5 U.S.C. § 702*, et. seq (Administrative Procedure Act, "APA"); and *28 U.S.C. § 2201* (Declaratory Judgment Act), to review the lawfulness of his detention.

1. Petitioner, Mr. Justimiano Rebollar Suarez, is a native and citizen of Mexico who has been in the United States since about the year 2000, when he entered without

inspection. He was not apprehended at the border. At the time, Petitioner was about 15 years old.

2. Petitioner is now divorced from his ex-U.S. Citizen wife with whom he has a 12-year old U.S. Citizen child.
3. Petitioner was detained by ICE and is presently detained and kept at Stewart Detention Center located in Stewart County, Georgia.
4. Petitioner has remained in custody since his arrest. Petitioner is presently in the custody and control of the Respondents.
5. Petitioner applied for bond with the immigration court, which was denied due to lack of jurisdiction based on Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), despite Petitioner having entered without inspection in 2000.
6. In the absence of judicial intervention, it is not reasonably foreseeable that Petitioner will be released; so, he now seeks a writ of habeas corpus to vindicate his regulatory, statutory, and constitutional rights.

II. JURISDICTION

7. Petitioner incorporates and re-alleges all other paragraphs of this Petition as if fully set forth herein, and as if fully set forth under all other parts of this Petition.[1]
8. This court has jurisdiction. *U.S. Const. art. I, § 9, Cl. 2* (Suspension Clause); *28 U.S.C. § 1331* (Federal subject matter jurisdiction); *28 U.S.C. § 2241* (Habeas corpus). *See also Zadvydas v. Davis*, 533 U.S. 678 (2001) (holding section 2241

[1] To avoid duplicity, Petitioner incorporates and re-alleges all paragraphs of this Petition within each other part of this Petition. Petitioner will avoid restating a prefatory sentence of 'incorporation by reference' as, per Rule 10 of the Federal Rules of Civil Procedure, "A statement in a pleading may be adopted by reference elsewhere in the same pleading [...]." Fed. R. Civ. P. 10(c). Petitioner incorporates by reference the totality of assertions in this Petition to be incorporated by reference to the remainder of the totality of the Petition - including every page, paragraph, section, or any other component whatsoever of the Petition.

habeas proceedings are available as a forum for statutory and constitutional challenges to post-removal-period detention); *28 U.S.C. § 1651* (All Writs Act); *5 U.S.C. § 702* (Administrative Procedure Act - "Right of review"); *Rasul v. Bush*, 42 U.S. 466 (2004) (Jurisdiction over petitions for habeas corpus exists where the custodian can be reached by service of process from the court in which the petition has been brought).

9. This court may grant relief under the U.S. Constitution and habeas corpus statutes. *U.S. Const. art. I, § 9, Cl. 2* (Suspension Clause); *28 U.S.C. § 2241* (habeas); *Zadvydas, supra*; *28 U.S.C. § 1651* (All Writs Act); *8 U.S.C. § 1252(e)(2)* (Immigration and Nationality Act, "INA").

10. This court is not deprived of jurisdiction by *28 U.S.C. § 2241(e)(1)* (Petitioner has not been determined to be an "enemy alien combatant" and is not "awaiting such determination); or by *8 U.S.C. § 1252(a)(2)(B)* (This Petition does not involve the denial of discretionary relief).

III. VENUE

11. Venue is proper in the **Middle District of Georgia**, because Petitioner is detained at the Stewart Detention Center located in Stewart County, Georgia, in the city of Lumpkin[2], Georgia, which is in the middle district.

12. Venue is proper because "a substantial part of the events or omissions giving rise to the claim occurred" in this district. *28 U.S.C. § 1391(b)(2)*.

---

[2] The city of "Lumpkin" is in Stewart County, Georgia, in the Federal Middle District of Georgia. That city is not located within "Lumpkin County" of the Federal Northern District of Georgia. *See e.g. History of Lumpkin*, accessed June 19th, 2025, https://cityoflumpkin.org/history/.

13. Venue is also proper because one or more of the Defendants is an officer or employee of the United States or an agency thereof acting in his or her official capacity. *28 U.S.C. § 1391(e)*.

IV. EXHAUSTION OF REMEDIES

14. This action is not barred by the exhaustion of remedies doctrine.

15. Under the exhaustion of remedies doctrine, a Petitioner must generally pursue and 'exhaust' all administrative remedies before seeking relief in federal court. *See e.g.* *Thompson v. United States Marine Corp*, D.C. Docket No. 09-80312-CV-KLR (unpublished) (An example of the D.C. Circuit applying the doctrine of exhaustion of remedies in an appeal from an 11th Circuit Case). Exhaustion is described as a prudential consideration rather than jurisdictional. *Hull v. IRS*, No. 10-1410, 2011 WL 3835402 (10th Cir. Aug. 31, 2011) (Baldock, J.); *see also* William Funk, *Exhaustion of Administrative Remedies – New Dimensions Since Darby*, 18 Pace Environmental Law Review 1 (2000) (Tracing the origins of the doctrine of exhaustion of remedies from common law and federal equity jurisdiction).

16. Where Congress imposes an exhaustion remedy by statute, exhaustion of remedies is required. *Coit Indep. Jt. Venture v. FSLIC*, 489 U.S. 561, at 579 (1989) (*Citing Weinberger v. Salfi*, 422 U. S. 749, 422 U. S. 766 (1975); *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 303 U. S. 50-51 (1938)). If an exhaustion requirement is not *explicit* in the statute, then "courts are guided by congressional intent in determining whether application of the doctrine would be consistent with the statutory scheme." *Coit Indep. Jt. Venture v. FSLIC*, 489 U.S. 561, at 579 (1989) (Citing *Patsy v. Florida Board of Regents*, 457 U.S. 496, 502 (1982)).

17. The INA has an exhaustion provision that only in the context of "final orders of removal." *8 U.S.C. § 1252(d)(1)* ("A court may review a final order of removal only if the alien has exhausted all administrative remedies to the alien as of right."). The § 1252(d)(1) exhaustion requirement is not jurisdictional. *Santos-Zacaria v. Garland*, 498 U.S. ___ (2023). Here, as the Petitioner is not subject to a final order of removal, § 1252(d)(1) does not apply; so, § 1252(d)(1) does not *explicitly* impose an exhaustion requirement. Nor can such a requirement be read as *implicit* in INA § 1252(d)(1). For citations describing the interpretation of statutes, *see, e.g. In re Adoption of Doe*, 156 Idaho 345, 349 (Idaho case describing that where statutory language is plain and unambiguous, courts give effect to the statute as written without engaging in statutory construction); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (1st Ed. 2012) (Describing canons of statutory construction including the 'Supremacy of Text Principle', 'Omitted Case Canon', 'Negative Implication Canon' [*expressio unius est exclusio alterius*], or the 'Whole Text Canon' – each of which supports the claim that Congress did not expressly or implicitly impose an exhaustion of remedies requirement that applies to the issues of this case). Therefore, the exhaustion of remedies doctrine does not apply in this case.

18. Even if the doctrine of exhaustion of remedies does apply, the Petitioner satisfies that doctrine via satisfaction of several exceptions to it. Exhaustion of remedies may be excused if:

(1) Requiring exhaustion of administrative remedies causes prejudice, due to unreasonable delay or an 'indefinite timeframe for administrative action';
(2) The agency lacks the ability or competence to resolve the issue or grant the relief requested;
(3) Appealing through the administrative process would be futile because the agency is biased or has predetermined the issue; or
(4) where substantial constitutional questions are raised.

Iddir v. INS, 301 F.3d 492, 500 (7th circuit case citing McCarthy v. Madigan, 503 U.S. 140, 146-48 (1992); *Bowen v. City of New York,* 476 U.S. 467, 483 (1986); *Mathews v. Diaz,* 426 U.S. 67, 76 (1976); *Gibson v. Berryhill,* 411 U.S. 564, 575 n. 14 (1973); *Houghton v. Shafer,* 392 U.S. 639, 640, 88 (1968); *McNeese v. Board of Educ.* 373 U.S. 668, 675 (1963)).

19. Each of the exceptions of paragraph 17 applies and excuses the exhaustion requirement in this case.

20. Exhaustion would be futile based on recent Board of Immigration Appeals (BIA) case law and BIA interpretations of the INA. On September 5, 2025, the Board of Immigration Appeals (BIA) issued a decision, *Yajure-Hurtado*, which holds that "Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission." *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA therefore asserts that aliens who are present without admission, a class that encompasses several million people[3], cannot request or be granted bond by an immigration judge. *See also Matter of Q Li*, 29 I&N Dec. 66 (BIA 2025) (BIA holds all "applicant[s] for admission" who are "arrested and detained without a warrant

[3] See Jeffrey S. Passel and Jens Manuel Krogstad, *U.S. Unauthorized Immigrant Population Reached a Record 14 Million in 2023*, Pew Research, Sept. 12, 2025, accessible at https://www.pewresearch.org/race-and-ethnicity/2025/08/21/u-s-unauthorized-immigrant-population-reached-a-record-14-million-in-2023/#:~:text=The%20number%20of%20unauthorized%20immigrants%20in%20the%20United%20States%20reached,a%20comprehensive%20and%20detailed%20estimate (Describing that "Unauthorized immigrants were 27% of the U.S. foreign-born population in 2023", consisting of "14.0 million [people]...")

while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings are subjected to mandatory detention under 8 U.S.C. § 1225(b) (2018), INA § 235(b) and [are] ineligible for release on bond under 8 U.S.C. § 1226(a) (2018), INA § 236(a); *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019); *but see Matter of Akhmedov* (In a decision that came out *before* the *Yajure-Hurtado* case and seemingly contradicts that case, and which the Attorney General designated as a precedent decision "all proceedings involving the same issue or issues", the BIA concluded that 8 U.S.C. § 1226(a), INA § 236(a) governed alien's custody redetermination where the alien entered the U.S. unlawfully in January 2022).

21. Petitioner entered the United States without inspection, without a visa, in the year 2007 and has not subsequently been admitted into the U.S.

22. Therefore, Petitioner is arguably an "applicant for admission" and, so long as *Yajure-Hurtado* remains in effect, that BIA interpretation would subject Petitioner to mandatory detention under 8 U.S.C. § 1225(b)(1)(A)(i), INA § 235 making the Petitioner ineligible for bond.

23. Therefore, it would be "futile", based on the clear language of the BIA holding in *Yajure-Hurtado*, to pursue an immigration bond with that administrative agency because BIA has pre-decided the issue of Petitioner's bond eligibility, along with the bond eligibility of all other "aliens who are present in the United States without admission." *See also McCarthy v. Madigan*, 503 U.S. 140, 148 (1992) ("an administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it." Citing *Gibson* v. *Berryhill*, 411 U. S., at 575, n. 14; *Montana National Bank of*

Billings v. *Yellowstone County*, 276 U. S. 499, 505 (1928) (taxpayer seeking refund not required to exhaust where "any such application [would have been] utterly futile since the county board of equalization was powerless to grant any appropriate relief" in face of prior controlling court decision – here, similarly, BIA has expressly demonstrated its belief that IJs lack jurisdiction to grant a bond to the Petitioner); *Houghton* v. *Shafer*, *392* U. S. 639, 640 (1968); *Association of National Advertisers, Inc.* v. *FTC*, 201 U. S. App. D. C. 165, 170-171, 627 F.2d 1151, 1156-1157 (1979) (bias of Federal Trade Commission chairman), cert. denied, 447 U. S. 921 (1980); *Patsy* v. *Florida International University*, *634 F.2d 900, 912-913 (CA5 1981) (en banc)* (administrative procedures must "not be used to harass or otherwise discourage those with legitimate claims"), rev'd on other grounds sub nom. *Patsy v. Board of Regents of Florida*, 457 U. S. 496 (1982)).

24. Requiring exhaustion would furthermore raise a substantial constitutional question, cause prejudice due to an unreasonable delay and indefinite timeframe for agency action, and the agency by its own case law seems to admit that the Executive Office for Immigration Review (EOIR) and its Immigration Judges (IJs) "lack the ability or competence to resolve the issue or grant the relief requested." *Quoting Iddir v. INS*; *see also Zadvydas v. Davis*, 533 U.S. 678 (2001) ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem … Freedom from imprisonment-from government custody, detention, or other forms of physical restraint- lies at the heart of the liberty that Clause protects… this Court has said that government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections [citing *United States v.*

Salerno, discussed below]"; *see also* U.S. Const. amend. V, § 5 (Due Process Clause); Reno v. Flores, 507 U.S. 292, at 292 (1993) (The Due Process Clause applies in the immigration context and extends its protections to noncitizens).

25. **REQUIREMENTS OF 28 U.S.C. § 2241, 2243**

26. The Petitioner is presently detained in a jail cell at an immigration detention under the control of Respondents by and through their various agents. The Petitioner is therefore in the "custody" of the Respondents under 28 U.S.C. § 2241. See also *Carafas v. LaVallee, 391 U.S. 234, 237-38 (1968)* ("... the 'in custody' determination is made at the time the habeas petition is filed."); Rumsfeld v. Padilla, 542 U.S. 426, 437 (2004) ("[O]ur understanding of custody has broadened to include restraints short of physical confinement.")

27. Under 28 U.S.C. § 2243, the court "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 or person detained is not entitled thereto."

28. In a petition for a writ of habeas corpus, the following timeline applies: first, the applicant files the petition, second, the court "shall forthwith" either award the writ or issue an order to show cause, third, the writ or order to show cause "shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed." 28 U.S.C. § 2243. When the writ is 'returned' by the respondent, "a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed." *Id.*; *see also* Fay v. Noia, 372 U.S. 391, 400 (1963) (The Writ of Habeas Corpus is "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.")

29. **PARTIES**

30. The Petitioner is Justimiano Rebollar Suarez. The Petitioner is not a citizen of the United States and is classified as an "alien" under the INA. *28 U.S.C. § 1101(a)(3).*

31. In accordance with *28 U.S.C. § 2242*, Petitioner alleges "the name of the person who has actual custody over the petitioner", for the various Respondent-custodians, are as follows: The Respondents are **George Sterling**, Deputy Managing Director of the Atlanta Field Office of Immigration and Customs Enforcement And Removal Operations ("ICE/ERO"). The Atlanta Field Office is responsible for local custody decisions relating to non-citizens charges with being removable from the United States, including the arrest, detention, and custody status of non-citizens. Respondent Sterling is a legal custodian of the Petitioner; **Jason Streeval**, the Warden of Stewart Detention Center, with immediate physical custody of the Petitioner based on the contracts of that facility with U.S. Immigration and Customs Enforcement (ICE) to detain noncitizens. Respondent Streeval is a legal custodian of the Petitioner; **Todd M. Lyons** is the Acting Director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of ICE in general. Respondent Lyons is a legal custodian of the Petitioner; **Kristi Noem** is the Secretary of the U.S. Department of Homeland Security (DHS), and has authority over the actions of all other DHS Respondents in this case, as well as the operations of DHS. Respondent Noem is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States. And **Pamela Bondi** is the Attorney General of

the United States of America and a senior official of the U.S. Department of Justice (DOJ), with authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR) which administers the immigration court and BIA. Respondent Bondi is a legal custodian of the Petitioner.

32. Each Respondent is sued in his or her official capacity.

33. The Petitioner is presently detained at **Stewart Detention Center** and is under the custody and direct control of the Respondents or their agents.

34. **LEGAL FRAMEWORK**

35. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

36. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for court or is a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

37. Removal proceedings described in Immigration and Nationality Act (INA) section 240 are used to determine whether individuals, such as Petitioner, are to be removed from the United States. *8 U.S.C. § 1229a* [INA § 240].

38. The INA establishes various procedures through which individuals may be detained pending a decision on whether the noncitizen is to be removed from the United States. *8 U.S.C. § 1226(a)* (Attorney general has discretion to, based on a warrant, arrest and detain an alien pending a decision on whether the alien is to be removed, and discretion to decide whether to release the alien on bond and what amount of bond to set).

39. The INA also has provisions describing the limited circumstances under which aliens may *not* be released on a bond. *8 U.S.C. § 1226(c)* (An alien who commits or is convicted of any of a set of specified offenses is ineligible for bond); *8 U.S.C. § 1225(b)* [INA § 235].

40. At issue is the lawfulness of the Petitioner's detention. So, at issue is the legal authority by which the Respondents continue to detain the Petitioner and deny him the right to have a request for bond granted by an IJ, and whether that legal authority can withstand scrutiny based on, inter alia, Fifth Amendment Due Process.

41. The primary legal dispute in this case centers on a question of statutory interpretation regarding the various provisions of the INA that describe the procedures by which a non-citizen can be detained, or by which an immigration judge can set a bond in a case. *See 8 U.S.C. § 1226(a); 8 U.S.C. § 1226(c); 8 U.S.C. § 1225(b)(1)(A)(i); 8 U.S.C. § 1101(a)* (INA definitions section).

42. Put another way, at issue is whether the INA is better read as having 8 U.S.C. § 1226(a) describe a general rule, that IJs *generally* have discretion to grant bond, with the other provisions that describe bond such as § 1226(c) or § 1225(b) describing exceptions to that general rule, which apply when § 1226(a) does not; or conversely, whether 8 U.S.C. § 1225(b) is better read as providing a sort of 'general rule', that Immigration Judges may not grant immigration bonds to the class of non-citizens covered by 8 U.S.C. § 1225(b), and therefore that the other provisions such as § 1226(a) and (c) are confined to apply only to the set of circumstances that are not encompassed by that general rule, as for example § 1225(b) is interpreted in *Yajure-Hurtado, supra*.

43. 8 U.S.C. § 1226(a) is the statutory provision of the INA that properly governs the Petitioner's detention.

44. Agency interpretations of statutes, such as interpretations of the INA by the BIA in its case law, are not entitled to deference. *Loper Bright Enterprises v. Raimondo*, 602 U.S. 574 (2024) (*Overruling Chevron U.S.A., Inc., v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and noting agency interpretations are entitled to "respect" only to the extent those interpretations have the power to persuade, also citing *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)). This court is therefore not bound by *Yajure-Hurtado*, *supra*.

45. **CLAIMS FOR RELIEF**

COUNT ONE

Violation of Fifth Amendment Right to Due Process

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

47. The Due Process Clause of the Fifth Amendment provides that "No person shall … be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V, § 5. The Due Process Clause entitles aliens to due process in deportation proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Demore v. Kim*, 538 U.S. 510 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *see also Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (Criminal law case in which the Supreme Court noted in dicta that "At the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.")

48. Respondents have failed to uphold their Fifth Amendment obligations to provide the Petitioner with due process of law. See *Reno v. Flores*, supra; *Matthews v. Eldridge*,

424 U.S. 319 (1976) (Providing a balancing test to evaluate the sufficiency of process under the Fifth Amendment requirements of procedural due process); *Goss v. Lopez*, 419 U.S. 565 (1975) (Students facing temporary school suspensions had interests qualifying for protection of the due process clause which requires "at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from the school" including, inter alia, notice of the charges against each student and an opportunity to present evidence or argument against those charges).

49. The Supreme Court has noted it would violate substantive due process for a statute to authorize detention that constitutes "impermissible punishment before trial." *United States v. Salerno*, 481 U.S. 739, 746 (1987). In *Salerno*, the Court was tasked with analyzing whether the Bail Reform Act of 1984 survived due process scrutiny. Justice Rehnquist writing for the *Salerno* majority held the Bail Reform Act of 1984 did *not* violate the substantive due process clause, reasoning: "[p]reventing danger to the community is a legitimate regulatory goal and the incidents of detention are not excessive in relation to that goal, *since the Act carefully limits the circumstances under which detention may be sought to the most serious of crimes, the arrestee is entitled to a prompt hearing, the maximum length of detention is limited by the Speedy Trial Act, and detainees must be housed apart from convicts*. Thus the Act constitutes a permissible regulation, rather than impermissible punishment." (emphasis added).

50. The present detention of the Petitioner under the interpretation of the INA the BIA urges in *Yajure-Hurtado* stand in striking contrast to the procedural protections listed

in *Salerno* that the Chief Justice reasoned forced the Bail Reform Act to not be an "impermissible punishment." The BIA in *Yajure-Hurtado* envisions the INA as imposing a rule of mandatory detention that applies to a class of several million people, "aliens who are present in the United States without admission." *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *United States v. Salerno*, 481 U.S. 739, 746 (1987). Here, the Petitioner is kept in indefinite detention on the basis of no crime at all. BIA urges that as a noncitizen "applicant for admission", he cannot receive a bond. *Yajure-Hurtado*, supra.

51. This is a habeas action challenging the lawfulness of the present detention of the Petitioner by the custodian-Respondents. The reasoning of *Yajure-Hurtado* is flawed and entitled to no deference. *Loper Bright Enterprises v. Raimondo* 603 U.S. 369 (2024) (Ending the 'Chevron Doctrine' and overruling *Chevron U.S.A. Inc. v. Natural Resources Defense Counsel, Inc.*, 467 U.S. 837 (1984)).

52. The BIA in *Yajure-Hurtado* looks to 8 U.S.C. § 1225(b)(2) (2018), INA § 235(b) in reaching its holding. That code section is entitled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing."

53. A striking contrast exists between the Bail Reform Act in *Salerno* and the present BIA interpretation of INA 235(b) put forth in Yajure-Hurtado – which envisions the INA as imposing a general rule of mandatory detention for a class of millions of people unsettling a decades-settled understanding that detention of a person is exceptional and poses, and that "… Freedom from imprisonment-from government custody, detention, or other forms of physical restraint- lies at the heart of the liberty that Clause protects." *Citing Zadvydas, supra.*

54. Petitioner's continued detention without opportunity to request bond violates the Due Process Clause of the Fifth Amendment.

COUNT TWO

Violation of the Eighth Amendment Prohibition Against Cruel And Unusual Punishments

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

56. Under the Eighth Amendment, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. Amend VIII.

57. Deportation is not a "punishment" for a crime. *Wong Wing v. United States*, 163 U.S. 228, 236 (1896) (*Citing Fong Yue Ting v. United States*, 149 U.S. 698, 730 (1893) *Elia v. Gonzales*, 431 F.3d 268, 276 (6th Cir. 2005); *Briseno v. Immigr. & Naturalization Serv.*, 192 F.3d 1320, 1323 (9th Cir. 1999); *Oliver v. U.S. Dep't of Just., Immigr. & Naturalization Serv.*, 517 F.2d 426, 428 (2d Cir. 1975) (despite its "severe … consequences," deportation is not a criminal punishment) (*Quoting Harisiades v. Shaughnessy*, 342 U.S. 580, 594 (1952)).

58. Petitioner does *not* assert that deportation - by itself - is cruel and unusual punishment, but *rather*, where the Petitioner is detained based on a warrantless arrest without any immigration charge filed against him and while effectively denied the ability to request a bond hearing, in an immigration detention facility as overcrowded and unsafe as is Stewart Detention Center, *that* Petitioner may have a colorable Eighth Amendment claim. *See Model Rules of Professional Conduct Rule* 3.1 (Lawyers are not ethically barred, under the model rules, from raising good faith arguments for extension, modification or reversal of existing law)

WHEREFORE, Petitioner respectfully requests this Court grant the following:

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. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
4. Declare that Petitioner's detention violates the Eighth Amendment;
5. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or in the alternative, ordering Respondents to schedule a bond hearing before an immigration judge within one week or within an amount of time this court deems fair and just, and find that the immigration court has jurisdiction to determine a bond amount;
6. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
7. Grant any further relief this court deems just and proper.

Respectfully submitted this 4th day of November, 2025,

/s/ David S. Kennedy
Attorney for Petitioner
Georgia Bar No. 414377
David Kennedy & Associates, P.C.
675 E.E. Butler Pkwy, Suite D
Gainesville, GA, 30501
(678) 971-5888

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

I represent Petitioner, Justimiano Rebollar Suarez, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 4th day of November, 2025.

/s/ David S. Kennedy

David S. Kennedy, Esq.
Attorney for Petitioner
David Kennedy & Associates
Phone: (678)-971-5888
Email: david@davidkennedylaw.com
Georgia Bar Number 414377