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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

Alvaro Enrique OROZCO ALFONSO,

A 

Petitioner,

v.

LUIS SOTO, Director, Delaney Hall Detention Facility; RUBEN PEREZ, in his official capacity as Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Newark Field Office; TODD LYONS, in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement; and KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security,

Respondents.


Case No.

**VERIFIED PETITION  
FOR WRIT OF  
HABEAS CORPUS**

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

Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents.

**INTRODUCTION**

1. Petitioner Alvaro Orozco Alfonso is a native and citizen of Colombia who has been living in New Jersey since December 2021. He is the sole caretaker for his twenty-two-year-old daughter Paula Sofia, who is 



2. When Mr. Orozco Alfonso entered the United States, he was released pursuant to 8 U.S.C. § 1226. He subsequently filed an affirmative asylum application with U.S. Citizenship and Immigration Services (USCIS). After living in the United States for three and a half years, Mr. Orozco Alfonso was informed that his asylum application had been dismissed.

3. Mr. Orozco Alfonso diligently complied with a notice sent to him by the asylum office and appeared for his Credible Fear Interview ("CFI"). At the interview he was found to have a credible fear of return to Colombia and was issued a notice to appear. However, after leaving the interview he was promptly arrested by

Immigration and Customs Enforcement (“ICE”) agents and detained without explanation or the ability to seek a custody redetermination.

4. ICE claims the authority to indefinitely detain Petitioner without a bond hearing under the 8 U.S.C. § 1225(b)(1)(B)(ii), which provides for the detention of asylum seekers who pass a credible fear interview “for further consideration of the application for asylum.”

5. Petitioner submits that Mr. Orozco Alfonso’s placement in expedited proceedings violates the Immigration and Nationality Act, 8 U.S.C. § 1225(b), because he has lived in the United States for more than two years. Additionally, his re-detention by respondents without any process violates procedural due process. *See Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976).

6. Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus and order Petitioner’s immediate release from custody.

### **PARTIES**

7. Petitioner Alvaro Orozco Alfonso is a noncitizen currently detained by Respondents pending removal proceedings.

8. Respondent Luis Soto is the Director of Delaney Hall. He is an employee of Geo Group, the private company that contracts with ICE to run Delaney Hall. In his capacity as Warden, he oversees the administration and management of

Delaney Hall. Accordingly, Mr. Soto is the immediate custodian of Petitioner. He is sued in his official capacity.

9. Respondent Ruben Perez is named in his official capacity as the Acting Newark Field Office Director for ICE. In this capacity, Respondent Perez is responsible for administration and management of ICE Enforcement Removal Operations in New Jersey and exercises control over Petitioner's custody at EDC. Respondent Perez's office is located at 970 Broad Street, 11th Floor, Newark, New Jersey, 07102.

10. Respondent Todd Lyons is named in his official capacity as the Acting Director of ICE. In this capacity, Respondent Lyons is responsible for the administration of federal immigration law and the execution of detention and removal determinations, and, as such, he is a legal custodian of Petitioner. Respondent Lyons's office is located at 500 12th Street, S.W., Washington, D.C. 20536.

11. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security (DHS). DHS oversees ICE, which is responsible for administering and enforcing the immigration laws. Secretary Noem is the ultimate legal custodian of Petitioner. She is sued in her official capacity. Respondent Noem's

office is located at U.S. Department of Homeland Security, Washington, D.C. 20528.

### **JURISDICTION AND VENUE**

12. This action arises under the Immigration and Nationality Act and the Fifth and Fourteenth Amendments to the U.S. Constitution.

13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the United States Constitution, 28 U.S.C. § 1331, and 28 U.S.C. § 1361. 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.

14. The United States has waived sovereign immunity for this action for declaratory and injunctive relief against one of its agencies and that agency's officers are sued in their official capacities. *See* 5 U.S.C. § 702.

15. Venue is proper in this District because the Petitioner is detained in this district. 28 U.S.C. § 1391; *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004).

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

16. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. *Arango Marquez v. I.N.S.*, 346 F.3d 892, 897 (9th Cir. 2003). Any requirement of

administrative exhaustion is therefore purely discretionary. *See Santos v. Lowe*, No. 1:18-cv-1553, 2020 WL 4530728, at \*2 (M.D. Pa. Aug. 2020) (“[T]he exhaustion requirement imposed by courts relating to habeas corpus petitions filed by immigration detainees is a prudential benchmark which is not compelled by statute.”).

17. In making that decision, the Court should consider the urgency of the need for immediate review. “Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent.” *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).

18. Moreover, the exhaustion “doctrine is not without exception.” *Ashley v. Ridge*, 288 F. Supp. 2d 662, 666. (D.N.J. 2003). “Courts have found that the exhaustion of administrative remedies may not be required when available remedies provide no opportunity for adequate relief, an administrative appeal would be futile, or if plaintiff has raised a substantial constitutional question.” *Id.* at 666-67.

19. Noncitizens who are placed in expedited removal and then transferred to removal proceedings after establishing a credible fear are ineligible for bond. *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019). Exhaustion before the BIA would therefore be futile.

20. Further, the BIA does not have jurisdiction to adjudicate constitutional issues. *Qatanani v. Att’y Gen. of the U.S.*, 144 F.4th 485, 500 (3d Cir. 2025); *see also Ashley*, 288 F. Supp. 2d at 667 (citation omitted). Therefore, any administrative proceedings would be futile because petitioner raises a constitutional due process claim. *Qatanani*, 144 F.4th at 500.

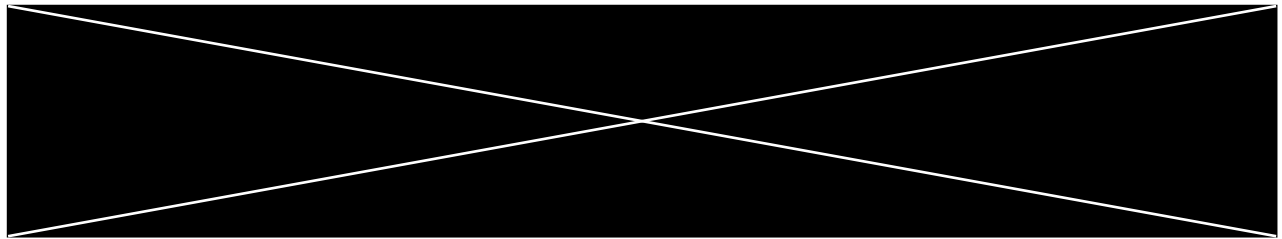
### **STATEMENT OF FACTS**


21. Petitioner Alvaro Orozco Alfonso is a native and citizen of Colombia. He entered the United States without inspection on approximately November 22, 2021 and was detained by immigration officials near the border.

22. On December 7, 2021, he was issued a Notice of Custody Determination pursuant to INA 236, 8 U.S.C. § 1226, indicating that he would be released on his own recognizance. Exh. A (Notice of Custody Determination). He moved to New Jersey with his daughter, Paula Sofia, who is now twenty-two years old. *See* Exh. D (Letter from Medical Provider).

23. Mr. Orozco Alfonso received no other notice of any upcoming hearing or further information about being placed in removal proceedings. Therefore, Mr. Orozco Alfonso filed an affirmative I-589 Application for Asylum with U.S. Citizenship and Immigration Services. *See* Exh. B (Letter Dismissing I-589).

24. Meanwhile, Paula Sofia was diagnosed with 




 She has only days or possibly weeks to live. Exh. F (Letters from Hospital Staff).

25. On June 16, 2025, USCIS sent Mr. Orozco Alfonso a “Notice of Dismissal” of his I-589 application. Exh. B. The dismissal stated that “records indicate that you were apprehended by OHS officials, placed in expedited removal, and issued a Form I-860, Notice and Order of Expedited Removal.” However, on information and belief, Mr. Orozco Alfonso never received an I-860 when he was processed near the border.

26. Mr. Orozco Alfonso was told to appear for a credible fear interview on September 12, 2025 at the Newark Asylum Office at 100 Mulberry Street, Newark New Jersey. Exh. C (Interview Notices). At Mr. Orozco Alfonso’s request, USCIS rescheduled the interview to October 7, 2025 and then to November 6, 2025. *Id.* Mr. Orozco Alfonso appeared, proceeded with the credible fear interview, and, on information and belief, was found to have a credible fear of return to Colombia. Mr.

Orozco Alfonso was given a notice to appear (NTA) for removal proceedings. As of the time of filing, the NTA has not been filed with any immigration court.

27. At the interview, Mr. Orozco Alfonso also provided a copy of the letter at Exhibit D, as well as documents showing that he had recently been certified for a U visa by the Passaic County Prosecutor's Office. Exh. E. Mr. Orozco Alfonso filed his U visa application with U.S. Citizenship and Immigration Services on November 10, 2025.

28. Nonetheless, Mr. Orozco Alfonso was detained by Respondents at the credible fear interview and transferred to Delaney Hall, where he remains detained. His daughter is currently alone at home, dying  Exh. F.

29. Mr. Orozco Alfonso, through counsel, filed a parole request with Respondents on November 11, 2025, providing the letters at Exhibits E and F. Exh. G (Parole Request). Counsel has not yet received a response.

## **LEGAL FRAMEWORK**

### **I. Asylum**

30. "Any alien who is physically present in the United States or who arrives in the United States . . . may apply for asylum." 8 U.S.C. § 1158(a)(1).

31. To receive asylum, a noncitizen must establish that he or she meets the definition of a "refugee," within the meaning of 8 U.S.C. § 1101(a)(42)(A). 8 U.S.C.

§ 1158(b)(1)(B)(i). The term “refugee” means: (a) any person who is outside any country of such person’s nationality; (b) who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country; (c) because of persecution or a well-founded fear of persecution; (d) on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. § 1101(a)(42)(A).

32. An applicant must apply for asylum within one year of his last arrival to the United States or qualify for an exception to the deadline. 8 U.S.C. § 1158(a)(2)(B); 8 C.F.R. § 1208.4(a)(2)(ii).

33. Asylum is a discretionary form of relief that allows applicants granted such relief to remain in the United States and apply for residency after one year. 8 C.F.R. § 1208.1. Congress required the government to establish an asylum application process. 8 U.S.C. § 1158(d)(1) (“The Attorney General shall establish a procedure for the consideration of asylum applications...”). In the absence of exceptional circumstances, an interview or hearing on the application must occur within 45 days of filing and final adjudication must occur within 180 days of filing. 8 U.S.C. § 1158(d)(5)(A)(ii)-(iii).

34. Regulations split responsibility for adjudicating asylum applications between USCIS and the Executive Office for Immigration Review (“EOIR”),

which includes the immigration courts. If a noncitizen has not been placed in removal proceedings before the immigration court by the Department of Homeland Security (“DHS”), then he or she may only file an asylum application before USCIS. *See* 8 C.F.R. § 208.2(a)(1). The applicant then receives a non-adversarial interview before an asylum officer, and the application is either granted or denied. If the application is denied, in most circumstances, the noncitizen will be placed in removal proceedings before the immigration court for *de novo* adjudication of the application. 8 C.F.R. § 208.14.

35. Noncitizens already in removal proceedings must file their asylum applications with the immigration court. 8 C.F.R. § 208.2(b). USCIS plays no role in adjudication of those applications. DHS has the discretion to initiate immigration court proceedings against a noncitizen by filing a charging document, usually a Form I-862, Notice to Appear (NTA), with the immigration court. *See* 8 U.S.C. § 1229a. Jurisdiction vests, and proceedings before an immigration judge commence, only when DHS properly files a charging document with the immigration court. 8 C.F.R. § 1003.14(a). After immigration court proceedings are initiated, the immigration court has exclusive jurisdiction over an asylum application.

## II. Expedited Removal

36. The expedited removal process is, as its name implies, a vastly accelerated process that is applied to noncitizens who have recently arrived in the United States without a valid visa. *See* 8 U.S.C. § 1225(b)(1).

37. Section 1225(b) authorizes the Attorney General (now delegated to the DHS Secretary) to designate as eligible for expedited removal any

alien ... who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.

U.S.C. § 1225(b)(1)(A)(iii)(II).

38. If the noncitizen subject to expedited removal does not express fear of removal to their home country, the inspecting officer orders the noncitizen removed. 8 U.S.C. § 1225(b)(1)(A)(i); 8 C.F.R. § 235.3(b)(2)(i). While the inspecting officer must follow certain procedures required by regulation, the noncitizen has no right to a hearing before an immigration judge for review of that order. 8 C.F.R. § 235.3(b)(1)(ii), (2)(i)-(ii).

39. If the noncitizen expresses a fear of removal, however, the inspecting officer shall not proceed further with expedited removal and shall refer the person

for an interview by an asylum officer. 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4).

40. The asylum officer must conduct a credible fear interview (CFI) within a reasonable period of time. While the statute does not provide a precise deadline, longstanding USCIS policy has set a benchmark of conducting CFIs within 10 working days of referral. The Government specifically committed to this timeframe to resolve *Padilla v. ICE*, which ended with a class action settlement in which the government agreed to refer individuals for CFIs within 10 days of expressing fear of return, and to providing access to legal resources during this period. *Padilla v. ICE*, No. 2:18-cv-928 MJP (W.D. Wash. Jan. 5, 2024).

41. If the asylum officer determines the person has a credible fear of persecution, the person is referred to the immigration court for removal proceedings under 8 U.S.C. § 1229. 8 C.F.R. § 208.30(f). In this situation, the immigration court has exclusive jurisdiction over an application for asylum.

42. If the asylum officer determines the person has not established a credible fear of persecution, the noncitizen may request an immigration judge review the negative credible fear determination. 8 U.S.C. § 1225(b)(B)(iii)(III). If the noncitizen does not request review by the immigration judge, or if the immigration judge upholds the negative credible fear determination, the individual will be

removed. 8 U.S.C. § 1225(b)(B)(iii)(I). There is no judicial review of negative credible fear determinations. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 116-17 (2020).

43. The expedited removal process must commence within two years of a noncitizen's entry into the United States. 8 U.S.C. § 1225(b)(1)(iii)(II); 8 C.F.R. § 235.5. Traditionally, DHS has only applied the procedure to persons within 100 miles of the U.S. border who had been in the country less than 14 days, although that policy was discarded early this year. *See* U.S. Dep't of Homeland Sec., *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). This policy reversal was promptly challenged. *See CHIRLA v. Noem*, No. 25-cv-872 (JMC), 2025 WL 219298 (D.D.C. Aug. 1, 2025) (staying DHS's expansion of expedited removal as exceeding statutory authority and arbitrary and capricious); *Make the Road New York v. Noem*, No. 25-cv- 190 (JMC) (D.D.C. Sep. 4, 2025) (stayed on due process grounds). Courts around the country have held that immigration officials may not subject people to expedited removal after they have been living in the United States for more than two years. *See Lopez v. Lyons*, No. 2:25-cv-3174, 2025 WL 3124116, at \*2 (E.D. Cal. Nov. 7, 2025); *Salgado Bustos v. Raycraft*, No. 25-13202, 2025 WL 3022294, at \*7 (S.D. Mich. Oct. 29, 2025); *Rico-Tapia v. Smith*, No. 25-00379, 2025 WL 2950089, at \*7 (D. Hawaii Oct. 10, 2025).

### III. Detention During Removal or Expedited Removal Proceedings

44. The Immigration and Nationality Act contains several provisions authorizing detention of noncitizens. Section 1226(a) entitles most noncitizens with pending removal proceedings to a hearing before an Immigration Judge to determine whether they should be released on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d). Noncitizens who are removable by virtue of certain criminal convictions are detained pursuant to § 1226(c). Section 1231 governs the detention of noncitizens with a final order of removal. Lastly, § 1225(b) requires the detention of noncitizens arriving at a designated port of entry as well as certain other noncitizens who are treated as “applicants for admission.” In stark contrast to § 1226(a), other detention provisions do not authorize a bond hearing. *See generally Jennings v. Rodriguez*, 583 U.S. 281 (2018).

45. In addition to affording the government the ability to quickly deport an individual, the process of expedited removal requires detention during the administrative proceedings. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). This clause states that any applicant for admission who claims asylum “shall be detained” pending a determination of a credible fear of persecution or “until removed,” as applicable.

46. In 2019, the Attorney General reversed prior Board of Immigration Appeals precedent and held that § 1225(b)(1)(B)(ii) mandates detention of

noncitizens who have passed their credible fear interviews and been transferred into full removal proceedings. *Matter of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019). Although that decision was previously enjoined, it is currently in effect nationwide. *Padilla v. U.S. Immigration & Customs Enforcement*, No. 18-928, 2024 WL 1049898 (W.D. Wash. 2024); *appeal filed*, No. 24-2801 (9th Cir. 2025).

47. In contrast, noncitizens who enter without inspection and are not placed in expedited removal are detained pursuant to 8 U.S.C. § 1226(a) and, absent criminal convictions, are eligible for a bond hearing.

48. The Board of Immigration Appeals recently held that noncitizens who enter without inspection are ineligible for bond pursuant to 8 U.S.C. § 1225(b)(2)(A). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Numerous courts in this District and around the country have rejected that interpretation of 8 U.S.C. § 1225(b)(2)(A). *Ayala Amaya v. Bondi*, No. 25-CV-16428-ESK, 2025 WL 3033880, at \*2 (D.N.J. Oct. 30, 2025) (collecting cases); *Bethancourt Soto v. Soto*, 2025 WL 2976572, at \*7 (D.N.J. Oct. 22, 2025) (same); *Rivera-Zumba v. Bondi*, Civ. No. 25-cv-14626, 2025 WL 2753496, at \*7-9 (D.N.J. Sept. 26, 2025).

#### **IV. Due Process**

49. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510,

523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom 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 v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention.”). This fundamental due process protection applies to all noncitizens within the United States, including both removable and inadmissible noncitizens. *See id.* at 693; *Plyler v. Doe*, 457 U.S. 202, 212 (1982); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

50. Procedural due process protects noncitizens against deprivation of liberty without adequate procedural protections, including notice and the opportunity to be heard. *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1367 (2025); *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). In determining the proper procedure to protect a detained noncitizen’s procedural due process rights under the Fifth Amendment, courts apply the three-part balancing test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), 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, 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.” *Gayle v. Warden Monmouth C’ty Corr. Facility*, 12 F. 4th 321, 331 (3d Cir. 2021); *Contreras Maldonado v. Cabezas et al.*, No. 25-13004, 2025 WL 2985256, at \*5 (D.N.J. Oct. 23, 2025).

51. First, the “importance and fundamental nature” of an individual’s liberty interest is well-established. *United States v. Salerno*, 481 U.S. 739, 750 (1987); *see also Ashley*, 288 F. Supp. at 670 (“[F]reedom from confinement is a liberty interest of the highest constitutional import.”). For people “who can face years of detention before resolution of their immigration proceedings, ‘the individual interest at stake is without doubt particularly important.’” *Linares Martinez v. Decker*, No. 18-cv-6527 (JMF), 2018 WL 5023946 at \*3 (S.D.N.Y. Oct. 17, 2018).

52. Weighing this factor in *Velasco Lopez*, the Second Circuit found the private interest to be “on any calculus, substantial,” observing that the petitioner, “could not maintain employment or see his family or friends or others outside normal visiting hours. The use of a cell phone was prohibited, and he had no access to the internet or email and limited access to the telephone.” 978 F.3d at 851-52. Similarly, the First Circuit found a substantial private liberty interest for the petitioner in *Hernandez-Lara v. Lyons*, noting that the petitioner there was incarcerated

“alongside criminal inmates” at a jail where “she was separated from her fiancé and unable to maintain her employment.” 10 F.4th 19, 28 (1st Cir. 2021).

53. Second, absent any individualized bond hearing, people will be detained despite not being a danger to the community or a flight risk, because there is no mechanism to determine whether their detention is necessary. *See, e.g., Günaydin v. Trump*, No. 25-cv-1151, 2025 WL 1459154, -- F. Supp. 3d --, at \*8 (D. Minn. May 21, 2025) (noting that lack of consideration of “individualized or particularized facts . . . increases the potential for erroneous deprivation of individuals’ private rights”); *Ashley*, 28 F. Supp. 2d at 670 (finding a procedural due process violation because “the Government has not proved that Petitioner presents an identified and articulable threat to an individual or the community so as to justify his continued detention”). A bond hearing would have significant value because it is designed to assess the individualized facts of each case and determine whether less restrictive measures can fulfill the same goals.

54. Finally, the burden on the government of holding a bond hearing does not outweigh the liberty interest at stake. To the contrary, the government has an interest in “minimizing the enormous impact of incarceration in cases where it serves no purpose.” *Velasco Lopez*, 978 F.3d at 854; *see also Hernandez-Lara*, 10 F.4th at 33 (noting that “limiting the use of detention to only those noncitizens who are

dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention”). Additionally, “unnecessary detention imposes substantial societal costs. . . . The needless detention of those individuals thus separates families and removes from the community breadwinners, caregivers, parents, siblings and employees. Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents.” *Hernandez-Lara*, 10 F.4th at 33 (citation and internal quotation marks omitted). The cost to the government and society of detaining people unnecessarily for long periods of time is greater than the cost of providing individualized hearings, and weighs in favor of additional procedural protections.

55. At these bond hearings, due process requires that the Government bear the burden of proof by clear and convincing evidence. *See Gayle*, 12 F.4th at 332 (“[W]hen such a severe deprivation is at issue, the Government must bear the burden of proof.”). “A standard of proof serves to allocate the risk of error between the litigants and reflects the relative importance attached to the ultimate decision.” *German Santos v. Warden Pike C’ty Corr. Facility*, 965 F.3d 203, 213 (citing *Addington v. Texas*, 441 U.S. 418, 423 (1979)). Therefore, when the Third Circuit has ordered a constitutionally-required bond hearing, it is placed the burden on the government by clear and convincing evidence. *German Santos*, 965 F.3d at 214;

*Guerrero-Sanchez v. Warden York C'ty Prison*, 905 F.3d 208, 224 & n.12 (3d Cir. 2018), *abrogated on other grounds by Johnson v. Arteaga-Martinez*, 596 U.S. 572 (2022). Other circuit courts have similarly held that due process requires this allocation of the burden in bond hearings for noncitizens like petitioner, who were then detained under § 1226(a). *Hernandez-Lara*, 10 F.4th at 39-40; *Velasco Lopez*, 978 F.3d at 855-56. Thus, even if the statute requires detention without a bond hearing, due process requires a hearing at which the government bears the burden by clear and convincing evidence.

**FIRST CLAIM FOR RELIEF**  
**Violation of the Immigration and Nationality Act,**  
**8 U.S.C. § 1225(b)**

56. Petitioner re-alleges and incorporates by reference the above paragraphs.

57. Mr. Orozco Alfonso is currently detained under 8 U.S.C. § 1225(b)(1) because he has been subjected to expedited removal. However, Mr. Orozco Alfonso is not subject to expedited removal under the plain meaning of the statute. He was released pursuant to 8 U.S.C. § 1226 at the border. Since that time, he has lived continuously in the United States for more than two years. He cannot now be placed in expedited removal. *See* 8 U.S.C. § 1225(b)(1)(A)(iii).

58. The fact that Mr. Orozco Alfonso was originally processed and released pursuant to 8 U.S.C. § 1226 indicates that he was not then subjected to expedited removal proceedings, because § 1226 governs detention of noncitizens pending removal proceedings. *Jennings*, 583 U.S. at 289. “Thus, Section 1225(b)(1) flatly does not apply to Petitioner as has been present without a determination of inadmissibility within two years of Petitioner’s entry.” *Lopez*, 2025 WL 3124116, at \*2.

59. As a remedy, this Court should hold that Mr. Orozco Alfonso is unlawfully detained pursuant to 8 U.S.C. § 1225(b)(1) and order his immediate release. *See Lopez*, 2025 WL 3124116, at \*5; *Salgado Bustos*, 2025 WL 3022294, at \*8 (E.D. Mich. Oct. 29, 2025); *Bethancourt Soto*, 2025 WL 2976572, at \*9 (holding detention under § 1225(b)(2)(A) unlawful and ordering release because the respondents never argued the petitioner was detained under § 1226(a)). In the alternative, it should hold that he should properly be detained under 8 U.S.C. § 1226(a) and hold or order a bond hearing.

## **SECOND CLAIM FOR RELIEF**

### **Violation of Fifth Amendment Right to Procedural Due Process: Re-detention Without Adequate Procedural Protections**

60. Petitioner re-alleges and incorporates by reference the above paragraphs.

61. Applying the *Mathews v. Eldridge* factors to Respondents' decision to re-detain Mr. Orozco Alfonso in June 2025 shows that this decision violated due process. See *Contreras Maldonado*, 2025 WL 2985256, at \*5

62. The first factor, the liberty interest at stake, is very weighty. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects.” *Zadvydas*, 533 U.S. at 690. This is particularly true because Mr. Orozco Alfonso was previously released, and has not violated the terms of that release. *Mata Velasquez v. Kurzdorfer*, No. 25-cv-493, 2025 WL 1953796, at \*16 (W.D.N.Y. July 16, 2025). Courts have found that release subject to conditions carries an “implicit promise” that the release will only be revoked if the noncitizen violates the conditions of that release. *Trejo v. Warden of ERO El Paso East Montana*, No. 25-cv-401, 2025 WL 2992187, at \*8 (W.D. Tex. Oct. 24, 2025); *Ramirez Tesara v. Wamsley*, No. 2:25-cv-1723, 2025 WL 2637663, at \*3 (W.D. Wash. Sept. 12, 2025) (collecting cases).

63. Second, the risk of erroneous deprivation was very high because there was apparently no individualized determination that re-detention was necessary at the time Respondents re-detained Mr. Orozco Alfonso. *See Contreras Maldonado*, 2025 WL 2985256, at \*5. Due process required, at minimum, a meaningful opportunity to be heard and to respond to the reasons for the re-detention. *Munoz Materano v. Arteta*, No. 25-cv-6137, 2025 WL 2630826, at \*13-15 (S.D.N.Y. Sept. 12, 2025). Mr. Orozco Alfonso was re-detained without any process whatsoever.

64. Finally, the government's interest in re-detaining Mr. Orozco Alfonso without providing such process is minimal. *See Ramirez Tesara*, 2025 WL 2637663, at \*4; *Munoz Materano*, 2025 WL 2630826, at \*15. Respondents do not have an interest in detaining noncitizens who are neither a flight risk nor a danger to the community. *Velasco Lopez*, 978 F.3d at 854.

65. For all these reasons, Mr. Orozco Alfonso's re-detention on November 7, 2025 violated due process. Therefore, this Court should order his immediate release. *See, e.g., Contreras Maldonado*, 2025 WL 2985256, at \*6-7. In the alternative, it should hold or order a bond hearing to remedy the due process violation, at which the government bears the burden of showing that continued detention is necessary by clear and convincing evidence. *See German Santos*, 965 F.3d at 214; *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-773, 2025 WL 2976923,

at \*10-11 (W.D. Tex. Oct. 21, 2025) (stating that “as of 2020, the vast majority—an overwhelming consensus—of courts granting immigration detainees’ habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk,” and collecting cases).

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Enjoin Respondents from moving the Petitioner from the jurisdiction of the Newark Field Office while habeas proceedings are pending;
- 3) Declare that Petitioner’s continued detention violates the Immigration and Nationality Act and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
- 4) Issue a Writ of Habeas Corpus and order Petitioner’s release immediate release from Custody;
- 5) In the alternative, hold or order a bond hearing within 10 days at which, to continue detention, the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration

of alternatives to detention that could mitigate any risk that Petitioner's release would present;

6) Award Petitioner his costs and reasonable attorney fees in this action as provided for by the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

7) Grant such further relief as the Court deems just and proper; and

Dated: November 11, 2025

Respectfully submitted,

/s/Rebecca Hufstader  
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**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF**  
**PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys, and I have discussed the claims with Petitioner's legal team. 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: November 11, 2025

Respectfully submitted,

/s/Rebecca Hufstader  
Rebecca Hufstader  
*Pro Bono Counsel for Petitioner*