UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

GERSON ANTONIO ALAS DUARTE, Petitioner, v. MICHAEL NESSINGER, Warden, Wyatt Detention Facility DAVID WESTLING, Acting Field Office Director, MICHAEL KROL, HSI New England Special Agent in Charge TODD LYONS, Acting Director U.S. Immigrations and Customs Enforcement, KRISTI L NOEM, U.S. Secretary of Homeland Security, and PAMELA BONDI, U.S. Attorney General Respondents.	Case No. 25-598 **PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner Gerson Antonio ALAS DUARTE ("Petitioner") is a national and citizen of El Salvador, born on , who resides in Hyannis, Massachusetts. On information and belief, Petitioner was arrested on November 9, 2025 for a traffic violation in New Bedford, Massachusetts, and subsequently produced for a hearing on November 10, 2025 morning (relevant to the traffic violation), from where he was detained by U.S. Immigration and Customs Enforcement ("ICE") and/or other federal agents acting on ICE's behalf. Further, Petitioner is currently being held in ICE's custody in the District of Rhode Island, at the Donald W. Wyatt Detention Facility in Central Falls, RI.

2. Accordingly, to vindicate Petitioner's constitutional rights, this Court should grant the instant petition for a Writ of Habeas Corpus. This petition is filed pursuant to 28 U.S.C. § 2241 to challenge his ongoing unlawful civil immigration detention and to prevent his transfer from the District of Rhode Island before this Court can review his claims.

3. Petitioner asks this Court to find that he was unlawfully detained and order his release.

4. **Petitioner has a pending affirmative asylum application (Form I-589) before the USCIS, bearing Receipt No. [redacted] filed on August 2, 2024. His asylum claim is based on Petitioner's [redacted] Petitioner is [redacted] from El Salvador [redacted] He also faced pervasive [redacted] and threats in a country where the state provides no protection. He fled because remaining in El Salvador put him at real risk of further violence or death.**

5. Petitioner is present in the United States and, on information and belief, the Department of Homeland Security ("DHS") has alleged or will allege that Petitioner was not previously admitted or paroled into the United States.

6. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(1), including because Petitioner does not meet the criteria for Expedited Removal. *See Make the Road New York v. Noem*, No. 25-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025).

7. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2), including because, as a person already present in the United States, Petitioner is not presently "seeking admission" to the United States. *See Aguiriano v. Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *1, 8-13 (D. Mass. Aug. 19, 2025).

8. On information and belief, Petitioner was not, at the time of arrest, paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A), and therefore Petitioner could not "be returned" under that provision to mandatory custody under 8 U.S.C. § 1225(b) or any other form of custody. Petitioner is not subject to mandatory detention under § 1225 for this reason as well.
9. Instead, as a person arrested inside the United States and held in civil immigration detention, Petitioner is subject to detention, if at all, pursuant to 8 U.S.C. § 1226. *See Aguiriano*, 2025 WL 2403827, at *1, 8-13 (collecting cases).
10. Petitioner is not lawfully subject to mandatory detention under 8 U.S.C. § 1226(c), including because he has not been convicted of any crime that triggers such detention. *See Demore v. Kim*, 538 U.S. 510, 513-14, 531 (2003) (allowing mandatory detention under § 1226(c) for brief detention of persons convicted of certain crimes and who concede removability).
11. Accordingly, Petitioner is subject to detention, if at all, under 8 U.S.C. § 1226(a).
12. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon his request, receive a custody redetermination hearing (colloquially called a "bond hearing") with strong procedural protections. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Doe v. Tompkins*, 11 F.4th 1, 2 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 256-57 (1st Cir. 2021) (affirming class-wide declaratory judgment); 8 C.F.R. 236.1(d) & 1003.19(a)-(f).
13. Petitioner requests such a bond hearing.

14. However, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals issued a decision which purports to require the Immigration Court to unlawfully deny a bond hearing to all persons such as Petitioner.[1]

15. The responsible administrative agency has therefore predetermined that Petitioner will be denied a bond hearing.

16. Petitioner is being irreparably harmed by his ongoing unlawful detention without a bond hearing. *See Aguiriano*, 2025 WL 2403827, at *6-8 (no exhaustion required because "[o]bviously, the loss of liberty is a . . . severe form of irreparable injury" (internal quotation marks omitted)); *Flores Powell v. Chadbourne*, 677 F. Supp. 2d 455, 463 (D. Mass. 2010) (declining to require administrative exhaustion, including because "[a] loss of liberty may be an irreparable harm"); *cf. Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021) (citing *Bois v. Marsh*, 801 F.2d 462 468 (D.C. Cir. 1986), for proposition that "'[e]xhaustion might not be required if [the petitioner] were challenging her incarceration . . . or the ongoing deprivation of some other liberty interest'").

17. The Immigration Court lacks jurisdiction to adjudicate the constitutional claims raised by Petitioner, and any attempt to raise such claims would be futile. *See Flores-Powell*, 677 F. Supp. 2d at 463 (holding "exhaustion is excused by the BIA's lack of authority to adjudicate constitutional questions and its prior interpretation" of the relevant statute).

18. There is no statutory requirement for Petitioner to exhaust administrative remedies. *See Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299, at *4 (D. Mass. July 7, 2025) ("[E]xhaustion is not required by statute in this context.").

[1] The BIA's reversal and newly revised interpretation of the statute are not entitled to any deference. *See Loper Bright Ent. v. Raimondo*, 603 U.S. 369, 412-13 (2024).

19. Accordingly, there is no requirement for Petitioner to further exhaust administrative remedies before pursuing this Petition. *See Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74, (1st Cir. 1997) (explaining that, where statutory exhaustion is not required, administrative exhaustion not required in situations of irreparable harm, futility, or predetermined outcome).

JURISDICTION AND VENUE

20. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).
21. Venue is proper in the District of Rhode Island because Petitioner is currently detained at the Wyatt Detention Facility, Central Falls, RI within this District, and Respondent Michael Nessinger is his immediate custodian.

PARTIES

22. Petitioner Luis (A Number [redacted], a citizen of El Salvador, is presently detained in ICE custody at Donald W. Wyatt Detention Facility, 950 High St, Central Falls, RI 02863. Prior to detention, he resided at [redacted] Hyannis MA 02601.
23. Respondent Michael Nessinger is the Superintendent/Warden of Wyatt Detention Facility and Petitioner's immediate custodian.
24. Respondent David Westling is the Acting Field Office Director for ICE ERO Boston, responsible for the custody and detention decisions for individuals detained within the District.
25. Respondent Michael Krol is the New England Special Agent in Charge for Homeland Security Investigations for U.S. Immigration and Customs Enforcement.

26. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement.

27. Respondent Kristi Noem is the Secretary of the Department of Homeland Security and Respondent Pamela Bondi is the U.S. Attorney General.

28. All respondents are sued in their official capacities.

FACTUAL BACKGROUND

29. Petitioner is a 24-year-old national and citizen of El Salvador, born on [redacted] who has been residing in Hyannis, Massachusetts since his entry into the United States. Petitioner entered the United States without inspection in or around February 2022 and has since lived continuously in Massachusetts, where he works, contributes to his community, and maintains strong family ties.

30. Petitioner is not a danger to the community and has no criminal history, other than a minor traffic-related stop on November 9, 2025 in New Bedford, Massachusetts, which resulted in his current arrest and subsequent transfer to ICE custody. Despite having no disqualifying offenses and despite having an active (affirmative), pending asylum application, Petitioner was taken into custody by U.S. Immigration and Customs Enforcement ("ICE") on the morning of November 10, 2025, immediately after a brief state-court appearance arising from the traffic stop. ICE officers seized him directly from the courthouse without any prior notice to counsel.

31. On information and belief, after this warrantless seizure, ICE transferred Petitioner to the Wyatt Detention Facility in Central Falls, Rhode Island, where he remains detained. Wyatt is located within the jurisdiction of the United States District Court for the District of Rhode

Island, and Petitioner is therefore in this Court's territorial custody for purposes of habeas review under 28 U.S.C. § 2241.

32. Petitioner's detention is unlawful. He has a properly filed Form I-589, Application for Asylum, submitted affirmatively with USCIS on August 2, 2024, under Receipt Number [redacted]. USCIS has accepted jurisdiction, generated a receipt notice, and placed the case in the queue for an in-person interview, confirming that his application is actively under consideration. Petitioner also holds a valid Employment Authorization Document pursuant to his pending asylum application. Exhibit A.

33. [redacted]

34. Petitioner additionally endured pervasive societal discrimination and harassment throughout El Salvador, where [redacted] stigmatized, frequently targeted for violence, and receive no meaningful protection from the state. Given the lack of laws safeguarding [redacted] and the prevalence of hate-motivated attacks and killings, Petitioner reasonably feared both future harm from his family and broader persecution by the public with government acquiescence.

35. His departure from El Salvador was a direct and necessary act of self-preservation. Remaining there would have exposed him to continued emotional and psychological trauma and an imminent risk of physical harm or death. Petitioner seeks asylum because

he has been persecuted in the past and faces an ongoing, well-founded fear of persecution on account of his membership in the particular social group of [redacted]

36. Since the Petitioner has a pending affirmative asylum claim, has never been referred to EOIR, and is not subject to a final order of removal, there is no lawful basis for ICE to detain him or initiate removal without providing the procedural protections required under the INA and Due Process Clause. ICE's seizure of Petitioner directly from a state traffic-court appearance, without probable cause of removability, without a warrant, without a Notice to Appear, and without providing access to counsel, violates both statutory and constitutional safeguards.

37. Petitioner also has significant family ties in Massachusetts, including his sister Blanca Alas Duarte and her minor daughter, [redacted]. Upon information and belief, both are presently pursuing or are eligible to pursue U-visa protection. Petitioner has deep community roots, stable residence, and no risk of flight or danger.

38. Notwithstanding these facts, ICE is holding Petitioner at Wyatt without justification and without providing him a prompt custody redetermination, bond hearing, or any meaningful process. Further, on information and belief, ICE may imminently transfer Petitioner out of this District, which would deprive this Court of the ability to adjudicate his constitutional claims.

CLAIMS FOR RELIEF

COUNT ONE

Violation of 8 U.S.C. 1226(a) and Associated Regulations

39. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

40. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

41. Petitioner has not been, and will not be, provided with a bond hearing as required by law.

42. Petitioner's continuing detention is therefore unlawful.

COUNT TWO
Violation of Fifth Amendment Right to Due Process
(Failure to Provide Bond Hearing Under 8 U.S.C. § 1226(a))

43. Because Petitioner is a person arrested inside the United States and is subject to detention, if at all, under 8 U.S.C. § 1226(a), the Due Process Clause of the Fifth Amendment to the United States Constitution requires that Petitioner receive a bond hearing with strong procedural protections. *See Hernandez-Lara*, 10 F.4th at 41; *Doe*, 11 F.4th at 2; *Brito*, 22 F.4th at 256-57.

44. Petitioner has not been, and will not be, provided with a bond hearing as required by law.

45. Petitioner's continuing detention is therefore unlawful.

COUNT THREE
Violation of Fifth Amendment Right to Due Process
(Failure to Provide an Individualized Hearing for Domestic Civil Detention)

46. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

47. The Fifth Amendment's Due Process Clause specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of law." U.S. CONST. amend. V.

48. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see Shaughnessy v. United States ex rel. Mezei*, 345 U.S.

206, 212 (1953) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law"); *cf. Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020) (holding noncitizens due process rights were limited where the person was not residing in the United States, but rather had been arrested 25 yards into U.S. territory, apparently moments after he crossed the border while he was still "on the threshold").

49. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas*, 533 U.S. 678 at (2001)

50. The Supreme Court has thus "repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979)

(collecting cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana,* 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks,* 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

51. Petitioner was arrested inside the United States and is being held without being provided any individualized detention hearing.

52. Petitioner's continuing detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

COUNT FOUR
Violation of Fifth Amendment Right to Due Process

(Substantive Due Process)

53. Because Petitioner is not being provided a bond hearing, the government is not taking any steps to effectuate its substantive obligation to ensure that immigration detention bears a "reasonable relation" to the purposes of immigration detention (*i.e.*, the prevention of flight and danger to the community during the pendency of removal proceedings) and is not impermissibly punitive. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring).

54. Petitioner's detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

COUNT FIVE
Unlawful Detention Despite Eligibility for Adjustment of Status
(Substantive Due Process)

55. Petitioner has an approved VAWA I-360 Petition as of August 20, 2019, and his priority date is current.

56. On September 27, 2019, Petitioner filed his Form I-485, Application to Adjust Status, with USCIS, accompanied by the required filing fees.

57. Accordingly, Petitioner is statutorily eligible to adjust his status to that of a Lawful Permanent Resident pursuant to INA § 245(a) and 8 C.F.R. § 245.2(a)(2)(i)(A).

58. Continued detention of an individual who is immediately eligible for lawful permanent residence, and who has a pending or adjudicable adjustment application, serves no legitimate governmental interest and violates the Due Process Clause of the Fifth Amendment. See *Zadvydas*, 533 U.S. at 690 (detention must bear a reasonable relation to its purpose).

59. Petitioner's ongoing detention therefore constitutes an abuse of discretion and an unlawful deprivation of liberty in contravention of both statutory and constitutional guarantees.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) **Order that Petitioner shall not be transferred outside this District;**

(3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.

(4) Declare that Petitioner's detention is unlawful.

(5) **Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or, in the alternative, provide Petitioner with a bond hearing and order Petitioner's release on conditions the Court deems just and proper.**

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

Respectfully submitted,
/s/ Carl Hurvich
Carl Hurvich
Brooks Law Firm
10 High Street, Ste. 3
Medford, MA 02155
(617) 245-8090
Carl@BrooksLawFirm.com
RI Bar # 9740
Pro bono counsel for Petitioner

Dated: November 13, 2025

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

I, Carl Hurvich, declare as follows:

I am an attorney admitted to practice law in the State of Rhode Island. Because many of the allegations of this Petition require a legal knowledge not possessed by Petitioners, I am making this verification on their behalf. I have read the foregoing Petition for Writ of Habeas Corpus and know the contents thereof to be true to my knowledge, information, or belief.

I certify under penalty of perjury that the foregoing is true and correct and that this declaration was executed on November13, 2025.

/s/ Carl Hurvich