UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Byron Manuel De Leon-Godinez, Petitioner, v. LUIS SOTO, In His Official Capacity as Warden of Delaney Hall Detention Center; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement (ICE); KRISTI NOEM, in her Official Capacity, Secretary of the U.S. Department of Homeland Security; JONATHAN FLORENTINO, Acting Newark Field Office Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement (ICE) Respondents.	Case No. **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **ORAL ARGUMENT REQUESTED**

COMES NOW, Petitioner, Bryon Manuel De Leon-Godinez ("Petitioner" or "Mr. De Leon-Godinez"), brings this Verified Petition for Writ of Habeas Corpu§s and Complaint for Declaratory and Injunctive Relief pursuant to 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; the Immigration and Nationality Act ("INA") and regulations thereunder; the Administrative Procedure Act; and the Suspension Clause of the Constitution, U.S. Const. Art. I § 9, cl. 2.

1. Mr. De Leon-Godinez, a college student, has an approved Form I-360, classifying him as a Special Immigrant Juvenile, and holds deferred action in relation to his approval. His priority date for adjustment is November 16, 2021. Petitioner was released on bond in 2019, and his 2019 removal proceedings were terminated by way of a joint motion on December

13, 2022. On October 25, 2025, he was unlawfully re-detained by two masked men from the Department of Homeland Security ("DHS") while delivering food at a Cliffside Park, New Jersey, address. Despite DHS previously agreeing to terminate immigration proceedings in 2022, ICE re-filed a new Notice to Appear on October 25, 2025, with identical charges to the one dismissed in 2019, and unlawfully detained Petitioner pursuant to 8 U.S.C. § 1225(b)(2).

2. Petitioner asserts that his re-detention, without any reasoned explanation or consideration of the Petitioner's deferred action, previous joint dismissal, bond grant, his fundamental right to due process, and the Fourth Amendment's prohibition on unreasonable seizures. His detention without a custody redetermination hearing prior to re-detention violates his due process rights, and continued detention without a bond hearing under 8 U.S.C. § 1226(a) violates the INA.

3. Pursuant to this Court's inherent powers in habeas corpus proceedings, Petitioner respectfully requests that this Court issue an Order to Show Cause due to the nature of this unlawful arrest and detention, and to enjoin Respondents from relocating Petitioner outside of this District.

CUSTODY

4. Petitioner is currently in the custody of ICE at the Delaney Hall Facility. *See* Ex. 1, ICE Detainee Locator Results. He is therefore in "'custody' of the Department of Homeland Security, ICE, within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

5. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et. seq.
6. 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., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).
7. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

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

8. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless Petitioner is not entitled to relief. See 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." Id.
9. Petitioner is "in custody" for the purpose of § 2241 because he was arrested and remains detained by Respondents.

VENUE

10. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because a substantial part of the events or omissions giving rise to the claim occurred in the District of New Jersey. Petitioner is under the jurisdiction of ICE's Newark Field Office, and he is

currently detained in Newark, New Jersey, at the Delaney Detention Center. *See* ICE Locator.

PARTIES

11. Petitioner, Byron Manuel De Leon Godinez, is a 24-year-old native and citizen of Guatemala who fled his country at the age of 18 after [redacted] Petitioner was detained while working for Rodi Delivery Service on Saturday, October 25, 2025, in Cliffside Park, New Jersey. Petitioner is currently detained at the Delaney Hall Detention Facility, 451 Doremus Avenue, Newark, NJ 07105. He suffers from ongoing mental and physical trauma because of losing his beloved mother and the mistreatment and violence that he suffered from his now deceased father.

12. Respondent Luis Soto is named in his official capacity as the Warden of Delaney Hall Detention Facility in Newark, New Jersey. In this capacity, he is responsible for the day-to-day operation of the facility and the custody, care, and control of individuals detained there; routinely transacts business in the District of New Jersey; is legally responsible for carrying out any effort to detain and remove the Petitioner; and, as such, is a custodian of the Petitioner. At all times relevant hereto, Respondent Soto's address is Delaney Hall Detention Facility, 451 Doremus Avenue, Newark, NJ 07105.

13. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the District of New Jersey, is legally responsible for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner. At all times relevant hereto, Respondent Lyons's address is ICE, Office of the Principal Legal Advisor.

14. Respondent Jonathan Florentino is named in his official capacity as the Acting Director of the Newark, NJ, Field Office of Enforcement and Removal Operations (ERO), U.S. Immigration and Customs Enforcement (ICE). Respondent Florentino is a legal custodian of the Petitioner and has the authority to release him.

15. Respondent, Kristi Noem, is the Secretary of the U.S. Department of Homeland Security ("DHS"), the federal agency responsible for enforcing Petitioner's arrest, detention and removal. Respondent Noem's address is 2707 Martin Luther King Jr. Ave, SE Washington, DC 20528-0485.

LEGAL BACKGROUND

16. Section 2241 of 28 United States Code provides in relevant part that "[w]rits of habeas corpus may be granted by . . . the district courts within their respective jurisdictions" when a petitioner "is in custody in violation of the Constitution or laws or treaties of the

17. United States." 28 U.S.C. § 2241(a), (c)(3); *see also I.N.S. v. St. Cyr*, 533 U.S. 289, 305, 121 S. Ct. 2271 (2001).

18. District courts grant writs of habeas corpus to those who demonstrate their custody violates the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3).

19. Habeas corpus "entitles [a] prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law." *Boumediene v. Bush*, 553 U.S. 723, 779, 128 S. Ct. 2229 (2008) (*quoting, St. Cyr*, 533 U.S. at 302.

20. The Fifth Amendment's Due Process Clause protects the right of all persons to be free from "depriv[ation] of life, liberty, or property, without due process of law." U.S. Const. amend. V.

21. "It is well established that the Fifth Amendment entitles aliens to due process of law[.]" *Trump v. J. G. G.*, 604 U.S. ---, 145 S. Ct. 1003, 1006 (2025) (*quoting Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)).

22. "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, 533 U.S. at 690.

23. The INA prescribes three basic mechanisms for detention for non-citizens, 8 U.S.C. § 1225, for arriving aliens and applicants for admission, § 1226 the default detention statute, and § 1231 for post–final order detention.

24. The detention provisions at § 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, 300-582 to 3009-583, 3009-585.

25. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

26. Following the enactment of the IIRIRA, the U.S. Department of Justice's Executive Office of Immigration Review ("EOIR") drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 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) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

27. Thus, in the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an Immigration Judge ("IJ"), unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

28. For decades, residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.

29. On July 8, 2025, however, DHS stated a new position with regard to custody determinations as follows:

30. 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). Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(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) 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).

31. 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 (emphasis original).

32. As a result, according to DHS, all noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, are now considered to be subject to mandatory detention under INA § 235(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) 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)." Id.

33. Prior to July 8, 2025, the predominant form of detention authority for anyone arrested in the interior of the United States was 8 U.S.C. § 1226(a). Further, the Petitioner in this case

was initially arrested and released pursuant to 8 U.S.C. § 1226(a), and is demonstrated by DHS's own forms.

34. The Supreme Court has explained that § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." Jennings v. Rodriguez, 583 U.S. 281, 297, 2987 (2018). In contrast, Section 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings." Id. at 289 (emphases added).

35. Under § 1226(a) the Attorney General may release a detainee on bond on the authority of ICE or by an Immigration Judge. There are standards for release: bond is available if the Supreme Court has explained that § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 297, 2987 (2018). In contrast, Section 1226 "authorizes the Government to detain certain aliens already in the Furthermore, § 1225(b)(2) specifically applies only to those "seeking admission," and the implementing regulations at 8 C.F.R. § 1.2 address noncitizens who are "coming or attempting to come into the United States." The use of the present progressive tense would exclude noncitizens like Petitioner who are apprehended in the interior years after they entered, as they are no longer "seeking admission" or "coming [...] into the United States." *See Martinez v. Hyde*, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); *see also Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168,

1200 (S.D. Cal. 2019) (construing "is arriving" in INA § 235(b)(1)(A)(i) and observing that "[t]he use of the present progressive, like use of the present participle, denotes an ongoing process").

36. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner, who had entered the U.S. approximately 6 years before he was apprehended.

37. The source of DHS's authority to release noncitizens from custody depends on which detention statute applies. Under § 1226(a), DHS can release noncitizens on bond, on their own recognizance, or on humanitarian parole. See 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(8). Noncitizens who are subject to § 1226(a) are also entitled to a bond hearing before an immigration judge.

38. In deciding whether to release a noncitizen on bond or their own recognizance, immigration judges consider whether the individual poses a danger to the community and whether they are likely to appear for future proceedings. 8 C.F.R. § 1003.19(h)(3); *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006).

39. As a result, any "[r]elease" of a noncitizen "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

40. Statutory and regulatory provisions governing re-arrest also depend on the manner of release. Under the text of the INA and federal regulations, certain DHS officials "at any time may revoke a bond or [conditional] parole authorized under [§ 1226(a)], rearrest the [noncitizen] under the original warrant, and detain the [noncitizen]." 8 U.S.C. § 1226(b); see 8 C.F.R. § 236.1(c)(9). For decades, however, DHS has had a consistent policy and

practice of re-detaining noncitizens in removal proceedings only when the individual circumstances related to their flight risk or danger to the community had materially changed.

41. DHS has placed explicit limits on re-detention under 8 U.S.C. § 1226(b) by requiring authorization from a high-level official within the field office. By regulation, such revocations of release from custody may only be carried out in the "discretion of the district, acting district director, deputy director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign)." 8 C.F.R. § 236.1(c)(9).

42. Additionally, despite "the breadth of [the] statutory language" in 8 U.S.C. § 1226(b), the federal government's authority is subject to "an important implicit limitation": It cannot lawfully re-arrest or re-detain someone without "a material change in circumstances." *Saravia*, 280 F. Supp. 3d at 1197; *see also, e.g., Matter of Sugay*, 17 I. & N. Dec. 637, 640 (B.I.A. 1981).

43. In the immigration context, this limitation means that a person who immigration authorities released from initial custody cannot be re-arrested "solely on the ground that he is subject to removal proceedings," without some new, intervening cause. *Saravia*, 280 F. Supp. at 1196. Indeed, the Fourth Amendment, which applies to seizures by immigration authorities, prohibits such re-arrests, which courts have long held could result in "harassment by continual rearrests." *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971) (Stevens, J.) (prohibiting rearrest without change in circumstances in criminal context); *see also U.S. v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (applying Fourth Amendment principles from criminal context to "limit" scope of immigration agents'

seizure authority); *Gonzalez v. United States Immigr. & Customs Enf't*, 975 F.3d 788, 817 (9th Cir. 2020) (Fourth Amendment limits apply equally to seizures in criminal and civil immigration context). The same applies here.

44. This prohibition also derives from fundamental constitutional principles enshrined in the Due Process Clause of the Fifth Amendment. "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). And those due process protections extend to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at 693).

45. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). Due process requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

46. The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings (or, in the case of a removal order, at removal); and preventing danger to the community. *Zadvydas*, 533 U.S. at 690-92; *see Demore v. Kim*, 538 U.S. 510, 519-20, 527–28, 531 (2003). It has also held that, in general, these purposes may not be assessed on a blanket or categorical basis. Instead, immigration custody decisions generally must be based on an

"individualized determination" of flight risk and danger to the community. *See INS v. Nat'l Ctr. for Immigrants' Rts., Inc.*, 502 U.S. 183, 194 (1991); *see also Zadvydas*, 533 U.S. at 690; *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 188 (D.D.C. 2015).

47. Moreover, individuals who are released from government custody have a protected liberty interest in remaining out of custody. The government's decision to release an individual from custody creates "an implicit promise" that their liberty "will be revoked only if [they] fail[ ] to live up to the . . . conditions [of release]." *Morrissey*, 408 U.S. at 482.

48. Accordingly, in the criminal context, the Supreme Court has repeatedly recognized that re-detention after some form of conditional release requires a pre-deprivation hearing. *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context).

49. These principles apply with at least equal force to people released from civil immigration detention. After all, noncitizens living in the United States have a protected liberty interest in their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. And, "[g]iven the civil context [of immigration detention], [the] liberty interest [of noncitizens released from custody] is arguably greater than the interest of parolees." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

50. Thus, if 8 U.S.C. § 1226(b) were construed as allowing ICE to re-arrest and re-detain noncitizens for delivering food, or for any reason at all, it would raise serious constitutional questions under both the Fourth Amendment and the Due Process Clause.

FACTUAL ALLEGATIONS

51. Petitioner, Bryon Manuel De Leon-Godinez ("Mr. De Leon-Godinez")is a citizen and national of Guatemala.

52. Mr. De Leon-Godinez entered the United States on August 15, 2019, at the age of 18, after [redacted] *See* Ex. 3, Notice to Appear dated September 19, 2019.

53. Petitioner was given a positive credible fear determination.

54. On September 19, 2019, Petitioner was issued a Notice to Appear ("NTA"), pursuant to 8 U.S.C. §1229(a), ordering him to appear at the Arlington Immigration Court in Arlington, Virginia.

55. The 2019 NTA charged the Petitioner pursuant to 8 U.S.C. §§ 1182(a)(6)(A)(i) as a non-citizen present without admission or parole, and 1182(a)(7)(A)(i)(I) as a non-citizen without valid documentation.

56. After three months detained, on November 25, 2019, the Petitioner was released from ICE custody on a $5,000 bond.

57. On November 16, 2021, Petitioner filed a Form I-360, Petition for Amerasian, Widower, or Special Immigrant. *See* Ex. 2.

58. On August 24, 2022, USCIS approved Petitioner's Special Immigrant Juvenile Status ("SIJ"). Petitioner's priority date is November 16, 2021.

59. On August 25, 2022, USCIS also approved deferred action.

60. In its decision, USCIS determined Petitioner warranted a favorable exercise of discretion to receive deferred action:

> "USCIS has determined that you warrant a favorable exercise of discretion to receive deferred action. As a result, you have been placed in deferred action and you may be issued an employment authorization document. Deferred action is an act of administrative convenience to the government, which gives some cases lower priority for removal from the United States for a specified period. Your grant of deferred action will

remain in effect for a period of four years from the date of this notice unless terminated earlier by USCIS."

61. On December 13, 2022, the DHS and Petitioner's immigration attorney filed a joint motion to terminate immigration proceedings.

62. On December 13, 2022, an Immigration Judge signed the termination, and the proceedings were terminated.

63. After the immigration termination, Petitioner attended Hudson Community College in the ESL department. His major was in radiology, and he plans on joining the US Armed Forces after getting my legal residence. *See* Petitioner's Declaration, Ex. 5, ¶13.

64. Petitioner was working as a delivery person for the Roadie Driver App. *See* Petitioner's Declaration, Ex. 5, ¶14.

65. On October 25, 2025, as he was delivering food to a Cliffside Park address in New Jersey, he saw two masked men get out of a Honda Accord. The men did not identify themselves, but told the Petitioner, "Hey, show me your ID; are you in this country legally?" *See* Petitioner's Declaration, Ex. 5, ¶14.

66. At that moment, Petitioner did not feel like he was free to leave and showed the masked men his valid New Jersey driver's license and his work authorization, as demanded. *See* Petitioner's Declaration, Ex. 5, ¶14.

67. It remains unclear what immigration violation DHS had to stop and arrest Petitioner when he was making a delivery.

68. Despite joining in a motion to terminate removal proceedings and extending deferred action for a term to expire in August 2026, DHS issued a second Notice to Appear dated October 25, 2025, under 8 U.S.C. § 1229(a), and the allegations and charges are identical to the first NTA that was terminated in 2019. *See* Ex. 7.

69. Despite an immigration court granting a previous bond for Petitioner's release on November 25, 2019, DHS re-detained him, and now arguing that he is not eligible for release any bond.

70. Upon information and belief, Petitioner has no criminal history in the United States.

71. Between Petitioner's initial release on bond in November 2019, up until his second arrest in October 2025, there were no changed circumstances that warrant re-detention.

72. The Petitioner continues to be detained at the Delaney Hall Detention Facility in Newark, New Jersey.

73. On July 8, 2025, DHS issued a new policy memorandum to all employees of Immigration and Customs Enforcement (Hereinafter "ICE") stating that "[t]his message serves as notice that DHS, in coordination with the Department of Justice (Hereinafter "DOJ"), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, 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." Memorandum, U.S. Immigration & Customs Enf't, *Interim Guidance Regarding Detention Authority for Applications for Admission* (July 8, 2025), available at AILA Doc. No. 25071607, https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

74. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision that unlawfully reinterpreted the Immigration and Nationality Act ("INA"). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Prior to this decision, noncitizens

like Petitioner who had lived in the U.S. for many years and were apprehended by ICE in the interior of the country were detained pursuant to 8 U.S.C. § 1226(a) and eligible to seek bond hearings before Immigration Judges ("IJs"). Instead, in conflict with nearly thirty years of legal precedent, Petitioner is now considered subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and has no opportunity for release on bond while his removal proceedings are pending.

75. Through his SIJ petitioner, Petitioner will be eligible to apply for adjustment of status when his priority date becomes current. The current visa bulletin for November 2025 provides visa availability for Special Immigrant Juvenile petitions up to February 15, 2021.

76. On November 10, 2025, Petitioner requested a bond custody re-determination from an immigration judge. However, it was denied as the immigration judge found it did not have jurisdiction to review his custody redetermination due to a new policy memo and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) holding that everyone present in the United States who did not enter with a valid visa is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *See* Exh. 8, Bond Denial dated November 10, 2025.

77. Petitioner's re-detainment six years after his initial custody release on bond is unlawful because he was never provided a pre-deprivation hearing in which an immigration judge could determine whether changed circumstances warranted re-detention.

78. Petitioner's re-detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who was apprehended in the interior of the U.S., should not be considered an "applicant for admission" who is "seeking admission." Instead, he must be detained, if at all, under 8 U.S.C. § 1226(a).

79. Through this petitioner, Petitioner asks this Court to find that Respondents have deprived his due process rights by re-detaining and have violated the INA by re-detaining him without the possibility of a bond hearing under 8 U.S.C. 1226(a). Petitioner seeks immediate release from custody, and an Order to Show Cause within three days as to why the government is re-detaining him.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)
The Petitioner's Re-Detention is Arbitrary and Capricious

80. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Complaint as if fully set forth herein.

81. The Administrative Procedure Act provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary [and] capricious, . . . or otherwise not in accordance with law[.]" 5 U.S.C. § 706(2)(A).

82. Petitioner's re-detention is reviewable as final agency action because it is neither tentative nor interlocutory, and legal consequences flow from Petitioner's re-detention.

83. Defendants provide no reasoned or adequate explanation for re-detaining Petitioner, who, since his release from ICE custody in 2019, had been attending school, granted deferred action, and working to support himself. *See Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016).

84. In re-detaining Petitioner, now without the ability for bond, Respondents failed to adequately consider important aspects of the problem and all relevant factors, including the constitutional limitations on the government's authority to re-arrest and re-detain, and the

reliance interests of the Petitioner in understanding that with a bond, he could not be re-arrested absent some violation of the bond conditions.

SECOND CLAIM FOR RELIEF

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)
The Petitioner's Re-Detention Violates the INA

85. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Complaint as if fully set forth herein.

86. Petitioner's re-detention violates 8 U.S.C. § 1226(b) because the statute does not authorize re-detention without a material change in circumstances with respect to a non-citizen's flight risk or danger to the community based on an individualized determination. In fact, Petitioner has deferred action. Further, Respondent's re-interpretation of 8 U.S.C. § 1225(b)(2) and § 1226(a) is contrary to law and is not a valid legal basis for re-detention.

87. Petitioner's re-detention violates the Administrative Procedure Act because it is "not in accordance with law" and "in excess of statutory jurisdiction, authority, or limitations." 5 U.S.C. § 706(2)(A), (C), (D).

THIRD CLAIM FOR RELIEF

Administrative Procedure Act, 5 U.S.C. § 706(2) – Accardi Doctrine
Unlawful Failure to Follow/Effective Rescission of 8 C.F.R. § 236.1(c)(8)

88. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Complaint as if fully set forth herein.

89. The APA provides that courts "shall . . . hold unlawful and set aside agency action" that is "without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

90. The Accardi doctrine holds that "government agencies are bound to follow their own rules, even self-imposed procedural rules that limit otherwise discretionary decisions." *See U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

91. DHS regulations implementing 8 U.S.C. § 1226(b) authorize revocations of release from custody under the statute only in the "discretion of the district director, acting district director, deputy director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign)." 8 C.F.R. § 1236.1(c)(9).

92. Petitioner's re-detention, albeit deferred action, while working as a delivery person, allows revocation or prior custody determinations by government officials not authorized by law to make this determination in violation of the APA and in violation of the Accardi doctrine's requirement that agencies comply with their own regulations.

FOURTH CLAIM FOR RELIEF

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(B)
Petitioner's Re-Detention Policy is Contrary to Constitutional Right

93. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Complaint as if fully set forth herein.

94. The APA provides that courts "shall . . . hold unlawful and set aside agency action" that is "contrary to constitutional right." 5 U.S.C. § 706(2)(B).

95. The Fourth Amendment protects the right of all persons present in the United States to be free from unreasonable seizures by government officials. Petitioner was unlawfully stopped and arrested while making a delivery. Immigration officials did not have probable of an immigration violation being committed when they stopped and arrested him.

96. As a corollary to that right, the Fourth Amendment prohibits re-arrest on the same charges/probable cause without a material change in circumstances.

97. Petitoner's re-detention violates the Fourth Amendment because immigration officers made an unreasonable seizure by re-arresting the Petitioner for the same civil immigration

charges as their initial arrest in 2019, which was terminated, and without a material change in circumstances.

FIFTH CLAIM FOR RELIEF

Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

98. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Complaint as if fully set forth herein.

99. Petitioner was initially detained in September 2019. At that time, he was detained for close to two months. Ultimately, Petitioner was issued a bond in the amount of $5,000 for his release.

100. Since the Petitioner's custody redetermination in 2019, there have not been any material changes that warrant re-arrest.

101. Petitioner has an SIJ approval with deferred action since 2022. To the Petitioner's information and knowledge, U.S. Citizenship and Immigration Services ("USCIS") never revoked his deferred action.

102. At the time of Petitioner's arrest, he had been living in the United States for about six years, with valid work authorization and awaiting his priority date.

103. DHS has already made an initial custody determination under 8 U.S.C. § 1226(a) and ordered his release from detention.

104. If DHS seeks to re-detain Petitioner, they must have a custody redetermination hearing prior to re-detention and detention, if at all, must be pursuant to 8. U.S.C. §1226(a).

SIXTH CLAIM FOR RELIEF

Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19
Unlawful Denial of Release on Bond

105. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Complaint as if fully set forth herein.

106. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

107. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to 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 without seventy-two hours;
3. Declare that Petitioner's re-detention is unlawful;
4. Prohibit Respondents from relocating Petitioner outside the District of New Jersey pending final resolution of this litigation;

5. Issue a Writ of Habeas Corpus ordering Respondents to release him from custody or provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
6. Order that Respondents may not subject Petitioner to any post-release monitoring or supervision;
7. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
8. Grant any other and further relief that the Court deems just and proper.

Dated: November 15, 2025

Respectfully submitted,

By: __*/s/Veronica Cardenas*_____

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