UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

J[redacted] Petitioner, v. DERRICK STAMPER, Chief Patrol Agent, Houlton Sector, U.S. Border Patrol, MATTHEW HLADIK, Area Port Director, Area Port of Portland, Maine, Office of Field Operations, U.S. Customs and Border Protection, RODNEY SCOTT, Commissioner, U.S. Customs and Border Protection, DAVID WESLING, Acting Field Office Director, Boston Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement, KRISTI NOEM, Secretary, U.S. Department of Homeland Security, PAMELA BONDI, Attorney General, U.S. Department of Justice, Respondents.	Case Number:

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241
(Expedited Consideration Requested)

1. Petitioner J[redacted] is a noncitizen from Ecuador. Exhibit 1 (Ecuadoran Passport). Petitioner is a minor child, aged sixteen (16) years old. Exhibit 2 (Office of Refugee Resettlement, Division of Unaccompanied Children Operations, Verification of Release).

2. Petitioner lives in Scarborough, Maine with his sponsor sister, Paula Maria Cuenca-Tamay. *Id.*

3. Petitioner attends [redacted] and has attended this school since March 10, 2025. Exhibit 3 (Scarborough High School Support Services Department Letter Verifying Attendance).

4. On information and belief, Petitioner entered the United States on or around Hidalgo, TX on or about January 08, 2025. Exhibit 4 (Notice to Appear dated January 09, 2025 served upon the Petitioner).

5. The U.S. Department of Homeland Security ("DHS") detained Petitioner shortly after he entered the U.S. and held him in federal custody under the U.S. Department of Health and Human Services (HHS)'s Office of Refugee Resettlement (ORR) until he was released "pursuant to section 462 of the Homeland Security Act of 2002 and section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ["TVPRA"]". Exhibit 2 (Office of Refugee Resettlement, Division of Unaccompanied Children Operations, Verification of Release).

6. Petitioner traveled to the state of Maine, where he has resided with his sister ever since. Exhibit 5 (Statement from Paula Maria Cuenca-Tamay, sister of Petitioner).

7. In May 2025, Petitioner and his sponsor sister retained the services of a Maine attorney to file for a predicate order from the Maine Probate Court establishing that the Petitioner had been abused, abandoned, or neglected by one or both parents, then establishing Petitioner's sister's guardianship over the Petitioner. They had every intention of then filing for special immigrant juvenile status. At this time, Petitioner's sister has worked with her family law attorney to file for emergency guardianship, which should be uploaded today. Exhibit 6 (Statement from Maine attorney Tori Stenbak regarding their relationship and intentions).

8. On information and belief, on about Sunday, November 23, 2025, Petitioner was in a car with a family friend in Greenfield, ME when their vehicle was stopped by authorities. Exhibit 5 (Statement from Paula Maria Cuenca-Tamay, sister of Petitioner).

9. On information and belief, Petitioner called his sponsor sister to inform her of the situation but his phone was then taken away and he has not had any further contact with her since. *Id.*

10. On information and belief, the agents did not have an administrative warrant at the time of the arrest.

11. Customs and Border Protection called Petitioner's sister on Facebook Messenger using the Petitioner's phone and Facebook account at approximately 7:00PM on November 23, 2025 and spoke to his sister. Exhibit 7 (Screenshot of Paula Maria Cuenca-Tamay's Messenger timestamps). They requested evidence of his release from ORR, which she sent to her brother's Messenger app. *Id.* On information and belief, he was held overnight at a police station without speaking with his sponsor.

12. At approximately 6:06AM today, November 24, 2025, Customs and Border Protection called Petitioner's sister to inform her that he would be deported immediately and she would need to bring his passport to Jackman to make the process smoother. Exhibit 8 (Screenshot of Paula Maria Cuenca-Tamay's phone call with officials in Jackman, ME).

13. Since the Petitioner is a minor child under 18 years old, Petitioner does not show up in the U.S. Immigration and Customs Enforcement ("ICE") Online Detainee Locator System.

14. On information and belief, Petitioner is currently being held in CBP custody in Jackman, Maine and they are aware that he is an unaccompanied child. Exhibit 5 (Statement from Paula Maria Cuenca-Tamay, sister of Petitioner).

LEGAL BACKGROUND

15. **Petitioner is Subject to the Trafficking Victims Protection Reauthorization Act.** The William Wilberforce Trafficking Victims Protection Reauthorization Act ("TVPRA"), passed with broad bipartisan support in 2008 and signed by President George W. Bush, was designed to protect the victims of trafficking and unaccompanied migrant children. Pub. L. No. 110-457, 122 Stat. 5044 (2008) (codified in part at 8 U.S.C. § 1232). The law recognizes that UACs are uniquely at risk of exploitation on their journey and once inside the United States. It affirms that every decision affecting them must prioritize the child's best interest and safety. Expediency must never come at the cost of a child's well-being.

16. The TVPRA states "Except in the case of exceptional circumstances, any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child." William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008., Pub. L. No. 110-457, § 235(b)(3), 122 Stat. 5044, 5077 (2008); *see also* 8 U.S.C. § 1232(b)(3) .It requires that UACs "be promptly placed in the least restrictive setting that is in the best interest of the child." *Id.* at § 1232(c)(2)(A). The statute continues: "A child shall not be placed in a secure facility absent a determination that the child poses a danger to self or others or has been charged with having committed a criminal offense." *Id.*

17. On information and belief, Jackman authorities are trying to circumvent the TVPRA by having him sign documents for self-deportation and trying to deport him within the 72 hours despite Petitioner being previously detained by ORR and released into the custody of his sister.

18. **Petitioner is Subject to the *Flores* Settlement Agreement.** In 1997, the District Court for the Central District of California approved the *Flores* Settlement Agreement ("FSA"), which set

forth the procedures and conditions of detention for minors subject to immigration detention. *Flores v. Session*, 862 F. 3d 863 (9th Cir. 2017). The *Flores* Settlement Agreement continues in its effect because "the Government continues to bind itself to the FSA by failing to fulfill its side of the Parties' bargain." *Flores v. Bondi,* CV 85-4544-DMG, 2025 U.S. Dist. LEXIS 207054 at * 32-33 (D. Me Aug. 15, 2025). Under the *Flores* Settlement Agreement, DHS is required to "release a minor from its custody without unnecessary delay" unless detention is required to secure appearance for immigration proceedings or ensure the minor's safety. FSA at ¶ 14. DHS is required to "make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor." *Id.* at ¶ 18.

19. The FSA requires that if DHS does not release a minor, that the minor "be afforded a bond redetermination hearing before an immigration judge *in every case*." FSA at 24A.

20. As also required by the *Flores* Settlement Agreement, this counsel has reached out to the United States Attorney's Office for the District of Maine to attempt to resolve this issue informally and the AUSA we spoke to asked to be copied on the filing.

21. **Petitioner is Not Subject to Expedited Removal.** 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).

22. **Petitioner is Not an Applicant for Admission Seeking Admission.** 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 Choglla Chafla*, No. 25-cv-437-SDN, 2025 WL 2688541, at *2–9 (D. Me. Sept. 22, 2025);

Aguiriano v. Romero v. Hyde, No. 25-11631, 2025 WL 2403827, at *1, 8-13 (D. Mass. Aug. 19, 2025).

23. 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. At the border, Petitioner was arrested with a warrant and provided documentation indicating that his detention was pursuant to 8 U.S.C. § 1226 (INA 236). Exhibit 9 (Form I-200, Warrant for Arrest of Alien); Exhibit 10 (Form I-286, Notice of Custody Determination). Petitioner is not subject to mandatory detention under § 1225 for this reason as well.

24. 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 Choglla Chafla*, 2025 WL 2688541, at *2–9 (collecting cases); *Aguiriano*, 2025 WL 2403827, at *1, 8-13 (collecting cases).

25. **Petitioner is Not Subject to Criminal Mandatory Detention.** 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).

26. Accordingly, Petitioner is subject to detention, if at all, under 8 U.S.C. § 1226(a).

27. 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).

28. Petitioner requests immediate release into the custody of the person that DHS has previously designated as his sponsor and released him to or, at the very least, such a bond hearing.

29. 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]

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

31. Petitioner is being irreparably harmed by his ongoing unlawful detention without a bond hearing. *See Chiliquinga Yumbillo v. Stamper*, No. 25-cv-479-SDN, 2025 WL 2783642, at *3–4 (D. Me. Sept. 30, 2025) (no exhaustion requirement because "many months of potentially unlawful detention" constitutes "irreparable harm"); *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'").

[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).

32. 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).

33. 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.").

34. 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

35. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

36. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question). Under 28 U.S.C. § 2241, "[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 United States." This jurisdiction includes "writs of habeas corpus filed by immigration detainees before and after a final order of removal has been issued." *Dambrosio v. McDonald*, 2025 U.S. Dist. LEXIS 67848 at * 4 (D. Mass Apr 9, 2025) (citing *Zadvydas v. Davis*, 533 U.S. 678, 688, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018)).

37. The First Circuit has routinely held that "district courts retain jurisdiction over challenges to the legality of detention the immigration context." *Aguilar v. U.S. Immigr. & Customs Enf't div.*

of Dep't of Homeland Sec., 510 F.3d 1, 11 (1st Cir. 2007) (citing *Hernandez v. Gonzales*, 424 F.3d 42 (1st Cir. 2005) (holding that detention claims are independent of removal proceedings and, thus, not barred by section 1252(b)(9))). Specifically, "constitutional challenges regarding the availability of bail" fall within this Court's habeas review. *Id.* (citing *Demore v. Kim*, 538 U.S. 510 (2003)).

38. The legal issue here is "wholly collateral to the removal process." *Gicharu v. Carr*, 983 F.3d 13, 16 (1st Cir. 2020).

39. Because Petitioner is solely contesting his ongoing detention through his Petition, this Court has jurisdiction and maintains the authority to order him immediately released. *See contra Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) ("[Section] 1252(b)(9) 'does not present a jurisdictional bar' where those bringing suit 'are not asking for review of an order of removal,' 'the decision to seek removal,' or 'the process by which removability will be determined'" (ellipses omitted) (quoting *Jennings*, 583 U.S. at 294-95)).
In the alternative, this Court has jurisdiction and maintains the authority to order Petitioner be provided with a bond hearing in the Immigration Court where DHS bears the burden of demonstrating he is a danger to the community or a flight risk. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021) ("[D]ue process requires the government to either (1) prove by clear and convincing evidence that [he] poses a danger to the community or (2) prove by a preponderance of the evidence that [he] poses a flight risk.").

40. Venue is proper because Petitioner resides in Maine, was detained in Maine, and on information and belief is detained in the District of Maine. *See Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) ("The plain language of the habeas statute thus confirms the general rule that . . .

jurisdiction lies in only one district: the district of confinement.") (*cited in Trump v. J.G.G.*, 145 S. Ct. 1003, 1006-07 (2025) (per curiam)).

PARTIES

41. The U.S. Department of Homeland Security ("DHS") is an executive department of the government of the United States.

42. U.S. Customs and Border Protection ("CBP") is a component of DHS. The U.S. Border Patrol and the CBP Office of Field Operations ("OFO") fall within CBP.

43. U.S. Customs and Immigration Enforcement ("ICE") is a component of DHS. ICE Enforcement and Removal Operations ("ERO") falls within ICE.

44. The U.S. Department of Justice ("DOJ") is an executive department of the government of the United States. The Executive Office of Immigration Review ("EOIR") is a component within DOJ. Immigration Courts and the Board of Immigration Appeals fall within EOIR.

45. Respondent Derrick Stamper is the Chief Patrol Agent for the Houlton Sector of the U.S. Border Patrol. He is being sued in his official capacity. He is Petitioner's immediate and legal custodian.

46. Respondent Rodney Scott is the Commissioner of CBP. He is being sued in his official capacity. He is also Petitioner's immediate and legal custodian.

47. Respondent David Wesling is the Field Office Director for the Boston Field Office of ICE. He is being sued in his official capacity. He is also Petitioner's legal custodian.

48. Respondent Todd Lyons is the Acting Director of ICE. He is being sued in his official capacity. He is also Petitioner's legal custodian.

49. Respondent Kristi Noem is the Secretary of DHS. She is being sued in her official capacity. She is also Petitioner's legal custodian.

50. Respondent Pamela J. Bondi is the United States Attorney General, and, as such, the head of DOJ. She is being sued in her official capacity. She oversees the Immigration Courts and the Board of Immigration Appeals. She is also Petitioner's legal custodian.

51. All respondents are named in their official capacities. One or more of the respondents is Petitioner's immediate custodian.

CLAIMS FOR RELIEF

COUNT ONE
Violation of 8 U.S.C. § 1226(a) and Associated Regulations
(Failure to Provide Bond Hearing)

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

53. 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).

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

55. 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))

56. 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.

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

58. 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)

59. "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).

60. 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.

61. "[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").

62. "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. at 690.

63. 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).

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

65. 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)

66. 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).

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

COUNT FIVE
Violation of 8 U.S.C. 1226(a)
(Failure to Obtain Administrative Warrant)

68. Petitioner could only be detained under 8 U.S.C. § 1226(a), if at all, "on a warrant issued by" DHS.

69. Respondents detained Petitioner without obtaining an administrative warrant, in direct violation of the statute.

70. Petitioner's detention is therefore unlawful under 8 U.S.C. § 1226(a).

COUNT SIX
Violation of the *Flores* Settlement Agreement

(Unlawful Detention of a Minor)

71. The government's detention of Petitioner violates the *Flores* Settlement Agreement's clear requirement to release him "without unnecessary delay" and "make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor." FSA at ¶ 14, 18.

COUNT SEVEN
Violation of the TVPRA, as Codified at 8 U.S.C. § 1232
(Unlawful Detention of a UAC)

72. The government's detention of Petitioner violates the TVPRA's requirement that UACs "be promptly placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C.§ 1232(c)(2)(A)

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 the District of Maine;

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

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

(5) Issue a Writ of Habeas Corpus ordering Respondents

(a) to immediately release Petitioner from detention, or, if at the time of the habeas hearing the Court has already ordered Petitioner released under its inherent Article III authority, not to re-detain Petitioner, or

(b) in the alternative, to provide Petitioner an individualized bond hearing before an Immigration Judge on danger to the community and flight risk under 8 U.S.C. §

1226(a) and *Hernandez-Lara*, at a time and in a manner that places Petitioner in the same position he would be if not for the Respondents' unlawful conduct, and, if the Immigration Judge grants bond, to immediately accept payment of the bond and release Petitioner from detention.

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

Respectfully submitted this 24th day of November, 2025.

Jefferson Israel QUITO TAMAY ,

By and through his Counsel,

/s/ Jenny Beverly
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Counsel for Petitioner

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

I represent Petitioner, Jefferson Quito Tamay, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 are true and correct to the best of our knowledge.

Respectfully submitted this 12th day of October, 2025.

/s/ Jenny Beverly
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