

JS 44 (Rev. 03/24)

of 1
CIVIL COVER SHEET *5:25-cv-145-DCB-RPM*

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS</p> <p style="text-align: center;">Gerber Geovanni Garcia Hernandez</p> <p>(b) County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) [REDACTED]</p>	<p style="text-align: center;">DEFENDANTS</p> <p style="text-align: center;">Noem, Bondi, Acuna, Edlow, Swindle, & Vergara,</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. SOUTHERN DISTRICT OF MISSISSIPPI FILED</p> <p style="text-align: center;">Attorneys (If Known) Assma A. Ali & Andrea C. Soto</p> <p style="text-align: right; font-size: 1.2em;">DEC 02 2025</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> <td style="width: 55%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input checked="" type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District *(specify)*
 6 Multidistrict Litigation - Transfer
 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
 8 U.S.C §1226 28 U.S.C. §2241 8 C.F.R. § 235.3(b)(2)(iii), 1235.3(b)(2)(iii), 28 U.S.C. § 1651

Brief description of cause: _____

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE _____ DOCKET NUMBER _____

DATE: 11/26/2025

SIGNATURE OF ATTORNEY OF RECORD: _____

FOR OFFICE USE ONLY

RECEIPT # 13066 AMOUNT \$ 5.00 APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

SOUTHERN DISTRICT OF MISSISSIPPI
FILED

DEC 02 2025

BY ARTHUR JOHNSTON
DEPUTY

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

Gerber Geovanni Garcia Hernandez,

Petitioner,

v.

Kristi Noem, in her Official Capacity,
Secretary of the U.S. Department of
Homeland Security;

Pamela Bondi, in her Official Capacity,
Attorney General of the United States

Brian Acuna, in his Official Capacity, Field
Office Director for ICE's ERO of New
Orleans, Louisiana

Joseph B. Edlow, Director of U.S. Citizenship
and Immigration Services;

Patrick D. Swindle, in his Official Capacity,
Chief Executive Officer of CoreCivic, Inc;

Rafael Vergara, in his Official Capacity,
Warden of Adams County Correctional
Center; CoreCivic, LLC, operator of Adams
County Correctional Center;

Respondents.

Case No. 5:25-cv-145-DCB-RPM

Judge: DCB
Magistrate Judge: RPM

No request for jury trial

**PETITION FOR WRIT OF HABEAS
CORPUS AND COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

ORAL ARGUMENT REQUESTED

COMES NOW, Petitioner, Gerber Geovanni Garcia Hernandez ("Mr. Garcia Hernandez"), brings this Verified Petition for Writ of Habeas Corpus 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.. The efforts to remove Petitioner constitute a “severe restraint” on his individual liberty such that Petitioner is “in custody” of the Respondents in violation of the . . . laws of the United States. Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist., Santa Clara Cnty., California, 411 U.S. 345, 351, 93 S. Ct. 1571, 36 L. Ed. 2d 294 (1973); 28 U.S.C. § 2241, including the Immigration Nationality Act, 8 U.S.C. § 1101 et seq.; the Administrative Procedure Act, 5 U.S.C. § 701 et seq.; and the Due Process Clause of the Fifth Amendment of the United States Constitution.

1. Petitioner has been physically detained by ICE since September 29, 2025. He is currently detained at Adams County Correctional Center, located at Natchez, Mississippi. Petitioner sought custody redetermination before the Executive Office for Immigration Review requesting release on bond. However, on November 19, 2025, the Immigration Judge denied the request, concluding that the Court lacked jurisdiction to consider bond under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which holds that noncitizens who entered without inspection are subject to mandatory detention under 8 U.S.C. § 1225(b) and ineligible for bond under § 1226(a). Petitioner also filed a Motion to Terminate Removal Proceedings Without Prejudice based on his approved Special Immigrant Juvenile (SIJ) petition and granting of deferred action from removal. However, the motion was denied citing that the record lacked sufficient evidence of the SIJ approval at the time of filing.

2. Pursuant to this Court’s inherent powers in habeas corpus proceedings, Petitioner respectfully requests that this Court enjoin Respondents from effectuating his removal from the United States and order his immediate release from custody, or in the alternative, or enjoin Respondents from continuing to detain him without an opportunity for bond redetermination.

3. Petitioner has been subjected to prolonged detention that far exceeds the brief period constitutionally permitted to facilitate removal. See *Zadvydas v. Davis*, 533 U.S. 678, 701, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001); *Demore v. Kim*, 538 U.S. 510, 530, 123 S. Ct. 1708, 155 L. Ed. 2d 724 (2003). His continued detention no longer serves any legitimate governmental purpose and has become arbitrary and punitive, in violation of the Due Process Clause of the Fifth Amendment.

4. The Immigration Court and the Board of Immigration Appeals have expressly disclaimed jurisdiction to review or redetermine custody in light of *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which held that Immigration Judges lack authority to conduct bond hearings for individuals charged removable under certain provisions of the Immigration and Nationality Act. As a result, Petitioner is left without an adequate or available administrative remedy, and only this Honorable Court possesses jurisdiction under 28 U.S.C. § 2241 to review the legality of his continued detention and to grant appropriate relief. See *I.N.S. v. St. Cyr*, 533 U.S. 289, 314, 121 S. Ct. 2271, 150 L. Ed. 2d 347 (2001) (recognizing federal habeas jurisdiction where no other judicial forum is available to test the legality of executive detention).

5. Petitioner currently has a pending application for asylum and withholding of removal before U.S. Citizenship and Immigration Services (USCIS), based on a well-founded fear of persecution in Guatemala. He is also the beneficiary of an approved Special Immigrant Juvenile (SIJ) petition, granted on September 17, 2022, which affirms his eligibility for humanitarian protection under U.S. immigration law and deferred action from removal. Additionally, he intends to file an application for T Nonimmigrant Status (T-Visa) with USCIS, as a survivor of trafficking and forced labor during his journey to the United States at the age of

seventeen. To pursue adjudication of these meritorious claims, Petitioner must remain lawfully present in the United States and free from prolonged detention that obstructs access to relief.

I. JURISDICTION & VENUE

6. The Court has jurisdiction under the Suspension Clause. The Suspension Clause provides, "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. art. I, § 9, cl. 2. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241 *et seq.*, as protected under U.S. Const. art. I, § 9, cl. 2 (Suspension Clause), and federal question jurisdiction under 28 U.S.C. § 1331. This case arises under the United States Constitution; the INA, 8 U.S.C. §§ 1101 *et seq.*; the APA, 5 U.S.C §§ 701 *et seq.*; the Due Process Clause of the Fifth Amendment and the Fourth Amendment. Petitioner's current removal order as enforced by Respondents constitutes a "severe restraint[] on [Petitioner's] individual liberty," such that Petitioner is "in custody in violation of the . . . laws . . . of the United States." *See Hensley*, 411 U.S. at 351; 28 U.S.C. § 2241(c)(3). Petitioner is also subject to prolonged physical detention.

7. While the courts of appeals have jurisdiction to review removal orders directly through petitions for review, *see* 8 U.S.C. § 1252, federal district courts have jurisdiction under 28 U.S.C. § 2241(d) to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of Respondents' conduct. *See Demore*, 538 U.S. at 516–517; *Zadvydas*, 533 U.S. at 687. No Supreme Court or Fifth Circuit precedent applicable to immigration detainees, nor the habeas statute, indicate that venue is not proper in the District Court of Louisiana. *See* 28 U.S.C. § 2241. Venue is proper in the United States District Court for the Southern District of Mississippi, Western Division, because a substantial part of the events and omissions giving rise

to this action occurred within this District. 28 U.S.C. § 1391(b)(2). Petitioner is currently being held at the Adams County Correctional Center, located at Natchez, Mississippi.

II. PARTIES

8. Gerber Geovanni Garcia Hernandez is a 22-year-old Guatemalan national with approved Special Immigrant Juvenile (SIJ) status, deferred action from removal, and a pending asylum application. He is currently detained by ICE and in removal proceedings before the Jena Immigration Court.

9. 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, District of Columbia 20528-0485.

10. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review, pursuant to section 103(g) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1103(g). She routinely transacts business in the Western District of Louisiana, is legally responsible for administering Petitioner’s removal proceedings and the standards used in those proceedings, and as such, is the legal custodian of Petitioner. Respondent Bondi’s address is U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.

11. Respondent, Brian Acuna, is the Acting New Orleans ICE Field Office Director and therefore is responsible for ICE policies and operations in the New Orleans District, which stretches across Alabama, Arkansas, Louisiana, Mississippi, and Tennessee. He is named in his official capacity only. His address is 1250 Poydras Street, Suite 325, New Orleans, LA 70113.

12. Respondent, Joseph B. Edlow, is the Senior Official Performing the Duties of the Director of U.S. Citizenship and Immigration Services, the federal agency responsible for adjudicating Petitioner's T visa application. His address is 5900 Capital Gateway Drive, Camp Springs, Maryland 20588-0009.

13. Patrick D. Swindle, Chief Executive Officer of CoreCivic, Inc., is named in his official capacity. His official address is 5501 Virginia Way, Brentwood, Tennessee 37027.

14. Respondent Rafael Vergara is the Warden of Adams County Correctional Center, where Petitioner is currently detained. CoreCivic, LLC, as operator of Adams County Correctional Center, is the legal custodian of Petitioner. All are named in their official capacities. The facility's address is 20 Hobo Fork Road, Natchez, Mississippi 39120.

III. FACTS GIVING RISE TO THE HABEAS PETITION

15. Petitioner, Mr. Gerber Giovanni Garcia Hernandez, is currently in removal proceedings before the Jena Immigration Court. A Notice to Appear initiating these proceedings was issued on October 10, 2025 (*see Exhibit "A"*), charging Mr. Garcia Hernandez under INA § 212(a)(6)(A)(i), alleging that he is present in the United States without being admitted or paroled, or that he arrived at a time or place not designated by the Attorney General. Petitioner is scheduled for a Master Calendar hearing on December 10, 2025. He is represented by counsel, Andrea C. Soto, who has entered a notice of appearance before this Honorable Court.

16. Petitioner is a citizen and national of Guatemala (*see Exhibit "B"*). He fled Guatemala under duress due to persistent poverty, social instability, and repeated threats and robberies by criminal groups. During his journey to the United States at the age of seventeen, Petitioner was recruited by traffickers and underwent forced labor and exploitation. These experiences have caused lasting psychological distress. Despite this, Petitioner has expressed a

willingness to cooperate with any investigation into the trafficking network and is actively pursuing humanitarian relief before the Immigration Court.

17. The inadmissibility charge in the Notice to Appear reflects DHS's determination that Mr. Garcia Hernandez entered the United States without inspection and is subject to removal proceedings under INA § 240. The NTA does not classify him as an "arriving alien," but rather identifies him as an individual present in the United States without lawful admission, thereby placing him within the jurisdiction of the Immigration Court for full removal proceedings.

18. Petitioner has demonstrated his intent to comply with immigration processes and maintain lawful presence by filing an application for asylum and withholding of removal, which remains pending before U.S. Citizenship and Immigration Services (*see Exhibit "C"*). He is also the beneficiary of an approved Special Immigrant Juvenile (SIJ) petition, granted on September 17, 2022 (*see Exhibit "D"*), which further granted him deferred action from removal. These filings reflect his good-faith pursuit of humanitarian protection under U.S. immigration law and underscore his longstanding ties to the United States and eligibility for discretionary relief.

19. The Form I-213, Record of Deportable/Inadmissible Alien, reflects that Mr. Garcia Hernandez has a minimal criminal history, with no convictions that would render him a danger to the community or a threat to public safety (*see Exhibit "E"*). His record does not include any aggravated felonies or conduct that would bar discretionary relief. This limited history, combined with his consistent compliance with legal proceedings, supports his eligibility for humanitarian protection and underscores his overall commitment to lawful behavior.

20. Petitioner sought Custody Redetermination before the Immigration Court. The Immigration Judge summarily denied the motion on November 19, 2025, concluding that the Court lacked jurisdiction to consider bond under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA

2025), which holds that noncitizens who entered without inspection are subject to mandatory detention under 8 U.S.C. § 1225(b) and ineligible for bond under § 1226(a) (*see Exhibit “F”*).

21. On November 19, 2025, Petitioner, through counsel, filed a Motion to Terminate Removal Proceedings Without Prejudice before the Immigration Court (*see Exhibit “G”*). The motion was denied on the grounds that the Court lacked sufficient evidence of Petitioner’s eligibility for adjustment of status before U.S. Citizenship and Immigration Services. After a review of the December 2025 Department of State Visa Bulletin, the Petitioner’s priority date for adjustment of status will become effective on or about September 2026. (*see Exhibit “H”*).

22. Petitioner remains in ICE custody despite having a pending application for asylum and substantial equities that warrant release. He is the father of a U.S. citizen child and his partner is currently pregnant with their second child, further underscoring his deep family ties and responsibilities within the United States. His continued detention without a bond hearing violates his constitutional rights and imposes unnecessary hardship, particularly in light of his eligibility for humanitarian relief, strong community support, and the emotional and financial strain his absence places on his growing family.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

23. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

24. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or

confinement.” *Fay v. Noia*, 372 U.S. 391, 400, 83 S. Ct. 822, 9 L. Ed. 2d 837 (1963), *overruled* by *Wainwright v. Sykes*, 433 U.S. 72, 97 S. Ct. 2497, 53 L. Ed. 2d 594 (1977), and *abrogated* by *Coleman v. Thompson*, 501 U.S. 722, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

V. APPLICABLE LAW

1. The Government Is Detaining Petitioner Under the Wrong Statutory Provision and Lacks Authority to Hold Him Under 8 U.S.C. § 1225(b)(2)(A).

25. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings. First, 8 U.S.C. § 1226 governs the arrest and detention of individuals placed in ordinary removal proceedings before an IJ pursuant to 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are subject to discretionary civil detention and are generally entitled to a bond hearing, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, provided they cannot show an exception. *See* 8 U.S.C. § 1226(c).

26. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2). Third, 8 U.S.C. § 1231(a)-(b) governs detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)-(b).

27. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

28. 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, 3009—582 to 3009—583, 3009—585. § 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

29. Following the enactment of the IIRIRA, 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 FR 10312, 10323, 62 FR 10312-01, 10323.

30. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

31. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”¹ claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

32. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*, 29 I&N 216 (2025). There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings. However, *Matter of Yajure Hurtado* does not hold that Immigration Judges lack bond jurisdiction under § 236(a)(1) as a general matter; rather, it reclassifies all individuals who entered without inspection as “applicants for admission” and places them within § 235(b)(2)’s mandatory detention scheme, which contains no bond authority. Because the Board treats such individuals as falling under § 235(b)(2), it concludes they cannot seek bond, since the section itself provides no mechanism for bond hearings.

33. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA’s detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

34. Even before ICE or the BIA introduced these nationwide policies, Immigration Judges (“IJs”) in the Tacoma, Washington Immigration Court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

35. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S.

District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

36. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ---, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro*

Reyes v. Raycraft, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

37. In addition to the many courts across the country that have rejected DHS’s and EOIR’s new interpretation, courts within the Fifth Circuit and particularly within this District, have reached the same conclusion. Most notably, the Western District of Louisiana recently held that § 1226(a), not § 1225(b)(2)(A), governs the detention of individuals who, like Petitioner, entered the United States without inspection years ago and were not apprehended at the time of entry. See *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025). In *Kostak*, the Court expressly rejected *Matter of Yajure Hurtado*, finding it inconsistent with statutory text, decades of agency practice, and due process requirements. The court emphasized that DHS cannot retroactively transform long-term residents into “arriving aliens” in order to impose mandatory detention, because such a reading contravenes the structure and purpose of the INA. This reasoning is fully consistent with Fifth Circuit principles, which recognize that noncitizens physically present in the United States are entitled to due process protections and that civil immigration detention must adhere to statutory limits. See *Roy v. Ashcroft*, 389 F.3d 132, 137–38 (5th Cir. 2004). Courts across the Fifth Circuit have likewise held that long-term residents apprehended in the interior fall under § 1226(a) and are entitled to individualized custody determinations. See, e.g., *Ncube v. Ridge*, 2004 WL 223790 (E.D. Tex. Feb. 3, 2004); *Arce-*

Nunez v. Napolitano, 2012 WL 3589804 (S.D. Tex. Aug. 20, 2012). Accordingly, both the text of the INA and binding authority from within this Circuit demonstrate that the Government is detaining Petitioner under the wrong statutory provision, and § 1225(b)(2)(A) cannot lawfully be applied to him.

38. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

39. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a [noncitizen].”

40. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also* *Gomes*, 2025 WL 1869299, at *7.

41. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

42. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute’s entire framework is premised on inspections at

the border of people who are “seeking admission” to the United States. 8 U.S.C.

§ 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “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, 287 (2018).

43. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

1. Petitioner’s Continued Detention Violates the Fifth Amendment’s Due Process Clause

44. The Due Process Clause applies to all persons in the United States, “whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001); *see also Yick Wo v. Hopkins*, 118 U.S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 (1886). The Supreme Court declared “that the Due Process Clause protects individuals against two types of government action” giving rise to distinct claims of substantive and procedural due process violations. *United States v. Salerno*, 481 U.S. 739, 746, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987). Thus, “the touchstone of due process is protection of the individual against arbitrary action of government ... whether the fault lies in the denial of fundamental due process fairness [procedural due process] ... or in the exercise of power without any reasonable justification in the service of a legitimate government objective [substantive due process]...” *City of Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998) (citations and internal quotations omitted).

45. Procedural due process constrains governmental decisions that deprive individuals of property or liberty interests within the meaning of the Due Process Clause of the Fifth

Amendment. *See Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976); *see also Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972) (reliance on informal policies and practices may establish a legitimate claim of entitlement to a constitutionally-protected interest). Infringing upon a protected interest triggers a right to a hearing before that right is deprived, and a right to meaningful process afforded at a meaningful time. *See The Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569–70, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972). “‘Substantive due process’ prevents the government from engaging in conduct that ‘shocks the conscience,’ ... or interferes with rights ‘implicit in the concept of ordered liberty.’” *Salerno*, 481 U.S. at 746. (internal citations omitted).

46. The Fifth Circuit has likewise made clear that the Due Process Clause applies fully to noncitizens in immigration detention. *See Velasquez v. DOJ*, 37 F.4th 760, 763–64 (5th Cir. 2022) (recognizing the constitutional protections afforded to detained noncitizens). Courts within this Circuit consistently apply *Zadvydas v. Davis*, 533 U.S. 678 (2001), as binding authority establishing that civil immigration detention must remain reasonably related to its purposes and cannot become arbitrary or punitive. Numerous courts in the Western and Southern Districts of Texas have applied *Zadvydas* to require meaningful review for prolonged detention.

47. Fifth Circuit district courts have consistently held that prolonged detention under §1226(a) without meaningful review violates due process. In *Ncube v. Ridge*, the Eastern District of Texas held that when an individual is detained for an extended period under §1226, due process requires individualized review to determine whether detention remains necessary. Similarly, in *Bah v. Cangemi*, 489 F. Supp. 2d 905, 919 (D. Minn. 2007), the court emphasized that detention must remain reasonably related to its purpose and that prolonged detention without an individualized hearing becomes punitive and unconstitutional.

48. Applying the balancing test set forth in *Mathews*, 424 U.S. 319, Petitioner’s detention lacks the minimum procedural safeguards required by due process. His liberty interest is fundamental; the risk of erroneous deprivation is absolute because the Immigration Judge has categorically refused jurisdiction based on Yajure-Hurtado; and the government’s interest is minimal given that Petitioner has no criminal history and has demonstrated a commitment to complying with immigration processes. Courts in the Fifth Circuit—including the Southern District of Texas in *Arce-Nunez*, have repeatedly held that due process requires a meaningful opportunity to challenge detention. Petitioner has been given no such opportunity.

49. Moreover, the Supreme Court in *Demore*, 538 U.S. 510, upheld mandatory detention only for a brief and finite period. The Court stressed that detention under §1226(c) generally lasted less than 90 days and emphasized the narrowness of its holding. *Demore* does not apply to § 1225(b) and does not authorize indefinite mandatory detention for non-arriving noncitizens apprehended years after entry. Petitioner’s detention has already exceeded this threshold and may continue indefinitely, particularly because he has pending asylum and future T-visa applications. Under Fifth Circuit standards, his detention has therefore become arbitrary and excessive in violation of substantive due process.

50. “Habeas corpus is at its core, an equitable remedy.” *Schlup v. Delo*, 513 U.S. 298, 319, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995). Judges have “broad discretion” to fashion an appropriate remedy. It may extend beyond simply ordering the release of a petitioner, *Carafas v. LaVallee*, 391 U.S. 234, 88 S. Ct. 1556, 20 L. Ed. 2d 554 (1968), and is to “be administered with the initiative and flexibility essential to ensure that miscarriages of justices within its reach are surfaced and corrected.” *Harris v. Nelson*, 394 U.S. 286, 291, 89 S. Ct. 1082, 22 L. Ed. 2d 281 (1969). Habeas corpus “never has been a static, narrow, formalistic remedy; its scope has been

to achieve its grand purpose - the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty.” *Jones v. Cunningham*, 371 U.S. 236, 243, 83 S. Ct. 373, 9 L. Ed. 2d 285 (1963). At its historical core, habeas corpus “has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.” *Rasul v. Bush*, 542 U.S. 466, 474 (2004) (citations omitted). These protections extend fully to noncitizens subject to an order of removal. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 301, 121 S. Ct. 2271, 150 L. Ed. 2d 347 (2001); *see also Martinez v. McAleenan*, 385 F. Supp. 3d 349, 355 (S.D.N.Y. 2019) (“Due to its talismanic significance in protecting individual liberty from unlawful detention, habeas corpus is fundamentally governed by equity. The Supreme Court has granted the writ when justice has so required.”) (citing *Munaf v. Geren*, 553 U.S. 674, 128 S. Ct. 2207, 171 L. Ed. 2d 1 (2008) and *Carafas v. LaVallee*, 392 U.S. 234 (1968)). The Supreme Court has noted the writ’s “scope and flexibility--its capacity to reach all manner of illegal detention--its ability to cut through barriers of form and procedural mazes.” *Harris*, 394 U.S. at 291.

51. Furthermore, in *Demore*, 538 U.S. 510, the Supreme Court held that mandatory detention under § 1226(c) was not unconstitutional on its face, but limited its holding to a brief period of detention, stating “Congress, justifiably concerned that deportable criminal aliens who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers, may require that persons such as respondent be detained for *the brief period* necessary for their removal proceedings.” 538 U.S. at 513 (emphasis added). The Court described the “brief period” that it held valid: “in the majority of cases,” detention pursuant to § 1226(c) in 2003 “lasts for less than ... 90 days.” *Id.* at 529.

52. In the present case, the Petitioner is being detained in violation of the Fifth Amendment's Due Process Clause and the INA. Pursuant to well established case law, his detention is governed by Section 1226(a), allowing for release on bond. Indeed, there is no indication that Petitioner's current detention is temporary or limited to a brief period necessary to effectuate removal. To the contrary, Petitioner has been subjected to prolonged detention that may continue for an indefinite period, potentially extending for years. Petitioner has actively pursued relief from removal through multiple avenues, including a pending application for asylum and withholding of removal, as well as an approved Special Immigrant Juvenile status and deferred action from removal. He also intends to file an application for T Nonimmigrant Status (T-Visa) with United States Citizenship and Immigration Services ("USCIS") based on his experience as a victim of human trafficking at the age of seventeen. A T-Visa is a specific humanitarian protection that Congress created to safeguard victims of severe forms of human trafficking, including individuals with pending or even final orders of removal. *See* 8 C.F.R. § 214.11(d)(1)(ii); *see also S.N.C. v. Sessions*, No. 18 CIV. 7680 (LGS), 2018 WL 6175902 (S.D.N.Y. Nov. 26, 2018). However, continued presence within the United States is a statutory condition of eligibility for T-Visa relief. *See* 8 C.F.R. § 214.11(g).

53. Contrary to the Respondents' anticipated position, the Petitioner is not an "alien seeking admission" because he was arrested years after his unlawful entry. Thus, Section 1226(a) should govern in this instance. The plain language of the statute supports the Petitioner's position. Indeed, the INA defines "admission and "admitted: as the "lawful entry of the alien in to the United States after inspection and authorization by an immigration officer." *See* 8 U.S.C. § 1101(a)(13)(A). The Supreme Court discussed the differences between Sections 1225 and 1226 in *Jennings v. Rodriguez*, 583 U.S. 281, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018). It explained

that Section 1225 “authorizes the Government to detain certain aliens seeking admission into the country[.]” while Section 1226 “authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings[.]” *Jennings*, 583 U.S. at 289. *Luis A. Vasquez Carcamo, Petitioner, V. Kristi Noem et al. Respondents*, No. 2:25-CV-00922-SPC-NPM, 2025 WL 3119263, at *4 (M.D. Fla. Nov. 7, 2025). As such, in the absence of action by the Court, Petitioner’s rights will be violated either by unreasonably prolonged detention, or by interference with his T visa application, or both.

A. The Suspension Clause Requires Habeas Review Because No Adequate Alternative Remedy Exists

54. The Fifth Circuit has consistently recognized that constitutional claims and challenges to unlawful immigration detention remain reviewable under the Suspension Clause and 28 U.S.C. § 2241. In *Rosales v. ICE*, 426 F.3d 733, 736–37 (5th Cir. 2005), the Fifth Circuit reaffirmed that habeas jurisdiction persists for claims that detention violates the Constitution or the immigration laws. Likewise, the court has explained that the REAL ID Act restricted review only of final removal orders, and did not eliminate habeas jurisdiction over detention challenges. *Nnadika v. Att’y Gen.*, 484 F.3d 626, 632 (5th Cir. 2007). Similarly, in *Santos v. ICE*, 370 F. App’x 477, 479 (5th Cir. 2010), the Fifth Circuit affirmed that district courts retain § 2241 jurisdiction over detention challenges. This Court therefore has clear authority to adjudicate Petitioner’s claim that DHS is detaining him under the wrong statutory provision and in violation of the Fifth Amendment.

55. When an individual is denied any administrative mechanism to challenge their detention, the Suspension Clause requires access to habeas relief. The Southern District of Texas in *Arce-Nunez v. Napolitano* held that habeas review is constitutionally mandated when no

adequate alternative exists. This principle applies directly here. The Board's decision in *Matter of Yajure-Hurtado*, 29 I&N 216 (2025) categorically strips Immigration Judges of jurisdiction to provide bond hearings to individuals like Petitioner, thereby eliminating any administrative remedy. Courts within the Fifth Circuit, and especially this Court in *Kostak*, have recognized that when DHS and EOIR foreclose administrative review, habeas corpus becomes the sole avenue for meaningful judicial oversight. Because Petitioner has no administrative path to contest his prolonged detention, habeas relief is required under the Suspension Clause and § 2241.

V. REQUEST FOR RELIEF

56. Pending the adjudication of this Petition, Petitioner respectfully requests that the Court use its authority under 28 U.S.C. § 2243 to order the Respondents to file a return within three days, unless they can show good cause for additional time. *See* 28 U.S.C. § 2243. (Order to show cause why a petition for a writ of habeas corpus should not be granted should be “returned within three days unless for good cause additional time, not exceeding twenty days, is allowed”).

57. Petitioner respectfully requests that Respondents be restrained from removing him from the United States pending adjudication of his removal proceedings, his pending Application for Asylum and Withholding of Removal, his approved Special Immigrant Juvenile (SIJ) petition, and his anticipated application for T Nonimmigrant Status, which he intends to file based on qualifying grounds. Premature removal would preclude him from pursuing these forms of relief and undermine his ability to seek protection under applicable immigration laws.

58. Without this Court's intervention, the Respondents will seek to remove Petitioner in violation of law and inflict further cruel and unnecessary harm on Petitioner. Petitioner

requests that this Court issue an order that Respondents must notify the Court and Petitioner's counsel five days prior to any removal of Petitioner.

59. Furthermore, Petitioner respectfully requests release from detention pending resolution of this matter. He has been subjected to prolonged detention despite having a bona fide Application for Asylum and Withholding of Removal currently pending before the Immigration Court. Continued detention imposes significant hardship and interferes with his ability to meaningfully prepare and present his claims for humanitarian relief.

60. Without this Court's intervention, the Respondents will seek to remove Petitioner in violation of law and inflict further cruel and unnecessary harm. Although Petitioner has a limited criminal history, none of the offenses are serious or disqualifying. Petitioner respectfully requests that this Court issue an Order requiring Respondents to notify the Court and Petitioner's counsel at least five days prior to any attempt to remove him from the United States.

VI. EXHAUSTION OF REMEDIES

61. Petitioner's claims regarding the constitutionally inadequate process and unlawful deprivation of liberty are not subject to any statutory requirement of administrative exhaustion. See *McCarthy v. Madigan*, 503 U.S. 140, 144, 112 S. Ct. 1081, 117 L. Ed. 2d 291 (1992). To the extent that prudential concerns might lead the Court to consider exhaustion as a discretionary matter, Petitioner has taken all reasonable steps available to him within the administrative framework.

62. Petitioner is currently in removal proceedings before the Immigration Court and is represented by counsel. He intends to proceed on his claims for asylum and withholding of removal, which remain pending before U.S. Citizenship and Immigration Services. In addition, Petitioner is the beneficiary of an approved Special Immigrant Juvenile (SIJ) petition, has been

granted deferred action from removal, will be able to adjust status to permanent resident within eight months, and intends to file a T Nonimmigrant Status application with USCIS based on his experience as a victim of human trafficking and forced labor at the age of seventeen. These remedies remain pending or forthcoming, and no final order of removal has been issued.

63. Moreover, neither the Immigration Judge nor the Board of Immigration Appeals has jurisdiction to adjudicate the constitutional claims raised in this habeas petition. These claims fall squarely within the purview of this Court.

64. Finally, Petitioner faces irreparable harm in the form of continued detention, psychological trauma, and the risk of premature removal before he can pursue the legal remedies available to him. Respondents have the authority to parole Petitioner under 8 C.F.R. § 235.3(b)(2)(iii), 1235.3(b)(2)(iii), yet have declined to do so despite his eligibility and humanitarian circumstances. Further, because the administrative process offers no meaningful opportunity for relief due to the recent holding of the Board of Immigration Appeals in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, exhaustion of remedies is not required. See *McCarthy v. Madigan*, 503 U.S. 140, 146–49, 112 S. Ct. 1081, 117 L. Ed. 2d 291 (1992) (exhaustion excused where administrative remedies are inadequate or futile); *I.N.S. v. St. Cyr*, 533 U.S. 289, 314, 121 S. Ct. 2271, 150 L. Ed. 2d 347 (2001).

VII. REQUEST FOR ORAL ARGUMENT

65. Petitioner respectfully requests oral argument on this Petition.

VIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Issue a Writ of Habeas Corpus on the ground that detention violates the Due Process Clause and order Petitioner's immediate release;

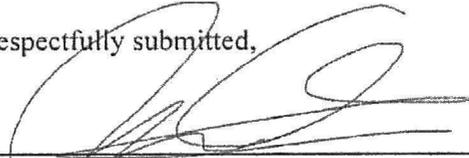
3. In the alternative, issue injunctive relief ordering Respondents to immediately release Petitioner on the ground that his continued detention violates the Due Process Clause;
4. Enjoin Respondents from removing Petitioner from the United States;
5. Order Respondents file a return within three days pursuant to 28 U.S.C. § 2243.
6. Declare that the process as applied to Petitioner by Respondents violates the Suspension Clause, the Due Process Clause of the Fifth Amendment, the Fourth Amendment, the INA, the APA, and federal regulations;
7. Issue a writ of habeas corpus directing Respondents to pursue a constitutionally adequate process to justify adverse immigration actions against Petitioner;
8. Stay Petitioner's removal from the United States until the adjudication of his T visa by USCIS is completed;
9. Order Respondents to provide five days of notice to the Court and Petitioner of his imminent removal;
10. Order Respondents to comply with all applicable rules, regulations, laws, and constitutional protections in relation to Petitioner's pending removal proceedings and his application for asylum and withholding of removal, as well as his intent to pursue T Nonimmigrant Status and U Nonimmigrant Status before United States Citizenship and Immigration Services (USCIS).
11. Award Petitioner his costs and reasonable attorney's fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other statutes;

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12. Grant such further relief as the Court deems just and proper.

Dated: November 26, 2025

Respectfully submitted,



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forthcoming*

Certificate of Service

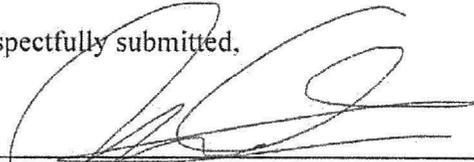
I, hereby certify that on November 26, 2025, I electronically filed the foregoing Petition for Writ of Habeas Corpus with the Clerk of the Court for the United States District Court for the Southern District of Mississippi using the CM/ECF system which will send notification of such filing to all registered counsel of record.

In addition, I caused copies of the foregoing to be served by email and/or overnight delivery upon:

- U.S Attorney for the Southern District of Mississippi
Attn : Civil Division
501 Court St. #4.430,
Jackson, MS 39201
- Office of Immigration Litigation, Civil Division
U.S Department of Justice
P.O Box 878, Ben Franklin Station
Washington, D.C. 20044

Dated: November 26, 2025

Respectfully submitted,



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