UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

VINCENTE SAUL LOPEZ-NIZ Petitioner, v. **GREG HALE,** Superintendent of Northwest State Correctional Facility, **PATRICIA HYDE**, Field Office Director, U.S. Immigration and Customs Enforcement, **TODD LYONS**, Acting Director U.S. Immigrations and Customs Enforcement, **KRISTI NOEM**, U.S. Secretary of Homeland Security, **PAMELA J. BONDI**, Attorney General of the United States, and **DONALD J. TRUMP**, President of the United States Respondents.	Case No. 2:25-cv-912 **PETITION FOR WRIT OF HABEAS CORPUS**

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 USC §2241 & EMERGENCY REQUEST FOR ORDER NOT TO REMOVE PETITIONER FROM THE DISTRICT OF VERMONT OR THE U.S.

This petition for writ of habeas corpus is being filed on behalf of Vincent Saul Lopez-Niz (Mr. Lopez-Niz or Petitioner) seeking relief for his unlawful detention at the Northwest State Correctional Facility (NWSCF). **Mr. Lopez-Niz also requests an order that he not be removed from the United States or moved out of the territory of the District of Vermont**

pending further order of this Court, to preserve this Court's jurisdiction, and pursuant to the All Writs Act, 28 U.S.C. § 1651.

Currently the U.S. Department of Homeland Security ("DHS") and the U.S. Department of Justice ("DOJ") has reversed decades of settled immigration practice and denied all immigration bond hearings. Specifically, DHS and DOJ are misclassifying people arrested inside the United States. These people are generally subject to the detention provisions of 8 U.S.C. § 1226, which usually allows for release on bond and conditions during the pendency of immigration proceedings. This misclassification is contrary to settled law and practice, and it is unlawfully premised solely upon the manner in which the person initially entered the country - in this years ago. Accordingly, to vindicate Petitioner's constitutional rights, this Court should grant the instant petition for a writ of habeas corpus. *See Rashid v. Trump, et. al.*, Opinion and Order on Motion for Leave to Amend Petition and File Supplemental Briefing and on Petition for Habeas Corpus, 2:25-cv-00732 (D-VT 2025), 10/27/25, Document 13, J. Crawford; *See also Piedrahita-Sanchez v. Turek, et al.*, Opinion and Order, 2:25-cv-00875 (D-VT 2025), 11/14/25, Document 13, J. Sessions; *See also Gonzales Lopez v. Trump, et al.*, 2:25-cv-00863 (D-VT 2025), 11/17/25, Document 13, J. Crawford.

Absent an order from this Court granting habeas relief, Petitioner will remain indefinitely detained without meaningful opportunity to secure release on bond, in violation of both statutory and constitutional protections.

Petitioner asks this Court to find that the Department of Homeland Security and Department of Justice are unlawfully detaining him under 8 U.S.C. § 1225(b), when the governing statute is 8 U.S.C. § 1226(a), and that such detention without a bond hearing violates his statutory and constitutional rights. Petitioner further asks this Court to order his immediate

release or, in the alternative, to order the government to provide him with an individualized bond hearing before an Immigration Judge within seven (7) days of the Court's order.

INTRODUCTION

1. Petitioner Vicente Saul Lopez-Niz is a native and citizen of Guatemala. He was born on [redacted], and is currently nineteen (19) years old. Petitioner resides in Lynn, Massachusetts.

2. Petitioner entered the United States on May 27, 2022, when he was fifteen (15) years old, as an Unaccompanied Alien Child ("UAC"). After Petitioner arrived to the United States border, the Department of Homeland Security ("DHS") placed Petitioner in the custody of Fort Bliss Emergency Intake Site: a facility in Fort Bliss, Texas that was operated by the Office of Refugee Resettlement ("ORR"). ORR is a sub-agency of the United States Department of Health and Human Services ("HHS"). On June 18, 2022, ORR released Petitioner into the custody of his sister, Santa Lopez Niz, pursuant to § 462 of the Homeland Security Act of 2002 and § 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. When Respondent arrived to the United States border, DHS never detained Respondent under 8 U.S.C. § 1225. Rather, DHS released Petitioner into the United States pursuant to 8 U.S.C. § 1232.

3. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ('TVPRA'), Pub. L. No. 110-457, 122 Stat. 5044 (2008), requires the Department of Homeland Security ('DHS') to transfer an unaccompanied noncitizen minor to the custody of the Secretary of Health and Human Services ('HHS') within 72 hours of determining that the minor is unaccompanied, absent 'exceptional circumstances.'" *Saravia for A.H. v. Sessions*, 905 F.3d 1137, 1140 (9th Cir. 2018) (quoting (8 U.S.C. § 1232(b)(3)). "ORR then must ensure that the minor is 'promptly placed in the least restrictive setting that is in the best interest of the child.'"

Id. (quoting § 1232(c)(2)(A)). "**In 1997, the United States entered into a settlement agreement with a plaintiff class in *Flores v. Sessions*, providing a minor in an ORR facility the right to a bond hearing before an immigration judge to challenge the agency's initial determination that the minor is a danger to the community.**" *Id.* (citing *Flores v. Sessions*, 862 F.3d 863, 879 (9th Cir. 2017)) (emphasis added). When DHS transfers an unaccompanied alien child to the Office of Refugee Resettlement, the transfer is made pursuant to 8 U.S.C. § 1232(b)(3) (TVPRA § 235), not under 8 U.S.C. § 1226(a) or 8 U.S.C. § 1182(d)(5)(A).

4. On February 1, 2024, United States Citizenship and Immigration Services ("USCIS") approved the Petitioner's Form I-360 Petition for Special Immigrant Juvenile Status ("SIJS"), with Deferred Action from removal from the United States.

5. Petitioner was arrested in Massachusetts by U.S. Immigration and Customs Enforcement ("ICE") on or about December 11, 2025.

6. On information and belief, Petitioner is currently being held in ICE's custody at the Northwest Correctional Facility in Swanton, Vermont, within the District of Vermont.

7. Ordinarily, people arrested by ICE are served a "Notice to Appear" and placed into removal proceedings in the Immigration Court. Removal proceedings contain certain procedural protections required by the applicable statutes and regulations. The person attends hearings before an Immigration Judge and, if he or she is found removable, may apply for various forms of relief from removal. The decision of the Immigration Court is subject to appellate review by the Board of Immigration Appeals ("BIA") and then via a petition for review to U.S. Court of Appeals. While the removal proceeding is pending, people without a criminal record or involvement in terrorism are constitutionally entitled to a bond hearing with certain procedural protections, which may result in their release for the pendency of the proceeding. *See* 8 U.S.C. §

1226; *Velasco Lopez v. Decker*, 978 F.3d 842, 856–57 (2d Cir. 2020) ("We therefore conclude that the district court's order requiring the Government to prove that Velasco Lopez is a danger to the community or a flight risk by clear and convincing evidence to justify his continued detention "strikes a fair balance between the rights of the individual and the legitimate concerns of the state." c*iting Addington*, 441 U.S. at 431, 99 S.Ct. 1804); *See also Hernandez-Lara v. Lyons,* 10 F.4th 19, 41 (1st Cir. 2021) (for Section 1226(a) detainees, due process requires a bond hearing in which government bears burden of proof to show flight risk or dangerousness); *Brito v. Garland,* 22 F.4th 240, 256-57 (1st Cir. 2021) (affirming class-wide declaratory judgment of same).

8. In certain narrow circumstances, there is an alternative process called Expedited Removal. *See* 8 U.S.C. § 1225(b). Expedited Removal orders are issued without the typical process in the Immigration Court. Expedited removal orders are issued by an immigration enforcement official, not by an Immigration Judge. Expedited removal orders are not subject to appeal to the BIA and U.S. Court of Appeals. The potential forms of relief from the expedited removal process are much narrower and essentially require a showing of credible fear of return to the destination country, and adverse findings on credible fear are subject only to a limited review by an Immigration Judge without further review by the BIA. On information and belief, the government takes the position that people in expedited removal proceedings are not eligible for a bond hearing but are rather mandatorily detained. *See* 8 U.S.C. § 1225. Full removal proceedings are mutually exclusive with expedited removal proceedings. *See* 8 U.S.C. § 1229a(a)(3)("a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States.").

9. One important limitation on Expedited Removal is that, as a matter of law, it cannot be applied to noncitizens who have been present in the United States for two years or more. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (expedited removal limited to noncitizens who, among other things, have "not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph"); 8 C.F.R. § 235.3(b)(1)(ii) (2025) (Expedited Removal applies only to noncitizens that have not "been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility.").

10. Furthermore, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ('TVPRA'), Pub. L. No. 110-457, 122 Stat. 5044 (2008), requires the Department of Homeland Security to place all unaccompanied noncitizen minor from non-contiguous countries in regular INA section 240 removal proceedings. Per the TVPRA, "Any unaccompanied [noncitizen] child sought to be removed by the Department of Homeland Security, except for an unaccompanied [noncitizen] child from a contiguous country subject to exceptions under subsection (a)(2), shall be— (i) placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a)." 8 U.S.C. § 1232(a)(5)(D)(i).

11. Based on information and belief, DHS intends on subjecting Petitioner to Expedited Removal. Because Petitioner has been present in the United States for longer than two years, and because Petitioner has been designated as an unaccompanied alien child under the TVPRA, it is unlawful for the Respondents to order him to be subjected to Expedited Removal or detain him on that basis.

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12. Based on information and belief, Respondents have detained Petitioner pursuant to a BIA agency decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that under the plain language of INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or grant bond to aliens who are present in the United States without admission or parole. The Board specifically concluded that such respondents are applicants for admission under INA § 235(a)(1), 8 U.S.C. § 1225(a)(1), and are subject to mandatory detention for the duration of their removal proceedings. *See Matter of Yajure Hurtado*, 29 I&N Dec. at 220-22. 9. The BIA's decision in *Yajure Hurtado* contradicts the plain meaning of 8 U.S.C. § 1225 and 8 U.S.C. § 1226, as well as factually similar decisions in cases across the country in which courts rejected the extension of § 1225(b)(2) to noncitizens already in the United States. *See*, e.g., *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *4 (C.D. Cal. Nov. 25, 2025) ("As a matter of law, Respondents' interpretation [of 8 U.S.C. § 1225] runs counter to the plain language of the INA, foundational principles of statutory interpretation, and the INA's statutory scheme"); *Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025) (same); *Garcia v. Hyde*, Civ. No. 25-11513 (D. Mass. July 14, 2025) (same); *Lopez Benitez v. Francis*, — F. Supp. 3d —, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (same); *Dos Santos v. Noem*, 2025 WL 5 2370988 (D. Mass. Aug. 14, 2025) (same); *Chang Barrios v. Shepley*, No. 1:25-cv-00406, 2025 U.S. Dist. LEXIS 152874 (D. Me. Aug. 8, 2025*); Chogllo Chafla v. Scott*, No. 2:25-cv-00437, 2025 U.S. Dist. LEXIS 184909 (D. Me. Sept. 21, 2025); Rodriguez v. Bostock, 2025 WL 2782499, at *1 & n.3 (W.D. Wash. Sept. 30, 2025) (collecting cases). "[C]ourts must exercise independent judgment in determining the meaning of statutory provisions," and they "may not defer to an agency interpretation of the law simply because a

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statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394, 413 (2024). Therefore, to the extent that Respondents have detained Petitioner pursuant to *Yajure Hurtado*, Respondents' restraint on Petitioner's liberty is unlawful.

13. Respondents intend to deny Petitioner a bond hearing before an Immigration Judge in which the government bears the burden of proof to justify Petitioner's detention. Noncitizens detained under § 1225(b)(2) are not eligible for bond. *See* 8 U.S.C.A. § 1225(b)(2)(A) (West) ("the alien shall be detained for a proceeding under section 1229a of this title."). The Second Circuit held in *Velasco Lopez* that the Fifth Amendment's Due Process clause requires the government to provide detained noncitizens awaiting removal proceedings a bond hearing. *Velasco Lopez v. Decker*, 978 F.3d 842, 856–57 (2d Cir. 2020); *See also Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021). The government must prove the noncitizen is a danger by clear and convincing evidence, or flight risk by preponderance of evidence. *Id.* If the government cannot meet its burden, it must offer bond or conditional parole. *Id.* The *Hernandez-Lara* decision expanded the due process rights of noncitizens. The court also asserted that the decision ameliorates the "substantial societal costs" of unnecessary detention. *See Id.*

14. In *Bautista v. Santacruz*, Judge Sykes of the Central District of California granted the petitioners' class certification request based on the claim "that the DHS Policy violates the INA and Due Process." *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). "The class certified is defined as follows: • Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at

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the time the Department of Homeland Security makes an initial custody determination." *Id.* Here, Petitioner contends that he falls within the *Bautista* class.

15. **Furthermore, on February 1, 2024, USCIS approved the Petitioner's Form I-360 Petition for Special Immigrant Juvenile Status ("SIJS") with Deferred Action from removal from the United States.** ***See*** **Exhibit A. "[A] special immigrant [juvenile] described in section 1101(a)(27)(J) of this title…shall be deemed…to have been paroled into the United States."** 8 U.S.C.A. § 1255(h)(1) (West). "'The protections afforded to children with SIJ status include an array of statutory and regulatory rights and safeguards, such as eligibility for application of adjustment of status to that of lawful permanent residents ('LPR'), exemption from various grounds of in admissibility, and robust procedural protections to ensure their status is not revoked without good cause.'" *Inlago Tocagon v. Moniz*, No. 25-CV-12453-MJJ, 2025 WL 2778023, at *3 (D. Mass. Sept. 29, 2025) (quoting Juarez Morales v. Noem, No. 24-cv-12518, — – F.Supp.3d ——, ——, 2025 WL 1923096, at *3 (D. Mass. June 24, 2025)). In the instant case, like in *Inlago Tocagon*, the Petitioner was "deemed to have been paroled into the United States. *See* 8 U.S.C. 7 § 1255(h)(1). These facts further affirm that Petitioner is subject to Section 1226(a)'s discretionary detention framework and is thus eligible for bond." Id. at *4 (emphasis added).

16. **Moreover, "[b]ecause release (or 'parole') under § 1232 is a different status than humanitarian or public benefit parole under § 1182, and because SIJ status is a 'special' status conferred by administrative process…these distinctions logically call for a construction of the INA that places UACs with SIJ status in a preferred position for purposes of the § 1225 ('arriving alien') versus § 1226 ('apprehension and detention') dichotomy when it comes to pre-removal detention."** *Guaman Chimborazo v. Shepley*, No.

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1:25-cv-00552-LEW, slip op. at *11 (D. Me. Nov. 20, 2025) (citing *Portillo Martinez v. Hyde*, No. 25-cv-11909-BEM, 2025 WL 3152847 (D. Mass. Nov. 12, 2025)).

17. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2), because, as a person already present in the United States, Petitioner is not presently "seeking admission" to the United States. *See Aguiriano v. Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *1, 8-13 (D. Mass. Aug. 19, 2025). 8 U.S.C. § 1225(b)(2) does not apply to Petitioner. "§ 1225(b) of Title 8 of the U.S. Code authorizes the detention of certain aliens **seeking to enter the country**." Jennings v. Rodriguez, 583 U.S. 281, 281, 138 S. Ct. 830, 833, 200 L. Ed. 2d 122 (2018) (emphasis added). On the other hand, "to detain certain **aliens already in the country**…Section 1226(a)'s default rule permits the Attorney General to issue warrants for the arrest and detention of these aliens pending the outcome of their removal proceedings." *Id.* (emphasis added). *See also Del Cid, v. Bondi*, No. 3:25-CV-00304, 2025 WL 2985150, at *16 (W.D. Pa. Oct. 23, 8 2025) (Jennings does stand for the general principle that § 1225 is tethered closely to the border and § 1226 is tethered closely to the interior of the country.").

18. "The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S. Ct. 2491, 2500, 150 L. Ed. 2d 653 (2001) (citing *Kaplan v. Tod*, 267 U.S. 228, 230, 45 S.Ct. 257, 69 L.Ed. 585 (1925)). "[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* Here, Petitioner "effected an entry into the United States" when DHS released Petitioner into the United States after his apprehension by border authorities on May 27, 2022.

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19. On information and belief, Petitioner was not, at the time of his apprehension by border authorities, paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A), and therefore Petitioner could not "be returned" under that provision to mandatory custody under 8 U.S.C. § 1225(b) or any other form of custody. Petitioner is not subject to mandatory detention under § 1225 for this reason as well.

20. Instead, as a person arrested inside the United States and held in civil immigration detention, Petitioner is subject to detention, if at all, pursuant to 8 U.S.C. § 1226. *See Aguiriano*, 2025 WL 2403827, at *1, 8-13 (collecting cases).

21. 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).

22. Accordingly, Petitioner is subject to detention, if at all, under 8 U.S.C. § 1226(a). 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 Velasco Lopez v. Decker, 978 F.3d 842, 856–57 (2d Cir. 2020; 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). Petitioner requests such a bond hearing.

23. 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.

24. Petitioner's wrongful detention under 8 U.S.C. § 1225 also violates his right to procedural due process. To determine whether a form of civil detention violates a detainee's due process rights under the Fifth Amendment, courts apply the three-part balancing test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under that test, a court must weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. *See also Velasco Lopez v. Decker, 978 F.3d 842, 856–57 (2d Cir. 2020; Hernandez-Lara*, 10 F.4th at 27-28 (analyzing procedural due process challenge to the detention of noncitizen held pursuant to Section 1226(a) using the Mathews test). "'Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that Clause protects.'" *Zadvydas v Davis*, 533 U.S. 678 (2001) (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). In this case, these factors, in conjunction with the Petitioner's SIJS, militate in favor of ordering the immediate release of the Petitioner. See, e.g., *Inlago Tocagon v. Moniz*, No. 25-CV-12453-MJJ, 2025 WL 2778023, at *4 (D. Mass. Sept. 29, 2025) (finding petitioner's "private interest in 'freedom from imprisonment' is strong, given his I-360 petition was granted"); *Doe v. Moniz*, No. 1:25-CV-12094-IT, 2025 WL 2576819, at *11 (D. Mass. Sept. 5, 2025) (concluding that "the Mathews factors weigh in favor of Petitioner, and the court finds that his detention without a bond hearing violates his Due Process rights" because "the public has no interest in the detention without bond of someone against whom no criminal charges are pending and who is an active member in his community.")

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

26. 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).

27. 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."). 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).

VENUE AND JURISDICTION

28. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question). This Court has jurisdiction to review habeas petitions

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filed by immigration detainees who assert that they are "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Although a federal district court does not generally have subject-matter jurisdiction to review orders of removal issued by an immigration court, *See* 8 U.S.C. § 1252(a)(1), (g), it does have jurisdiction over habeas petitions. 28 U.S.C. § 2241(a); see U.S. CONST. art. I, § 9, cl. 2 (providing that "[t]he 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").

29. Venue is proper because Petitioner is detained in the District of Vermont.

30. Respondent Greg Hale is the Superintendent of Northwest Correctional Facility and is currently the de facto custodian of Petitioner in Vermont.

31. Respondent Patricia Hyde is the New England Regional Field Office Director for U.S. Immigration and Customs Enforcement.

32. Respondent Todd Lyons is the Acting Director for U.S. Immigration and Customs Enforcement.

33. Respondent Kristi Noem is the U.S. Secretary of Homeland Security.

34. Pamela J. Bondi is the Attorney General of the United States.

35. Respondent Donald J. Trump is the President of the United States.

36. 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

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

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38. 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).

39. Petitioner has not been, and will not be, provided with a bond hearing in which DHS has the burden of proof, as required by Velasco Lopez v. Decker, 978 F.3d 842, 856–57 (2d Cir. 2020) and *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021).

40. Petitioner's continuing detention is therefore unlawful.

COUNT TWO
Violation of Fifth Amendment Right to Due Process
(Failure to Provide Substantive Due Process of Law)

41. On information and belief, Petitioner is currently being detained and subjected to Expedited Removal in violation of his Constitutional right to due process of law.

42. Petitioner cannot be detained for, or subjected to, Expedited Removal because he has been continuously present in the United States for greater than two years.

43. The Expedited Removal statute largely "precludes judicial review," and therefore challenges to "confinement and removal" under that statute fall within the "core" of the writ of habeas corpus. *See Trump v. J.G.G.,* 145 S. Ct. 1003, 1006-07 (2025); *cf. Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, (2020) (holding attempt "to obtain additional administrative review of his asylum claim" after Expedited Removal order was outside the "core" of habeas relief). However, *Thuraissigiam* is distinguishable from this case because in that case, the petitioner "was apprehended just 25 yards from the border" and was never released from Border Protection custody. *See Thuraissigiam*, 591 U.S. at 107. Moreover, *in Thuraissigiam*, DHS "detained [the petitioner for expedited removal," whereas in this case, expedited removal does not apply to Petitioner because he resided in the United States for more than two years before his detention. *Thuraissigiam* is further inapposite because in that case, the petitioner did not seek

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release from DHS custody, but rather a "vacatur of his 'removal order' and 'an order directing [the Department] to provide him with a new...opportunity to apply for asylum and other relief from removal.'" *Id.* at 117-18. In this case, however, Petitioner solely requests the Court to review the constitutionality of his detention by Respondents.

44. Accordingly, to the extent 8 U.S.C. § 1252(e)(2) purports to preclude habeas review of whether Petitioner is ineligible for detention and removal via Expedited Removal due to the length of his presence in the United States, that limitation violates the Suspension Clause and is void and without effect.

45. Indeed, if there were no judicial review whatsoever of the immigration agencies' determinations that people have been present for less than two years, then the immigration agencies would be free to find that essentially any arrested noncitizen without status is subject to Expedited Removal, in direct violation of the procedures and safeguards required for removal proceedings by the laws and Constitution of the United States.

46. Even assuming Petitioner is eligible for detention for removal proceedings, he has not been provided any opportunity to receive a bond hearing to which he is entitled during any such proceedings pursuant to *Velasco Lopez v. Decker*, 978 F.3d 842, 856–57 (2d Cir. 2020) and *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021). The only current basis for Petitioner's detention and potential deportation—Expedited Removal—is one that categorically does not apply to him.

47. Several District Courts in the District of Massachusetts have considered the applicability of 8 U.S.C. § 1226(a) (rather than Section 1225) in these circumstances, the right of a similarly-situated detainee's right to receive a bond hearing, and the soundness of the BIA's position in *Matter of Yajure Hurtado*. These judges have all found Section 1226(a) to apply,

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concluded that access to a bond hearing was required, and, either expressly or implicitly, held the BIA's contrary view to be incorrect and unlawful. *See Rocha v. Hyde*, 2025 WL 2807692, at *2 (D. Mass. Oct. 2, 2025) (Burroughs, J.) ("[a]s Respondents acknowledge in their opposition, "[o]ther sessions of this court, as well as other courts across the country, have determined that 8 U.S.C. § 1226(a), and not 8 U.S.C. § 1225(b)(2), appl[ies] to aliens arrested and detained within 15 the United States, even if such alien meets the definition of an applicant for admission as an alien present in the United States who has not been admitted"); *Mendoza v. Hyde*, C.A. No. 25-12815 (D. Mass. Oct. 1, 2025) (Kobick, J.) (not available in Westlaw) ("Mendoza is not an applicant for admission subject to mandatory detention under Section 1225(b). Noncitizens subject to detention under § 1226(a) have the right to request a bond hearing before an Immigration Judge, at which the government bears the burden to prove that continued detention is justified.") (internal quotation marks omitted); *Reynoso Tejada v. Moniz*, C.A. No. 25-12731 (D. Mass. Oct. 1, 2025) (Sorokin, J.) (not available in Westlaw) (granting habeas petition, including rejection of government's argument that petitioner was detained under § 1225); *De Sousa v. Hyde*, C.A. No. 25-12736 (Murphy, J.) (D. Mass. Oct. 1, 2025) (not available in Westlaw) (ordering that "Petitioner receive a bond hearing under 8 U.S.C. s. 1226"); *Inlago Tocagon v. Moniz*, 2025 WL 2778023 (D. Mass. 2025) (Joun, J.); *Doe v. Moniz*, 2025 WL 2576819, at *5) (D. Mass. 2025) (Talwani, J.); *Guerrero Orellana v. Moniz*, 2025 WL 2809996 (D. Mass. 2025) (Saris, J.); *Velasco-Luis v. Hyde*, C.A. No. 25-12747 (D. Mass. Oct. 6, 2025) (Stearns, J.) (not available in Westlaw) (adopting rationale of *Guerrero Orellana v. Moniz*, supra). Nearly every court nationwide to have considered these issues has come to the same conclusions. *See Guerrero Orellana v. Moniz*, supra, at *5 (collecting cases).

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48. "[A] district court entertaining a petition for habeas corpus has inherent power to release the petitioner pending determination of the merits." *Gomes v. U.S. Dep't of Homeland Sec.*, 460 F. Supp. 3d 132, 144 (D.N.H. 2020) (quoting *Woodcock v. Donnelly*, 470 F.2d 93, 94 (1st Cir. 1972)). Petitioner's continuing detention is unlawful; therefore, Petitioner's immediate release from Respondents' custody is the proper remedy in this case.

COUNT THREE
Violation of Fifth Amendment Right to Due Process
(Failure to Provide Procedural Due Process of Law)

49. "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). 46. 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.

50. "[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").

51. 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)

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(collecting cases); *See also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged 17 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).

52. "'[T]he indefinite detention without access to bond or bail of any person in the United States violates due process.'" *Tenemasa-Lema v. Hyde*, No. CV 25-13029-BEM, 2025 WL 3280555, at *1 (D. Mass. Nov. 25, 2025) (quoting *Castaneda v. Souza*, 810 F.3d 15, 44 (1st Cir. 2015) (Torruella, J., concurring)). "The Supreme Court has repeatedly affirmed that '[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.'" Id. at *8 (*quoting Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021)*); See also Velasco Lopez v. Decker,* 978 F.3d 842, 856–57 (2d Cir. 2020) ("We therefore conclude that the district court's order requiring the Government to prove that Velasco Lopez is a danger to the community or a flight risk by clear and convincing evidence to justify his continued detention "strikes a fair balance between the rights of the individual and the legitimate concerns of the state." citing *Addington*, 441 U.S. at 431, 99 S.Ct. 1804.) "[A]liens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country." *Rincon v. Hyde*, No. CV 25-12633-BEM, 2025 WL 3122784, at *6 (D. Mass. Nov. 7, 2025) (*quoting United States v. Verdugo-Urquidez*, 494 U.S. 259, 271, 110 S.Ct. 1056, 108 L.Ed.2d 222 (1990). In this case, as in *Tenemasa-Lema* and *Rincon*, Petitioner has developed deep ties to the United States since his arrival to this country when he was fifteen (15) years old.

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

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

PRAYER FOR RELIEF

WHEREFORE Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue a Temporary Restraining Order prohibiting Respondents from transferring the Petitioner outside the District of Vermont;

(3) Issue an Order to Show Cause pursuant to 28 U.S.C. § 2243 ordering Respondents to show cause why this Petition should not be granted within three days;

4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;

(6) conduct a bond hearing as appropriate; and

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

Dated at Pittsfield, Vermont this 12th day of December 2025.

A.J. Ruben, Esq.
Attorney for Petitioner
P.O. Box 836
Pittsfield, VT 05672
802.342.1187
aj@blackbearlawvt.com
VT Bar # 2688