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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Carlos TORRES,

Petitioner,

v.

LUIS SOTO, in his official capacity as
Director of Delaney Hall;

TODD LYONS, in his official capacity as
Acting Director of the Immigration and
Customs Enforcement;

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security;

PAMELA BONDI, in her official capacity as
Attorney General of the United States;

Respondents.

Case No. 2:25-cv-18578

**VERIFIED PETITION FOR A
WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner Carlos Torres Madero (“Mr. Torres” or “Petitioner”) is in the physical custody of Respondents at the Delaney Hall Detention Facility in Newark, New Jersey. *See* Ex. I, Screenshot of Immigration and Customs Enforcement (“ICE”) Detainee Locator. He is married to a lawful permanent resident and has lived in the United States for more than three years.

2. After Mr. Torres entered the United States, in May of 2022, the Department of Homeland Security (“DHS”) conducted a determination of his custody as pursuant to 8 U.S.C. § 1226(a), and found that he merited release with conditions, including an initial one-year grant of humanitarian parole, pursuant to 8 U.S.C. § 1182(d)(5)(A), which was issued on the date Mr. Torres was released, June 3, 2022. *See* Ex. C, 2022 DHS Custody Documents.

3. For more than three years, DHS’ processing actions and representations in Mr. Torres’ case, have indicated that his custody is governed by 8 U.S.C. § 1226(a) - not by § 1225(b). *Id.* Moreover, no material or relevant change in circumstances has occurred since Mr. Torres’ release, on June 3, 2022, to justify altering DHS’s prior determination authorizing his release pursuant to 8 U.S.C. § 1226(a). Mr. Torres is an asylum-seeker with a pending application and a family-based petition pending, filed by his lawful permanent resident wife. *See* Ex. H, EOIR Bond Submission. He has never been arrested nor convicted of any crime, neither in the U.S. nor in any country in the world.

4. Despite this, DHS unlawfully re-detained Mr. Torres as he complied with an appointment set by DHS, on September 18, 2025.

5. Mr. Torres’s re-detention without pre-deprivation hearing or any finding that he is a danger or a flight risk violates his rights to both substantive and procedural due process. In addition, DHS’s contention that Mr. Torres is subject to mandatory detention - a reversal of its prior processing decisions in his case and of decades of DHS policy and practice - and his

detention for nearly three months without an individualized custody hearing or review, violate the Immigration and Nationality Act (“INA”) and Mr. Torres’ right to procedural due process.

6. Accordingly, Mr. Torres seeks a writ of habeas corpus requiring that he be released from DHS custody.

JURISDICTION

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

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art. I § 9, cl. 2 of the U.S. Constitution (“Suspension Clause”); and 28 U.S.C. § 1331 (federal question jurisdiction).

9. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

10. Venue is proper in the District of New Jersey because Mr. Torres is physically detained in Newark, New Jersey, which is located in this district. *See Rumsfeld v. Padilla*, 542 U.S. 426, 428 (2004) (“[T]he traditional rule has always been that habeas relief is issuable only in the district of confinement...”); *Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 444-45 (3d Cir. 2021) (applying the district of confinement rule to a habeas petition challenging immigration detention).

11. Venue is also proper in the District of New Jersey pursuant to 28 U.S.C. § 1391(b)(2) and (e)(1) because a substantial part of the events giving rise to the claims in this action took place within this district. *See also Braden v. 30th Judicial Circuit*, 410 U.S. 484,

493–94 (1973) (holding that venue lies where it is most convenient, where “material events took place,” and where “records and witnesses pertinent to petitioner’s claim are likely to be found.”).

PARTIES

12. Petitioner Carlos Torres is a citizen of Colombia who has been in Respondents’ custody, in Newark, NJ, since September 18, 2025, when he was unlawfully detained without a pre-deprivation hearing. He has not been afforded a custody re-determination at any time since.

13. Respondent Luis Soto is employed as Director of the Delaney Hall Detention Facility where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

14. Respondent Todd Lyons is the Acting Director of DHS Immigration and Customs Enforcement (“ICE”). As such, Todd Lyons is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He is named in his official capacity.

15. Respondent Kristi Noem is the Secretary of the DHS. She is responsible for the implementation and enforcement of the INA and oversees ICE, which is responsible for Petitioner’s present DHS detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity. Respondent DHS is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

16. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review (“EOIR”) and the immigration court system it operates is a component agency. She is sued in her official capacity. Respondent EOIR is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

LEGAL FRAMEWORK

I. Revocation of Release and Due Process

17. The Fifth Amendment's Due Process Clause prevents the Government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). It is well established that such protection extends to noncitizens, including those who are in removal proceedings. *See id.* at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.").

18. In the civil detention context, governmental detention violates due process except in "certain special and narrow nonpunitive circumstances... where a special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* at 690. Courts have identified only two legitimate government purposes for immigration detention: mitigating flight risk and preventing danger to the community. *Id.*; *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 231 (3d Cir. 2011).

19. A protected liberty interest may arise from a conditional release from physical restraint. *Young v. Harper*, 520 U.S. 143, 147–49 (1997). In addition, "the government's decision to release an individual from custody creates 'an implicit promise,' upon which that individual may rely, that their liberty 'will be revoked only if [they] fail[] to live up to the ... conditions [of release].'" *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) ("The more than two years that she has spent out of custody since ICE initially released her have only heightened her liberty interest in remaining out of detention.") (citing *Morrissey v. Brewer*, 408 U.S. 471, 482

(1972)). “Thus, even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody, she has a protected liberty interest in remaining out of custody.” *Id.*

20. Infringement upon this protected liberty interest violates substantive Due Process where detention is not justified by a need to mitigate flight risk or danger to the community. Where an individual was previously granted conditional parole under § 1226(a), a DHS officer already found that an individual is not a danger or a flight risk. *See* 8 C.F.R. § 236.1(c)(8); *Singh v. Andrews*, 2025 WL 1918679, at *2 n.1 (E.D. Cal. July 11, 2025) (in releasing petitioner, “DHS necessarily determined under 8 C.F.R. § 1236.1(c)(8) that he was not a flight risk”). Therefore, revocation of release without a showing of changed circumstances that indicate flight risk or danger violates substantive Due Process. *See, e.g., Luna Sanchez v. Bondi*, No. 1:25-CV-018888-MSN-IDD, 2025 WL 3191922, at *4 (E.D. Va. Nov. 14, 2025) (finding a substantive Due Process violation where Petitioner was re-detained based on Respondents’ new interpretation of § 1225(b) mandatory detention and not individual changed circumstances).

21. Re-detention under those circumstances also violates procedural Due Process. Because of the strong interest against re-detention, “[e]ven when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute.” *J.C.E.P. v. Wofford*, No. 1:25-CV-01559-EFB (HC), 2025 WL 3268273, at *3 (E.D. Cal. Nov. 24, 2025) (citations omitted). These procedural protections include, in general, a pre-deprivation hearing, as “the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property.” *See Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). This Court, and others, have found that this requirement applies in the case of re-detention of non-citizens by

DHS. *See, e.g., Contreras Maldonado v. Cabezas*, No. CV 25-130042, 2025 WL 2985256, at *5 (D.N.J. Oct. 23, 2025) (finding that the petitioner was entitled to an “individualized determination” when Respondents initially decided to detain her, and the violation of her due process rights when that was not afforded to her was not rectified by a later bond hearing.); *Pinchi*, 792 F. Supp. 3d at 1037 (N.D. Cal. 2025) (“[Petitioner’s] re-detention without a pre-detention hearing before a neutral decisionmaker is ‘likely unconstitutional’”...)(internal citation omitted).

22. Where an individual’s Due Process rights were violated by their re-detention without a pre-deprivation hearing establishing changed circumstances, the proper remedy is release. *See, e.g., Contreras Maldonado*, 2025 WL 2985256, at *5 (granting release because the petitioner was not provided an “individualized determination” when Respondents initially decided to detain her); *Guaman Lliguicota, v. Cabezas*, No. CV 25-17216, 2025 WL 3496300, at *2 (D.N.J. Dec. 5, 2025) (granting immediate release); *Zumba v. Bondi*, No. 25-CV-14626, 2025 WL 2753496, at *11 (D.N.J. Sept. 26, 2025) (same).

II. Authority for Detention of Noncitizens by the DHS

23. The INA prescribes three basic forms of detention authority for noncitizens detained by the DHS.

24. First, the provisions of 8 U.S.C. § 1226 constitutes the “default rule” for “certain [noncitizens] already in the country,” *Jennings v. Rodriguez*, 583 U.S. 281, 281, 138 S. Ct. 830, 833, 200 L. Ed. 2d 122 (2018), and permits DHS to detain, subject to supervision, or release such noncitizens pending the outcome of their removal proceedings. *Id.* Noncitizens subject to § 1226(a) “discretionary” detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d). In contrast, non-citizens may be subject to 8

U.S.C. § 1226(c) “mandatory” detention – and denied access to a bond hearing – if they have been arrested, charged with, or convicted of certain crimes. DHS has the duty to make an initial custody determination in writing at the time of detention and to inform the non-citizen of this decision. *Gayle v. Johnson*, 81 F. Supp. 3d 371, 383-87 (D.N.J. 2015), *judgment vacated and remanded on other ground sub nom.*, *Gayle v. Warden Monmouth Cnty. Corr. Inst.*, 838 F.3d 297 (3d Cir. 2016) (explaining that “if an alien is not apprised of his or her detention status, it follows that the alien would not know, and the form fails to indicate, the type of custody redetermination hearing to which he or she is entitled”).

25. Second, the INA also provides for detention of noncitizens who have already been ordered removed, *see* 8 U.S.C. § 1231(a)–(b), including for individuals in “withholding-only proceedings,” who are subject to a removal order but seek fear-based protection from removal on the basis that they would, if removed, face persecution or torture.

26. Finally, 8 U.S.C. § 1225(b) provides procedures for inspection and processing of noncitizens at or near U.S. borders. § 1225(b) provides for mandatory detention of certain such noncitizens in two separate clauses: 8 U.S.C. § 1225(b)(1) is entitled “[i]nspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled.” 8 U.S.C. § 1225(b). It contains procedures governing inspection and screening of individuals placed, as an exercise of DHS discretion, into the process of “expedited removal.” *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I). Pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii), non-citizens whom DHS chooses to continue to process for expedited removal “shall be detained” while they undergo this process, including for adjudication of claims for fear-based protection. The second mandatory detention clause within 8 U.S.C. § 1225 is at 8 U.S.C. § 1225(b)(2) (A). This clause requires detention of certain noncitizens who are deemed to be “seeking admission” but not admissible by an

examining immigration officer. Pursuant to regulation, detention pursuant to 8 U.S.C. § 1225 also requires a custody determination be made within 48 hours of arrest. *See* 8 C.F.R. § 287.3(d).

27. The detention provisions at § 1226 and § 1225 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. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

28. 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. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

29. Thus, in the decades that followed, most noncitizens detained pending the outcome of 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 aliens” - who were generally detained since the time of their arrival – were entitled to a custody hearing before an immigration judge (“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)).

30. On July 8, 2025, ICE, “in coordination with” the Department of Justice, announced a new policy that rejected this well-established understanding of the statutory framework and reversed decades of practice. 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 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.

31. On September 5, 2025, the BIA adopted the same position in a published decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 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 bond hearings before an IJ.

32. Since Respondents adopted their new policies, in more than 350 cases “decided by over 160 different judges sitting in about fifty different courts spread across the United States,” courts have rejected ICE and EOIR’s new interpretation of § 1225. *See Barco Mercado v. Francis*, No. 25-CV-6582 (LAK), 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025). This includes numerous decisions by this Court. *See, e.g., Zumba*, 2025 WL 2753496; *Bethancourt Soto v. Soto*, No. 25-CV-16200 (CPO), 2025 WL 2976572, at *6 (D.N.J. Oct. 22, 2025). Most recently, the district court in *Maldonado Bautista et al v. Noem* echoed the reasoning of district courts across the country, finding that the class members are detained under § 1226(a) and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 25, 2025).

33. DHS’s and EOIR’s new interpretation of § 1225 defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” *See Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025). These

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

removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].” The text of § 1226(c) also explicitly refers to people charged as being inadmissible, including those who entered without inspection, indicating that individuals who have not been admitted can be detained under § 1226. *See* 8 U.S.C. § 1226(c)(1)(E). And “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Id.* at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

34. 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 its application in the context of inspections at the border of noncitizens who are “seeking admission” to the United States. 8 U.S.C. § 1225(b). This context is clearly reflected in its title and the titles of its sub-provisions. 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*, 583 U.S. at 287. Therefore, application of § 1225 to individuals who have already lived for years in the United States, pending adjudication of their removal proceedings, violates the INA.

35. Subjecting all individuals who have not been admitted to the United States to mandatory detention also violates procedural due process. In the Third Circuit, the three-factor balancing test set forth in *Mathews v. Eldridge* applies to determine what procedural protections due process requires. *Gayle v. Warden Monmouth Cnty. Corr. Inst.*, 12 F.4th 321, 331 (3d Cir. 2021) (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). These factors are: (i) “the private interest that will be affected by the official action”; (ii) “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 (iii) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.*

36. As to the first factor, the private interest in remaining at liberty is strong, as freedom from imprisonment is “the most elemental of liberty interests,” *see Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The risk of erroneous deprivation of liberty is high where no individualized determination that detention is justified has been made. *See, e.g. Contreras Maldonado*, 2025 WL 2985256, at *5. Finally, “neither the government nor the public has a significant interest in detaining a long-term resident of the United States with no criminal history who is participating in... removal proceedings, which are civil in nature.” *Zumba*, 2025 WL 2753496, at *10.

FACTS AND PROCEDURAL HISTORY

37. Mr. Torres is a trade unionist who fled to the United States in 2022, facing threats from a paramilitary-linked criminal organization. On May 14, 2022, he crossed the southern U.S. border and presented himself to U.S. Customs and Border Patrol (“CBP”) officials, who then took him into custody in Carrizo Springs, Texas. Ex. A, May 14, 2022, CBP Processing Document.

38. Two days later, on May 16, 2022, Mr. Torres was called to speak with a CBP officer in the facility. *See Ex. B*, May 16, 2022, CBP Processing Documents. The officer sat behind a computer screen which Mr. Torres could not see. He did not provide information but asked Mr. Torres questions in broken Spanish. Mr. Torres responded. After this questioning, the officer returned Mr. Torres to his holding cell. He did not explain to Mr. Torres anything about any of his subsequent processing, nor read him what he had written, nor provide him with any

documents. The officer then issued a partially-executed DHS Form I-860 for Mr. Torres, as well as DHS Form I-867A and B, but did not serve Mr. Torres with any of these documents, leaving Mr. Torres unaware of their existence until several years later.

39. On May 19, 2022, CBP transferred Mr. Torres into the custody of Immigration and Customs Enforcement (“ICE”) Enforcement and Removal Operations (“ERO”) at the South Texas Detention Facility in Pearsall, Texas. There, on May 26, 2022, ICE ERO conducted a custody determination for Mr. Torres, and issued him DHS Form I-286. *See Ex. C, 2022 Custody and Release Documents*, at 1. The Form I-286 records ICE ERO’s determination that Mr. Torres’ custody and conditional release would thereafter be pursuant to 8 U.S.C. § 1226(a). *Id.* It authorizes Mr. Torres’ release pursuant to “other conditions” of supervision to be provided. *Id.* Soon thereafter, on June 3, 2022, ERO issued Mr. Torres a one-year grant of humanitarian parole, pursuant to 8 U.S.C. § 1182(d)(5)(A). *Id.*, at 2-5.

40. At the time of his release from DHS custody, on June 3, 2022, Mr. Torres was provided with these custody documents and was informed by a DHS officer that he should follow up regarding his case with the Immigration Court. *See Ex. C*, at 2 (“you are required to notify the Immigration Judge... of any address change... ...the attached Form EOIR-33 can be used for this purpose.”).

41. As required, Mr. Torres then began attending regular supervision appointments with ICE ERO – first, in Charlotte, North Carolina, and later, after he relocated his residence, in Newark, New Jersey. *Ex. C*, at 3.

42. At each of these appointments, DHS reviewed Mr. Torres’ case and authorized his continued release, with ongoing supervision. *See Ex. D, ICE ERO Supervision Correspondence.*

At these supervision appointments, DHS continued to affirm that Mr. Torres' case would be processed in the Immigration Courts.

43. In 2023, as Mr. Torres neared the one-year deadline for timely filing of his I-589 asylum application, his case had not yet appeared in the online EOIR system. Mr. Torres retained private immigration counsel who advised that he should file his I-589 application for asylum, withholding of removal, and U.N. Convention Against Torture protection affirmatively, with U.S. Citizenship and Immigration Services ("USCIS"). *See* Ex. E, I-589 Receipt Notice. Mr. Torres thus filed his I-589 application in May of 2023. *Id.*

44. Mr. Torres' one-year parole expired two weeks thereafter, on June 3, 2023. After the expiry of this parole, Mr. Torres' custody returned, by operation of law, to the status previously authorized, i.e., conditional parole under 8 U.S.C. § 1226(a). *See* 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. 212.5(e). Thereafter, Mr. Torres attended a scheduled USCIS Biometrics collection appointment and continued to comply with reporting requirements for his conditional release pursuant to 8 U.S.C. 1226(a). *See* Ex. D; Ex. F, USCIS Biometrics Notice.

45. Three months later, on September 19, 2023, the USCIS Asylum Office in Newark, New Jersey, issued Mr. Torres a "Notice of... ..Issuance of Form I-862, Notice to Appear (NTA)" in EOIR proceedings, and of the closure of his I-589 application before USCIS. Ex. G, USCIS NTA and Administrative Closure Notice. The noticed stated that while "[DHS] records indicate that you were apprehended by DHS officials, placed in expedited removal, and issued a Form I-860, Notice and Order of Expedited Removal...[t]he asylum office is issuing you a Form I-862, Notice to Appear (NTA) and filing it with the appropriate immigration court." *Id.* The letter then reiterated that Mr. Torres should continue to pursue his case with the Immigration Court. *Id.*

46. Throughout this more than three-year period, Mr. Torres worked, lived, and built a full life in the United States. *See* Ex. L, EOIR Bond Submission, *generally*. In July of 2025, Mr. Torres was lawfully married to his wife, a U.S. lawful permanent resident who has since filed a family-based visa petition for Mr. Torres, which is pending. *Id.* at 18-20. During the early months of 2025, Mr. Torres also provided critical support to his wife as she underwent a period of medical instability. *Id.* at 6-11.

47. Then, abruptly, in September of 2025, Mr. Torres received a letter from the USCIS Newark Asylum Office, stating that Mr. Torres must present himself the week thereafter in Newark for an interview regarding his fear of deportation to Colombia. Mr. Torres appeared as directed, on September 18, 2025, and an asylum officer found he had credibly established a threshold likelihood of torture if removed to Colombia.

48. Then, as Mr. Torres sought to leave the interview, he was unexpectedly detained by ICE ERO, and transferred to the Delaney Hall Detention Facility, in Newark, New Jersey. *See* Ex. I, ICE Detainee Locator. That same day, DHS filed an NTA for Mr. Torres with the Elizabeth Immigration Court, initiating his removal proceedings pursuant to 8 U.S.C. § 1229a. Ex. J, NTA.

49. DHS did not inform the Immigration Court of Mr. Torres' ICE detention until four days later, on September 22, 2025. *See* Exh K, DHS Form I-830. DHS did not file, nor inform Mr. Torres or his counsel of, any withdrawal or amendment to its prior custody determination. In fact, DHS made no written or oral assertion of any legal basis for Mr. Torres' re-detention until Mr. Torres requested an EOIR bond hearing, seven weeks into his detention, on December 5, 2025.

50. In its NTA, DHS alleges that Mr. Torres is an "alien present in the United States who has not been admitted or paroled." Ex. J. That is, DHS does *not* allege the alternative check-

box option, which would be that Mr. Torres is “an arriving alien” - this box is left blank, and the alternative is selected. The NTA then alleged Mr. Torres entered the United States at a time and place “unknown” and charges Mr. Torres as removable pursuant to both 8 U.S.C. § 1182(a)(7)(A)(i)(I) and 8 U.S.C. § 1182(a)(6)(A)(i)(I). *Id.*

51. On November 18, 2025, an Immigration Judge upheld Mr. Torres’ removability pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I), as lacking valid entry documents. Mr. Torres then re-filed his I-589 Application for fear-based relief and protection with the Immigration Court. *See* Ex. H, at 27.

52. Following orders granting nationwide class certification and partial summary judgement in *Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 20, 2025), Mr. Torres moved the Immigration Court to set a custody hearing in his case, which the Court set on December 5, 2025. *See* Ex. H, at 42.

53. At Mr. Torres’ bond hearing, the Immigration Judge held that EOIR lacked jurisdiction over Mr. Torres’ custody pursuant to *Yajure Hurtado*, 29 I&N Dec. 216. *See* Ex. L, IJ Bond Order. In its entirety, the order states that Mr. Torres “entered without inspection and is present in the United States without admission. Under Matter of Yajure Hurtado, the respondent is ineligible for bond. Further, *Bautista v. Noem* is not controlling on this Court.” *Id.*

54. To date, Mr. Torres remains in DHS’ detention, separated from his lawful permanent resident wife and community in New Jersey and deprived of both his liberty and his ability to provide for his family.

CLAIMS FOR RELIEF

COUNT I

Violation of Due Process

55. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

56. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas*, 533 U.S. at 690.

57. Mr. Torres has a fundamental interest in liberty and being free from official restraint. His interest was only strengthened by his prior grant of release on parole.

58. Respondents necessarily determined that Mr. Torres was neither a danger nor a flight risk when they granted him parole and repeatedly determined that he should remain at liberty for more than three years. *See* 8 C.F.R. § 236.1(c)(8).

59. No material change in circumstances occurred to indicate that Mr. Torres is now a danger to the community or a flight risk, and Mr. Torres was not afforded a hearing to determine whether his re-detention was justified before he was deprived of his liberty.

60. Therefore, Respondents’ detention of Mr. Torres was unrelated to any legitimate government interest and violated his liberty interest. Respondents’ failure to provide Mr. Torres with a pre-deprivation bond hearing also violated his due process rights.

COUNT II

Violation of the INA

61. Mr. Torres incorporates by reference the allegations of fact set forth in the preceding paragraphs.

62. As an individual who was released into the United States, has been living in the United States for more than three years, and who is currently in removal proceedings under 8 U.S.C. § 1229a, Mr. Torres is currently detained under 8 U.S.C. § 1226(a). This categorization is

also confirmed by Respondent's prior actions suggesting that they considered his custody to be authorized by § 1226(a).

63. The INA dictates that individuals detained pursuant to 8 U.S.C. § 1226(a) are entitled to a bond hearing.

64. Therefore, Mr. Torres's continued detention without a bond hearing violates the INA.

COUNT III

Violation of Procedural Due Process

65. Mr. Torres incorporates by reference the allegations of fact set forth in the preceding paragraphs.

66. The Due Process Clause grants protections to "all persons within the territory of the United States." *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

67. Mr. Torres has been detained since September 18, 2025, without any individualized determination that his continued detention is justified.

68. The *Mathews v. Eldridge* factors weigh in Mr. Torres's favor, as he has a strong private liberty interest, the lack of any individualized custody determination makes the risk of erroneous deprivation high, and the administrative burden of affording Mr. Torres a bond hearing is minimal. *See* 424 U.S. at 335.

69. As such, Mr. Torres's continued detention without a custody hearing violates his right to procedural due process.

PRAYER FOR RELIEF

WHEREFORE, Mr. Torres prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;

- b. Order that Mr. Torres shall not be transferred outside the District of New Jersey while this habeas petition is pending;
- c. Declare that Mr. Torres's re-detention violated the Due Process Clause of the Fifth Amendment;
- d. Declare that Mr. Torres's continuing detention without a bond hearing violates the Due Process Clause of the Fifth Amendment and the INA;
- e. Issue a Writ of Habeas Corpus requiring that Respondents immediately release Mr. Torres;
- f. Enjoin Respondents from re-detaining Mr. Torres without a pre-deprivation hearing at which DHS bears the burden of justifying his detention by clear and convincing evidence;
- g. Grant any other and further relief that this Court deems just and proper.

DATED this 12th day of December 2025.

s/ Lauren Major

Lauren Major
American Friends Service Committee
570 Broad St., Ste 1001
Newark, NJ 07102
Pro Bono Counsel for Petitioner

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

I represent Petitioner, Name, and submit this verification on his/her/their behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 12th day of December, 2025.

s/ Lauren Major

Lauren Major
Pro Bono Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I have furthermore mailed a copy by USPS Certified Priority Mail to each of the following individuals:

Todd Lyons
Acting Director, Immigration and Customs Enforcement
500 12th St. SW
Washington, DC 20536

Kristi Noem
Secretary of the U.S. Department of Homeland Security
c/o Office of the General Counsel
2707 Martin Luther King Jr. Ave., SE
Washington, DC 20528-0485

Pamela Bondi
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Luis Soto
Director of Delaney Hall
451 Doremus Ave
Newark, New Jersey 07105

Dated: December 12, 2025

s/ Lauren Major
Lauren Major
Pro Bono Counsel for Petitioner