UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Jorge Armando Portilla 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 Kenneth Genalo, in his Official Capacity as New York Field Office Director for Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement. Sheriff Paul Arteta, in his Official Capacity as the Sheriff of Orange County, NY, Respondents.	Case No. (To be Assigned) Judge: Hon. _____ Magistrate Judge: _____ No request for jury trial **PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **ORAL ARGUMENT REQUESTED**

COMES NOW, Petitioner, Jorge Armando Portilla 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. Municipal Court*, 411 U.S. 345, 351 (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 December 13, 2025 and in a removal proceeding before the Immigration Court. He was transferred to Orange County Correctional Facility at 110 Wells Farm Rd, Goshen, NY 10924.

2. Undersigned counsel is aware of ongoing litigation concerning *Lazaro Maldonado Bautista et. al v. Ernesto Santacruz Jr et. al*, in the United States District Court of the Central District of California. EOIR appears to be evaluating how the November 25th ruling impacts *Matter of Yajure Hurtado*. Undersigned counsel is aware of at least one instance in which an Immigration Judge claimed that *Matter of Yajure Hurtado* is still valid and that individuals such as Plaintiff continue to be ineligible for bond. Moreover, DHS has indicated an intent to appeal the November 25, 2025 ruling as well as any other rulings that may purport to overrule *Matter of Yajure Hurtdado*. Therefore, this Court remains the only venue in which Plaintiff can seek relief.

3. Pursuant to this Court's inherent powers in habeas corpus proceedings, Petitioner Jorge Armando Portilla Hernandez 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.

4. 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 (2001); *Demore v. Kim*, 538 U.S. 510, 530 (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.

5. 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).

6. Petitioner has resided in the United States for at least twenty-five years prior to being detained and place in removal proceedings, his U.S. Citizen child who depends on the Petitioner for survival, and other significant discretionary factors. The Petitioner must remain lawfully present in the United States to pursue adjudication of these meritorious claims for humanitarian protection.

7. Any Motion For Bond And Custody Redetermination would be denied in light of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). As the Immigration Court has expressly disclaimed jurisdiction to review or redetermine custody under this precedent, Petitioner is left without an adequate or available administrative remedy. Accordingly, 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 INS v. St. Cyr, 533 U.S. 289, 314 (2001)

(recognizing federal habeas jurisdiction where no other judicial forum is available to test the legality of executive detention).

I. PARTIES

8. Jorge Armando Portilla Hernandez is a 47-year-old native and citizen of Mexico who fled his native country of Mexico on or about 2001, [redacted] He is currently detained at the Orange County Correctional Facility, located at 110 Wells Farm Road, Goshen, NY 10924. Additionally, he is the primary caregiver for a U.S. citizen child and a USC spouse, whose well-being depends on his continued presence and support. He also requires daily medication to manage diabetes, a condition that necessitates consistent medical supervision and reliable access to prescribed treatment.

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, DC 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 Southern District of New York, 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, Kenneth Genalo, is the New York Field Office Director for Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement. He is the local ICE official who has immediate authority over the Petitioner. Respondent Genalo's address is 26 Federal Plaza, 9th Floor, Suite 9-110, New York, NY 10278.

12. Respondent Sheriff Paul Arteta is the Sheriff of Orange County, NY and is the ranking officer of the Orange County Jail, where Petitioner is being held. He is the custodian of Petitioner and is named in his official capacity.

II. JURISDICTION & VENUE

13. 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 Art. I § 9, cl. 2 of the United States Constitution (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 detention 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 (1973); 28 U.S.C. § 2241(c)(3). Petitioner is also subject to prolonged physical detention.

14. 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 v. Kim*, 538 U.S. 510, 516–517 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). No Supreme Court or Second Circuit precedent applicable to immigration detainees, nor the habeas statute, indicate that venue is not proper in the Southern District Court of New York. *See* 28 U.S.C. § 2241. Venue is proper in the United States District Court for the Southern District of New York because a substantial part of the events and omissions giving rise to this action occurred in the District. 28 U.S.C. § 1391(b)(2). Petitioner is currently being held at the Orange County Correctional Facility.

III. FACTS GIVING RISE TO THE HABEAS PETITION

15. Petitioner, born on [redacted] is a citizen of Mexico who fled his country due to [redacted] He entered the United States on or about 2001. During his time residing in the United States, Petitioner has established significant equities, including an eleven-year-old U.S. citizen child and a U.S. citizen spouse who depend on him both emotionally and financially.

16. Upon information and belief, on December 13, 2025, the Respondent was apprehended by an ICE Officer while boarding a public bus in Rockland County, New York. Petitioner was detained without a warrant of arrest and was not advised under what authority he was being detained under. At some point that weekend between December 13, 2025 and December 14, 2025, Petitioner was then transferred to Orange County Detention Facility. It is currently unknown where Petitioner was taken in the interim.

17. An ICE administrative arrest warrant (Form I-200) is required by regulation before taking a noncitizen into custody, see 8 C.F.R. § 287.5(e)(2), and ICE refused to produce such a warrant despite repeated requests by counsel, underscoring the unlawful and warrantless nature of the arrest.

18. Indeed, ICE failed to comply with 8 C.F.R. § 287.8(c)(2)(ii), which requires an officer to identify the legal authority for an arrest and provide documentation upon request. Neither ICE nor USCIS supervisors articulated the specific statutory basis, whether § 1225(b), § 1226(a), or another authority, under which he was being taken into custody.

19. ICE has not served Petitioner with a Notice to Appear ("NTA"), and DHS has not initiated removal proceedings. In the absence of an NTA, DHS lacks statutory authority to detain him under either § 1226(a) or § 1225(b). The detention is therefore ultra vires, as ICE cannot lawfully detain a noncitizen without commencing proceedings through proper service of an NTA. See 8 C.F.R. §§ 236.1, 239.1.

20. Petitioner's arrest and detention are unlawful. ICE detained him without a warrant, without probable cause, and without articulating any statutory authority for the seizure, in violation of the Fourth Amendment, the Due Process Clause, and 8 C.F.R. § 287.8. His detention also lacks any reasonable relation to the execution of a removal order. His continued detention violates the Constitution and the Immigration and Nationality Act. Petitioner respectfully requests that this Court order his immediate release from custody.

21. Petitioner suffers from diabetes, a chronic medical condition that requires daily medication and consistent medical supervision. The lack of adequate medical care in custody underscores the urgent need for his release so that he may properly manage his condition and avoid life-threatening complications.

22. Petitioner remains in ICE custody despite his eligibility to pursue applications for relief from removal and the substantial equities that warrant release. His continued detention violates his constitutional rights and imposes unnecessary hardship, particularly in light of his intent to seek humanitarian protection and the strong support available to him.

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

A. 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. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

32. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," 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.

33. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. 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.

34. 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.

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); *Arrazola-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 nationwide that have rejected DHS's and EOIR's new theory of retroactively treating long-term residents as "arriving aliens," courts within the Second Circuit, including the Southern District of New York, have reached the same conclusion. Most notably, in *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020), the Second Circuit confirmed that individuals arrested in the interior after having lived in the United States for years are detained under 8 U.S.C. § 1226(a), not § 1225(b), and are entitled to individualized custody determinations with the government bearing the burden of justifying continued detention. Numerous SDNY decisions applying *Velasco Lopez* reaffirm that DHS cannot reclassify long-term residents as "arriving aliens" for purposes of mandatory detention. See, e.g., *Sajous v. Decker*, 2018 WL 2357266, at *6–7 (S.D.N.Y. May 23, 2018)* (finding § 1226(a) governs where noncitizen was arrested in the interior years after entry); *Rosales-Garcia v. Decker*, 2019 WL 1227848 (S.D.N.Y. Mar. 15, 2019) (rejecting government attempt to impose § 1225(b) mandatory detention on a long-term resident apprehended in the interior); *Hernandez v. Decker*,

2018 WL 3579108 (S.D.N.Y. July 25, 2018) (same). Courts throughout this Circuit consistently recognize that noncitizens physically present in the United States, even if originally admitted without inspection, cannot be retroactively converted into "arriving aliens" to trigger § 1225(b)(2)(A). See also *Perez v. Decker*, 2018 WL 3991497 (S.D.N.Y. Aug. 20, 2018); *Almonte v. Decker*, 2018 WL 3609839 (S.D.N.Y. July 27, 2018). Accordingly, both the statutory text and binding Second Circuit authority demonstrate that Petitioner is properly detained, if at all, under § 1226(a), and DHS cannot lawfully apply § 1225(b)(2)(A) to an individual who entered years ago and was apprehended inside the United States. Because DHS initially and improperly classified Petitioner under §1226, it cannot now retroactively reclassify him under § 1225(b)(2)(A) to cure that jurisdictional defect; accordingly, his present detention is unlawful and he must be released immediately.

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.

B. 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. at 693; *see also Yick Wo v. Hopkins*, 118 U.S. 356 (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 (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 Sacramento v. Lewis*, 523 U.S. 833 (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 Matthews v. Eldridge*, 424 U.S. 319, 332 (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 Bd. of Regents v. Roth*, 408 U.S. 564, 569–70 (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. Respondents' power to detain and deport someone is not limitless, nor is it shielded from judicial review. *See Calderon v. Sessions,* 330 F. Supp. 3d 944, 950 (S.D.N.Y. 2018) *appeal withdrawn sub nom. Villavicencio Calderon v. Sessions*, No. 18-2926, 2018 WL 6920377 (2d Cir. Oct. 5, 2018) (ordering a stay of removal and release from detention to permit the Petitioner to continue with the provisional waiver process afforded by the government); *You Xiu Qing v. Nielsen*, 321 F.Supp.3d 451 (S.D.N.Y. 2018) (ordering a stay of removal and release from detention to permit the Petitioner to continue with the provisional waiver process and a motion to reopen); *S.N.C. v. Sessions*, No. 18 2018 WL 6175902, (S.D.N.Y. Nov. 26, 2018);

Compere v. Nielsen, 2019 WL 332193, at *9 (D.N.H. Jan. 24, 2019) (granting a stay of removal for petitioner because deportation to Haiti would vitiate his ability to pursue an appeal to the BIA of the IJ's denial for a motion to reopen); *Lin v. Nielsen*, 2019 WL 1958569 at *15 (D. Md. May 2, 2019) (court found that a preliminary injunction was "in the public interest, as it requires DHS to comport with its own rules and regulations, and bars arbitrary and capricious action towards vulnerable undocumented immigrants."); *see also Martinez v. Neilsen*, 341 F.Supp.3d 400 (D.N.J. Sept. 14, 2018); *Fatty v. Nielsen*, 2018 WL 3491278 at *2 (W.D. Wash. Jul. 20, 2018); *Gutierrez-Soto v. Sessions*, 317 F. Supp. 3d 917, 933-35 (W.D. Tex. 2018); *Jimenez v. Nielsen*, No. CV 18-10225-MLW, 2018 WL 4539687 (D. Mass. Sept. 21, 2018); *Sied v. Nielsen*, 2018 WL 1142202 (N.D. Cal. Mar. 2, 2018); *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018); *Ibrahim v. Acosta*, No. 17-CV-24574, 2018 WL 582520 (S.D. Fla. Jan. 26, 2018); *Chhoeun v. Marin*, 306 F. Supp. 3d 1147 (C.D. Cal. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017).

47. "Habeas corpus is at its core, an equitable remedy." *Schlup v. Delo*, 513 U.S. 298, 319 (1995). Judges have "broad discretion" to fashion an appropriate remedy. It may extend beyond simply ordering the release of a petitioner, *Carafas v. La Vallee*, 391 U.S. 234 (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 (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 (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 (2001); *see also Martinez v, McAleenan*, 385 F.Supp.3d 349, 355 ("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. Grren*, 128 S.Ct. 2207 (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.

48. Furthermore, in *Demore,* 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.

49. Even if the government were correct in placing Petitioner under § 1225(b), *Demore* expressly applies only to § 1226(c) detainees and is limited to brief, finite detention; it does not authorize indefinite, pre-hearing detention of long-term residents arrested years or decades after entry.

50. In the present case, there is no indication that Petitioner's 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 qualifies for relief from removal through multiple avenues, including the filing of an Application for Cancellation of Removal (Form EOIR-42B) and an Application for Asylum and Withholding of Removal. These applications reflect his eligibility for lawful relief under the Immigration and Nationality Act and demonstrate his longstanding ties to the United States, as well as the significant hardship his removal would cause to his U.S. citizen family members.

C. **Respondents' Conduct Violates the Administrative Procedure Act (5 U.S.C. §§ 701–706).**

51. Respondents' actions further violate the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–706, because the decision to detain Petitioner under 8 U.S.C. § 1225(b)(2)(A)—despite his undisputed status as a long-term interior resident placed in removal proceedings under § 240—constitutes final agency action that is arbitrary, capricious, an abuse of discretion, and contrary to law. See 5 U.S.C. § 706(2)(A), (C). DHS's retroactive reclassification of Petitioner as an "arriving alien" for the sole purpose of placing him in mandatory detention represents a fundamental departure from decades of consistent agency practice and violates the statutory framework Congress enacted. Such reclassification is not the product of reasoned decision-making, is unsupported by the INA's text, structure, or purpose, and reflects an unexplained and irrational policy shift lacking any contemporaneous justification.

52. The APA forbids agencies from acting in a manner that is "arbitrary, capricious, [or] an abuse of discretion," especially where— as here—an agency's deviation from settled practice imposes severe restraints on liberty. DHS's application of § 1225(b)(2)(A) to Petitioner is arbitrary and contrary to law because that provision governs recent entrants applying for admission at or near the border, not individuals like Petitioner who have lived in the United

States for decades and are charged with inadmissibility under § 212(a)(6)(A)(i) in full § 240 proceedings. See Jennings v. Rodriguez, 138 S. Ct. 830, 837 (2018) (explaining § 1225(b) applies at ports of entry). Respondents' reclassification policy also constitutes final agency action reviewable under the APA because it determines Petitioner's custodial status, imposes mandatory detention with no administrative process for review, and marks the consummation of the agency's decision-making process as applied to him.

53. Accordingly, Respondents' detention of Petitioner under § 1225(b)(2)(A) must be set aside under 5 U.S.C. § 706(2) as unlawful agency action taken "in excess of statutory jurisdiction" and "without observance of procedure required by law," and this Court should order his immediate release.

VI. CLAIMS FOR RELIEF

Count I

Habeas Corpus Under 28 U.S.C. § 2241 (Unlawful Executive Detention)

54. Petitioner is being unlawfully detained in violation of 28 U.S.C. § 2241 because DHS has placed him under 8 U.S.C. § 1225(b)(2)(A), a statutory provision that does not authorize his detention as a long-term interior resident apprehended decades after entry and placed in full removal proceedings under 8 U.S.C. § 1229a. His continued detention is unauthorized, exceeds the scope of statutory jurisdiction, and is not reasonably related to any legitimate removal purpose, rendering it unconstitutional and unlawful.

Count II

Violation of the Fifth Amendment (Substantive and Procedural Due Process)

55. Respondents' detention of Petitioner violates the Fifth Amendment by subjecting him to prolonged, mandatory, and unreviewable incarceration without an individualized custody determination. The absence of any opportunity to be heard, the government's refusal to consider less restrictive alternatives, and the arbitrary reclassification of Petitioner as subject to § 1225(b)(2)(A) constitute both procedural and substantive due process violations.

Count III

Violation of the INA and Administrative Procedure Act (5 U.S.C. §§ 701–706)

56. Respondents' application of § 1225(b)(2)(A) to Petitioner constitutes final agency action that is arbitrary, capricious, an abuse of discretion, and contrary to law, in violation of 5 U.S.C. § 706(2)(A), (C). DHS's unexplained and retroactive reinterpretation of the detention statutes, reclassifying long-term interior residents as "arriving aliens", is inconsistent with decades of agency practice, unsupported by statutory text, and results in unlawful mandatory detention. This action exceeds statutory authority and must be set aside under the APA.

Count IV

Violation of the Suspension Clause (U.S. Const. Art. I § 9, cl. 2)

57. By eliminating any administrative review of custody and foreclosing access to an Immigration Judge, Respondents have suspended the privilege of the writ of habeas corpus as applied to Petitioner. The government's reinterpretation of § 1225(b)(2)(A) prevents Petitioner from obtaining judicial review of the legality of his detention anywhere except this Court. The Suspension Clause prohibits such restrictions on habeas jurisdiction.

VII. REQUEST FOR RELIEF

58. 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").

59. Petitioner respectfully requests that Respondents be restrained from removing him from the United States pending adjudication of his removal proceedings. Premature removal would preclude him from pursuing the forms of relief for which he is eligible and would undermine his ability to seek protection under applicable immigration laws.

60. 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.

61. Furthermore, Petitioner respectfully requests release from detention pending the resolution of his immigration proceedings. He has been subjected to prolonged custody despite establishing prima facie eligibility for Cancellation of Removal (Form EOIR-42B), as well as for asylum and withholding of removal, both of which remain before the Immigration Court. His continued detention under these circumstances is unwarranted and imposes unnecessary hardship. Continued detention imposes significant hardship and interferes with his ability to meaningfully prepare and present his claims for relief.

62. Without this Court's intervention, the Respondents will seek to remove Petitioner in violation of law and inflict further cruel and unnecessary harm, even though Petitioner has no

criminal history, and he 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.

VIII. EXHAUSTION OF REMEDIES

63. 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 (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.

64. 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.

65. 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 (BIA 2025), exhaustion of remedies is not required. See *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992) (exhaustion excused where administrative remedies are inadequate or futile); *INS v. St. Cyr*, 533 U.S. 289, 314 (2001).

IX. REQUEST FOR ORAL ARGUMENT

66. Petitioner respectfully requests oral argument on this Petition.

X. 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 Petitioner's continued 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. Order Respondents to provide five days of notice to the Court and Petitioner of his imminent removal;

9. Order Respondents to comply with all applicable rules, regulations, laws, and constitutional protections in relation to Petitioner's removal proceedings and his eligibility to pursue an Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (Form EOIR-42B).

10. 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;

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

Dated: December 15, 2025

Respectfully submitted,

By: 

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