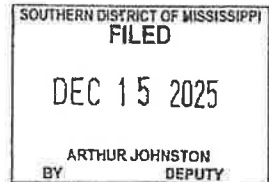


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI



JOSE NICACIO FUENTES ARAUJO,

A 

Petitioner/Plaintiff,

v.

RAFAEL VERGARA, Warden,
Adams County Correctional Center,
TODD LYONS, Acting Director, Immigration
and Customs Enforcement, KRISTI NOEM,
Secretary of United States Department of
Homeland Security, MELISSA HARPER,
Immigration and Customs Enforcement,
New Orleans Field Office Director,
PAMELA BONDI, United States Attorney General,

Respondents/Defendants

Civil Action No. 5:25-cv-158-DCB-BWR

ORAL ARGUMENT
REQUESTED

PETITION FOR WRIT OF
HABEAS CORPUS UNDER 28
U.S.C. § 2241 AND COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF

BACKGROUND

Petitioner, José Nicacio Fuentes Araujo, by and through undersigned counsel, respectfully petitions this Honorable Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to challenge his ongoing and unlawful civil immigration detention by the United States Department of Homeland Security and its agents. Petitioner is currently confined at the Adams County Correctional Center in Natchez, Mississippi, in the custody of the facility's Warden. In support of this petition and complaint for injunctive relief, Petitioner alleges as follows:

1. On October 25, 2025, Immigration and Customs Enforcement (“ICE”) officers targeted and arrested Petitioner near Port Canaveral, Florida, and took him into custody despite his lawful entry into the United States under Humanitarian Parole and his full compliance with immigration requirements.
2. Petitioner is subject to pre-final order of removal detention. Noncitizens detained under section 1226(a) are subject to discretionary detention and can request a change in custody redetermination (i.e., bond hearing) with an Immigration Judge (“IJ”). However, ICE has misclassified Petitioner as an arriving alien subject to mandatory detention under 8 U.S.C. § 1225(b) following DHS’s unilateral termination of his parole—a classification that ignores his lawful parole entry and pending affirmative asylum case.
3. Because Petitioner entered the United States lawfully with Humanitarian Parole, he is properly subject to detention under 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b). Noncitizens detained under section 1226(a) are entitled to discretionary custody review before an Immigration Judge. However, DHS has adopted the incorrect position that—contrary to statutory principles and governing case law—lawfully paroled individuals like Petitioner are automatically subject to mandatory detention under § 1225(b), thereby denying him access to a bond hearing and leaving him detained without any constitutionally adequate custody determination. *Q. Li*, 29 I&N Dec. 66 (BIA 2025)—has unlawfully deprived Petitioner of a bond hearing, resulting in prolonged and medically dangerous detention without any meaningful opportunity for release consideration.
4. Petitioner seeks immediate release, or in the alternative, an order directing Respondents to provide him with a constitutionally adequate bond hearing before a neutral decisionmaker with authority to grant release.

5. On December 2, 2025, the Immigration Judge denied jurisdiction to consider bond, concluding that Petitioner was subject to mandatory detention under INA § 235(b) based on DHS's unilateral termination of his Humanitarian Parole. The Immigration Judge relied on *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025) to hold that Petitioner was ineligible for bond, despite his lawful entry with Humanitarian Parole and his evidence establishing strong community ties and lack of danger or flight risk.
6. As a result of this jurisdictional denial, Petitioner now faces prolonged and potentially indefinite detention without any meaningful opportunity for an individualized custody review. Petitioner is actively pursuing asylum before the Immigration Court, and his next hearing is currently scheduled for December 16, 2025, in Jena, Louisiana. Despite his pending claims for relief and eligibility for release under 8 U.S.C. § 1226(a), DHS continues to detain him without providing a mechanism for release or a hearing before an Immigration Judge capable of evaluating danger, flight risk, medical vulnerability, or alternatives to detention.
7. Petitioner's continued detention without a bond hearing violates Petitioner's Fifth Amendment Due Process rights and the Immigration and Nationality Act ("INA"). DHS's position has upended long-standing interpretation of bond eligibility under §§ 1226(a) and 1225(b). Federal courts across the country have repeatedly rejected DHS's unfounded reliance on § 235(b) to deny custody review to individuals with lawful entries and pending immigration proceedings. For the foregoing reasons, the Court should grant habeas relief and direct Respondents to release Petitioner, or in the alternative promptly provide him with a constitutionally adequate bond hearing under § 1226(a) within seven days.

FACTUAL BACKGROUND

8. Petitioner José Nicacio Fuentes Araujo is a 61-year-old man and a citizen and national of Venezuela. [REDACTED]

[REDACTED] Petitioner does not have a criminal record, has no history of violence or dangerous behavior, and has at all times demonstrated compliance with U.S. immigration authorities.

9. Petitioner lawfully entered the United States on August 17, 2023, through Orlando International Airport, after being approved for Humanitarian Parole under INA § 212(d)(5). He complied with all entry and inspection requirements and was issued valid parole documentation upon his arrival. Thereafter, he resided continuously in Florida, obtained stable housing, and remained compliant with all immigration and identification requirements.
10. On March 17, 2025, Petitioner affirmatively filed Form I-589 with U.S. Citizenship and Immigration Services to seek asylum, withholding of removal, and protection under the Convention Against Torture. He appeared for all required appointments and never missed a legal obligation associated with his case.
11. On October 25, 2025, Petitioner was illegally arrested, without bases, during a routine operation by Respondents.
12. On December 2, 2025, Petitioner appeared before the Jena Immigration Court for a bond redetermination hearing. Through counsel, he argued that he was lawfully paroled into the United States and placed in removal proceedings under section 240 of the Immigration and Nationality Act, rendering him eligible for a custody redetermination under section 236(a) of the INA. He further presented evidence demonstrating that his arrest did not occur “shortly after entry,” but rather more than two years after his lawful parole, while he

remained fully compliant with DHS requirements and that he was not subject to expedite removal.

13. Despite this, the Immigration Judge denied bond solely on jurisdictional grounds. Relying on *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), the Immigration Judge concluded that Petitioner remained subject to mandatory detention under section 235(b) based on DHS's unilateral assertion that the termination of his parole reverted him to 235(b) and the status of an "arriving alien," thereby eliminating the court's authority to consider bond. As a result, the Immigration Judge determined that he had no jurisdiction to evaluate individualized factors such as danger, flight risk, community ties, or alternatives to detention.
14. Petitioner has no criminal history, no disciplinary infractions during his detention, and no evidence suggesting that he poses a danger to the community or a risk of absconding. He has demonstrated consistent cooperation with immigration authorities and is pursuing his asylum, withholding of removal, and Convention Against Torture claims in good faith. His next immigration court hearing is scheduled for December 16, 2025, in Jena, Louisiana.
15. Because the Immigration Judge determined that he lacked jurisdiction to provide a bond hearing, Petitioner now faces prolonged and potentially indefinite detention without any mechanism for individualized custody review. He remains confined under restrictive, penal-like conditions, despite his lawful entry, his stable community ties in Florida, his severe medical conditions, and his pending application for humanitarian protection.
16. Petitioner's ongoing detention—based solely on a contested custody classification and without any opportunity for an individualized determination of his eligibility for release—violates the Immigration and Nationality Act, the Due Process Clause of the Fifth

Amendment, and fundamental constitutional safeguards against arbitrary and indefinite confinement. Petitioner therefore seeks immediate judicial intervention to secure his release or, in the alternative, a constitutionally adequate bond hearing before an Immigration Judge with authority to consider all relevant factors and grant his release.

JURISDICTION AND VENUE

17. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner challenges the legality of his ongoing civil immigration detention and seeks relief that is within the traditional scope of habeas corpus. Jurisdiction also lies under 28 U.S.C. § 1331, as this petition raises federal questions arising under the Constitution, laws, and treaties of the United States. The Suspension Clause of the United States Constitution further guarantees Petitioner's right to seek habeas corpus review where no other adequate remedy exists.
18. The 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. Congress has preserved judicial review of challenges to mandatory immigration detention. *See, e.g., Nielsen v. Preap*, 139 S. Ct. 954, 961-62 (2019); *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (distinguishing reviewable statutory claims from unreviewable discretion under 8 U.S.C. § 1226(e)).
19. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (same); *Soberanes v. Comfort*, 388 F.3d 1305, 1310

(10th Cir. 2004) (“Challenges to immigration detention are properly brought directly through habeas.”).

20. Although 8 U.S.C. § 1226(e) bars review of the Attorney General's discretionary judgments in releasing or detaining aliens, it does not preclude judicial review of questions of law or constitutional claims arising from immigration detention. Petitioner is not asking this Court to second-guess an immigration judge's discretionary bond determination; rather, he challenges the Department of Homeland Security's legal authority to subject him to mandatory detention in the first place, and the constitutionality of his prolonged detention without bond. Such claims are squarely within the scope of habeas review. Indeed, the Supreme Court and Tenth Circuit have long recognized that federal courts retain habeas jurisdiction to review the statutory and constitutional bases of immigration detention despite jurisdiction-stripping provisions, as such review is a core Great Writ function. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

21. No petition for a writ of habeas corpus has previously been filed in any court regarding Petitioner.

22. Venue is proper because Petitioner is detained at Adams County Correctional Center in Natchez, Adams County, Mississippi, which is within the jurisdiction of this District and Division. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States. *See* 28 U.S.C. §§ 1391(b) and (e)(1); *see also United States v. Scott*, 803 F.2d 1095, 1096 (10th Cir. 1986) (“A § 2241 petition for a writ of habeas corpus must be addressed to the federal district court in the district where the prisoner is confined.”).

PARTIES¹

23. Petitioner, José Nicacio Fuentes Araujo, is a citizen and national of Venezuela who is currently detained at the Adams County Correctional Center in Natchez, Mississippi. He is held in the custody of the United States Department of Homeland Security and brings this habeas petition to challenge the legality of his ongoing civil immigration detention.
24. Respondent **Kristi Noem** is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security ("DHS"). In this capacity, Respondent is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention and custody. Respondent is a legal custodian of Petitioner.
25. Respondent **Pamela Bondi** is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent is a legal custodian of Petitioner.
26. Respondent **Todd Lyons** is sued in his official capacity as the Acting Director of the U.S. Immigration and Customs Enforcement. Respondent is a legal custodian of Petitioner and has authority to release him.

¹ In *Rumsfeld v. Padilla*, the Supreme Court addressed the identity of the proper respondent to a § 2241 habeas petition filed by a U.S. citizen challenging his detention as an enemy combatant. 542 U.S. 426 (2004). The Court held that the only appropriate respondent for a traditional habeas corpus petition involving a "core challenge" to "present physical confinement" is the individual's "immediate custodian," meaning the person in charge of the facility where the individual is being held *Id.* at 435. In that case, the immediate custodian was the commanding officer in charge of the naval brig where the petitioner was physically held. *Id.* at 442. The Supreme Court also made it clear that it would not address who the proper respondent would be for a petition filed by a noncitizen "detained pending deportation." The Court noted a disagreement among different circuit courts regarding whether the Attorney General is a proper respondent to a habeas petition in such cases and stated, "Because the issue is not before us today, we again decline to resolve it" *Id.* at 435 n.8.

27. Respondent **Brian Acuna**, Field Office Director, Enforcement and Removal Operations, New Orleans Field Office, is sued in his official capacity. This official exercises supervisory responsibility over immigration functions relevant to Petitioner's detention and the processing of matters that affect his custody and immigration status.

28. Respondent **Rafael Vergara**, Warden of the Adams County Correctional Center, is Petitioner's immediate custodian. The Warden maintains direct physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement ("ICE") to detain noncitizens and is a legal custodian of Petitioner. Respondent is a legal custodian of Petitioner.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

29. Petitioner has no administrative remedies to exhaust.

30. Petitioner's request for custody redetermination was denied solely due to lack of jurisdiction by the Immigration Judge, based on DHS's classification of Petitioner as subject to mandatory detention under INA § 235(b).

31. As such, Petitioner's continued detention in ICE custody cannot be challenged by way of bond proceedings before the Immigration Judge, as the Immigration Court has expressly determined it has no authority to consider bond.

32. Therefore, a writ of habeas corpus is the sole avenue to vindicate Petitioner's constitutional, statutory, and regulatory rights and to restore his liberty.

LEGAL FRAMEWORK

33. The INA prescribes three basic forms of detention for noncitizens in removal proceedings. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard, non-expedited removal proceedings before an Immigration Judge. *See* 8 U.S.C. § 1226(a); 8 U.S.C. §

1229a. Individuals in section 1226(a) detention are entitled to a bond hearing at the outset of their detention, *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, *see* 8 U.S.C. § 1226(c).

34. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1), as well as for other arriving noncitizens seeking admission who are referred under 8 U.S.C. § 1225(b)(2).
35. Finally, the Act also provides for the detention of noncitizens who have previously been ordered removed, including those in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).
36. The detention provisions at section 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. Section 1226(c) was most recently amended earlier this year by the LRA, Pub. L. No. 119-1, 139 Stat. 3 (2025).
37. Following enactment of IIRIRA, the Executive Office for Immigration Review drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under section §1225 but were instead detained under section 1226(a). *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). In the decades that followed, most noncitizens who entered without inspection—unless they were subject to some other detention authority—received bond hearings. This practice was also consistent with pre-IIRIRA procedure, in which

noncitizens not deemed “arriving” were entitled to a custody hearing before an Immigration Judge 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 section 1226(a) simply “restates” the detention authority previously found at section 1252(a)).

38. On July 8, 2025, DHS issued a memo to all employees of Immigration and Customs Enforcement (“ICE”) stating that “[t]his message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA) [8 U.S.C. § 1225], rather than section 236 [8 U.S.C. § 1226], is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department’s legal interpretation while additional operational guidance is developed.” The memo further stated DHS’ new position with regard to custody determinations as follows:

An “applicant for admission” is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole. These aliens are also ineligible for a custody redetermination hearing (“bond hearing”) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that “arriving aliens” have historically been treated.

The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).

Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. *See* <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authorityfor-applications-for-admission> (last accessed August 4, 2025) (emphasis original).

39. As a result, DHS now considers all noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including longtime U.S. residents, are now considered to be subject to mandatory detention under section § 1225(b) and ineligible for release on bond. Conversely, according to DHS “[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)].” *Id.*
40. On September 5, 2025, the BIA issued a precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that, based on the plain language of 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to noncitizens who are present in the United States without admission.

COUNT I: UNLAWFUL DETENTION IN VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT (INA) AND IMPLEMENTING REGULATIONS.

41. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

42. The Immigration and Nationality Act authorizes immigration detention only when it serves a legitimate statutory purpose—namely, to ensure an individual’s appearance at future proceedings or to protect public safety. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Clark v. Martinez*, 543 U.S. 371, 381 (2005). Detention that does not advance those purposes, or that becomes arbitrary and indefinite, exceeds the government’s statutory authority.
43. Petitioner is a citizen and national of Venezuela who lawfully entered the United States under Humanitarian Parole and was subsequently placed in removal proceedings under section 240 of the Immigration and Nationality Act.
44. Petitioner has no criminal history, no record of violence, and has never exhibited conduct suggesting danger to the community or risk of flight. Nothing in his immigration file indicates that he poses a threat to public safety or that he would fail to appear for his hearings if released.
45. Petitioner has been detained continuously since his arrest by ICE on October 25, 2025, and is currently confined at the Adams County Correctional Center in Natchez, Mississippi.
46. On December 2, 2025, the Jena Immigration Court denied Petitioner’s request for bond solely on jurisdictional grounds, relying on *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), which held that individuals classified by DHS as being subject to section 235(b) of the INA are ineligible for bond, even when they have lawfully entered and have fully complied with immigration requirements.
47. The Immigration Judge did not consider any individualized custody factors and did not evaluate Petitioner’s lack of criminal history, his non-dangerousness, his cooperation with immigration authorities, or the feasibility of alternatives to detention.

48. The jurisdictional denial leaves Petitioner with no administrative mechanism for custody review, effectively subjecting him to prolonged and potentially indefinite detention without any statutory pathway to request release.
49. The INA does not authorize indefinite detention of a noncitizen who has no final order of removal, who poses no danger or flight risk, and who has not been afforded an opportunity to present evidence regarding custody.
50. Petitioner's continued detention—without individualized assessment, without statutory justification, and without any realistic prospect of removal in the reasonably foreseeable future—exceeds the narrow detention authority granted by the INA and violates controlling Supreme Court precedent limiting civil immigration detention to purposes expressly authorized by Congress.
51. Accordingly, Petitioner's ongoing detention is unlawful under the Immigration and Nationality Act, its implementing regulations, and established constitutional principles. Petitioner respectfully requests that this Court order his immediate release or, in the alternative, require the government to provide a constitutionally adequate custody hearing before an Immigration Judge with authority to order his release on bond.

COUNT II: VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH

AMENDMENT TO THE U.S. CONSTITUTION.

52. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.
53. The Fifth Amendment to the United States Constitution guarantees that no person shall be deprived of liberty without due process of law. Noncitizens physically present in the United States, including those who entered without inspection, are entitled to the protections of

procedural due process. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982).

54. Petitioner is a citizen and national of Venezuela who lawfully entered the United States under Humanitarian Parole seeking protection and was placed in removal proceedings under section 240 of the Immigration and Nationality Act.
55. Petitioner has no criminal history, has not engaged in violent or dangerous behavior, and has consistently cooperated with immigration authorities since his arrest.
56. Petitioner has been detained continuously since being taken into ICE custody on October 25, 2025, and is currently confined at the Adams County Correctional Center in Natchez, Mississippi.
57. On December 2, 2025, Petitioner sought a bond redetermination before the Jena Immigration Court. He provided evidence demonstrating his lack of danger, his willingness to comply with immigration proceedings, and his eligibility for release.
58. The Immigration Judge denied bond solely on jurisdictional grounds, relying on *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), and concluding that he lacked authority to conduct any individualized custody assessment.
59. As a result, Petitioner has been categorically barred from receiving a hearing before a neutral adjudicator to determine whether his detention is justified. He has been denied the opportunity to present evidence, contest the government's assertions, or obtain a meaningful review of his custody.
60. Petitioner's detention has now become prolonged, with no statutory or administrative mechanism available for individualized custody review. He faces ongoing incarceration

under penal-like conditions despite having no criminal background and pursuing his asylum and protection claims in good faith.

61. Immigration detention implicates a fundamental liberty interest. Prolonged detention without a meaningful opportunity to challenge confinement violates the core due process guarantees of notice, the right to be heard, and adjudication by a neutral decisionmaker.
62. The government's reliance on a categorical jurisdictional bar to deny Petitioner any opportunity for individualized review contravenes these constitutional protections and results in arbitrary, unjustified, and indefinite detention.
63. Accordingly, Petitioner's continued incarceration without an individualized custody determination violates the Due Process Clause of the Fifth Amendment. Habeas relief is warranted to remedy these constitutional violations by ordering his immediate release or, in the alternative, requiring a prompt and constitutionally adequate bond hearing before a neutral adjudicator with authority to grant release.

COUNT III: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT –

ARBITRARY AND CAPRICIOUS AGENCY ACTION.

64. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.
65. The Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2), requires courts to hold unlawful and set aside agency actions that are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Under this standard, an agency must articulate a rational connection between the facts found and the choices made, and provide an adequate explanation for its actions, consistent with statutory authority. *See Judulang v. Holder*, 565 U.S. 42, 55 (2011).

66. The Department of Homeland Security has acted arbitrarily and capriciously in continuing to detain Petitioner without any individualized justification. Petitioner has no criminal history, no record of violence or misconduct, and has consistently cooperated with immigration authorities. Nothing in his record establishes that he presents a danger to the community or a flight risk.
67. Despite these facts, DHS has maintained Petitioner's detention for an extended and potentially indefinite period without providing any reasoned explanation or evidence that continued confinement serves a legitimate statutory purpose. DHS has failed to articulate why release under supervision, bond, or other alternatives would be insufficient.
68. DHS's reliance on *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), to justify continued detention is arbitrary and contrary to law. *Q. Li* addresses the jurisdiction of Immigration Judges to conduct bond hearings for individuals allegedly apprehended shortly after entry. It does not compel DHS to detain such individuals indefinitely, nor does it eliminate DHS's longstanding discretionary authority to release noncitizens on parole, recognizance, supervision, or bond.
69. By treating *Q. Li* as an absolute bar to any form of custody review or discretionary release, DHS has effectively adopted a blanket detention policy that substitutes categorical rules for the individualized determinations required under the Immigration and Nationality Act.
70. DHS has not conducted any meaningful custody assessment of Petitioner, nor has it provided a rational explanation for refusing to exercise discretion in his case. Its failure to consider Petitioner's lack of criminal history, his cooperation with authorities, his pursuit of asylum and protection, or his eligibility for alternatives to detention constitutes arbitrary and capricious decision-making.

71. DHS's actions are inconsistent with the statutory purpose of civil immigration detention, which is limited to ensuring appearance at future proceedings and protecting public safety.

Petitioner's continued confinement does not advance either purpose

72. DHS has therefore acted in a manner that is arbitrary, capricious, an abuse of discretion, and not in accordance with law. Its continued detention of Petitioner must be set aside under 5 U.S.C. § 706(2)(A).

73. Habeas relief is warranted to remedy this unlawful agency conduct. Petitioner respectfully requests that this Court order his immediate release or, in the alternative, direct DHS to provide a constitutionally adequate and reasoned custody determination consistent with the requirements of the Administrative Procedure Act and the Immigration and Nationality Act.

COUNT IV: VIOLATION OF THE EQUAL PROTECTION GUARANTEE OF THE

FIFTH AMENDMENT.

74. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

75. The Due Process Clause of the Fifth Amendment contains an implicit guarantee of equal protection that applies to all persons within the United States, including noncitizens physically present, regardless of their immigration status. *See Reno v. Flores*, 507 U.S. 292, 302 (1993); *Plyler v. Doe*, 457 U.S. 202, 210 (1982). The government may not selectively apply immigration laws or policies in a manner that discriminates against a particular nationality or class of individuals without a rational and legitimate governmental purpose.

76. Petitioner is placed in removal proceedings under section 240 of the Immigration and Nationality Act, a statutory framework under which noncitizens ordinarily receive an

individualized custody determination before an Immigration Judge pursuant to section 236(a).

77. Petitioner is a citizen and national of Venezuela who fled his country seeking protection.

He has no criminal history, no record of violence or dangerous behavior, and has cooperated fully with immigration authorities since entering ICE custody.

78. Despite being similarly situated to other § 240 respondents, Petitioner has been categorically denied access to any bond hearing based solely on DHS's assertion—drawn from disputed factual allegations—that he is subject to mandatory detention under section 235(b) because DHS terminated his lawful parole.

79. On December 2, 2025, the Immigration Judge denied jurisdiction to consider bond, relying exclusively on *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025). As applied, this decision deprived Petitioner of a procedural safeguard routinely afforded to other noncitizens in identical § 240 proceedings.

80. The government's treatment of Petitioner creates an unjustifiable disparity between him and similarly situated detainees who receive individualized bond hearings. The Fifth Amendment prohibits the government from treating similarly situated persons differently without a rational basis. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000); *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

81. DHS's categorical reliance on section 235(b) to foreclose Petitioner's access to custody review—despite his placement in § 240 proceedings and his lawful parole entry—lacks a rational connection to any legitimate governmental purpose. Disparate treatment based solely on disputed and unreviewed facts regarding custody classification is arbitrary and

not rationally related to the goals of ensuring appearance or protecting public safety. *See Zadvydas*, 533 U.S. at 690 (civil detention must relate to its permissible purposes).

82. Federal courts have recognized that immigration detention classifications must comport with basic fairness and may not be applied in an arbitrary or discriminatory manner. See, e.g., *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011) (government must justify detention with individualized evidence); *Rodriguez v. Robbins*, 804 F.3d 1060, 1074–76 (9th Cir. 2015) (due process prohibits prolonged detention without meaningful review).

83. DHS has provided no individualized or rational explanation for why Petitioner, unlike others in the same statutory posture, is denied access to an individualized custody determination. This unequal treatment violates the equal protection component of the Fifth Amendment.

84. Petitioner's continued incarceration under a discriminatory and arbitrary detention classification violates constitutional guarantees of equal protection and further underscores the unreasonableness and unlawfulness of his confinement.

85. Habeas relief is therefore warranted to remedy this unconstitutional disparate treatment by ordering Petitioner's immediate release or, in the alternative, directing DHS to provide him with the same procedural protections and individualized custody review available to similarly situated noncitizens.

COUNT V: VIOLATION OF THE SUSPENSION CLAUSE OF THE UNITED STATES

CONSTITUTION.

86. Petitioner re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

87. The Suspension Clause of the United States Constitution provides 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.” U.S. Const. art. I, § 9, cl. 2. The Clause guarantees the availability of judicial review to challenge the lawfulness of executive detention. *Boumediene v. Bush*, 553 U.S. 723, 745–46 (2008); *INS v. St. Cyr*, 533 U.S. 289, 300–05 (2001).
88. Habeas corpus remains available to all persons in the United States who are detained by executive authority, including noncitizens in civil immigration custody. The Supreme Court has made clear that Congress may not eliminate all avenues of meaningful judicial review of the legality of detention. *St. Cyr*, 533 U.S. at 305–06.
89. Petitioner is detained solely pursuant to civil immigration authority. He has no criminal history, no record of violence, and is pursuing his asylum, withholding, and Convention Against Torture claims in good faith.
90. The Immigration Judge has categorically denied jurisdiction to consider bond or any individualized custody determination, relying on *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025). This classification—based on disputed factual assertions regarding Petitioner’s custody status—forecloses access to the custody review mechanism traditionally available to noncitizens in § 240 proceedings.
91. Because the Immigration Judge concluded that he lacked jurisdiction, Petitioner has no administrative pathway to challenge the legality, length, or necessity of his detention. ICE has likewise provided no discretionary parole review or case-specific custody assessment.
92. As a result, no alternative remedy exists outside of habeas corpus through which Petitioner may obtain judicial review of the legality of his ongoing confinement. Neither the

Immigration Courts nor the Board of Immigration Appeals possess jurisdiction to review custody challenges arising from DHS's mandatory-detention classification.

93. The Suspension Clause forbids the government from creating a detention scheme that eliminates all meaningful opportunity for detainees to test the legality of their confinement. *Boumediene*, 553 U.S. at 779 (“The writ must be effective.”). Where no adequate substitute exists, habeas review is constitutionally required. *St. Cyr*, 533 U.S. at 305.
94. Petitioner's detention, which is prolonged, indefinite, and wholly insulated from individualized review, triggers the core protections of the Suspension Clause. Without access to habeas relief, Petitioner would have no mechanism—judicial or administrative—to contest the legality of his civil confinement.
95. The government's application of *Matter of Q. Li* to categorically bar all custody review, therefore, violates the Suspension Clause by depriving Petitioner of an effective and constitutionally required means to challenge unlawful detention.
96. Accordingly, habeas corpus relief is required. Petitioner respectfully requests that this Court order his immediate release or, in the alternative, direct Respondents to provide him with a prompt, meaningful, and individualized custody hearing before a neutral adjudicator with authority to grant release.

COUNT VI: VIOLATION OF THE ACCARDI DOCTRINE WITH RESPECT TO 8

C.F.R. § 287.8(C)(2)(I) AND (II)

97. Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.
98. The United States has also failed to follow immigration-specific arrest and processing regulations. Regulations governing immigration enforcement require that warrantless

arrests conform to the standards in 8 C.F.R. § 287.8(c). Specifically, for any arrest, immigration officers must have reason to believe that an individual committed an offense against the United States or was present illegally. 8 C.F.R. § 287.8(c)(2)(i). And, for a warrantless arrest, officers must also have reason to believe that an individual is “likely to escape before a warrant can be obtained.” 8 C.F.R. § 287.8(c)(2)(ii).

99. At the time of his arrest and at all times since, Petitioner had a lawful parole status, a timely-filed Form I-589 pending with USCIS, he did not flee from immigration authorities, and he posed no danger to any person or to the community at large. Therefore, Petitioner’s warrantless arrest and continued civil detention contravene the regulations governing immigration arrests, in violation of the Accardi doctrine, which requires DHS to follow its own binding rules and procedures.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Pursuant to 28 U.S.C. § 2243, issue an order to show cause directing Respondents to file a return within three (3) days, absent good cause for a short extension not exceeding ten days, and set the matter for a prompt hearing;
- (3) Enjoin Respondents from transferring Petitioner during the pendency of the instant action;
- (4) Declare that Petitioner’s continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1226(a); the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

(5) Grant the writ of habeas corpus and order Petitioner's immediate release from ICE custody;

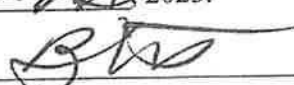
(6) In the alternative, order a constitutionally adequate bond hearing at which DHS bears the burden of proving that Petitioner is a danger to the community or risk of flight, or that no less-restrictive alternative to detention would suffice;

(7) Award Petitioner his costs and reasonable attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and

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

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted this the 12th day of December 2025.



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