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

ELVIN CAMPOS MUNOZ,  
A  Petitioner,  
  
v.  
  
ERIC ROKOSKY, in his official capacity as  
Warden of the Elizabeth Detention Center;  
RUBEN PEREZ, in his official capacity as  
Acting Field Office Director of the  
Immigration and Customs Enforcement,  
Enforcement and Removal Operations  
Newark Field Office; TODD LYONS, in his  
official capacity as the Acting Director of U.S.  
Immigration and Customs Enforcement; and  
KRISTI NOEM, in her official capacity as  
Secretary of the Department of Homeland  
Security,  
  
Respondents.

Case No.

**VERIFIED PETITION  
FOR WRIT OF  
HABEAS CORPUS**

**PETITION FOR WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2241**

Petitioner Elvin Campos Munoz (“Petitioner” or “Mr. Campos Munoz”) respectfully petitions this Honorable Court for a writ of habeas corpus to remedy his unlawful detention by Respondents, as follows:

### **INTRODUCTION**

1. Mr. Campos Munoz is a 45-year-old noncitizen from Costa Rica who is in the custody of the United States Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”), and is currently detained at the Elizabeth Detention Center (“EDC”). Prior to his detention, Mr. Campos Munoz lived in New Jersey. He initially entered the United States without inspection in 1998, and has lived here ever since. Respondents detained him and placed him in removal proceedings on November 13, 2025.

2. Mr. Campos Munoz is detained without access to a hearing conducted by a neutral decisionmaker—a federal judge or an immigration judge—to determine whether his detention is warranted based on danger or flight risk, pursuant to the Board of Immigration Appeals’ (BIA) recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *Matter of Yajure Hurtado* holds that 8 U.S.C. § 1225(b)(2) makes noncitizens like Petitioner, who are apprehended in the United States but have never been admitted, subject to mandatory detention without a bond hearing

3. This interpretation is incorrect. Instead, 8 U.S.C. § 1226(a) applies and authorizes release on bond after a hearing before an immigration judge. As scores of federal district courts have held, the BIA's interpretation conflicts with the plain language and structure of the statute, as well as the greater statutory scheme, the legislative history of the relevant provisions, and decades of consistent agency practice. Therefore, the application of § 1225(b)(2) to Petitioner is contrary to law.

4. Additionally, Mr. Campos Munoz's detention without access to a bond hearing or any process whatsoever violates procedural due process. Application of the *Mathews v. Eldridge* balancing test establishes that if he is to remain detained, a bond hearing is necessary to protect Petitioner from an unnecessary deprivation of liberty. *See* 424 U.S. 319, 335 (1976). Therefore, Mr. Campos Munoz's detention violates the statute and due process.

5. Mr. Campos Munoz respectfully requests that this Court issue a writ of habeas corpus and order his immediate release from custody. In the alternative, he requests that this Court conduct a bond hearing, or alternatively an order an immigration judge to do so, at which (1) the government bears the burden of proving flight risk and/or dangerousness by clear and convincing evidence and (2) the reviewing court considers alternatives to detention that could mitigate risk of flight. *See German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 213-214 (3d

Cir. 2020). Petitioner also requests an immediate order barring his transfer outside of this district during the pendency of this action.

### **PARTIES**

6. Petitioner Elvin Campos Munoz is a noncitizen currently detained by Respondents at the Elizabeth Detention Center.

7. Respondent Eric Rokosky is the Warden of Elizabeth Detention Center (EDC). He is an employee of CoreCivic, the private company that contracts with ICE to run EDC. In his capacity as Warden, he oversees the administration and management of EDC. Accordingly, Mr. Rokosky is the immediate custodian of Petitioner. He is sued in his official capacity.

8. Respondent Ruben Perez is named in his official capacity as the Acting Newark Field Office Director for ICE. In this capacity, Respondent Perez is responsible for administration and management of ICE Enforcement Removal Operations in New Jersey and exercises control over Petitioner's custody at EDC. Respondent Perez's office is located at 970 Broad Street, 11th Floor, Newark, New Jersey 07102.

9. Respondent Todd Lyons is named in his official capacity as the Acting Director of ICE. In this capacity, Respondent Lyons is responsible for the administration of federal immigration law and the execution of detention and removal determinations, and, as such, he is a legal custodian of Petitioner.

Respondent Lyons's office is located at 500 12th Street, S.W., Washington, D.C. 20536.

10. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security (DHS). DHS oversees ICE, which is responsible for administering and enforcing the immigration laws. Secretary Noem is the ultimate legal custodian of Petitioner. She is sued in her official capacity. Respondent Noem's office is located at U.S. Department of Homeland Security, Washington, D.C. 20528.

### **JURISDICTION AND VENUE**

11. This action arises under the Fifth Amendment to the U.S. Constitution and the Immigration and Nationality Act ("INA").

12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the United States Constitution, 28 U.S.C. § 1331, and 28 U.S.C. § 1361. 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.

13. The United States has waived sovereign immunity for this action for declaratory and injunctive relief against one of its agencies and that agency's officers are sued in their official capacities. *See* 5 U.S.C. § 702.

14. Venue is proper in this District because the Petitioner is detained in this district. 28 U.S.C. § 1391; *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004).

#### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

15. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. *Arango Marquez v. I.N.S.*, 346 F.3d 892, 897 (9th Cir. 2003). Any requirement of administrative exhaustion is therefore purely discretionary. *See Santos v. Lowe*, No. 1:18-cv-1553, 2020 WL 4530728, at \*2 (M.D. Pa. Aug. 2020) (“[T]he exhaustion requirement imposed by courts relating to habeas corpus petitions filed by immigration detainees is a prudential benchmark which is not compelled by statute.”).

16. Prudential exhaustion is not warranted here, given the need for immediate judicial review. “Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent.” *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).

17. Moreover, the exhaustion “doctrine is not without exception.” *Ashley v. Ridge*, 288 F. Supp. 2d 662, 666. (D.N.J. 2003). “Courts have found that the exhaustion of administrative remedies may not be required when available remedies

provide no opportunity for adequate relief, an administrative appeal would be futile, or if plaintiff has raised a substantial constitutional question.” *Id.* at 666-67.

18. The BIA has issued a published decision holding that people like Mr. Munoz Campos who entered the United States without inspection are ineligible for bond pursuant to 8 U.S.C. § 1225(b)(2)(A). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Immigration judges and the BIA are bound by this decision. 8 C.F.R. § 1003.1(g)(1). Exhaustion before the agency would therefore be futile.

19. Further, neither Immigration Judge (IJ) nor the BIA have jurisdiction to adjudicate constitutional issues. *Qatanani v. Att’y Gen. of the U.S.*, 144 F.4th 485, 500 (3d Cir. 2025); *see also Ashley*, 288 F. Supp. 2d at 667. Therefore, administrative proceedings would be futile as petitioner raises due process claims. *Qatanani*, 144 F.4th at 500; *see also Contreras Maldonado v. Cabezas*, No. 25-13004, 2025 WL 2985256, at \*6 (D.N.J. Oct. 23, 2025) (waiving exhaustion where BIA could not provide petitioner with relief on due process claim where there was “no doubt that [she] was not afforded an individualized assessment before she was detained”).

### **STATEMENT OF FACTS**

20. Petitioner Elvin Campos Munoz is a native and citizen of Costa Rica who has lived in the United States since November 9, 1998. Exh. C (Application for Cancellation of Removal).

21. Mr. Campos Munoz was arrested by ICE on November 13, 2025 and transferred to the Elizabeth Detention Center. Exh. B (I-213). Mr. Campos Munoz was detained upon release from the Essex County Correctional Facility (ECCF) after he had been arrested for violating a restraining order. *Id.* That charge was remanded to family court. *Id.* Mr. Campos Munoz's only other criminal charge is an arrest for simple assault in 2016 that was dismissed.<sup>1</sup> *Id.*

22. Mr. Campos Munoz issued a Notice to Appear and placed in removal proceedings before the Elizabeth Immigration Court. Exh. A (Notice to Appear). On December 15, 2025, he filed an application for cancellation of removal for non-permanent residents, pursuant to 8 U.S.C. 1229b(b)(1), based on hardship to his U.S. citizen wife and severely disabled U.S. citizen daughter, who uses a wheelchair. Exh. C. He is currently awaiting a final hearing on that application.

### **LEGAL FRAMEWORK**

#### **I. Section 1226(a) Governs the Detention of People Like Petitioner Who Are Detained in the United States and Have Not Previously Been Admitted**

23. The Immigration and Nationality Act contains several provisions authorizing detention of noncitizens. Section 1226(a) entitles most noncitizens with

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<sup>1</sup> Petitioner does not have a conviction for an offense enumerated in 8 U.S.C. § 1182(a)(2) or § 1182(a)(3)(B), and therefore is not subject to mandatory detention under 8 U.S.C. § 1226(c). Should the Department of Homeland Security argue that Petitioner is subject to mandatory detention under § 1226(c), he would be entitled to a hearing on that issue (a *Joseph* hearing). *See Matter of Joseph*, 22 I. & N. Dec. 799, 800 (B.I.A. 1999).

pending removal proceedings to a hearing before an Immigration Judge to determine whether they should be released on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d). Section 1226(c) creates an exception to § 1226(a) and provides that noncitizens who are removable by virtue of certain criminal convictions must be detained without a bond hearing. Section 1225(b) 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” under (b)(2). Finally, section 1231 governs the detention of noncitizens with a final order of removal.

24. As explained later in this discussion, §1226(a)’s authorization of bond hearings applies to those already present in the United States without having been admitted or paroled, like the Petitioner. By contrast, the mandatory detention provision in § 1225(b) applies to those arriving at U.S. ports of entry or who otherwise very recently entered the United States.

25. 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. “Upon passing IIRIRA, Congress declared that the new Section 1226(a) ‘restates the current provisions in the predecessor statute,’” which allowed noncitizens who entered without inspection to be released on bond.

*Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (citing H.R. Rep. No. 104-469, pt. 1, at 229; H.R. Rep. No. 104-828, at 210).

26. Following the enactment of the IIRIRA, the Executive Office for Immigration Review (“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 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.”).

27. Thus, in the decades that followed, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an immigration judge, unless their criminal history rendered them ineligible. *Diaz Martinez v. Hyde*, 792 F. Supp. 3d 211, 217 (D. Mass. 2025).

28. In recent months, DHS and the BIA have abruptly changed course. On July 8, 2025, ICE Director Todd M. Lyons issued an internal memorandum stating that, “in coordination with the Department of Justice (DOJ),” DHS had “revisited” its legal position and believed that § 1225, not § 1226, governs the detention of

noncitizens who are present in the United States without having been admitted. *Diaz Martinez*, 792 F. Supp. 3d at 218.

29. On September 5, 2025, the BIA followed suit and issued a precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA held that noncitizens “who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” 29 I&N Dec. at 220.

30. Numerous recent federal court decisions have rejected the new position of DHS and the BIA and held that people who are present without having been admitted are generally eligible for bond pursuant to § 1226. *See, e.g., Ayala Amaya v. Bondi*, No. 25-cv-16428, 2025 WL 3033880, at \*2 (D.N.J. Oct. 30, 2025) (collecting cases); *see also Can Topuz v. Soto*, No. 25-17593, 2025 WL 3640953 (D.N.J. Dec. 16, 2025); *Garcia-Zamora v. Jamison*, No. 25-6656, 2025 WL 3642088 (E.D. Pa. Dec. 16, 2025); *Calzado Diaz v. Noem*, No. 25-458, 2025 WL 3628480 (W.D. Pa. Dec. 15, 2025); *Tinoco Pineda v. Noem*, No. 25-1518, 2025 WL 3471418, at \*6 (W.D. Tex. Dec. 2, 2025); *Contreras Maldonado*, 2025 WL 2985256; *Patel v. Almodovar*, No. 25-15345, 2025 WL 3012323 (D.N.J. Oct. 28, 2025); *Bethancourt Soto v. Soto*, No. 25-16200, 2025 WL 2976572, -- F. Supp. 3d -- (D.N.J. Oct. 22, 2025); *Perez v. Berg*, No. 8:25-cv-494, 2025 WL 2531566, -- F. Supp. 3d -- (D. Neb.

Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379, -- F. Supp. 3d -- (E.D. Mich. Aug. 20, 2025); *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1152 (D. Minn. 2025); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 491 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, No. 25-2157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Diaz Martinez*, 792 F. Supp. 3d at 222; *Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299, -- F. Supp. 3d -- (D. Mass. July 7, 2025); *Rodriguez*, 779 F. Supp. 3d at 1257.

31. As these decisions explain, the BIA's position in *Matter of Yajure Hurtado* defies the INA. The plain text of the statute shows that Congress viewed § 1226(a) as the default bond provision for people arrested within the United States, including those who entered without being admitted or paroled. Therefore, § 1226(a), not § 1225(b), applies to people like Petitioner.

32. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (describing § 1226(a) as the "default rule" for people detained pending removal). These removal hearings are held pursuant § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

33. The text of § 1226 explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c) (creating an exception to § 1226(a) for people who are subject to certain

grounds of inadmissibility). Just this year, Congress amended Section 1226 in the Laken Riley Act by adopting a new subparagraph (c)(1)(E) to exclude certain noncitizens who entered without inspection from § 1226(a)'s default bond provision. Subparagraph (E)'s reference to persons inadmissible under § 1182(a)(6)(A), i.e., persons inadmissible for entering without inspection, makes clear that, by default, people are afforded a bond hearing under subsection (a). *Lopez-Campos v. Raycraft*, 2025 WL 2496379, at \*8 (“If Congress had intended for Section 1225 to govern all noncitizens present in the country, who had not been admitted, then it would not have recently adopted an amendment to Section 1226 that prescribes a subset of noncitizens be exempt from the discretionary bond framework.”). As one court explained, “[w]hen Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the statute generally applies. *Rodriguez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

34. Under the BIA’s interpretation in *Yajure Hurtado*, all noncitizens subject to inadmissibility grounds are detained under 8 U.S.C. § 1225(b) without the opportunity for a bond hearing. *Matter of Yajure Hurtado*, 29 I&N Dec. at 220; see 8 U.S.C. § 1182(a)(6) (making people who are present without having been admitted inadmissible); 8 U.S.C. § 1101(a)(14) (defining an admission). This broad interpretation would render the grounds of mandatory detention in § 1226(c)

superfluous, because all those people would already be subject to mandatory detention under § 1225(b). *Gomes*, 2025 WL 1869299, at \*7; *Rodriguez*, 779 F. Supp. 3d at 1258 (explaining that mandatory detention for inadmissible noncitizens under new subsection (c)(1)(E) “who are implicated in an enumerated crime, including those ‘present in the United States without being admitted or paroled,’ would be meaningless since ‘all noncitizens who have not been admitted’ would already be governed by 1225's mandatory detention authority.”); see *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2103) (“[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.”). “If § 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless.” *Maldonado*, 795 F. Supp. 3d at 1152.

35. By contrast, § 1225(b) is limited to people arriving at U.S. ports of entry or who very 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); see also *Diaz Martinez*, 792 F. Supp. 3d at 222 (“[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.”) (quoting *Leng*

*May Ma v. Barber*, 357 U.S. 185, 187 (1958))). 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.

36. The BIA’s interpretation “would render the phrase ‘seeking admission’ in 8 U.S.C. § 1225(b)(2)(A) mere surplusage.” *Lopez Benitez*, 795 F. Supp. 3d at 487. The BIA’s new interpretation makes all applicants for admission subject to mandatory detention, leaving the “seeking admission” clause unnecessary and violating the rule against surplusage. *Tinoco Pineda*, 2025 WL 3471418, at \*5; *Lopez Benitez*, 795 F. Supp. 3d at 488; *Diaz Martinez*, 792 F.3d at 218.

37. Instead, the phrase “seeking admission” indicates that § 1225(b)(2)(A) applies to people who are taking “some sort of present-tense action,” in other words, coming or attempting to come into the United States. *Diaz Martinez*, 792 F. Supp. 3d at 218; *see also Matter of M-C-D-V-*, 28 I&N Dec. 18, 23 (BIA 2020) (stating that “the use of the present progressive tense . . . denotes an ongoing process”). Therefore, § 1226(a), not § 1225(b)(2)(A), governs the detention of people who are already “within the United States after an entry,” *Diaz Martinez*, 792 F. Supp. 3d at 218, and therefore are not actively seeking admission.

38. Applying § 1226(a), rather than § 1225(b), to people detained in the interior who had previously entered without inspection is consistent with the

government's longstanding practice, which "can inform a court's determination of what the law is." *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024). This longstanding practice further counsels against the BIA's abrupt change in policy. *Maldonado*, 795 F. Supp. 3d at 1150.

39. Finally, as discussed below, the BIA's interpretation of § 1225(b)(2)(A) to mandate detention without a bond hearing for all noncitizens present in the United States without having been admitted presents serious constitutional concerns. Therefore, to the degree that the statute remains ambiguous, the Court should presume that Congress "did not intend the alternative which raises serious constitutional doubts" and reject that construction. *Clark v. Martinez*, 543 U.S. 371, 381-82 (2005). Therefore, § 1226(a), which permits bond hearings, not § 1225(b)(2)(A), which does not, governs the detention of people like Petitioner.

## **II. The BIA's Detention of Petitioner Without Access to a Bond Hearing Violated Procedural Due Process**

40. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "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). This fundamental due process protection applies to all noncitizens within the United States, including both

deportable and inadmissible noncitizens. *See id.* at 693; *Plyler v. Doe*, 457 U.S. 202, 212 (1982).

41. Procedural due process protects noncitizens against deprivation of liberty without adequate notice and the opportunity to be heard. *A.A.R.P. v. Trump*, 605 U.S. 91, 95-96(2025); *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). In determining the necessary procedural protections under the Fifth Amendment, courts apply the three-part balancing test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), weighing (1) “the private interest that will be affected by the official action;” (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;” and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Black v. Decker*, 103 F.4th 133, 147-48 (2d Cir. 2024); *Gayle v. Warden Monmouth Cty. Corr. Facility*, 12 F. 4th 321, 331 (3d Cir. 2021); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 28 (1st Cir. 2021); *Velasco Lopez*, 978 F.3d at 851 (all quoting *Mathews*, 424 U.S. at 335); *see also Zumba*, 2025 WL 2753496 at \*10 (applying *Mathews* in case raising similar claims). Here, ICE’s detention of Mr. Campos Munoz under § 1225(b)(2) without any access to a bond hearing violates due process.

42. First, the “importance and fundamental nature” of an individual’s liberty interest is well-established. *United States v. Salerno*, 481 U.S. 739, 750 (1987); *see also Ashley*, 288 F. Supp. at 670 (“[F]reedom from confinement is a liberty interest of the highest constitutional import.”). Where noncitizens have been deprived of their liberty by official government action placing them in immigration detention, this factor “weighs heavily” in a petitioner’s favor. *Bethancourt Soto*, 2025 WL 2976572, at \*8; *accord Zumba*, 2025 WL 2753496, at \*10.

43. Weighing this factor in *Velasco Lopez*, the Second Circuit found the private interest to be “on any calculus, substantial,” observing that the petitioner, “could not maintain employment or see his family or friends or others outside normal visiting hours. The use of a cell phone was prohibited, and he had no access to the internet or email and limited access to the telephone.” 978 F.3d at 851-52. Similarly, the First Circuit found a substantial private liberty interest for the petitioner in *Hernandez-Lara*, noting that the petitioner there was incarcerated “alongside criminal inmates” at a jail where “she was separated from her fiancé and unable to maintain her employment.” 10 F.4th at 28.

44. Second, absent an individualized hearing, Mr. Campos Munoz will be detained despite not being a danger to the community or a flight risk, because there is no mechanism to determine whether his detention is necessary. *See, e.g., Bethancourt Soto*, 2025 WL 2976572, at \*8 (the second Mathews factor weighed in

petitioner's favor where he was "*erroneously* detained under the mandatory detention provisions of § 1225, without an opportunity for a bond hearing" and where there was no suggestion that he presented any risk of flight or danger); *Günaydin v. Trump*, No. 25-cv-1151, 2025 WL 1459154, -- F. Supp. 3d --, at \*8 (D. Minn. May 21, 2025) (noting that lack of consideration of "individualized or particularized facts . . . increases the potential for erroneous deprivation of individuals' private rights"); *Ashley*, 28 F. Supp. 2d at 670 (finding a procedural due process violation because "the Government has not proved that Petitioner presents an identified and articulable threat to an individual or the community so as to justify his continued detention"). A bond hearing would have significant value because it is designed to assess the individualized facts of each case and determine whether less restrictive measures can fulfill the same goals.

45. Finally, the burden on the government of holding a bond hearing for Mr. Campos Munoz does not outweigh the liberty interest at stake. To the contrary, the government has an interest in "minimizing the enormous impact of incarceration in cases where it serves no purpose." *Velasco Lopez*, 978 F.3d at 854; *see also Hernandez-Lara*, 10 F.4th at 33 (noting that "limiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention"). Additionally, "unnecessary detention imposes substantial societal costs. . . . The

needless detention of those individuals thus separates families and removes from the community breadwinners, caregivers, parents, siblings and employees. Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents.” *Hernandez-Lara*, 10 F.4th at 33 (citation and internal quotation marks omitted). Thus, Mr. Campos Munoz’s detention without access to a bond hearing or any process whatsoever violates due process.

### **III. To Remedy the Statutory and Constitutional Violations at Issue Here, Courts Can Order Release or, Alternatively, Conduct Bond Hearings Themselves**

46. Numerous courts have held that where Respondents fail to invoke § 1226(a) the Court has “no reason to consider § 1226 as a basis for Petitioner’s current detention” and as such there is no justification for detention by DHS. *Tinoco Pineda*, 2025 WL 3471418, at \*6; *see also, e.g., Guaman Lliguicota v. Cabezas*, No. 25-17216, 2025 WL 3496300, at \*2 (D.N.J. Dec. 5, 2025); *Aguilar v. Bondi*, No. 25-1453, 2025 WL 3471417, at \*6 (W.D. Tex. Nov. 26, 2025); *Bethancourt Soto*, 2025 WL 2976572, at \*9; *Alejandro v. Olson*, No. 25-2027, 2025 WL 2896348, at \*9 (S.D. Ind. Oct. 11, 2025); *Martinez v. Hyde*, 792 F. Supp. 3d at 223 n. 23. Recognizing that “[h]abeas has traditionally been a means to secure *release* from unlawful detention,” “courts across the country have ordered the release of individuals stemming from ICE’s illegal detention.” *Patel v. Tindall*, No. 3:25-cv-373, 2025 WL 2823607, at \*6 (W.D. Ky. Oct. 3, 2025); *see also, e.g., Garcia-*

*Zamora*, 2025 WL 3642088, at \*4 (ordering release); *Galdamez Martinez v. Noem*, No. 25-cv-1373, 2025 WL 3471575, at \*7 (W.D. Tex. Nov. 26, 2025) (same); *Morocho v. Jamison*, No. 25-5930, 2025 WL 3296300, at \*3 (E.D. Pa. Nov. 26, 2025) (same); *Cuy Comes v. DeLeon*, 25-9283, 2025 WL 3206491, at \*6 (S.D.N.Y. Nov. 14, 2025) (same); *Lepe v. Andrews*, No. 25-1163, 2025 WL 2716910, at \*10 (E.D. Cal. Sept. 23, 2025) (same).

47. Alternatively, if the Court orders a bond hearing, due process requires that the Government bear the burden of proof by clear and convincing evidence. *See Gayle*, 12 F.4th at 332 (“[W]hen such a severe deprivation is at issue, the Government must bear the burden of proof.”). “A standard of proof serves to allocate the risk of error between the litigants and reflects the relative importance attached to the ultimate decision. . . . When the Government seeks to take more than just money from a party, we typically hold the Government to a standard of proof higher than preponderance of the evidence.” *German Santos*, 965 F.3d at 213 (citing *Addington v. Texas*, 441 U.S. 418, 423 (1979)). Therefore, when the Third Circuit has ordered a constitutionally-required bond hearing to remedy a due process violation, it has placed the burden on the government by clear and convincing evidence. *Id.* at 214; *Guerrero-Sanchez v. Warden York Cty. Prison*, 905 F.3d 208, 224 & n.12 (3d Cir. 2018), *abrogated on other grounds by Johnson v. Arteaga-Martinez*, 596 U.S. 572 (2022).

48. Similarly, courts around the country have agreed that when a noncitizen is unlawfully detained under § 1225(b)(2) due process requires a bond hearing at which the government bears the burden by clear and convincing evidence. *Quinteros Moran v. Joyce*, 2025 WL 3632895, at \*4 (S.D.N.Y. Dec. 15, 2025); *Servin Espinoza v. Noem*, No. 25-618, 2025 WL 3543646, at \*5 (W.D. Tex. Dec. 10, 2025); *Escobar-Arauz v. Noem*, No. 25-619, 2025 WL 354648, at \*4 (W.D. Tex. Dec. 10, 2025); *Salazar v. Dedos*, No. 1:25-cv-835, 2025 WL 2676729, at \*9 (D.N.M. Sept. 17, 2025). Other courts have held that due process requires the government to bear the burden in all § 1226(a) bond hearings. *Hernandez-Lara*, 10 F.4th at 39; *Alvarez Ortiz v. Freden*, No. 25-cv-960, 2025 WL 3085032, --F. Supp. 3d --, at \*12 (W.D.N.Y. Nov. 4, 2025); *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1186 (D. Colo. 2024); *J.G. v. Warden, Irwin C'ty Detention Center*, 501 F. Supp. 3d 1331, 1341-42 (M.D. Ga. 2020).

49. Finally, this Court has the power to hold the bond hearing itself as a “legal and logical concomitant” of its habeas jurisdiction. *Leslie v. Holder*, 865 F. Supp. 2d 627, 634-35 (M.D. Pa. 2012). Courts have exercised this authority, “particularly where delay risks perpetuating the constitutional injury” and immigration court dockets are “exploding.” *Centeno-Martinez v. Jamison*, No. 25-3593, 2025 WL 2157711, at \*3 (E.D. Pa. Nov. 12, 2025); *L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 407 (E.D.N.Y. 2025). Otherwise, immigration judges who are not

accustomed to applying the constitutionally-required burden of proof discussed above may not do so correctly, necessitating further proceedings before this Court. *See, e.g., Saltos Chiguano v. Lowe*, No. 1:24-cv-2210, 2025 WL 3187161, at \*4 (M.D. Pa. Nov. 14, 2025) (deciding to hold a hearing before the district court after two different IJs failed to apply the appropriate burden of proof); *Mathon v. Searls*, 623 F. Supp. 3d 203, 219 (W.D.N.Y. 2022) (granting a motion to enforce after an inadequate bond hearing conducted by an IJ); *Blandon v. Barr*, 434 F. Supp. 3d 30, 42 (W.D.N.Y. 2020) (same).

**FIRST CLAIM FOR RELIEF**  
**Violation of 8 U.S.C. § 1226(a)**  
**Unlawful Denial of Release on Bond**

50. Petitioner re-alleges and incorporates by reference the above paragraphs.

51. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Mr. Campos Munoz who entered the United States without inspection in 1998 and has lived here ever since.

52. Therefore, Petitioner is detained under § 1226(a) and is eligible for release on bond. Respondents' unlawful application of § 1225(b)(2) to Petitioner violates the INA.

**SECOND CLAIM FOR RELIEF**  
**Violation of Fifth Amendment Right to Procedural Due Process**

53. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V. Courts apply the *Mathews v. Eldridge* balancing test to determine what procedures the due process clause requires. *Gayle*, 12 F.4th at 331.

54. Respondents’ detention of Mr. Campos Munoz under § 1225(b)(2) without any procedural protections violates due process of law. “Petitioner’s mandatory detention is not authorized by § 1225, serves no legitimate purpose, and amounts to punitive detention, warranting habeas relief.” *Rivera Zumba*, 2025 WL 2753496, at \*10.

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Immediately enjoin Petitioner’s transfer outside the District of New Jersey during the pendency of this action;
- 3) Declare that Petitioner’s continued detention violates the Immigration and Nationality Act, 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;
- 4) Issue a Writ of Habeas Corpus, order Petitioner’s immediate release from custody, and enjoin Respondents from re-detaining Petitioner absent constitutionally adequate pre-deprivation due process in which Respondents bear the

burden of proving he presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present;

5) In the alternative, hold a custody hearing in this Court at which Respondents bear the burden of proving Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present;

6) In the alternative, order Petitioner's release from custody within 3 days unless Respondents schedule a hearing before an immigration judge at which the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger,

7) Award Petitioner his costs and reasonable attorney fees in this action as provided for by the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

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

Dated: December 17, 2025

Respectfully submitted,

/s/Rebecca Hufstader  
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**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF**  
**PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys, and I have discussed the claims with Petitioner's legal team. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: December 17, 2025

Respectfully submitted,

/s/ Rebecca Hufstader  
Rebecca Hufstader, Esq.  
*Pro Bono Counsel for Petitioner*