IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

OCTAVIO VALERIO MOLLO CHOQUEHUAYTA, **Petitioner,** **v.** **PAMELA BONDI, *et. al.*,** **Respondents.**	**Case No: 5:25-cv-01889-XR**

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

This is an amended petition for a Writ of Habeas Corpus filed on behalf of Octavio Valerio Mollo Choquehuayta ("Mr. Mollo) seeking relief to remedy his unlawful detention. Respondents are detaining Mr. Mollo in violation of his Fifth Amendment due process rights, effectively depriving him of a meaningful custody re-determination hearing, exceeding the limits of the Department of Homeland Security's ("DHS") statutory authority. By subjecting Mr. Mollo to unlawful and indefinite detention, Respondents also violate his Eighth Amendment rights by inflicting cruel and unusual punishments.

Undersigned Counsel prepared and filed the original petition based on information from Mr. Mollo's family members and the original petition was filed in good faith. Counsel was later able to speak directly with Mr. Mollo, who is currently detained in the South Texas ICE Processing Center in Pearsall, Texas. Mr. Mollo provided Counsel with new facts that could change the course of this litigation. Counsel also received new evidence from Mr. Mollo's family on Wednesday,

January 7, 2026, which also supports amending this petition. New information and an additional claim for relief is noted in **bold text** for ease of reference.

On January 8, 2026, Counsel spoke with Assistant U.S. Attorney Christina Playton at the U.S. Attorney's Office for the Western District of Texas by phone. Counsel informed Attorney Playton of the new facts, and the parties agreed to remain in communication about ongoing developments in Mr. Mollo's immigration court case. Attorney Playton indicated that the Respondents do not oppose the filing of this amended petition. Undersigned Counsel respectfully requests that the Court provide Respondents a new five-day period to respond to this amended petition.

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Mr. Mollo cooperated with Respondents in his arrest and detention. On or about Wednesday, December 3, 2025, unidentified law enforcement stopped Mr. Mollo over while he was driving in or near Waldorf, Maryland. Upon information and belief, law enforcement did not have probable cause to do so because Mr. Mollo has a valid driver's license, current tags and registration, and he was not speeding or committing another traffic offense. Law enforcement also stopped him within a few minutes of leaving a Home Depot parking lot; federal agents have been known to profile immigrants in situations such as these. Mr. Mollo was taken into custody and eventually transferred to the South Texas Processing Center in Pearsall, Texas. Mr. Mollo is now subject to removal proceedings before the Pearsall Immigration Court in Pearsall, Texas.

Recent Board of Immigration Appeals ("BIA") precedent, namely *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), **may strip** the immigration judge of jurisdiction to issue a bond in Mr. Mollo's case **if the immigration judge finds that Mr. Mollo cannot meet his burden to prove he entered with inspection**. Thus, his detention could be indefinite if he pursues

all forms of relief from removal available to him. In effect, Mr. Mollo's indefinite detention creates a chilling effect to deter him from pursuing all forms of relief from removal, as litigating his case could take years. His continued detention far from home also hinders Mr. Mollo's ability to mount a zealous defense against removal.

Mr. Mollo submits that his prolonged detention violates the plain text of the Immigration and Nationality Act ("INA") and its implementing regulations as well as his Fifth Amendment due process rights. He also asserts that his detention subjects him to cruel and unusual punishment under the Eighth Amendment. Mr. Mollo seeks an order from this Court declaring his continued detention unlawful and ordering Respondents to immediately release Mr. Mollo from custody, or in the alternative, allow Mr. Mollo to have an individualized bond hearing such that he may post a bond and be released from their custody.

CUSTODY

1. Mr. Mollo is in the physical custody of Respondents Noem, the Secretary of the U.S. Department of Homeland Security ("DHS"); Lyons, Acting Director of Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO"); and the Warden at the South Texas Processing Center, At the time of the filing of this petition, Mr. Mollo is detained at the South Texas Processing Center in Pearsall, Texas. The South Texas Processing Center contracts with DHS to detain noncitizens like Mr. Mollo. Thus, Mr. Mollo is under the direct control of Respondents and their agents.

JURISDICTION

2. This action arises under the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.*, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 1570. This

Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), as Mr. Mollo is presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States.

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

VENUE

4. Venue is proper in the United States District Court for the Western District of Texas, the judicial district in which Respondent Warden of the South Texas Processing Center resides and where Mr. Mollo is detained. 28 U.S.C. § 1391(e).

PARTIES

5. Mr. Mollo is a national and citizen of Peru. He is detained by Respondents pursuant to 8 U.S.C. § 1226.

6. 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.

7. Respondent Kristi Noem is sued in her official capacity as the Secretary of the DHS. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees ICE, the component agency responsible for Mr. Mollo's detention.

8. Respondent Lyons is sued in his official capacity as the Acting Director for ICE ERO. Respondent Lyons has immediate physical custody of Mr. Mollo. Respondent Lyons is a legal

custodian of Mr. Mollo and has authority to release him.

9. The Warden of the South Texas Processing Center is sued in his or her official capacity. At the time of filing, the Warden's name is unknown and therefore he or she is named by title pursuant to the Federal Rule of Civil Procedure 17(d). Respondent Warden has immediate physical custody of Mr. Mollo. Respondent Warden is a legal custodian of Mr. Mollo and has the authority to release him.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

10. **Mr. Mollo will imminently attempt to obtain a bond by filing a bond motion with the immigration court. Because Respondents have charged Mr. Mollo as inadmissible under 8 U.S.C. § 1182(a)(6)(i), Mr. Mollo has the burden to prove that he entered without inspection.** ***See*** **8 U.S.C. § 1229a(c)(2); 8 C.F.R. § 1240.8(c). If the immigration judge finds that he did not meet that burden, he will remain detained.**

11. **If Mr. Mollo cannot prove that he was lawfully admitted,** Mr. Mollo does not have administrative remedies to exhaust.

12. On September 5, 2025, the BIA published *Matter of Yajure Hurtado*, which strips immigration judges of their authority to issue bonds in cases such as Mr. Mollo's. 29 I&N Dec. 216 (BIA 2025). This case is binding on immigration judges and an immigration judge would declare they had no authority to issue a bond.[1]

[1] The exhaustion requirement serves to protect administrative agency authority and promote judicial efficiency. *Woodford v. Ngo*, 548 U.S. 81, 88-90 (2006). These purposes would not be served by requiring Mr. Mollo to request a bond that has no chance of success. *See id.* at 89-90 (Although exhaustion promotes overall efficiency, a party may conclude . . . correctly or incorrectly—that exhaustion is not efficient in that party's particular case. In addition, some aggrieved parties may prefer to proceed directly to federal court for other reasons, including bad faith.").

13. Mr. Mollo fully cooperated with Respondents and did not delay or obstruct his detention.

14. Even if Respondents contend that Mr. Mollo has not exhausted his administrative remedies because he has not had a bond hearing nor appealed the anticipated refusal to hold a bond hearing, the Court should waive the exhaustion requirement as he raises serious constitutional concerns and there is no section in the INA requiring exhaustion of administrative remedies. *See Aguilar v. Lewis*, 50 F. Supp. 2d 539, 541 (E.D. Va. 1999) ("[T]here is no federal statute that imposes an exhaustion requirement on [noncitizens] taken into custody pending their removal."); *see also Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022) ("[W]here Congress had not clearly required exhaustion, sound judicial discretion governs").

15. Further, Mr. Mollo's detention is causing him irreparable harm, and the administrative agency has predetermined the issue that Mr. Mollo would appeal, making his pursuit of this remedy futile. This administrative remedy is clearly futile as the BIA has predetermined this issue and bound itself and all Immigration Judges to follow its authority on this matter.

16. Finally, Mr. Mollo would remain in detention during the pendency of his appeal, subject to an intolerable delay, which would exacerbate the harm he and his family are facing while he is detained.

17. There are over 186,000 cases pending at the BIA with just 17 members on the BIA. Accordingly, immediate action from this court is required to prevent Mr. Mollo's continued prolonged and unjustified detention.[2]

18. Mr. Mollo's only remedy is by way of this judicial action.

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[2] Executive Office for Immigration Review Adjudication Statistics, U.S. DEP'T OF JUSTICE, https://www.justice.gov/eoir/media/1344986/dl?inline (last updated July 31, 2025); Board of Immigration Appeals, U.S. DEP'T OF JUSTICE, https://www.justice.gov/eoir/board-of-immigration-appeals (last updated Sep. 18, 2025).

LEGAL FRAMEWORK

19. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

20. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), 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).

21. 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 § 1229a removal proceedings under 8 U.S.C. § 1225(b)(2).

22. Third, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

23. This case concerns the detention provisions at 8 U.S.C. §§ 1226(a) and 1225(b)(2).

24. Congress enacted the detention provisions at § 1226(a) and § 1225(b)(2) 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. Congress most recently amended § 1226 earlier this year with the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

25. Following IIRIRA's enactment, 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).

26. 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)).

27. 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.

28. 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.

29. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the BIA held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for bond hearings.

30. 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.

31. The Respondent's interpretation defies the plain text of the INA, which demonstrates that

§ 1226(a), not § 1225(b), applies to people like Mr. Mollo.

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." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

33. 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). 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.

34. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who are apprehended very close to the U.S. border. 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).

35. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Mr. Mollo, who have already entered and were residing in the United States at the time they were apprehended.

36. For decades, courts deferred to reasonable agency interpretations of ambiguous statutes under *Chevron* deference. On June 8, 2024, the U.S. Supreme Court overturned *Chevron* in *Loper Bright Enterprises v. Raimondo*, holding that the Administrative Procedure Act requires

courts to exercise their own independent judgment in deciding whether an agency has acted within its statutory authority. 603 U.S. 369 (2024). In its decision, the Court emphasized that judges may not defer to an agency interpretation merely because a statute is ambiguous; instead, the courts must decide the best interpretation, giving respectful consideration - but not deference - to the Executive Branch. *Id.*

STATEMENT OF FACTS

37. Mr. Mollo is a national and citizen of Peru who entered the United States **with inspection in 2002. Mr. Mollo's family obtained a false passport and U.S. visitor visa on his behalf. He entered under the name Octavio Valerio Avila Paredes. His family also made him appear younger by changing his date of birth from [redacted] to [redacted] Mr. Mollo did not have control or access to this passport until after entering the United States, as a family member traveled with him and presented his documents to immigration officials on his behalf upon arrival at the Miami International Airport. Immigration officials inspected and admitted Mr. Mollo, albeit under a false name, to the United States as a visitor. This is known as a Quilantan entry. *See Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). Additionally, his family's actions constitute smuggling under 8 U.S.C. § 1182(a)(6)(E)(i).** He has resided continuously in the United States since then.

38. On or about Wednesday, December 3, 2025, Mr. Mollo left a Home Depot parking lot in Waldorf, Maryland and within a few minutes was stopped despite not having committed a traffic offense, having a valid driver's license as well as valid tags. Mr. Mollo's vehicle was blocked in the rear and in the front by unmarked vehicles that only had police-style lights. The people who stopped and detained Mr. Mollo also did not have any identifying logos or names on their clothing to indicate the law enforcement agency to which they belonged. When he told the agent who

approached his vehicle that he needed to reach for his identification, the agent reached through the window, opened the car door, and dragged Mr. Mollo out of the vehicle.

39. Mr. Mollo was taken to the Baltimore ICE ERO Field Office and then transferred to the South Texas Processing Center, where he remains detained.

40. Mr. Mollo fully cooperated with the authorities. **He told immigration authorities that he originally entered the United States with a visa.**

41. Mr. Mollo is not a danger to the community or a flight risk. He has no criminal history in this country or outside the United States. Mr. Mollo has three minor citations, including two traffic citations and one fishing citation. He paid any fine and/or completed any other requirements to resolve these citations.

42. **Mr. Mollo is now subject to removal proceedings before the Pearsall Immigration Court in Pearsall, Texas. His Notice to Appear, which is the document that charges Mr. Mollo with removability, states that he entered the United States without inspection and he is therefore inadmissible under 8 U.S.C. § 1182(a)(6)(i).**

43. Prior to his arrest, Mr. Mollo was working and was the sole economic support for his family members, including two U.S. citizen children, ages 19 and 16. His continued detention deprives his loved ones of his companionship and income.

44. Respondents' decision to detain Mr. Mollo is not legally justifiable and is capricious and arbitrary. There is no better time for the Court to consider the merits of Mr. Mollo's request for release and clarify that he is entitled to release.

CLAIMS FOR RELIEF

COUNT ONE

Violation of the INA

45. Mr. Mollo incorporates by reference the allegations of fact set forth in the preceding

paragraphs **and his claims for relief remain in the event the immigration judge finds that he does not meet his burden of proof to show he was lawfully admitted to the United States.**

46. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

47. The application of § 1225(b)(2) to Mr. Mollo unlawfully mandates his continued detention and violates the INA.

COUNT TWO

Violation of the Bond Regulations

48. Mr. Mollo incorporates by reference the allegations of fact set forth in preceding paragraphs **and his claims for relief remain in the event the immigration judge finds that he does not meet his burden of proof to show he was lawfully admitted to the United States.**

49. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) *will be eligible for bond and bond redetermination*." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before the immigration court under 8 U.S.C. § 1226 and its implementing regulations.

50. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Mr. Mollo. Respondents' application of § 1225(b)(2) to Mr. Mollo unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT THREE

Violation of Fifth Amendment Right to Substantive and Procedural Due Process

51. Mr. Mollo incorporates by reference the allegations of fact set forth in preceding paragraphs **and his claims for relief remain in the event the immigration judge finds that he does not meet his burden of proof to show he was lawfully admitted to the United States.**

52. Mr. Mollo's detention violates his substantive due process rights under the Fifth Amendment to the United States Constitution as it subjects him to arbitrary detention.

53. "Government detention violates the Fifth Amendment "unless the detention is ordered in a *criminal proceeding* with adequate procedural protections or, in certain special and 'narrow' nonpunitive 'circumstances' where a special justification . . . outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Zadvydas v. Davis*, 553 U.S. 678, 690 (2001) (emphasis in original).

54. There is no "special justification" which allows Respondents to deny the Mr. Mollo the liberty he is entitled. Respondents have not alleged any "special justification" to support Mr. Mollo's continued detention. Mr. Mollo would otherwise be eligible for a reasonable bond considering his immigration history and equities.

55. Mr. Mollo's continued detention and deprivation of a bond hearing (over which and immigration judge should have jurisdiction) grossly deprives Mr. Mollo of his procedural due process rights. This court applies the three-factor balancing test set out in *Matthews v. Eldridge* in

the context of civil immigration detention. *See, e.g.*, *Santos Garcia v. Garland*, No. 1:21-cv-742 (E.D. Va Mar. 31, 2022). The three factors are (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." *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976).

56. Here, the factors weigh heavily in favor of Mr. Mollo. First, he has a significant private interest at stake. Freedom from bodily restraint "lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 at 630. Mr. Mollo is being detained far away from his family and without meaningful access to counsel.

57. As to the second factor, there is an enormous risk of the erroneous deprivation of Mr. Mollo's liberty interest. In fact, it has already occurred. Mr. Mollo is categorically not subject to mandatory detention under the INA, and an immigration judge with jurisdiction to hear his bond request would likely grant him bond, given his equities.

58. Regarding the third *Matthews* factor, the government does not have a significant interest in Mr. Mollo's detention pursuant to the automatic stay provision. Mr. Mollo is not a danger to the community or a flight risk. Mr. Mollo has every incentive to show up to his immigration court proceedings as he is eligible to seek cancellation of removal under 8 U.S.C. § 1229b(B). In contrast to the enormous interest at stake for Mr. Mollo, the government's interest is miniscule. On balance, the *Matthews v. Eldridge* factors weigh heavily in favor of Mr. Mollo.

59. Respondents are violating Mr. Mollo's due process rights by keeping him in detention for an unnecessary period as it deprives him of fundamental fairness in his removal proceedings. He

will likely seek cancellation of removal, but his access to counsel is severely impugned by the remote location of his detention location. It is extremely challenging to properly prepare and document these applications while Mr. Mollo is detained and access to counsel is severely limited.

60. Without federal court action, Mr. Mollo will likely continue to remain detained for months. Mr. Mollo will face undue burdens in presenting his claims for relief making it more likely that he is ordered removed and returned to the country where he fears persecution.

COUNT FOUR

Violation of Eighth Amendment Right to Protection from Cruel and Unusual Punishments

61. Mr. Mollo incorporates by reference the allegations of fact set forth in preceding paragraphs **and his claims for relief remain in the event the immigration judge finds that he does not meet his burden of proof to show he was lawfully admitted to the United States.**

62. Mr. Mollo's continued unlawful detention constitutes cruel and unusual punishment under the Eight Amendment because Mr. Mollo is subject to mandatory, indefinite detention based solely on Respondents' erroneous interpretation of 8 U.S.C. § 1225(b)(2). Numerous federal district courts around the country recently issued decisions rejecting the Respondents' interpretation of the statute and ordering noncitizen petitioners release from detention.[3]

[3] *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court's disagreement with BIA's analysis in *Yajure Hurtado*); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Orellana Juarez v. Moniz*, 2025 WL 1698600 (D. Mass. June 11, 2025); *Lopez Benitez v. Francis,* 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025); *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19,

63. Detainees may challenge the unconstitutional conditions of their confinement through writs of habeas corpus, an avenue which the Supreme Court has never explicitly foreclosed. *See Preiser v. Rodriguez*, 411 U.S. 475, 499-500 (1973) (stating that when "a prisoner is put under *additional and unconstitutional restraints* during his lawful custody, it is arguable that habeas corpus will lie to remove the restraints making the custody illegal."); *Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014).

64. Respondents' continued custody of Mr. Mollo has transformed civil immigration detention into cruel and unusual punishment. Mr. Mollo is eligible for relief from removal yet is indefinitely held in detention because of the manner of his entry into the United States.

65. Respondents' incorrect and reckless interpretation of a detention statute is imposing additional constitutional restraints on Mr. Mollo's liberty, in the form of cruel and unusual punishment. As such, Mr. Mollo challenges the facts and conditions of his detention through this habeas petition.

COUNT FIVE

Violation of Nationwide Class Action Declaratory Judgment in Maldonado Bautista v. Santacruz

66. **Mr. Mollo incorporates by reference the allegations of fact set forth in preceding** paragraphs **and his claims for relief remain in the event the immigration judge finds that he**

2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Escalante v. Bondi*, 2025 WL 2212104 (D. Minn. July 31, 2025); *Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025), *Aguinaga Trujillo v. Noem*, 2025 WL 2471572 (W.D. Tex. 2025).

does not meet his burden of proof to show he was lawfully admitted to the United States.

67. **On December 18, 2025, the U.S. District Court for the Central District of California issued a final declaratory judgment vacating the DHS Respondents' July 2025 policy as unlawful.**

68. **The court in that case also certified a nationwide class which includes Mr. Mollo: "All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination."** ***Maldonado Bautista v. Santacruz*****, -- F.Supp.3d –, 2025 WL 3713987 at *32 (C.D. Cal 2025).**

69. **The court also declared that the Bond Eligible Class "are entitled to consideration for release on bond by immigration officers, and if not released, a custody redetermination hearing before an immigration judge."** ***Maldonado Bautista v. Santacruz*****, 2025 WL 3678485 at *1 (C.D. Cal 2025).**

70. **To date, Mr. Mollo has not been ordered released on bond by Respondents DHS and has not had a custody redetermination hearing before and immigration judge as required under the declaratory judgement in** ***Maldonado Bautista.*** **Thus, Respondents are violating the** ***Maldonado Bautista*** **court's order.**

PRAYER FOR RELIEF

WHEREFORE, Mr. Mollo respectfully requests that this Court grant the following relief:

1. Assume jurisdiction over this matter;

2. Issue an order directing Respondents to show cause why the writ should not be granted;

3. Issue a writ of habeas corpus ordering Respondents to release Mr. Mollo on his own

recognizance or under parole, a low bond, or reasonable conditions of supervision;

4. Enjoin Respondents from invoking the bond auto-stay provision at 8 C.F.R. § 1003.19(i)(2) should and immigration judge grant Mr. Mollo a bond;

5. Award Mr. Mollo reasonable costs and attorney's fees; and

6. Grant any other relief which this Court deems just and proper.

Respectfully submitted,

//S// Doran Michelle Shemin
Doran Michelle Shemin
*Counsel for Petitioner**
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01/09/2026
Date
* *Pro Hac Vice*

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

I represent Petitioner, Octavio Valerio Mollo Choquehuayta, and submit this verification on his behalf. I hereby certify under the penalty of perjury that the factual statements made in the foregoing Amended Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 9th day of January 2026.

//S// Doran Michelle Shemin
Doran Michelle Shemin

CERTIFICATE OF SERVICE

I certify that on January 9, 2026, a copy of the foregoing Amended Petition for a Writ of Habeas Corpus and attached exhibits were served on Respondents' counsel via the Court's CM/ECF system.

//S// Doran Michelle Shemin
Doran Michelle Shemin
Counsel for Petitioner