



bear the burden of justifying Petitioner's continued detention. Petitioner also requests that the Court set aside recent policies implemented by Respondents that are contrary to the statutory right of non-citizens like Petitioner to seek release and bail through an exercise of the Respondents' discretion.

Mr. Cruz Diaz is a native of El Salvador seeking asylum in the United States. Mr. Cruz Diaz entered the United States in 2011, without inspection or detention. Mr. Cruz Diaz will be filing an application for asylum and has a Master's Hearing scheduled for January 12, 2026, before the Immigration Court in Philadelphia, Pennsylvania. See EOIR Case Automated Information attached as Exhibit "A".

On December 30, 2025, Mr. Cruz Diaz was detained outside his home in Philadelphia on his way to his place of employment. ICE agents arrested Mr. Cruz Diaz without stated justification. Respondents arbitrarily detained, Mr. Cruz Diaz despite the requirement under 8 U.S.C. § 1226(a) and its implementing regulations that immigration officials make an individualized custody determination. Moreover, Respondents have adopted policies enshrined in administrative decisions by the Board of Immigration Appeals ("BIA") that subject non-citizens like Mr. Cruz Diaz to mandatory detention in violation of Section 1226(a).

Mr. Cruz Diaz is presently detained at the Federal Detention Center in Philadelphia. See ICE Detainee locator attached, collectively, as Exhibit "B".

### **JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 1331 (federal question); 5 U.S.C. § 702 (Administrative Procedures Act); U.S. Const. amend. V (Due Process Clause); and U.S. Const. art. I, § 9, cl. 2 (Suspension Clause).

2. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 2241(d), because at the time of filing his Petition for Writ of Habeas Corpus (Doc. 1), Mr. Cruz Diaz is imprisoned at the Federal Detention Center (“FDC”) in Philadelphia, Pennsylvania.

### **PARTIES**

3. Petitioner Mr. Cruz Diaz is a native of El Salvador seeking asylum, withholding of removal, and protection under the United Nations Convention against torture. He is detained at the Federal Detention Center in Philadelphia, PA.

4. Respondent J.L. Jamison is named in his official capacity as the Warden of FDC, Philadelphia, which detains individuals suspected of civil immigration violations. Respondent Jamison is the immediate physical custodian responsible for the detention of Petitioner.

5. Respondent Brian McShane is the Acting Philadelphia Field Office Director for Immigration and Customs Enforcement's ("ICE") Enforcement and Removal Operations. In this capacity he is responsible for the custody of all noncitizens detained by ICE at FDC, Philadelphia and has the authority to release Mr. Cruz Diaz or transfer him to a different facility. He is one of Mr. Cruz Diaz's immediate custodians and is sued in his official capacity.

6. Respondent Todd Lyons is the Acting Director of ICE. In this capacity he is responsible for enforcing immigration laws, and as such is a legal custodian of Mr. Cruz Diaz. He is sued in his official capacity.

7. Respondent Kristi Noem is Secretary of Homeland Security. In this capacity she runs the Department of Homeland Security, and is charged pursuant to 8 U.S.C. 1103(a)(1) with administering and enforcing immigration laws. She is the ultimate legal custodian of Mr. Cruz Diaz and is sued in her official capacity.

8. The Department of Homeland Security ("DHS") is the agency of the federal government responsible for enforcing the immigration laws. DHS is also Mr. Cruz Diaz's legal custodian.

9. Respondent Pamela Bondi is the Attorney General of the United States and the head of the U.S. Department of Justice, which encompasses the Board

of Immigration Appeals (“BIA”) and immigration courts, known collectively as the Executive Office of Immigration Review (“EOIR”). Ms. Bondi shares responsibility for the implementation and enforcement of immigration laws along with Respondent Noem. Ms. Bondi is a legal custodian of Mr. Cruz Diaz. She is sued in her official capacity.

### **LEGAL FRAMEWORK**

10. For non-citizens attempting to enter the United States, the INA provides under 8 U.S.C. § 1225(b)(2)(A) that “in the case of [a non-citizen] who is an applicant from admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained.” “A noncitizen detained under Section 1225(b)(2) may be released only if he is paroled ‘for urgent humanitarian reasons or significant public benefit’ pursuant to 8 U.S.C. § 1182(d)(5)(A).” *Gomes v. Hyde*, 25 Civ. 11571, 2025 WL 1868288, at \*2 (D. Mass. July 7, 2025) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018)).

11. In contrast, the Supreme Court has found that “U.S. immigration law authorizes the Government to detain certain [non-citizens] *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c).” *Jennings*, 583 U.S. at 288-89.

12. Section 236 of the INA provides in relevant part as follows:

(a) Arrest, Detention, and Release. On a warrant issued by the Attorney General, *an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.* Except as provided in subsection (c) and pending such decision, *the Attorney General—*

(1) *may continue to detain the arrested alien; and*

(2) *may release the alien on—*

(A) *bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or*

(B) *conditional parole ...*

13. The Supreme Court has interpreted similar “may” language in other provisions of the INA to require “some level of individualized determination.” *I.N.S. v. Nat’l Ctr. For Immigrants’ Rights*, 502 U.S. 183, 194 (1991). The regulation implementing Respondents’ authority to arrest non-citizens present in the United States reads:

*“Any officer authorized to issue a warrant of arrest may, in the officer’s discretion, release an alien not described in [8 U.S.C. § 1236(c)(1)] of the Act, under the conditions at section [8 U.S.C. § 1236(a)(2) and (3)]; provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.”*

8 U.S.C. § 1236.1(c)(8).

14. Noncitizens may request a review of an initial custody determination before an Immigration Judge (“IJ”). 8 C.F.R. § 1236.1(d)(1); 8 C.F.R.

§ 1002.19(a). At this hearing an IJ may make the decision “upon any information that is available to the [Immigration Judge] or that is presented to him or her by the [non-citizen] or the [government].” 8 C.F.R. § 1003.19(d); *see also Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006). Non-citizens may appeal a negative decision in a custody review before an IJ to the Board of Immigration Appeals. 8 C.F.R. § 1236.1(d)(3)(i). The current statutory scheme was created through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”).

15. For the first time in nearly three decades, Respondents have taken the position through a series of precedential decisions by the Board of Immigration Appeals that non-citizens residing in the interior of the United States are not entitled to a custody redetermination (a “bond hearing”) before an Immigration Judge.

16. First, in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the BIA held that a non-citizen who had been apprehended at the border and subsequently released into the United States is subject to mandatory detention without a possibility of bail upon re-detention, pursuant to 8 U.S.C. § 1225(b), even if that re-detention occurs years after their initial release from custody. The BIA reasoned that “an applicant for admission who is arrested and detained without a warrant while in the process of arriving in the United States, whether or not at a port of entry, and

subsequently placed in removal proceedings is detained under section [1225(b)] [], and is ineligible for any subsequent release on bond under section [1226(a)].” *Q. Li*, 29 I&N Dec. at 74.

17. Then in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA stated that all non-citizens who are present in the United States without admission are subject to mandatory detention under Section 1225(b), regardless of how long they have been residing in the U.S. and absent any prior interaction with immigration authorities.

#### **FACTS AND PROCEDURAL HISTORY**

18. Mr. Cruz Diaz is a native of El Salvador.

19. In 2011, Mr. Cruz Diaz entered the United States. Officials from Customs and Border Patrol (“CBP”), a sub-agency of DHS, did not detain Mr. Cruz Diaz upon his entry. Mr. Cruz Diaz has lived in the United States for over 14 years. Additionally, he is employed and pays taxes.

20. Mr. Cruz Diaz was issued a Notice to Appear charging him as removable from the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) (“A [non-citizen] present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible”).

21. Mr. Cruz Diaz settled in Philadelphia, PA where he was living before his incarceration.

22. Mr. Cruz Diaz will be submitting an application for asylum with the Department of Homeland Security.

23. On December 30, 2025, Mr. Cruz Diaz was detained outside his residence while on his way to work. Without prior warning, an ICE official took Mr. Cruz Diaz into custody. Mr. Cruz Diaz was transported to FDC, Philadelphia. He remains detained there.

## **CLAIM FOR RELIEF**

### **COUNT ONE**

#### **VIOLATION OF DUE PROCESS, U.S. CONST. AMEND. V**

24. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

25. The Fifth Amendment's Due Process Clause prevents the Government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. amend. V.

26. The Due Process Clause extends to noncitizens residing in the United States, whether they have lawful status or not. *See Mathews v. Diaz*, 426 U.S.

67, 77 (1976); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Specifically, “[i]t is well established that the Fifth Amendment entitles [non-citizens] to due process of law in deportation proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993); *see also Abdulai v. Ashcroft*, 239 F.3d 542, 549 (3d Cir. 2001) (“[Non-citizens] facing removal are entitled to due process”); *Calderon-Rosas v. Atty’ Gen.*, 957 F.3d 378, 386 (3d Cir. 2020) (“In sum, petitioners seeking discretionary relief are entitled to fundamentally fair removal proceedings, which constitutes a protected interest supporting a due process claim.”).

27. Evaluating the adequacy of the process provided to a non-citizen requires a balancing of factors. “First, the private interest that will be affected by the official action; second, 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 finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

28. First, Mr. Cruz Diaz faces “the most significant liberty interest there is—the interest in being free from imprisonment.” *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529

(2004)). Second, Respondents have erroneously deprived Mr. Cruz Diaz of his liberty without any individualized assessment of his circumstances. Third, Respondents did not make any individualized finding that Mr. Cruz Diaz was a danger or flight risk, so there does not appear to be a significant government interest in detaining Mr. Cruz Diaz.

29. An application of these factors requires that Mr. Cruz Diaz should have been provided with additional process before being detained.

## **COUNT TWO**

### **VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a)**

30. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

31. 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 have been residing in the United States at liberty after being briefly detained at or near the border. Such noncitizens, if detained, are done so under § 1226(a), and are generally eligible release on bond.

32. Respondents' authority to detain Mr. Cruz Diaz is derived from 8 U.S.C. § 1226(a) as Mr. Cruz Diaz is already present in the United States.

33. Respondents have detained Mr. Cruz Diaz without making an individualized determination regarding whether he posed a danger or flight risk as required by 8 U.S.C. § 1226(a) and its regulations.

34. Moreover, Respondents' current policies as set forth in the BIA's decisions in *Matter of Q. Li* and *Matter of Yajure Hurtado* unlawfully prevent Mr. Cruz Diaz from obtaining a custody redetermination in front of an Immigration Judge as is his right by statute.

### **COUNT THREE**

#### **VIOLATION OF THE BOND REGULATIONS, 8 C.F.R. § 236.1, 1236.1 and 1003.19**

35. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

36. In 1997, after Congress amended the INA through IIRIRA, EOIR 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 [Non-citizens]," 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). Thus, the agencies made clear that non-citizens present in the United States would be eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

37. Yet, Respondents have adopted a policy and practice of applying § 1225(b)(2) to non-citizens like Mr. Cruz Diaz who are present in the United States without being admitted or paroled.

38. The application of § 1225(b)(2) to Mr. Cruz Diaz unlawfully mandates his continued detention in violation of 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

#### **COUNT FOUR**

#### **VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT (“APA”), 5 U.S.C. § 701, et. seq.**

39. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

40. Mr. Cruz Diaz is aggrieved by agency action under the Administrative Procedure Act, 5 U.S.C. §§ 701 *et. seq.* Specifically, Respondents have acted arbitrarily in detaining Mr. Cruz Diaz without conducting an

individualized determination into his circumstances.

41. Additionally, Respondents' recent policies announced through administrative decisions issued by the BIA unlawfully withhold the right to a bond hearing under 8 U.S.C. § 1226(a) to Mr. Cruz Diaz.

42. These policies are arbitrary, capricious, and not in accordance with the text of the INA.

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays that this Court grant the following relief:

Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody immediately on his own recognizance or under parole, bond or reasonable conditions of supervision, on the ground that his continued detention by the Department of Homeland Security violates his Due Process rights;

Set aside Respondents' unlawful detention policy contained *Matter of Q. Li* and *Matter of Yajure Hurtado* under the APA, 5 U.S.C. § 706(2), as contrary to law, arbitrary and capricious, and contrary to constitutional right;

Issue a writ requiring an immediate, constitutionally adequate hearing before an Immigration Judge, at which: (i) DHS bears the burden to demonstrate, by clear and convincing evidence, that Petitioner's continued detention is

necessary, and (ii) the immigration judge considers Petitioner's ability to pay a bond.

While this petition is pending, order Petitioner's immediate release pursuant to the Court's inherent authority to release habeas corpus petitioners on bail;

Enter a judgment declaring that Respondents' detention of Petitioner is unauthorized by statute and contrary to law and the U.S. Constitution;

Award Petitioner reasonable costs and attorneys' fees;

Grant any further relief that this Court may deem fit and proper.

Dated: January 2, 2026

Respectfully submitted,



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**LIST OF EXHIBITS**

Exh. A. EOIR Case Automated Information

Exh. B. ICE Detainee locator