

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

David Kennedy
Georgia Bar Number 414377
David Kennedy & Associates
Attorneys for Petitioner

Carlos Ramirez Vargas
Petitioner,

VS.

George Sterling, Deputy Managing Director,
Atlanta Field Office, Immigration and Customs
Enforcement And Removal Operations (“ICE/ERO”)

Jason Streeval, Warden,
Stewart Detention Center;

Todd M. Lyons, Acting Director of
U.S. Immigration and Customs Enforcement;

Kristi Noem, Secretary of the U.S.
Department of Homeland Security; and

Pamela Bondi, Attorney General of the
United States,
in their official capacities,

Respondents.

)
)
)
) **Case No.**
) **4:26-cv-00126**

PETITION FOR WRIT OF HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner, Mr. Carlos Ramirez Vargas (“Petitioner”), by and through undersigned counsel, files this Petition For Writ of Habeas Corpus under 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question jurisdiction); 5 U.S.C. § 702, et. seq (Administrative Procedure Act, “APA”); and 28 U.S.C. § 2201 (Declaratory Judgment Act), to review the lawfulness of his detention.

Petitioner became a Lawful Permanent Resident on December 30, 2025 has still not yet been released from immigration detention. As such, he seeks a writ of habeas corpus to compel his immediate release.

1. Petitioner, Mr. Carlos Ramirez Vargas, is a fifty-eight year old man with Mexican nationality who became a Lawful Permanent Resident on December 30, 2025.
Exhibit A, Order Granting Adjustment of Status.
2. Petitioner has been in the United States since before the 2000, when he entered without inspection.
3. Amongst other medical history, the Petitioner is an amputee below his right knee (missing the lower portion of that limb), Petitioner is missing several toes in his left foot, Petitioner uses a wheelchair to move himself around, and the Petitioner is diabetic.
4. In March 2025, Petitioner was hospitalized in Grady Memorial Hospital for a heart attack. While medicated and being treated for his heart attack, Petitioner was arrested after an incident where a nurse alleged that Petitioner groped her inappropriately.
5. On July 17, 2025, Petitioner pled nolo contendere to a public indecency charge as part of a plea deal, for which Respondent was sentenced to six months of probation.¹

¹ Petitioner was charged with public indecency under O.C.G.A. § 16-6-8(b) and sexual battery under O.C.G.A. § 16-6-22.1(b). As part of a plea deal, the sexual battery charge was dismissed nolle prosequi

Subsequently, Petitioner was transferred to ICE custody; he is presently detained at Stewart Detention Center in Lumpkin, Georgia. Petitioner has now been in immigration detention for over six months, since July 17, 2025.

6. On August 8, 2025, Petitioner applied for a bond out of immigration detention. The judge denied that bond on August 18, 2025, finding that Petitioner – a wheelchair bound amputee who was then fifty-seven years old – was a “flight risk”, or in the alternative, that the immigration court considered itself to lack jurisdiction over the Petitioner as an “applicant for admission” based on, inter alia, Matter of Q. Li and an interpretation of 8 U.S.C. § 1225(b) [INA § 235]. *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).²
7. On September 16, 2025, Petitioner filed a timely appeal of the immigration judge’s decision denying his request for bond. That appeals remains pending before BIA³ and – as of the date of this filing – has been pending without decision for more than the past four months.
8. On December 30, 2025, the immigration court granted the Petitioner’s I-485 *Application to Register Permanent Residence or Adjust Status*. **Exhibit A, Order Granting Adjustment of Status**. Such applications are ordinarily resolved by USCIS but in some circumstances (as here) may be resolved by EOIR⁴.

while Petitioner pled nolo contendere to the public indecency charge. For the public indecency charge, Petitioner received a sentence of six months of probation.

² As of the August 18, 2025, immigration judge order denying bond, BIA had not yet put forth Matter of Yajure-Hurtado, 29 I&N Dec. 216 (BIA 2025), which was published on September 5, 2025.

³ BIA stands for the “Board of Immigration Appeals.”

⁴ USCIS stands for “United States Citizenship and Immigration Services”, an offshoot agency of the former Immigration and Naturalization Services (INS). EOIR stands for the Executive Office for Immigration Review and is another offshoot of INS.

9. On January 7, 2026, DHS⁵ filed an appeal of the December 30, 2025 immigration court decision granting the Petitioner his LPR (Lawful Permanent Resident) status.
10. It has been multiple weeks since Petitioner gained LPR status, yet the Petitioner is still detained.
11. Petitioner is under the custody and control of the Respondents.
12. In the absence of judicial intervention, it is not reasonably foreseeable that Petitioner will be released. He seeks a writ of habeas corpus to vindicate his regulatory, statutory, and constitutional rights as a Lawful Permanent Resident, and therefore files this Petition for a Writ of Habeas Corpus.

II. JURISDICTION

13. Petitioner incorporates and re-alleges all other paragraphs of this Petition as if fully set forth herein, and as if fully set forth under all other parts of this Petition.⁶
14. This court has jurisdiction. U.S. Const. art. I, § 9, Cl. 2 (Suspension Clause); 28 U.S.C. § 1331 (Federal subject matter jurisdiction); 28 U.S.C. § 2241 (Habeas corpus); *see also Zadvydas v. Davis*, 533 U.S. 678 (2001) (holding section 2241 habeas proceedings are available as a forum for statutory and constitutional challenges to post-removal-period detention); 28 U.S.C. § 1651 (All Writs Act); 5 U.S.C. § 702 (Administrative Procedure Act - “Right of review”); Rasul v. Bush, 42 U.S. 466 (2004) (Jurisdiction over petitions for habeas corpus exists where the

⁵ DHS stands for the “Department of Homeland Security.”

⁶ To avoid duplicity, Petitioner incorporates and re-alleges each statement or paragraph of this Petition within the totality of the rest of this petition including every other statement or paragraph. See F.R.C.P. Rule 10, providing “A statement in a pleading may be adopted by reference elsewhere in the same pleading [...]” Petitioner will avoid superfluous statements of ‘incorporation by reference.’

custodian can be reached by service of process from the court in which the petition has been brought).

15. This court may grant relief under the U.S. Constitution and habeas corpus statutes.

U.S. Const. art. I, § 9, Cl. 2 (Suspension Clause); 28 U.S.C. § 2241 (habeas);

Zadvydas, supra; 28 U.S.C. § 1651 (All Writs Act); 8 U.S.C. § 1252(e)(2)

(Immigration and Nationality Act, “INA”).

16. This court is not deprived of jurisdiction by 28 U.S.C. § 2241(e)(1) (Petitioner has not been determined to be an “enemy alien combatant” and is not “awaiting such determination); or by 8 U.S.C. § 1252(a)(2)(B) (This Petition does not involve the denial of discretionary relief).

III. VENUE

17. Venue is proper in the Middle District of Georgia, because Petitioner is detained at the Stewart Detention Center located in Stewart County, Georgia, in the city of Lumpkin⁷, Georgia, which is in the middle district.

18. Venue is proper because “a substantial part of the events or omissions giving rise to the claim occurred” in this district. 28 U.S.C. § 1391(b)(2).

19. Venue is also proper because one or more of the Defendants is an officer or employee of the United States or an agency thereof acting in his or her official capacity. 28 U.S.C. § 1391(e).

IV. EXHAUSTION OF REMEDIES

20. This action is not barred by the exhaustion of remedies doctrine.

⁷ The city of “Lumpkin” is in Stewart County, Georgia, in the Federal Middle District of Georgia. That city is not located within “Lumpkin County” of the Federal Northern District of Georgia. *See e.g. History of Lumpkin*, accessed January 21, 2025, <https://cityoflumpkin.org/history/>.

21. Under the exhaustion of remedies doctrine, a Petitioner must generally pursue and ‘exhaust’ all administrative remedies before seeking relief in federal court. *See e.g. Thompson v. United States Marine Corp.*, D.C. Docket No. 09-80312-CV-KLR (unpublished) (An example of the D.C. Circuit applying the doctrine of exhaustion of remedies in an appeal from an 11th Circuit Case). Exhaustion is a prudential consideration rather than jurisdictional. *Hull v. IRS*, No. 10-1410, 2011 WL 3835402 (10th Cir. Aug. 31, 2011) (Baldock, J.); *see also* William Funk, *Exhaustion of Administrative Remedies – New Dimensions Since Darby*, 18 Pace Environmental Law Review 1 (2000) (Tracing the origins of the doctrine of exhaustion of remedies from common law and federal equity jurisdiction).
22. Where Congress imposes an exhaustion remedy by statute, exhaustion of remedies is required. *Coit Indep. Jt. Venture v. FSLIC*, 489 U.S. 561, at 579 (1989) (Citing *Weinberger v. Salfi*, 422 U. S. 749, 422 U. S. 766 (1975); *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 303 U. S. 50-51 (1938)). If an exhaustion requirement is not *explicit* in the statute, then “courts are guided by congressional intent in determining whether application of the doctrine would be consistent with the statutory scheme.” *Coit Indep. Jt. Venture v. FSLIC*, 489 U.S. 561, at 579 (1989) (Citing *Patsy v. Florida Board of Regents*, 457 U.S. 496, 502 (1982)).
23. The INA has an exhaustion provision that only applies in the context of “final orders of removal.” *8 U.S.C. § 1252(d)(1)* (“A court may review a final order of removal only if the alien has exhausted all administrative remedies to the alien as of right.”). The 8 U.S.C. § 1252(d)(1) exhaustion requirement is not jurisdictional. *Santos-Zacaria v. Garland*, 498 U.S. ____ (2023).

24. Here, Petitioner is not subject to a final order of removal (or *any* order of removal), therefore, § 1252(d)(1) does not apply; and consequently, § 1252(d)(1) does not *explicitly* impose an exhaustion requirement.

25. Nor can INA § 1252(d)(1) be read to impose an *implicit* exhaustion requirement *that applies here*. See, e.g. *In re Adoption of Doe*, 156 Idaho 345, 349 (Idaho case describing that where statutory language is plain and unambiguous, courts give effect to the statute as written without engaging in statutory construction); see also Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (1st Ed. 2012) (Describing canons of statutory construction including the ‘Supremacy of Text Principle’, ‘Omitted Case Canon’, ‘Negative Implication Canon’ [*expressio unius est exclusio alterius*], or the ‘Whole Text Canon’ – each of which supports the claim that Congress did not expressly or implicitly impose an exhaustion of remedies requirement that applies to the issues of this case). Therefore, the exhaustion of remedies doctrine does not apply in this case.

26. Even if the doctrine of exhaustion of remedies does apply, which it does not, Petitioner satisfies ample exceptions to that doctrine. Exhaustion of remedies may be excused if:

- (1) Requiring exhaustion of administrative remedies causes prejudice, due to unreasonable delay or an ‘indefinite timeframe for administrative action’;
- (2) The agency lacks the ability or competence to resolve the issue or grant the relief requested;
- (3) Appealing through the administrative process would be futile because the agency is biased or has predetermined the issue; or
- (4) where substantial constitutional questions are raised.

Iddir v. INS, 301 F.3d 492, 500 (7th circuit case citing *McCarthy v. Madigan*, 503 U.S. 140, 146-48 (1992); *Bowen v. City of New York*, 476 U.S. 467, 483 (1986); *Mathews v. Diaz*, 426 U.S. 67, 76 (1976); *Gibson v. Berryhill*, 411 U.S. 564, 575 n. 14 (1973); *Houghton v. Shafer*, 392 U.S. 639, 640, 88 (1968); *McNeese v. Board of Educ.* 373 U.S. 668, 675 (1963)).

27. Each of the exceptions of paragraph 17 applies and excuses the exhaustion requirement in this case. Here, Petitioner has no administrative option available to him other than, seemingly, to await a BIA briefing schedule regarding the Department's appeal of his favorable grant of LPR status (dated December 30, 2025). BIA has not yet resolved the Petitioner's appeal of the immigration judge's (IJs) decision denying bond, which Petitioner filed on September 16, 2025. Requiring exhaustion of remedies would therefore cause prejudice due to "unreasonable delay" and an "indefinite timeframe for administrative action." The agency has demonstrated its lack of ability or desire to resolve appeals in less than four months. Furthermore, there is a substantial constitutional question of whether the government may permissibly force Petitioner to remain detained until BIA deigns to notice and adjudicate his appeal, this presents an indefinite timeframe and lack of control over the case sufficient to render attempts at relief with the agency "futile"; therefore, exhaustion is excused.

28. Therefore, exhaustion would be "futile" and is therefore excused. See *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992) ("an administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it." Citing *Gibson v. Berryhill*, 411 U. S., at 575, n. 14; *Montana National Bank of Billings v. Yellowstone County*, 276 U. S. 499, 505 (1928) (taxpayer seeking refund not required to exhaust where "any such application [would have been] utterly futile since the county board of equalization was powerless to grant any

appropriate relief" in face of prior controlling court decision); Houghton v. Shafer, 392 U. S. 639, 640 (1968) (It was not necessary for a Pennsylvania state prisoner to exhaust certain state remedies relating to obtaining evidence for an appeal in his criminal case in light of Monroe v. Pape, 365 U.S. 167, 365 U.S.); Association of National Advertisers, Inc. v. FTC, 201 U. S. App. D. C. 165, 170-171, 627 F.2d 1151, 1156-1157 (1979) (bias of Federal Trade Commission chairman), cert. denied, 447 U. S. 921 (1980); Patsy v. Florida International University, 634 F.2d 900, 912-913 (CA5 1981) (*en banc*) (administrative procedures must "not be used to harass or otherwise discourage those with legitimate claims"), rev'd on other grounds sub nom. Patsy v. Board of Regents of Florida, 457 U. S. 496 (1982)).

29. Requiring exhaustion would furthermore raise a substantial constitutional question, cause prejudice due to an unreasonable delay and indefinite timeframe for agency action, and the agency has demonstrated by its own more-than-four-months long timeline to resolve the Petitioner's appeal (which remains pending), that EOIR and the other Respondents "lack the ability or competence to resolve the issue or grant the relief requested." *Quoting Iddir v. INS; see also Zadvydas v. Davis*, 533 U.S. 678 (2001) ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem ... Freedom from imprisonment-from government custody, detention, or other forms of physical restraint- lies at the heart of the liberty that Clause protects... this Court has said that government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections [citing United States v. Salerno, 481 U.S. 739 (1987)]"; *see also* U.S. Const. amend. V, § 5 (the Due Process Clause); Reno v. Flores, 507 U.S. 292, at 292

(1993) (The Due Process Clause applies in the immigration context and extends its protections to noncitizens).

V. REQUIREMENTS OF 28 U.S.C. § 2241, 2243

30. Petitioner has been living in a jail cell at an immigration detention center for more than six months at Stewart Detention Center. Petitioner is therefore in the “custody” of Respondents under 28 U.S.C. § 2241. *See also Carafas v. LaVallee*, 391 U.S. 234, 237-38 (1968) (“... the ‘in custody’ determination is made at the time the habeas petition is filed.”); *Rumsfeld v. Padilla*, 542 U.S. 426, 437 (2004) (“[O]ur understanding of custody has broadened to include restraints short of physical confinement.”)
31. Under 28 U.S.C. § 2243, the court “shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.”
32. In a petition for a writ of habeas corpus, the following timeline applies: first, the applicant files the petition, second, the court “shall forthwith” either award the writ or issue an order to show cause, third, the writ or order to show cause “shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.” 28 U.S.C. § 2243. When the writ is ‘returned’ by the respondent, “a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.” *Id.*; *see also Fay v. Noia*, 372 U.S. 391, 400 (1963) (The Writ of Habeas Corpus is “perhaps the most important writ known to the

constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.”)

33. Furthermore, Petitioner need not apply for bond out of his detention because his detention is unlawful in the first place, and when he did apply for bond the immigration court denied it finding Petitioner to be a flight risk.

V. PARTIES

34. Petitioner is Carlos Ramirez Vargas. Petitioner, while not a citizen of the United States, is a Lawful Permanent Resident (LPR). **Exhibit A.**

35. In accordance with 28 U.S.C. § 2242, Petitioner alleges “the name of the person who has actual custody over the petitioner”, for the various Respondent-custodians, are as follows: The Respondents are **George Sterling**, Deputy Managing Director of the Atlanta Field Office of Immigration and Customs Enforcement And Removal Operations (“ICE/ERO”). The Atlanta Field Office is responsible for local custody decisions relating to non-citizens charges with being removable from the United States, including the arrest, detention, and custody status of non-citizens. Respondent Sterling is a legal custodian of the Petitioner; **Jason Streeval**, the Warden of Stewart Detention Center, with immediate physical custody of the Petitioner based on the contracts of that facility with U.S. Immigration and Customs Enforcement (ICE) to detain noncitizens. Respondent Streeval is a legal custodian of the Petitioner; **Todd M. Lyons** is the Acting Director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of ICE in general. Respondent Lyons is a legal custodian of the Petitioner; **Kristi Noem** is the Secretary of the U.S. Department of Homeland Security (DHS), and has authority over the actions of all other DHS

Respondents in this case, as well as the operations of DHS. Respondent Noem is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States. And **Pamela Bondi** is the Attorney General of the United States of America and a senior official of the U.S. Department of Justice (DOJ), with authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR) which administers the immigration court and BIA.

Respondent Bondi is a legal custodian of the Petitioner.

36. Each Respondent is sued in his or her official capacity.

37. Petitioner is presently detained at **Stewart Detention Center** and is under the custody and direct control of the Respondents through their various agents.

VI. LEGAL FRAMEWORK

38. At issue in a habeas corpus proceeding is the lawfulness of confinement⁸. 8 U.S.C. § 2241; 8 U.S.C. § 2243; *Ex parte Royall*, 117 U.S. 241 (1886) (Habeas corpus is used to determine whether an individual “is restrained of his liberty in violation of the Constitution...”); *Fay v. Noia*, 372 U.S. 391 (1963) (“...in a civilized society, government must always be accountable to the judiciary for a man’s imprisonment: if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release.”).

39. USCIS generally has jurisdiction to adjudicate applications for adjustment of status. 8 U.S.C. § 1255(a) [INA § 245(a)]. However, the immigration court generally has “exclusive jurisdiction” over applications for adjustment of status of those placed in removal proceedings. 8 C.F.R. § 1245.2(a)(1)(i); *Matter of Israel Enrique Roque-*

⁸ The habeas corpus statutes use the terms “confinement”, “custody”, “restraint”, and “detention.” 8 U.S.C. § 2241; 8 U.S.C. § 2243. These terms appear at face value to carry identical meanings.

Izada, 29 I&N Dec. 106, 108 (BIA 2025). Immigration court “exclusive jurisdiction” contains an exception, such that jurisdiction *generally* will not attach “in the case of an arriving alien who is placed in removal proceedings” *unless* a set of exceptions are met. 8 C.F.R. § 1245.2(a)(ii)(A)-(D). Those exceptions are met here as the Petitioner’s application for adjustment of status was made pursuant to 8 U.S.C. § 245(i) INA § 245(i)

40. Petitioner obtained LPR status on December 30, 2026, when the immigration court granted his I-485 Application. **Exhibit A.** 8 U.S.C. § 1255(b) [INA § 245(b)] (“Upon the approval of an application for adjustment [...] the Attorney General shall record the alien’s lawful admission for permanent residence as of the date of the order of the Attorney General approving the application for the adjustment of status is made[...].”); *see also USCIS Policy Manual, Volume 12, part d, paragraph 3 “Effective Date of Permanent Residence”* (“A person is generally considered an LPR at the time USCIS approves the applicant’s adjustment of status application...”).
41. Therefore, at issue here is the lawfulness of the confinement of a Lawful Permanent Resident (LPR).
42. A “[noncitizen] lawfully admitted for permanent residence” is generally not classified as an applicant for admission. 8 U.S.C. § 1103(a)(13)(C). The term “lawfully admitted for permanent residence” means “the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws [...]” 8 U.S.C. § 1101(a)(20) (defining the term “lawfully admitted for permanent residence”); *see* 8 U.S.C. § 1101(a)(15) (defining “immigrant”).

43. On December 30th, 2025, the immigration court considered Petitioner's application for adjustment of status. The Department conceded Petitioner's eligibility for adjustment of status and argued solely that the application should be denied as a matter of discretion. The immigration court disagreed with DHS, granting Petitioner's application for adjustment of status. Respondents have filed an appeal to BIA of the December 30th, 2025 decision of the immigration court granting LPR status to the Petitioner. Petitioner – or his legal counsel – have not yet been served with the Respondent's appeal, and so he is not aware of the supposed issues with the grant of LPR status that prompt Respondent's appeal. Despite this, where the government has conceded eligibility for adjustment of status and argued solely the issue of discretion, issue preclusion applies to now estop the Respondents from taking a contrary position as to Petitioner's eligibility for adjustment of status. See Greg Pennington, *A Preclusive Effect: Issue Preclusion in Immigration Practice*, Immigration Law Advisor, January 2015, Vol. 9 No. 1 (This 2015 publication of the U.S. Department of Justice summarizes issue and claim preclusion, and argues how those doctrines can apply in the immigration context).
44. Under 8 U.S.C. § 1226(a), "On a warrant... [a noncitizen] may be arrested and detained pending a decision whether the [noncitizen] is to be removed from the United States." On December 30, 2025, upon granting Petitioner's application for permanent residence, the immigration court made its decision of whether Petitioner "is to be removed"; therefore, 8 U.S.C. § 1226(a) can no longer provide a basis to justify the Petitioner's continued detention.

45. Meanwhile, 8 U.S.C. § 1225 applies on its face to noncitizens who have not been “admitted or paroled.” 8 U.S.C. § 1225(a)(1); (b)(1). So, that statute also cannot justify Petitioner’s detention.

46. Whether the Department has filed an appeal to that favorable grant of LPR status is irrelevant because Petitioner’s LPR status is not contingent on whether the Department appeals. Of course, it is possible for LPR status to be taken away in certain circumstances, for example, voluntary abandonment or certain criminal convictions or extended periods of absence from the United States. 8 U.S.C. § 1256 (Describing the process by which USCIS can rescind a grant of adjustment of status subsequent to its issuance); 8 C.F.R. § 246.1 (same); see also *Saxbe v. Bustos*, 419 U.S. 65 (1974) (LPR who maintains home in Canada or Mexico and commutes daily to a place of work in the US does not lose LPR status solely on account of maintaining a residence abroad); *Ward v. Holder*, 733 F.3d 601 (6th Cir. 2013) (standard for establishing deportability for LPRs requires DHS to prove abandonment by “clear, unequivocal, and convincing evidence”) (citing *Woodby v. INS*, 385 U.S. 276 (1966)).

47. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993). Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for court or is a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

48. Removal proceedings described are used to determine whether individuals are to be “removed”⁹ from the United States. *See* 8 U.S.C. § 1229a [INA § 240].
49. The INA also has provisions describing the limited circumstances under which aliens may *not* be released on a bond. 8 U.S.C. § 1226(c) (An alien who commits or is convicted of any of a set of specified offenses is ineligible for bond); 8 U.S.C. § 1225(b) [INA § 235].
50. At issue is the lawfulness of the Petitioner’s detention. So, at issue is the legal authority by which the Respondents continue to detain the Petitioner and deny him the right to have a request for bond granted by an IJ, and whether that legal authority can withstand scrutiny based on, *inter alia*, Fifth Amendment Due Process.
51. Agency interpretations of statutes, such as interpretations of the INA by the BIA in its case law, are not entitled to deference. *Loper Bright Enterprises v. Raimondo*, 602 U.S. 574 (2024) (*Overruling* *Chevron U.S.A., Inc., v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)), and noting agency interpretations are entitled to “respect” only to the extent those interpretations have the power to persuade, also citing *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)). This court is therefore not bound by *Yajure-Hurtado*, or any other piece of agency case law.

VII. CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

⁹ The term “removal” replaced the term “deportation” with the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, though note the terms are not technically identical. *See* 8 U.S.C. § 1229 [INA § 239], 8 U.S.C. § 1229a [INA § 240]; 8 C.F.R. §§ 1003.12 et seq., 1240.1 et seq.

52. The Due Process Clause of the Fifth Amendment provides that “No person shall ... be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V, § 5. The Due Process Clause entitles aliens to due process in deportation proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Demore v. Kim*, 538 U.S. 510 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *see also Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (Criminal law case in which the Supreme Court noted in dicta that “At the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.”)
53. Respondents have failed to uphold their Fifth Amendment obligations to provide the Petitioner with due process of law. *See Reno v. Flores*, *supra*; *Matthews v. Eldridge*, 424 U.S. 319 (1976) (Providing a balancing test to evaluate the sufficiency of process under the Fifth Amendment requirements of procedural due process).¹⁰
54. The Supreme Court has noted it would violate substantive due process for a statute to authorize detention that constitutes “impermissible punishment before trial.” *United States v. Salerno*, 481 U.S. 739, 746 (1987). In *Salerno*, the Court was tasked with analyzing whether the Bail Reform Act of 1984 survived due process scrutiny. Justice Rehnquist writing for the *Salerno* majority held the Bail Reform Act of 1984 did *not* violate the substantive due process clause, reasoning: “[p]reventing danger to the community is a legitimate regulatory goal and the incidents of detention are not excessive in relation to that goal, *since the Act carefully limits the circumstances*

¹⁰ See also *Goss v. Lopez*, 419 U.S. 565 (1975) (Students facing temporary school suspensions had interests qualifying for protection of the due process clause which requires “at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from the school” including, *inter alia*, notice of the charges against each student and an opportunity to present evidence or argument against those charges).

under which detention may be sought to the most serious of crimes, the arrestee is entitled to a prompt hearing, the maximum length of detention is limited by the Speedy Trial Act, and detainees must be housed apart from convicts. Thus the Act constitutes a permissible regulation, rather than impermissible punishment.”
(emphasis added).

55. Petitioner’s continued detention violates the Due Process Clause of the Fifth Amendment. See *Reno v. Flores*, supra; *Ingraham v. Wright*, 430 U.S. 651 (1977) (Freedom from bodily restraint and punishment is within the liberty interest in personal security that has historically been protected from state deprivation without due process of law); *Zadydas*, supra (“Freedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause. Government detention violates the Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards or a special justification outweighs the individual’s liberty interest.”)
56. Petitioner need not request bond for the Court to determine Petitioner is entitled to his immediate release by virtue of his LPR status.

COUNT TWO

Violation of the Eighth Amendment Prohibition Against Cruel And Unusual Punishments

57. The allegations in the above paragraphs are realleged and incorporated herein.
58. Under the Eighth Amendment, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. Amend VIII.
59. According to 18th century dicta, deportation is not a “punishment” for a crime. *Wong Wing v. United States*, 163 U.S. 228, 236 (1896) (Citing *Fong Yue Ting v. United*

States, 149 U.S. 698, 730 (1893) Elia v. Gonzales, 431 F.3d 268, 276 (6th Cir. 2005); Briseno v. Immigr. & Naturalization Serv., 192 F.3d 1320, 1323 (9th Cir. 1999); Oliver v. U.S. Dep't of Just., Immigr. & Naturalization Serv., 517 F.2d 426, 428 (2d Cir. 1975) (despite its “severe ... consequences,” deportation is not a criminal punishment) (Quoting Harisiades v. Shaughnessy, 342 U.S. 580, 594 (1952)).

60. From this piece of century-old dicta, it does *not* follow that *no* aspect of the immigration process, including the prospect of indefinite detention or the conditions of confinement, can *ever* be encompassed by the ambit of the eighth amendment prohibition against cruel and unusual punishment. Rather, the eighth amendment can and does apply here because Petitioner’s continued subjection to imprisonment is cruel and unusual under that amendment. See U.S. Const. Amend. VIII; but see Ingraham v. Wright, 430 U.S. 651, 659-660 (1977) (declining to extend the eighth amendment to corporal punishment in a Florida high school, yet noting in dicta the scope and contours of the protections of the eighth amendment can be understood by reference to “traditional ideas of fair procedure” (citing Greene v. McElroy, 360 U.S. 474 (1959)) or to what “has always been the law of the land” (citing United States v. Barnett, 376 U.S. 681 (1964)); United States v. Salerno, 481 U.S. 739 (1987) (Noting pretrial detention for dangerous individuals is authorized only because it requires stringent procedural safeguards such as a prompt hearing, and at page 755 that “In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”).

61. Petitioner does not assert that deportation - by itself - is cruel and unusual punishment, but rather that his continued detention based on a warrantless arrest and

in spite of his LPR status is Eighth Amendment “punishment”, notwithstanding the lack of conviction against him.

COUNT FOUR

Violation of the INA

62. Neither 8 U.S.C. § 1226(a), 8 U.S.C. § 1225, or any other section of the INA authorizes Petitioner’s continued detention. So, his continued detention is unlawful and this Honorable Court may grant habeas corpus relief.

VIII. CONCLUSION

Petitioner became a Lawful Permanent Resident (LPR) on December 30, 2025. Upon becoming an LPR, his continued detention became unlawful because (a) 8 U.S.C. § 1226(a) no longer justifies his detention as the immigration court has addressed the question of “whether the [noncitizen] is to be removed...”, (b) 8 U.S.C. § 1225(b) does not apply to the Petitioner as Petitioner has been admitted and is not an “arriving alien”, (c) the due process clause applies and protects Petitioner from unlawful or arbitrary deprivations of his liberty.

Petitioner’s continued detention despite his LPR status with no future hearings scheduled regarding his immigration detention, violates his Fifth Amendment right to due process of law, the Eighth Amendment prohibition on cruel and unusual punishment, and the Immigration and Nationality Act.

Petitioner believes the Respondents are lawfully required to release him from detention, and that a bond hearing is not necessary under the INA or due process clause. However, to hedge his bets, should the Court find Petitioner not entitled to immediate release, then Petitioner would alternatively request a bond hearing governed by 8 U.S.C. § 1226(a), since applying for bond absent a writ of habeas corpus order would be futile in light of *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).

WHEREFORE, Petitioner respectfully requests this Court grant the following:

1. Assume jurisdiction over this matter;
2. Enjoin and prevent the Respondents from relocating the Petitioner to a different detention center during these proceedings.

3. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
4. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
5. Declare that Petitioner's detention violates the Eighth Amendment;
6. Declare that Petitioner's detention violates the Immigration and Nationality Act;
7. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
8. Alternatively, if and only if the Court finds Petitioner is not entitled to immediate release, then Petitioner would request a bond hearing governed by 8 U.S.C. § 1226(a);
9. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law;
10. That, in considering the vast more than half-year duration of Petitioner's time in immigration detention, the Court adjudicate this Petition expeditiously; and
11. Grant any further relief this court deems just and proper.

Respectfully submitted 22nd of January 2026,

Lead Counsel 28
/s/ David S. Kennedy Jr 29
David S. Kennedy 30, Esq.
Georgia Bar No.: 3114377
675 E.E. Butler Parkway,
Suite D, Gainesville,
Georgia 30501 34
35
Phone: (678) 971-5888
Facsimile: (678) 971-5899
david@davidkennedylaw.c
om 39

Associate Counsel 40
/s/ Noah D. Gault 41
Noah D. Gault 42
Georgia Bar No.: 4308364
44
Phone: (678) 971-5888
Facsimile: (678) 971-5899
noah.gault@davidkennedy
law.com 48

Associate Counsel
/s/ Michelle B. Park
Michelle B. Park
Georgia Bar No.: 949707
Phone: (678) 971-5888
Facsimile: (678) 971-5899
michelle@davidkennedy.la
w.com

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

I represent Petitioner, Carlos Ramirez Vargas, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Submitted this 22nd day of January, 2026,

/s/ David S. Kennedy

Address: 675 EE Butler Pkwy, Suite D, Gainesville, GA 30501

Telephone Number: (678) 971-5888

E-mail Address: david@davidkennedylaw.com

Attorney for Petitioner

Georgia Bar No. 414377

David Kennedy & Associates, Attorneys at Law, PC