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*Counsel for Petitioner*

**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEVADA (Las Vegas)**

**T.P.S.**

*Petitioner*,

v.

**KRISTI NOEM**,
in her official capacity as Secretary, U.S. Department of Homeland Security; 245 Murray Lane SW, Washington, DC 20528;

**U.S. DEPARTMENT OF HOMELAND SECURITY**

**PAMELA J. BONDI**,
in her official capacity as Attorney General of the United States, 950 Pennsylvania Avenue, NW, Washington, DC, 20530;

**TODD LYONS**,
in his official capacity as Acting Director and Senior Official Performing the Duties of the Director for U.S. Immigration and Customs Enforcement, 500 12th Street, SW, Washington, DC 20536;

Case No.: _____

Agency No: [redacted]

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

**BRIAN HENKEY,**
in his official capacity as Acting Field Office Director, Salt Lake City Field Office Director, U.S. Immigration & Customs Enforcement, 2975 Decker Lake Drive Suite 100, West Valley City, UT 84119-6096

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT**

**JOHN MATTOS,**
in his official capacity as Warden, Nevada Southern Detention Center, 2190 E. Mesquite Ave. Pahrump, NV 89060

*Respondents.*

## INTRODUCTION

1. Petitioner files this Petition for a Writ of Habeas Corpus ("Petition") because ICE has kept him detained for nearly six (6) months on charges that it could not sustain in immigration court. [redacted] ("Petitioner") has been a lawful permanent resident ("LPR") of the United States for thirty-four (34) years. *See* **Exhibit ("Exh.") A**, *Personal Declaration of* [redacted] at ¶ 10; *see also* **Exh. B**, *Notice to Appear ("NTA")*; *see also* **Exh. C**, *Form I-213*. He has lived in the United States since the early 1980s, when he entered the U.S. without inspection and did not have immigration status, which was remedied in 1991 when Petitioner became an LPR. *Id.* at ¶¶ 1, 10.

2. Currently, Immigration and Customs Enforcement ("ICE") is detaining Petitioner. *See* **Exh. D**, *ICE Detainee Locator Screenshot*. Though an Immigration Judge ("IJ") terminated Petitioner's immigration proceedings on October 23, 2025 after finding him not deportable, ICE has continued to detain him. *See* **Exh. E**, *IJ Order*, dated October 23, 2025; *see also* **Exh. D**, *ICE Detainee Locator Screenshot*. As of the filing of this petition, Petitioner has been in ICE

custody almost six (6) months—since August 2025. *See* **Exh. A** *Personal Declaration of* [redacted] at ¶ 16.

3. On or about August, 4, 2025, ICE took Petitioner into custody after his release from the Idaho Department of Corrections. *See* **Exh. A**, *Personal Declaration of* [redacted] at ¶ 17; *see also* **Exh. C**, *Form I-213*. ICE then transported him to Nevada Southern Detention Center ("NSDC"), a private prison run by CoreCivic in Pahrump, Nevada. *See* **Exh. A**, *Personal Declaration of* [redacted] at ¶ 17. On August 4, 2025, ICE also initiated removal proceedings against Petitioner. *See* **Exh. B**, *NTA*. During those proceedings, Petitioner had two master calendar hearings while represented by counsel. *See* **Exh. H**, *Declaration of Counsel, Melissa Corral, Esq.* at ¶¶ 1–2, 5. In his first master calendar hearing, on September 25, 2025, Petitioner, through counsel, requested his entire A-file from the Department of Homeland Security ("DHS") pursuant to *Dent v. Holder,* 627 F.3d 365, 374 (9th Cir. 2010), with the intent that would help refute the removability charges DHS brought. *Id.* at ¶ 2. DHS, however, did not provide it. *Id.* at ¶ 2. At his second master calendar hearing with counsel, DHS still had not produced Petitioner's A-file, and the IJ terminated those proceedings because DHS was unable to prove by clear and convincing evidence that Petitioner was removable as charged. *See* **Exh. H**, *Declaration of Counsel, Melissa Corral, Esq.* at ¶ 2, 5; *see* **Exh. E**, *IJ Order*, dated October 23, 2025. DHS filed an appeal of the IJ's decision on November 10, 2025. *See* **Exh. F**, *Notice of Appeal*, dated November 14, 2025. Petitioner has remained in ICE custody since.

4. In immigration court, DHS failed to meet its burden of clear and convincing evidence to sustain its charges against Petitioner. *See* **Exh. E**, *IJ Order*, dated October 23, 2025. An IJ found Petitioner not deportable, and ICE's failure to meet its burden has resulted in Petitioner's unnecessary and unlawful detention, regardless of the appeal DHS filed.

5. Respondents' only conceivable argument for why they continue to detain Petitioner is that they are appealing to the Board of Immigration Appeals ("BIA"). Yet, so far, they have not managed to convince any independent adjudicator that they have legal grounds to remove him. Their appeal to the BIA only serves to delay Petitioner's release from detention.

6. Petitioner is not subject to any mandatory detention requirements. While Petitioner has convictions, he has no criminal history that would subject him to mandatory immigration detention under 8 U.S.C. § 1226(c) nor is he detained pursuant to 8 U.S.C. § 1225, which applies to those in expedited removal proceedings. Petitioner also does not have a final removal order or a removal order that is on appeal. Thus, Petitioner is entitled to release from detention.

7. Absent this Petition, Petitioner does not have access to any agency remedies to secure his release from detention. He has an erroneous "arriving alien" designation on his NTA, and his removal proceedings in immigration court are terminated; both circumstances strip the IJ of jurisdiction from a bond redetermination hearing. Further, while ICE could authorize Petitioner's discretionary release on conditional parole while his appeal is pending, the current agency policy of ICE is not amenable to a discretionary release. In fact, ICE appears to have made its discretionary release determination when the agency chose to keep Petitioner detained after his removal proceedings were terminated. This Petition before the Court is his only avenue for release.

8. Petitioner brings this Petition pursuant to 28 U.S.C. § 2241; the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101-1538 and its implementing regulations, the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 500-596, 701–706, and the United States Constitution to allow him to be released from immigration detention as an IJ has already

determined he is not deportable due to the DHS's failure to meet its burden and sustain its charges against Petitioner. Petitioner is now being detained simply because of DHS's accusation of being deportable.

9. Petitioner does not request a review of the IJ decision, his removability, or any other determination of the immigration court – he only seeks review of the lawfulness of ICE's detention and his immediate release from that detention when an Immigration Judge has already ruled on removability and found that Respondents cannot sustain its charges. If the court grants this Petition, Respondents may still proceed with their appeal and review of Petitioner's removability. Petitioner asks this court to only address his detention.

## JURISDICTION AND VENUE

10. Petitioner is in the custody of Respondents. He is in the physical custody of the Nevada Southern Detention Center, 2190 E Mesquite Ave, Pahrump, NV 89060 in Pahrump, Nevada. NSDC is a private detention center operated by CoreCivic, Inc., under contract with ICE.

11. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

12. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

13. Venue is proper in this District under 28 U.S.C. § 2241; 28 U.S.C. § 1391(b); and 28 U.S.C. § 1391(e)(1) because when this Petition was filed while Petitioner was detained within the geographic jurisdiction of the District of Nevada (Las Vegas). Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and

agencies of the United States, and a substantial part of the events or omissions giving rise to the claim occurred in this district. *See* 28 U.S.C. § 1391(e).

**REQUIREMENTS OF 28 U.S.C. § 2243**

14. The Court must grant the Petition for Writ of Habeas Corpus or order respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the respondents must file a return "within three (3) days unless for good cause additional time, not exceeding twenty (20) days, is allowed." *Id.*

15. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added) (overruled on other grounds by *Keeney v. Tamayo-Reyes*, 504 U.S. 1 (1992)). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

**PARTIES**

16. Petitioner is a citizen of Mexico who has resided in the United States as an LPR since 1991, after entering the U.S. in the early 1980s. He has been in immigration detention since August 2025.

17. Respondent Kristi Noem is the Secretary of the DHS. She is responsible for the implementation and enforcement of the INA and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

18. Respondent DHS is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens. Respondent DHS is a legal custodian of Petitioner.

19. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice ("DOJ"), of which the Executive Office for Immigration Review ("EOIR") and the immigration court system it operates is a component agency. She is sued in her official capacity.

20. Respondent DOJ is the federal agency responsible for adjudicating removal and related bond cases. EOIR, and its components the immigration courts and the BIA, is a division of the DOJ.

21. Respondent Todd Lyons is the Acting Director and Senior Officer Performing the Duties of the Director of ICE. Respondent Lyons is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants during their removal procedures. Respondent Lyons is a legal custodian of Petitioner. Respondent Lyons is sued in his official capacity.

22. Respondent ICE is the sub agency of DHS that is responsible for carrying out removal orders and overseeing immigration detention. Respondent ICE is a legal custodian of Petitioner.

23. Respondent Brian Henkey is the Acting Director of the Salt Lake City Field Office of ICE Enforcement and Removal Operations ("ERO"), a federal law enforcement agency within the DHS. ERO is a directorate within ICE whose responsibilities include operating the immigration detention system. In his capacity as ICE ERO Salt Lake City, Acting Field Office Director, Respondent Henkey exercises control over and is a custodian of immigration detainees

held at NSDC. At all times relevant to this Complaint, Respondent Henkey was acting within the scope and course of his employment with ICE. He is sued in his official capacity.

24. Respondent John Mattos is the Warden of NSDC which detains individuals suspected of civil immigration violations pursuant to a contract with ICE. Respondent Mattos exercises physical control over immigration detainees held at NSDC. Respondent Mattos is sued in his official capacity.

25. Respondents individually and collectively will be referred to as "Respondents."

## LEGAL FRAMEWORK

### Lawful Permanent Resident ("LPR")and Removal Proceedings

26. An LPR is a noncitizen who may live permanently in the United States, in accordance with the immigration laws. 8 U.S.C. § 1011(a)(20). Contrast this to the status of nonimmigrant, an individual admitted to the United States for a specific, temporary purpose, or that of an individual either in the United States without immigration status or no longer has immigration status. *See* 8 U.S.C § 1101(15) (listing the definition of nonimmigrant and different types of nonimmigrant visas); *see also* 8 U.S.C. § 1182(6)–(7) (listing the circumstances where an individual is out of immigration status or has not been admitted or paroled into the United States). Historically, it is settled law that an LPR, as a person, has a right to due process and the LPR's immigration status is an interest with due process protection. *See Landon v. Plasencia*, 459 U.S. 21 (1982) (noting that an LPR returning to the United States is entitled to a hearing as a matter of due process); *see also Kwong Hai Chew v. Colding*, 344 U.S. 590, 597 (1953) ("It is well-established that if [a noncitizen] is a lawful permanent resident of the United States and remains physically present there, he is a person within the protection of the Fifth Amendment.").

27. An LPR's immigration status is only jeopardized in certain circumstances including, but not limited to, extended absences from the United States, convictions of crimes or other illegal activity, or relinquishment of the status. 8 U.S.C. § 1227(a)(2); *see also* 8 U.S.C. § 1101(a)(13)(C). In those circumstances, DHS may bring deportation charges against the LPR by filing an NTA with EOIR, which must be sustained by clear and convincing evidence of the allegation. 8 U.S.C. § 1229(a)(c)(3)(A); 8 C.F.R. § 1240.8(a); *see also Woodby v. INS*, 385 U.S. 276, 286 (1966). However, regardless of the filing of the NTA, LPR status can only be terminated by the act of an IJ in removal or rescission proceedings. *Romero v. Garland*, 999 F.3d 656, 663 (9th Cir. 2021); *see also* 8 U.S.C. § 1256.

28. When LPRs accrue a criminal history, only certain crimes jeopardize their immigration status and make them deportable. *See* 8 U.S.C. § 1227(2) (listing the criminal grounds for deportability). The INA provides definitions for the crimes that make LPRs deportable. *Id.* It is DHS's burden to prove the LPR's criminal history matches the INA definitions by clear and convincing evidence and, therefore, sustaining the deportability charges that DHS brings. 8 U.S.C. § 1229(a)(c)(3)(A); 8 C.F.R. § 1240.8(a); *see also Woodby*, 385 U.S. 276, 286 (1966). This is done through the categorical approach. *Mathis v. United States*, 579 U.S. 500, 504 (2016). Notably, driving under the influence ("DUI") is not a crime that makes an LPR deportable. *See* 8 U.S.C. § 1227(2) (listing the grounds of deportability); *see also Leocal v. Ashcroft*, 543 U.S. 1 (2004) (holding a DUI is not an aggravated felony crime of violence); *see also Marmolejo-Campos v. Holder*, 558 F.3d 903, 913 (9th Cir. 2009) (noting that the BIA does not consider a simple DUI a crime involving moral turpitude).

29. In addition to the effects of a criminal history, other past actions can endanger an LPR's status, including fraud or misrepresentation, jeopardizing national security, or an

underlying defect in the acquisition of LPR status. 8 U.S.C. § 1227(3)–(6). When these other circumstances arise, it is still DHS's burden to prove them by clear and convincing evidence. 8 U.S.C. § 1229(a)(c)(3)(A); 8 C.F.R. § 1240.8(a); *see also Woodby*, 385 U.S. at 286.

30. In all the preceding circumstances, regardless of the charges DHS brings against an LPR, when DHS is unable to sustain removability charges by clear and convincing evidence, the IJ must terminate removal proceedings. 8 C.F.R. § 1003.18(d)(1)(i)(A). Mandatory termination, in this case, is distinct from other docket management tools, like dismissal or administrative closure, because it is based on an underlying legal defect in the charges DHS alleges.

**LPRs and Immigration Detention**

31. The INA prescribes three (3) forms of detention for noncitizens in removal proceedings— discretionary detention under § 1226(a), mandatory detention under § 1226(c), and mandatory detention under § 1225. *See* 8 U.S.C. § 1229(a).

32. As an LPR who has been admitted to the United States pursuant to 8 U.S.C. § 1255, only 8 U.S.C. § 1226 applies when an LPR is in removal proceedings. Once granted LPR status, LPRs are only seeking admission in certain limited circumstances outlined in 8 U.S.C. § 1011(a)(13)(C). As such, 8 U.S.C. § 1225, which governs detention procedures for expedited removal and now "applicants for admission," does not apply to LPRs in most circumstances, including Petitioner's.

33. Certain noncitizens are subject to mandatory detention under 8 U.S.C § 1226(c) due to their criminal history. Again, in most cases, LPRs have been admitted to the United States, therefore, only 8 U.S.C. §§ 1226(c)(1)(B) and (C) apply. In those sections, a noncitizen who is deportable is subject to mandatory detention when they have been convicted or have

admitted to: a controlled substance offense, one (1) crime involving moral turpitude ("CIMT") within five (5) years of admission, two (2) CIMTs at any time, a firearms offense, and/or an aggravated felony.

34. Noncitizens in removal proceedings can also be subject to discretionary detention. 8 U.S.C. § 1226(a). With a warrant, DHS may detain a noncitizen during their removal proceedings, but a noncitizen may also be released on bond or conditional parole. *Id.* LPRs are infrequently subject to discretionary detention. *See Khalil v. Trump*, 786 F. Supp. 3d. 871 (D.N.J. 2025) (discussing evidence provided that demonstrates the rarity of LPRs in discretionary detention).

**Available Agency Relief**

35. After DHS makes a custody determination, an LPR may request a custody redetermination, or a bond hearing, with an IJ. 8 C.F.R. § 1003.19(a). The IJ must have jurisdiction to hear this request and, generally, an IJ will. *See* 8 C.F.R. § 1003.19(h) (listing the circumstances where an IJ does not have jurisdiction to hear a bond hearing). Pertinent to LPRs, if an IJ does not have the jurisdiction to hear a bond request because the LPR is subject to mandatory detention, a *Matter of Joseph* hearing is available to allow the LPR argue his eligibility for bond. *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999). This, however, only applies when mandatory detention under § 1226(c) is alleged, and here it does not apply in Petitioner's case.

36. Jurisdiction with an IJ vests once a charging document, like an NTA, is filed with the immigration court. 8 C.F.R. § 1003.14(a). While no charging document is required for an IJ to make a custody redetermination at a bond hearing, a request for a bond hearing must be filed with the immigration court with jurisdiction over the place of detention, the immigration court

with administrative control over the case, or with the office of the Chief Immigration Judge for the court with jurisdiction. 8 C.F.R. § 1003.14(a); 8 C.F.R. § 1003.19(c). Mandatory termination of a case, however, pauses an immigration court's jurisdiction and administrative control of a noncitizen's case, save for a refiling of the Notice to Appear or *sua sponte* reopening. *Sanchez v. Sessions*, 904 F.3d 643, 655 (9th Cir. 2017) (explaining that termination without prejudice "effectively means that the agency must hit the reset button and begin deportation proceedings anew[.]"); *see* 8 C.F.R. § 1003.14(a); *see also* 8 C.F.R. § 1003.23(b)(1). Therefore, it is nearly impossible to re-vest agency jurisdiction for the purpose of a bond hearing in a case where removability charges are unsustainable, as well as being judicially inefficient and unreasonable.

37. An IJ also does not have jurisdiction to hear a request for bond when DHS designates a noncitizen as an "arriving alien" in the NTA or other charging document. 8 C.F.R. § 1003.19(h)(1)(i)(B). The "arriving alien" designation applies to those who are: applicants for admission into the United States at a port-of-entry or those attempting to apply for admission at a port-of-entry, those seeking transit through the United States, and those intercepted in international or American waters. 8 C.F.R. § 1.2; 8 C.F.R. § 1001.1(q). DHS has erroneously given Petitioner this designation on his NTA. *See* **Exh. B**, *Notice to Appear*. Petitioner did contest the "arriving alien" designation before the IJ, but, ultimately, no decision was made because the IJ terminated proceedings, making the issue moot. *See* **Exh. I**, *Written Pleadings*, dated October 17, 2025. Even if Petitioner sought bond pending DHS's appeal of the IJ decision to terminate proceedings, the "arriving alien" designation on the NTA prohibits an IJ from hearing Petitioner's bond request. Additionally, as removal proceedings were terminated, Petitioner cannot revisit the issue to argue he is not an "arriving alien." Petitioner does not ask

the Court for a determination on his status as an "arriving alien," only that the Court takes notice of how this also closes off agency-based relief.

38. ICE, as an agency, also has the authority to set a bond or release a noncitizen on conditional parole, in their discretion. 8 U.S.C. § 1226(a)(2). To warrant this discretionary determination, a noncitizen must show they are not a danger to society nor a flight risk. 8 C.F.R. § 1236.1(c)(3). ICE, however, has already made this discretionary determination by continuing to detain Petitioner unlawfully after his case has been terminated. Further, there is a significant trend of ICE denying parole over fiscal year 2025, with parole grants dropping dramatically from 209 to three (3) and then zero (0) from February to April. *See* Immigration and Customs Enforcement, FY25_detentionStats09242025, Detention Management, https://www.ice.gov/detain/detention-management (last visited January 29, 2026). This suggests an agency policy against discretionary release, and that a conditional parole request to ICE would be futile.

39. If this Court does not act, Petitioner has no remedy to his unlawful detention. There is no reasonable or judicially efficient way for Petitioner to seek relief with DHS and ICE.

**Applicability of the Writ of Habeas Corpus**

40. The primary remedy sought through the writ of habeas corpus is release from detention. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117 (2020) (explaining that the Supreme Court has long held that habeas corpus is the appropriate remedy to whether someone is lawfully detained or not). This is particularly so in the immigration context, where immigration benefits and relief are collateral to an individual's release from unlawful detention. *Id.* at 124–25.

41. Immigration detention is a form of civil confinement that "constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979). In *Addington*, the Supreme Court explains that the clear and convincing burden of proof is the most appropriate standard for civil confinements[1] to adequately protect the due process rights of the individual confined and prevent heavy-handedness in the application of beyond a reasonable doubt. 441 U.S. at 427–28. The Supreme Court looks to *Woodby v. INS*[2] to inform this standard, noting the high stakes in deportation proceedings. 385 U.S. 276, 286 (1966) ("The immediate hardship of deportation is often greater than that inflicted by denaturalization, which does not, immediately at least, result in expulsion from our shores."). This higher burden of proof in the civil deportation proceedings is designed to prevent allegations that lead to extended detention, like in Petitioner's case – the absence of proof is not sufficient evidence here.

42. Petitioner is held in immigration detention based on charges that could not meet the clear and convincing standard for civil confinement. *See* **Exh. E**, *IJ Order*, dated October 23, 2025. The Supreme Court selected this standard in *Addington* and *Woodby* to ensure the protection of due process rights when liberty interests were at stake. *Addington*, 441 U.S. at 432—33 ("To meet due process demands, the standard has to inform the factfinder that the proof must be greater than the preponderance-of-the-evidence standard applicable to other categories of civil cases."); *Woodby*, 385 U.S. at 286 ("The immediate hardship of deportation is often greater than that inflicted by denaturalization, which does not, immediately at least, result in

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[1] At issue in *Addington* was civil confinement in a mental institution in Texas. 441 U.S. 418.
[2] In *Woodby*, the Supreme Court held that the appropriate burden of proof for deportation, now removal, proceedings is clear and convincing. 385 U.S. at 286. Now codified in U.S. Code at 8 U.S.C. § 1229(a)(c)(3)(A), and the Federal Regulations 8 C.F.R. § 1240.8(a).

expulsion from our shores."). Because DHS did not meet its burden of proof, as an IJ determined, Petitioner's detention is unlawful. Petitioner also lacks the ability to challenge his confinement within the agency of DHS; therefore, a writ of habeas corpus is the most appropriate form of relief.

**Applicability of the Procedural Due Process Under the Fifth Amendment**

43. The Fifth Amendment provides procedural due process that "imposes constraints on governmental decisions which deprive individuals of 'liberty' . . . interests[.]" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). This protection applies to all persons within the United States, including noncitizens in immigration detention. *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017); *see also Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The inquiry into whether an individual's right to procedural due process has been violated occurs in two (2) steps: first, whether a liberty or property interest exists that has been interfered with by the states, and two (2) whether the procedures upon which that deprivation occurred were constitutionally sufficient. *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

44. First, Petitioner has a protected liberty interest. Prior to ICE detention, Petitioner was released from Idaho state custody after completing his sentence and was not subject to any parole requirements. *See* **Exh. A** *Personal Declaration of* [redacted] at ¶ 16. Then, while in immigration detention, an IJ terminated Petitioner's removal proceedings, as DHS's removability charges could not be sustained by clear and convincing evidence, with the weight and importance of that burden is discussed *infra*. *See* **Exh. E**, *IJ Order*, dated October 23, 2025; *see also* **Exh. H**, *Declaration of Counsel, Melissa Corral, Esq.* at ¶ 5. Therefore, Petitioner has no restrains on his liberty other than his current unlawful ICE custody. As such, he has an

interest in his continued freedom, particularly after he successfully completed his sentence in Idaho state custody and his removal proceedings have been terminated.

45. Second, to determine whether the administrative procedures, like removal proceedings, are constitutionally sufficient, the Supreme Court articulated the following three (3) factor test:

> "[f]irst, 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 probative 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*, 424 U.S. at 335.

46. For the first factor, Petitioner has a significant private interest in freedom from detention. Again, he has completed his sentence within the Idaho state system, is not subject to any parole requirements, and his immigration proceedings have been terminated.

47. For the second factor, erroneous deprivation of such interest has already occurred. Petitioner is being deprived of his liberty interest despite a hearing in immigration court and the termination of proceedings due to unstainable charges. DHS could not meet the procedural safeguard of the highest civil burden of proof, *clear and convincing evidence*, but Petitioner remains detained today. Further, DHS has designated Petitioner as an "arriving alien" a procedural decision that has effectively robbed Petitioner of any additional opportunity for agency relief, like a bond hearing. Petitioner did contest this designation in written pleadings filed with the immigration court on October 17, 2025, but the IJ did not make a ruling on the issue. *See* **Exh I**, *Written Pleadings*, dated October 17, 2025; *see also* **Exh. E**, *IJ Order*, dated

October 23, 2025. Despite Petitioner defending DHS's charges through the administrative procedure he was provided, he remains unlawfully detained.

48. Finally, for the third factor, the fiscal and administrative burden to the government to adhere to the procedural safeguards in the statutes and caselaw is low. Petitioner has exhausted his administrative remedies, and received the outcome of terminated removal proceedings, which entitle him to freedom. Where the government falls short and on its own increases its administrative burden is in its willful defiance to follow through on the next step—releasing Petitioner while DHS's BIA appeal is ongoing. Also, keeping Petitioner detained for an unknown period of time pending the appeal, *see infra* ¶ 61, only increases DHS's fiscal burden due to the costs associated with keeping him detained.

49. Therefore, Petitioner's right to procedural due process has been violated because the administrative procedures in place are flawed, not because the procedures themselves do not exist. DHS has been permitted to keep Petitioner detained, despite his removal proceedings being terminated. Additionally, the arriving alien designation, has stripped Petitioner of other administrative remedies for release.

**Applicability of the Administrative Procedure Act ("APA")**

50. The APA at 5 U.S.C. §706(2)(A) permits a court to "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." To assess whether agency conduct is arbitrary or capricious, a court must review whether the decision made by the agency was based in consideration of relevant factors and if there has been a clear error of judgment. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020).

51. Throughout 2025, DHS has shown through its actions that it is the agency's policy to increase the detention of noncitizens during removal proceedings. This is evident in the expansion of mandatory detention under 8 U.S.C. § 1225 and the decrease in parole grants and release on recognizance for detained noncitizens. *See* Designating Aliens for Expedited Removal, 90 Fed. Reg. 8,139 (January 24, 2025); *accord* Exec. Order No. 14165, 90 Fed. Reg. 8,467 (January 30, 2025); *see also* Immigration and Customs Enforcement, FY25_detentionStats09242025, Detention Management, https://www.ice.gov/detain/detention-management (last visited January 29, 2026); *see also* Immigration and Customs Enforcement, FY26_detentionStats12222025, Detention Management, https://www.ice.gov/detain/detention-management (last visited January 29, 2026). This policy skyrocketed ICE's detention statistics and unfairly detained thousands entitled to release and who are unable to seek release through agency-based options, like Petitioner. *See* Immigration and Customs Enforcement, FY26_detentionStats12222025, Detention Management, https://www.ice.gov/detain/detention-management (last visited January 29, 2026); *compare* Immigration and Customs Enforcement, FY25_detentionStats09242025, Detention Management, https://www.ice.gov/detain/detention-management (last visited January 29, 2026); *e.g. Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 LX 523334 (C.D. Cal. Dec. 18, 2025) (certifying a class of noncitizens eligible for bond, despite DHS policy of expansive mandatory detention). This policy of detaining almost all noncitizens during removal proceedings, and the decision to detain Petitioner based on this policy, is arbitrary and capricious. DHS did not consider the constitutionality of the detention in certain circumstances, and the questionable constitutionality of so many noncitizen detentions which shows there has been a clear error in judgment.

52. Additionally, 5 U. S. C. §706(2)(B) of the APA also permits a court the same ability to "hold unlawful and set aside agency action, findings, and conclusions" that are "contrary to constitutional right, power, privilege, or immunity."

53. In the United States, liberty is the norm and detention "is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). An individual's private interest in being free from physical restraint is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (stating that freedom from imprisonment lies at the heart of the liberty that the Clause protects, in reference to the Fifth Amendment of the U.S. Constitution). Immigration detention must "bear[] a reasonable relation to the purpose for which the individual [is] [detained]" so that it remains "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690. Here, in policy and Petitioner's detention by extension, DHS's policy of expansive detention is violating Petitioner's Fifth Amendment right to liberty without due process.

54. Further, all noncitizens are entitled to due process under the Fifth Amendment in removal proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993). This includes adherence to the clear and convincing standard in removal proceedings. 8 U.S.C. § 1229(a)(c)(3)(A); 8 C.F.R. § 1240.8(a); *see also Woodby*, 385 U.S. 276, 286 (1966). This also includes, in the Ninth Circuit, noncitizen access to their entire A-file, without a Freedom of Information Act ("FOIA") request. *Dent v. Holder,* 627 F.3d at 374. A noncitizen's complete A-file includes all non-confidential records and documents related to a noncitizen's admission or presence in the United States. *Id.* at 374.

55. Finally, 5 U. S. C. § 555(b) of the APA requires that "within a reasonable time, each agency shall proceed to conclude a matter presented to it." This premise allows courts to

compel agency action that is unlawfully withheld or unreasonably delayed. 5 U. S. C. § 706(1). DHS's detention of Petitioner in violation of the Fifth Amendment transpires into an unreasonable delay in Petitioner's release.

**FACTS**

56. Petitioner has resided in the United States since the 1980s, when he entered the U.S. from Mexico without inspection. *See* **Exh. A** *Personal Declaration of* [redacted] at ¶ 1. In 1991, Petitioner became a legal permanent resident ("LPR") through his marriage to a United States citizen. *Id.* at ¶ 10.

57. From 1990 to 2016, Petitioner has been arrested several times, resulting in six (6) DUI convictions and one (1) misdemeanor assault conviction, and he also has several traffic infractions. *Id.* at ¶ 13. Petitioner was sentenced to ten (10) years in Idaho prison after his most recent conviction in 2016. *Id.* Respondent has completed his sentence, is not subject to parole, and was released from the Idaho Department of Corrections on or about August 4, 2025. *Id.* at ¶ 16. As Petitioner was leaving Idaho custody to return home, ICE intercepted him and transported him to NSDC, where he has remained since then. *Id.* at ¶ 16.

58. On August 4, 2025, ICE initiated removal proceedings against Petitioner before the Las Vegas Immigration Court pursuant to 8 U.S.C. § 1229a. *See* **Exh. B**, *NTA*. In his NTA, ICE charged Petitioner as an LPR subjected to one ground of deportability. *Id.* The ground, under 8 U.S.C. § 1227(a)(1)(A), alleges Petitioner is a noncitizen who, at the time of entry or adjustment of status, was inadmissible as he seeks to procure, sought to procure, or who procured a visa or immigration benefit by fraud or willful misrepresentation of a fact. *Id.* DHS alleged Petitioner failed to disclose a 1991 Oregon arrest and charge for assault in the second degree. *Id.* To support its allegation, DHS submitted a six (6) page application filed in 1991, along with an

information and judgment of conviction from Petitioner's 1991 Oregon arrest. *See* **Exh. G**, *DHS Evidentiary Submission*, dated August 14, 2025, at 39-91. DHS included a second charge under 8 U.S.C. § 1182, but DHS rescinded these charges in immigration court on October 23, 2025. *See* **Exh. H**, *Declaration of Counsel, Melissa Corral, Esq.* at ¶ 5. DHS did not file an amended NTA. *Id.*

59. For context, Petitioner traveled to Cuidad Juarez, Mexico in 1991 for his interview to become an LPR. *See* **Exh. A** *of* [redacted] at ¶ 6. In May 1991, prior to the interview in June 1991, Petitioner was arrested and charged with a DUI and attempted assault in the second degree. *See* **Exh. G**, *DHS Evidentiary Submission*, dated August 14, 2025, at 41-46. Leading up to the interview, Petitioner collected his criminal records from the United States and Mexico, and provided them to the officer at the interview. *See* **Exh. A** *Personal Declaration of* [redacted] at ¶¶ 7–8. Petitioner attempted to collect his criminal records from Oregon, but the arresting police department was unable to provide him with anything. *Id.* at ¶ 7. Despite this, Petitioner still verbally disclosed his May 1991 arrest and charges in Oregon to the consular officer. *Id.* at ¶ 9. Therefore, Petitioner did not fail to disclose his 1991 arrest as DHS alleges. Ultimately, Petitioner was convicted of assault and DUI at the end of July 1991, after his permanent residency was granted. *Id.*

60. On October 23, 2025, Petitioner, through counsel, argued he was not deportable as charged because DHS did not provide enough evidence to meet their burden. The IJ agreed and found DHS's submission insufficient to sustain the charges and terminated Petitioner's case. *See* **Exh. E**, *IJ Order*, dated October 23, 2025. On November 10, 2025, DHS filed an appeal. *See* **Exh. F**, *Notice of Appeal*, dated November 14, 2025 to the BIA.

61. Since then, Petitioner remains in detention despite an IJ's order terminating the charges against him. Without relief from this Court, he faces the prospect of an unknown amount of time spent in detention because the BIA has not yet issued a briefing schedule for Petitioner's matter, and there is no public, reliable method to calculate or anticipate when a briefing schedule and ultimate decision will be issued. At this time, the best predictor of adjudication times shows that pending appeals increased dramatically from fiscal year 2024 to 2025, by over 60,000 cases. *See* Adjudication Statistics All Appeals Filed, Completed, and Pending, Executive Office for Immigration Review, https://www.justice.gov/eoir/media/1344986/dl?inline (last visited January 29, 2026). Contrast this with the appeals completed, which has stayed relatively the same, save for an isolated jump in 2024 of just under 9,000 cases. *Id.* This does not bode well for a fast adjudication before the BIA. While detained, Petitioner has been and will continue to be separated from his family, and unable to seek treatment for his alcohol dependency or receive proper medical care and diet, and subject to the harsh conditions of ICE custody. *See* **Exh. A**, *Personal Declaration of* [redacted] at ¶¶ 18–20.

## CLAIMS FOR RELIEF

### COUNT I

**Violation of Due Process Under the Fifth Amendment**

62. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

63. Petitioner has a fundamental interest in liberty and being free from unlawful detention. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government

custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. 678

64. The Fifth Amendment also entitles noncitizens to due process in removal proceedings. *Reno*, 507 U.S. at 306. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). To protect due process in removal proceedings, the Supreme Court consciously selected the burden of proof in removal proceedings to be clear and convincing evidence. *Woodby*, 385 U.S. at 286 (1966). By intentionally selecting a higher burden than preponderance of the evidence, the Supreme Court acknowledged the liberty interest at stake and sought to prevent arbitrary outcomes. *Id.* at 285. In addition to this, the Ninth Circuit also added an additional procedural safeguard in requiring noncitizen access to their A-file under *Dent v. Holder*. 627 F.3d 365. These procedural protections, along with Petitioner's master calendar hearings, have been ineffective in protecting his fundamental liberty interest.

65. Here, however, the government's continued detention of Petitioner violates his right to due process under the Fifth Amendment. DHS has not produced any additional evidence beyond what was filed on August 14, 2025, nor have they produced Petitioner's A-file. Petitioner is currently being held based on deportation charges that *could not* be sustained by clear and convincing evidence in immigration court. *See* **Exh. E**, *IJ Order,* dated October 23, 2025. In failing to meet the clear and convincing burden of proof, yet still detaining Petitioner, DHS is infringing on Petitioner's liberty solely based on accusations. This is arbitrary and punitive, as it appears to reflect disdain for Petitioner's criminal history, rather the concrete fact that an IJ terminated removal proceedings.

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**COUNT II**

**Violation of the INA**

66. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

67. The INA includes several provisions that govern detention and custody redeterminations; however, Petitioner is unable to utilize any provision to seek release. As an LPR with no criminal history that subjects him to mandatory detention, his detention is governed by 8 U.S.C. § 1226(a), the INA discretionary detention provision. While § 1226(a) states that a noncitizen "may" be released, Petitioner has no avenues to do so.

68. Seeking a bond hearing under the INA is not possible for Petitioner, as his immigration proceedings have been terminated and an IJ will not have jurisdiction to preside over a bond hearing unless another NTA is filed, or the *sua sponte* reopening of a terminated case. Even if Petitioner could theoretically request a bond hearing, his NTA erroneously designates him an "arriving alien", further preventing an IJ from having jurisdiction to preside over a bond hearing.

69. As no additional grounds of removability are applicable to Petitioner and the initial charges were not sustained, there is no lawful way to revest jurisdiction within the immigration court. The proceedings based on the NTA DHS filed have been terminated. It is unreasonable and judicially imprudent to request that DHS refile an NTA, change the "arriving alien" designation, or expect the *sua sponte* reopening of a case for the sole purpose of re-vesting jurisdiction for a custody redetermination.

70. Petitioner also cannot seek discretionary release from DHS or ICE, as current agency policy is not amenable to discretionary release. The agencies have already made the discretionary, yet unlawful, determination to keep Petitioner detained after proceedings were terminated and DHS filed its appeal. This decision and underlying policy are both unreasonable and unlawful. It robs Petitioner of his final opportunity for remedy from the agency. The closing of all opportunities to seek agency-based relief from detention through jurisdictional technicalities and agency policy, not the law itself, is a misapplication and violation of the INA.

**COUNT III**

**Violation of the APA**

71. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

72. The APA permits this Court to review agency actions, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U. S. C. §706(2)(A). Here, in the expansion of immigration detention, DHS failed to consider all relevant factors – most pertinent the unconstitutional detention of individuals entitled to relief and unable to seek a remedy through the agency, like Petitioner. The fact that such a glaring issue of constitutionality exists at all shows this policy is an error in judgement. This makes DHS's policy of the expansion of immigration detention, and Petitioner's detention based on that policy, arbitrary and capricious.

73. The APA also permits those actions, findings, and conclusions that are contrary to constitutional right, power, privilege, or immunity. 5 U. S. C. §706(2)(B). As discussed, *supra* in Count I, Petitioner's detention is violating the Fifth Amendment.

74. The APA also allows courts to compel agency action when there is an unreasonable delay, or the agency is unlawfully withholding action. 5 U. S. C. § 555(b); 5 U. S. C. § 706(1). Here, Petitioner's continued detention in violation of the Fifth Amendment alone creates an unreasonable delay in Petitioner's release. On top of this, Petitioner's removal proceedings have terminated and yet, DHS filed an appeal, as is their right, but has not released Petitioner. There is no set timeframe for an appeal at the BIA, and the filing of the appeal without release only serves to prolong Petitioner's detention. The combination of Petitioner's detention and the appeal appear vindictive and punitive, the opposite of the intention behind immigration detention. *Zadvydas*, 533 U.S. at 690 (explaining that immigration detention should be nonpunitive and bear a reasonable relation to the reason an individual is detained).

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## PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Issue a writ of habeas corpus requiring that Respondents immediately release Petitioner following the termination of his removal proceedings on October 23, 2025;
3. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
4. Grant any other and further relief that this Court deems just and proper.

DATED this 29th day of January, 2026.

Respectfully Submitted,

/s/ Melissa Corral

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**28 U.S.C. § 2242 VERIFICATION STATEMENT**

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

Dated: January 29, 2026

/s/ Melissa Corral
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## EXHIBIT LIST

| Tab | Document | Page |
|---|---|---|
| A | Personal Declaration of [redacted] | PET001–PET005 |
| B | Notice to Appear | PET006–PET010 |
| C | Form I-213 | PET011–PET015 |
| D | ICE Detainee Locator Screenshot | PET016–PET017 |
| E | Immigration Judge Order, dated October 23, 2025 | PET018–PET020 |
| F | Notice of Appeal dated November 14, 2025 | PET021–PET024 |
| G | DHS Evidentiary Submission, dated August 14, 2025 | PET025–PET091 |
| H | Declaration of Counsel, Melissa Corral, Esq. | PET092–PET093 |
| I | Written Pleadings, dated October 17, 2025 | PET094–PET098 |