UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

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

C.R.V.
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-00312

HABEAS PETITION SEEKING RELEASE OF LAWFUL PERMANENT RESIDENT

HABEAS PETITION SEEKING RELEASE OF LAWFUL PERMANENT RESIDENT

I. INTRODUCTION

Petitioner, Mr. Carlos R.V. ("C.R.V."), a 58-year old Spanish-speaking wheelchair-bound amputee who cannot write, has been in the United States for more than two-and-a-half decades, having arrived prior to the year 2000. He reports to counsel his fears that he will die as an inmate based on recent spikes in his blood pressure, further reports that he is unable to write, and therefore offers statements made by his family members attesting as to his condition.

He suffered a heart attack in March 2025 leading to his hospitalization at Grady Memorial Hospital. While hospitalized and medicated for his condition, he allegedly exposed himself inappropriately and touched a nurse without her permission, leading to Petitioner's arrest then transfer to immigration custody at Stewart Detention Center. Petitioner has been in immigration custody since July 17, 2025, for more than the seven months.

On December 30, 2025, Immigration Judge Harness granted C.R.V.'s application for permanent residence. Petitioner believes he became a Lawful Permanent Resident (LPR) at this point. The Department, despite conceding C.R.V.'s *eligibility* (though arguing based solely on discretion) [1] for adjustment of status prior to the start of the hearing, nonetheless appealed the December 30th grant on January 8, 2025 to the Board of Immigration Appeals (BIA).

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[1] Eligibility for adjustment of status generally depends on 8 U.S.C. § 1255(a) [INA § 245], though Petitioner's application was made based on 8 U.S.C. § 1255(i) [INA § 245(i)], which allows for adjustment notwithstanding an entry without inspection, if certain conditions are met. The Immigration Judge found Petitioner *was* eligible for adjustment of status under Section 1255(i). Prior to the hearing, the Department conceded Petitioner's eligibility for adjustment of status, but argued the application should have been denied as a matter of discretion. Immigration Judge Harness disagreed with the Department, and issued a decision granting Petitioner's I-485 *Application to Register Permanent Residence or Adjust Status* on December 30, 2025.

Now, in the absence of federal court intervention, Petitioner faces the prospect of continued detention for the indefinite period in which the Department's appeal is pending with BIA, which could subject him to several more months of detention. [2]

Therefore, to vindicate his statutory and constitutional rights, Petitioner seeks immediate release from immigration detention. He does not seek another Section § 1226(a) bond hearing before the immigration courts because he believes the immigration court is unable or unwilling to fairly decide his case for release on bond.

II. FACTS AND PROCEDURAL HISTORY

Petitioner, C.R.V., a 58-year old Spanish-speaking wheelchair-bound amputee who does not know how to write, entered the United States without inspection prior to the year 2000 and has been in this country more than two-and-a-half decades.

Entry: Petitioner entered the United States without inspection prior to the year 2000. On September 25, 2000, His U.S. citizen brother, Ernesto, filed an I-130 *Petition for Alien Relative* with a priority date of September 20, 2000, to assist his brother in applying for permanent residency. USCIS issued an I-485 receipt notice on June 2, 2023.

Arrest: In March 2025, Petitioner was hospitalized for a heart attack at Grady Memorial Hospital. While hospitalized and medicated for his condition, Petitioner was alleged to have touched a nurse without her permission and exposed himself inappropriately, for which he was

[2] See e.g. *BIA Appeal Timeline 2025: What To Expect*, Naila Gulzar (Published Nov. 3, 2025) (noting "Many routine appeals finish in about 6 to 18 months from filing, and it's common for delays to stretch to two years or more, especially in busy circuits." Further noting detained cases (as of this November 2025 article) took an average of 4.8 months) (Available at https://www.chidoluelaw.com/bia-appeal-timeline-2025-what-to-expect/).

arrested by state authorities and pled down to public indecency.[3] He was released from state custody into immigration detention on July 17, 2025, and has since been detained, for more than seven months, at Stewart Detention Center in Lumpkin, Georgia.[4]

First Bond Motion: On August 8, 2025, Mr. V. filed his first bond motion[5], seeking release on an immigration bond. Immigration Judge (IJ) Harness denied this bond motion on August 18, 2025, finding the Court lacked jurisdiction (in this pre-habeas bond motion), or alternatively, finding Petitioner, an amputee in a wheelchair, was a "significant risk of flight." IJ Harness found Petitioner was *not* ineligible on the basis of danger to the community. Petitioner appealed this first bond motion denial on September 16, 2025, with BIA. That appeal remains pending as of February 2026. Since filing it, Petitioner has received no communication from BIA regarding it, as well as no supplemental brief from the Department responding to the appeal.

Lawful Permanent Residence Application: On December 30, 2025, Immigration Judge (IJ) Harness granted Petitioner's application for permanent residence. [6]

First habeas petition: The Department, despite having conceded Petitioner's eligibility for adjustment of status prior to the start of the December 30, 2025 hearing (arguing for denial based on discretion), nonetheless appealed that decision on January 8, 2025. Weeks later,

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[3] In connection with the 2025 hospital incident, Petitioner was charged under O.C.G.A. § 16-6-8(b) (public indecency) and O.C.G.A. § 16-6-22.1(b) (sexual battery). He pled to misdemeanor public indecency. The prosecutor dismissed the sexual battery charge *nolle prosequi*, and Petitioner was sentenced to six months probation owing a monthly probation fee of $49.00, and was ordered to avoid contact with the hospital or nurse staff.

[4] Stewart Detention Center is located in the city of Lumpkin and county of Stewart, Georgia, within the Middle District, but not within "Stewart County" of the Northern District.

[5] In immigration law, a "bond hearing" is termed a "bond redetermination proceeding." *Immigration Court Practice Manual* 1.5(a) (available at page 79 of https://www.justice.gov/eoir/media/1052736/dl?inline=). This brief refers to "bond redetermination requests" as "bond motions."

[6] Immigration Judge (IJ) Harness granted the Petitioner's I-485 *Application for Adjustment of Status* on December 30, 2025.

noticing he was still not released from detention, Petitioner filed his first habeas corpus petition seeking a bond hearing under 8 U.S.C. § 1226(a), or alternatively, seeking immediate release. This Court chose to order the immigration court to provide Respondent with a bond hearing governed by Section 1226(a).

Second bond hearing: On February 4, 2026, the immigration court provided Respondent with a bond hearing governed by Section 1226(a) (IJ Fuller was presiding). IJ Fuller recognized Section 1226(a) jurisdiction but denied the bond motion finding Petitioner ineligible for bond on the basis of being a 'danger to the community', but found him *not* to be a flight risk. IJ Fuller then rejected Petitioner's arguments that he obtained LPR status on December 30, 2025, or that even if he did not obtain LPR status that keeping him in detention until BIA adjudicates the Department's appeal violates due process. Judge Fuller disagreed and denied the bond motion, stating C.R.V. would remain detained until BIA adjudicates the Department's appeal.

Now, in the absence of judicial intervention Petitioner will not be released. He seeks an order from this court granting his habeas petition and ordering immediate release, to vindicate his Constitutional and statutory rights.

First, Petitioner acquired Lawful Permanent Resident (LPR) status on December 30, 2025, when an Immigration Judge Harness granted his application for permanent residence. Therefore, his continued detention is unlawful.

Second, regardless of whether Petitioner became an LPR on December 30, 2025, the prospect of continued detention for the indefinite, months-long period in which BIA adjudicates the Department's appeal violates the due process clause.

Third, Petitioner's continued confinement violates the Fourth Amendment because his confinement has become an "unreasonable seizure" under these circumstances.

Fourth, the Immigration Judge erred in finding Petitioner ineligible for bond on the basis of being a 'danger', by failing to properly weigh the *Matter of Guerra*[7] factors.

Fifth, the Department violates the Eighth Amendment prohibition on "excessive bail" and against "cruel and unusual punishments […]."

III. JURISDICTION

1. This Court has jurisdiction. *U.S. Const. art. I, § 9, Cl. 2* (Suspension Clause); *28 U.S.C. § 1331* (subject matter jurisdiction); *28 U.S.C. § 2241* (habeas corpus); *28 U.S.C. § 1651* (All Writs Act); *5 U.S.C. § 702* (Administrative Procedure Act); *Zadvydas v. Davis*, 533 U.S. 678 (2001) (section 2241 habeas proceedings are available as a forum for statutory and constitutional challenges to post-removal-period detention); *Rasul v. Bush*, 42 U.S. 466 (2004) (jurisdiction over petitions for habeas corpus exists where the custodian can be reached by service of process from the court in which the petition has been brought).
2. Petitioner incorporates by reference all paragraphs of this Petition as if fully set forth herein, and as if fully set forth under all other parts of this Petition.[8]
3. 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);

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[7] In Re Guerra, 24 I&N Dec. 37 (BIA 2006).

[8] To avoid duplicity, Petitioner makes this statement of "incorporation by reference" and will not superfluously restate it elsewhere. *See* F.R.C.P. Rule 10, providing "A statement in a pleading may be adopted by reference elsewhere in the same pleading […]."; See also Antonio Gidi, *Incorporation by Reference: Requiem for a Useless Tradition*, 70 HASTINGS L.J. 989 (2019). Available at: https://repository.uclawsf.edu/hastings_law_journal/vol70/iss4/3 (Examining the history of incorporation by reference and arguing it "is useless.")

Zadvydas, supra; *28 U.S.C. § 1651* (All Writs Act); *8 U.S.C. § 1252(e)(2)* (Immigration and Nationality Act, "INA").

4. This court is not deprived of jurisdiction by *28 U.S.C. § 2241(e)(1)* as Petitioner has not been deemed an "enemy alien combatant" and is not "awaiting such determination", or by *8 U.S.C. § 1252(a)(2)(B)* as this Petition does not involve review of discretionary relief. *Jennings v. Rodriguez*, 583 U.S. 281, at 292-95 (Section 1252 did not bar review of non-citizens entitlement to bond hearing pending resolution of immigration proceedings); *Johnson v. Guzman-Chavez*, 594 U.S. 523, 533 n.4 (holding the same, summarily citing Jennings).

IV. VENUE

5. The Court is a proper venue. Petitioner is detained at Stewart Detention Center within the Middle District of Georgia.[9] 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)*.

6. Alternatively, venue is proper since 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)*.

V. EXHAUSTION OF REMEDIES

7. The exhaustion of remedies doctrine does not bar this action.

8. First, exhaustion of remedies does not apply to begin with. Second, even if it does apply, Petitioner satisfies ample exceptions to it because exhaustion is "futile" under the circumstances of this case. *Iddir v. INS, 301 F.3d 492, 500*; *McCarthy v. Madigan*,

[9] "Stewart Detention Center" is in the city of Lumpkin in Stewart County within the Middle District of Georgia, and not within "Lumpkin County" of the Northern District of Georgia.

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."); *see also Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) (BIA decision demonstrating the futility of seeking bond in current immigration courts absent a habeas corpus order).

9. Petitioner reserves the right to file supplemental argument as to the inapplicability of the doctrine of exhaustion of remedies, should future argument be necessary.

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

10. Petitioner is detained at Stewart Detention Center and has been for more than seven months. He is therefore in "custody" of Respondents under 28 U.S.C. § 2241. *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.")

11. 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." *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.")

VI. PARTIES

12. Petitioner is Carlos Ramirez Vargas, whose application for adjustment of status was granted on December 30, 2025.

13. 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.

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

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

VII. LEGAL FRAMEWORK

16. At issue is the lawfulness of Petitioner's confinement. 8 U.S.C. § 2241; 8 U.S.C. § 2243; *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."); *Ex parte Royall*, 117 U.S. 241 (1886) (Habeas is used to determine whether an individual "is restrained of his liberty in violation of the Constitution…").

A. Petitioner acquired Lawful Permanent Residence on December 30, 2025, when Judge Harness granted his application for permanent residence, making his continued detention unlawful.

17. On December 30, 2025, the immigration court had jurisdiction to grant Petitioner's application for adjustment of status. 8 C.F.R. § 245.2 (citing 8 C.F.R. § 1245.2(a)(1)) (Immigration court obtains jurisdiction over adjustment of status applications for any "[non-citizen] placed in … removal proceedings (other than as an arriving alien) […]."). [10]

18. Lawful Permanent Resident (LPR) status is conferred "[u]pon the approval of an application for adjustment made under subsection (a). [referring to 8 U.S.C. § 1255(a)]." 8 U.S.C. § 1255(b); *see also USCIS Policy Manual Vol. 12, part A, 3*

[10] Petitioner did not enter the United States as an arriving alien, rather, he entered without inspection. But even if he did enter as an arriving alien, the immigration court would retain jurisdiction to grant his application for adjustment of status, because he had "properly filed" his application with USCIS while in the United States. 8 C.F.R. § 1245.2(a)(1)(ii)(A).

"Effective Date of Permanent Residence" ("A person is generally considered an LPR at the time USCIS approves the applicant's adjustment application…").

19. Here, an immigration judge issued an order approving Petitioners' application for adjustment of status on December 30, 2025.

20. Status is considered adjusted to that of Lawful Permanent Residence as of the date of the decision granting the application. 8 U.S.C. § 1255(b) ("Upon the approval of an application for adjustment made under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for adjustment of status is made[…]."; 8 C.F.R. § 245.2(a)(5)(ii) ("If the application is approved, the applicant's permanent residence shall be recorded as of the date of the order approving the adjustment of status.").

21. Therefore, Petitioner became a Lawful Permanent Resident on December 30, 2025.

22. **As a lawful permanent resident, Petitioner's present confinement is unlawful.**

23. The NTA charges Petitioner as allegedly removable under 8 U.S.C. § 1226(a). That provision authorizes "On a warrant…" that "a [non-citizen] may be arrested and detained pending a decision on whether the [non-citizen] is to be removed from the Untied States." 8 U.S.C. § 1226(a).

24. Here, the immigration court made just such a "decision on whether [Petitioner] is to be removed" when Immigration Judge Harness granted Petitioner's application for permanent residence on December 30, 2025.

25. Since then, the immigration court has not scheduled any future merits hearings. There is not a purpose to a future merits hearing where, as here, the non-citizen has obtained Lawful Permanent Resident status.

26. Therefore, the statutory grant of authority to detain under 8 U.S.C. § 1226(a) ended when IJ Harness granted Petitioner's application for adjustment of status on December 30, 2025, making his present detention without statutory authorization making it unlawful.

27. And because Petitioner's detention is unlawful, this Court has authority to order Petitioner's immediate release. 28 U.S.C. § 2241; Id. § 2243 ("The court shall … dispose of the matter as law and justice require."); *Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004) ("Habeas is at its core a remedy for unlawful executive detention); *Munaf v. Geren*, 553 U.S. 675 (2008) ("The typical remedy [for unlawful executive detention] is, of course, release." (*citing Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)) ("[T]he traditional function of the writ is to secure release from illegal custody"))); for several on-point district court decisions, *see also Larrazabal-Gonzalez*, 2026 WL 221706, at *5 ("There is no process to await. The Constitution requires release."); *accord Quijada Cordoba v. Knight*, No. 1:25-CV-00605-BLW, 2025 WL 3228945, at *9 (D. Idaho Nov. 19, 2025) (collecting cases of "courts across the country [that] have ordered the immediate release (S.D.N.Y. Dec. 17, 2025) (same); *Solano*, 2026 WL 311624, at *20–21 (same). detainees in similar situations" and ordering the release of a petitioner who challenged his detention without a bond hearing); *Yao v. Almodovar*, No. 25-CV-9982, 2025 WL 3653433, at *12; Cf. Jennings v. Rodriguez, 583 U.S. ___ at 2B

(2018) ("...detention under §1226(c) [inapplicable here but analogous to § 1226(a)] has 'a definite termination point': the conclusion of removal proceedings... under §1226(c), the Government must detain until 'a decision on *whether* the alien is to be removed' is made. (citing § 1226(a)); 8 U.S.C. § 1226a(a)(2) – Release (In this provision relating to "Detention of Terrorist Aliens", providing "...If the alien is finally determined not to be removable, detention pursuant to this subsection shall terminate."))

B. <u>Petitioner's confinement violates the due process clause</u>

28. The due process clause provides: "No person shall ... be deprived of life, liberty, or property without due process of law [...]." U.S. Const. Amend. V. Petitioner is detained and has therefor been "deprived" of his liberty interest. *Id.*

29. The due process clause applies here and extends its protections to Petitioner. *Reno v. Flores*, 507 U.S. 292 (1993) ("It is well established that the Fifth Amendment entitled aliens to due process of law in deportation proceedings." (*citing The Japanese Immigrant Case*, 189 U.S. 86, 100-101 (1903)); *Zadvydas v. Davis*, 533 U.S. at 693 (("[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."); *Demore v. Kim*, 538 U.S. 510 (2003); *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (the "essence of due process is the requirement that 'a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it.'" (quoting *Joint Anti-Fascist Refugee Comm. V. McGrath*, 341 U.S. 123, 171-72 (1951) (Frankfurter J., concurring)); *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.").

30. Although Congress's power over immigration power has been described as "plenary" (*Kleindienst v. Mandel*, 408 U.S. 753, 769 (1972)), "it is well-established that the Due Process Clause stands as a significant constraint on the manner in which the political branches may exercise their plenary authority." *Hernandez v. Sessions*, 872 F.3d 976, 990 n.17 (9th Cir. 2017) (Citing *Zadvydas*, supra, at 695).

31. Procedural due process is often evaluated using a balancing test. *Mathews v. Eldridge*, 424 U.S. 319, 347 (1976) (Evaluating whether process is 'due process' based on a multifactor balancing test weighing individual interests, the governmental interests in limiting procedural burdens, the risk that existing procedures might erroneously curtail individual interests, and how much additional procedure would help reduce the risk of error).

32. Here, Petitioner is and will remain in detention until BIA adjudicates the Department's appeal of the December 30, 2025 decision of IJ Harness granting Petitioner's application for adjustment of status. BIA appeals can take between six to eighteen months, or an average of 4.8 months in the case of detained non-citizens. [11]

33. Applying *Mathews v. Eldridge* balancing here, Petitioner's has a powerful individual liberty interest. *Zadvydas*, supra, ("A statute permitting indefinite detention would raise serious constitutional questions. Freedom from imprisonment lies at the heart of

[11] See e.g. *BIA Appeal Timeline 2025: What To Expect*, Naila Gulzar (Published Nov. 3, 2025) (noting "Many routine appeals finish in about 6 to 18 months from filing, and it's common for delays to stretch to two years or more, especially in busy circuits." Further noting detained cases (as of this November 2025 article) took an average of 4.8 months) (Available at https://www.chidoluelaw.com/bia-appeal-timeline-2025-what-to-expect/).

the liberty protected by the Due Process Clause"); *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).

34. Since 2025, DOJ has fired all Biden-appointees to BIA and over 100 immigration judges.[12] Furthermore, of the 41-precedential decisions issued by BIA as of September 12, 2025, every decision favored the administration "save one where the government won only in large part." *[See Footnote 13]*. Therefore, existing procedures are likely to erroneously curtail Petitioner's individual interests.

35. Furthermore, 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 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

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[12] See AILA, *BIA Decision Strips Immigraiton Judges of Bond Authority...*, (available at https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/#:~:text=The%20decision%20comes%20from%20an,weaponization%20of%20the%20legal%20system)

constitutes a permissible regulation, rather than impermissible punishment." (emphasis added).

36. Therefore, the *Salerno* court concluded the Bail Reform Act did *not* violate due process in part because it "carefully limits" detention to occur only for "the most serious of crimes" – here Respondent was arrested in connection with a public indecency conviction. However, he was not sentenced to jail time. And his length of time is indefinite: there is no apparent limit on how long the Department can continue to keep Petitioner detained absent federal court intervention. Therefore, Salerno is an analogous case showing Petitioner's due process rights are being violated, empowering this Court to grant habeas corpus relief. *Cf. United States v. Salerno*, 481 U.S. 739 (1987).

C. Petitioner's Detention Violates the Eighth Amendment

37. The Eighth Amendment prohibits "excessive bail" or the infliction of "cruel and unusual punishments." U.S. Const. Amend. VIII.

38. Petitioner acknowledges there is 18th century dicta providing deportation is not "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). Other courts have echoed this dicta. *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)).

39. However, from this century-old dicta, it does not follow that *no part* of the immigration process, however grueling the conditions, however long or indefinite the duration of confinement, can ever implicate the Eighth Amendment.

40. Rather, while there is admittedly a lack of on-point case law weighing in dispositively, Petitioner believes the Eighth Amendment can and must apply in the immigration context in certain contexts, as here. *See Ingraham v. Wright*, 430 U.S. 651, 659-660 (1977) (noting in dicta the scope of the eighth amendment's protections can be understood by reference to "traditional ideas of fair procedures"); *see also 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."). Here, Salerno provides that even *dangerous individuals* can receive a bond under certain circumstances and the IJ erroneously held Petitioner to be ineligible based on danger, but furthermore Petitioner's detention is not subject to any of the procedural safeguards "such as a prompt hearing" that the Salerno court noted was relevant to its conclusion that the Salerno detention was lawful.

41. Rather, Petitioner offers two theories of why his detention violates the Eighth Amendment: first the Department is requiring "excessive bail" by erroneously holding him ineligible for bond. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) (Providing factors to evaluate bond eligibility. Here, unlike Guerra, a prior immigration judge did not find Petitioner to be a danger, and the Judge neglected to

consider Petitioner's LPR status). Second, Petitioner's detention is cruel and unusual punishment.

D. Petitioner's detention violates the Immigration and Nationality Act

42. As discussed, 8 U.S.C. § 1226(a) does authorize a non-citizen to be "arrested and detained *pending a decision on whether the [non-citizen] is to be removed* […]." However, that grant of authority to detain ends where a decision on removability is made. Here, IJ Harness decided Petitioner is *not* removable when she granted his application for adjustment of status.

43. Therefore, Petitioner's detention is no longer authorized by Section 1226(a).

44. And in the absence of authority to detain, Petitioner's detention is unlawful.

VIII. CONCLUSION

Petitioner became a Lawful Permanent Residence on December 30, 2025. This makes his present detention unlawful because it made Section 1226(a) no longer a source of authority to detention. His detention furthermore violates the due process clause and Eighth Amendment prohibition on excessive bail, because bail is excessive where Petitioner was wrongfully held ineligible for bond, and the prohibition on cruel and unusual punishment. There is no future merits hearing set. In the absence of judicial intervention Petitioner will remain detained indefinitely for a potentially months-long period. His previous bond hearing was not a fair bond hearing, making pursuit of relief with the immigration court "futile."

Petitioner does not seek a bond hearing under 8 U.S.C. § 1226(a) presided over by the immigration courts because he believes he will not receive "due process of law" in the immigration courts. He urges this court to either (1) order his immediate release, or (2) assume

authority to preside over its own bond hearing governed by 8 U.S.C. § 1226(a) at which Petitioner may prove his eligibility for bond.

WHEREFORE, Petitioner respectfully requests this Court grant the following:

1. Assume jurisdiction;
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. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law;
9. That, in considering the vast more than half-year duration of Petitioner's time in immigration detention, the Court adjudicate this Petition expeditiously;
10. Assume authority to preside over its own bond hearing governed by 8 U.S.C. § 1226(a) at which Petitioner may prove his eligibility for bond, and
11. Grant any further relief this court deems just and proper.

Respectfully submitted 23rd of February 2026,

Lead Counsel
/s/ David S. Kennedy Jr
David S. Kennedy, Jr., Esq.
Georgia Bar No.: 774377
675 E.E. Butler Parkway,
Suite D, Gainesville,
Georgia 30501

Phone: (678) 971-5888
Facsimile: (678) 971-5899
david@davidkennedylaw.com

Associate Counsel
/s/ Noah D. Gault
Noah D. Gault
Georgia Bar No.: 298364

Phone: (678) 971-5888
Facsimile: (678) 971-5899
noah.gault@davidkennedylaw.com

Associate Counsel
/s/ Michelle B. Park
Michelle B. Park
Georgia Bar No.: 949707

Phone: (678) 971-5888
Facsimile: (678) 971-5899
michelle@davidkennedylaw.com

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

I represent Petitioner, Carlos R.V., 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.

Respectfully submitted 23rd of February 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