

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

Jose Manuel Sanchez Panora,

Petitioner,

v.

Markwayne Mullin, in his official capacity as
Secretary of the U.S. Department of Homeland
Security;

Todd Blanche, in his official capacity as
Attorney General of the United States;

Todd M. Lyons, Senior Official Performing the
Duties of the Director, U.S. Immigration and
Customs Enforcement;

Raul Maldonado Jr., Warden, Metropolitan
Detention Center Brooklyn, in his official
capacity

Respondents.

Case No. (To be Assigned)

Judge: Hon. _____

Magistrate Judge: _____

No request for jury trial

**PETITION FOR WRIT OF HABEAS
CORPUS AND COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

ORAL ARGUMENT REQUESTED

COMES NOW, Petitioner Jose Manuel Sanchez Panora, and brings this Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief pursuant to 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; the Immigration and Nationality Act (“INA”) and regulations thereunder; the Administrative Procedure Act; and the Suspension Clause of the Constitution, U.S. Const. Art. I § 9, cl. 2. The efforts to detain Petitioner constitute a “severe restraint” on his individual liberty such that Petitioner is “in custody” of the Respondents in violation of the laws of the United States. *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241, including the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*; the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*; and the Due Process Clause of the Fifth Amendment of the United States Constitution.

1. Petitioner has been detained by U.S. Immigration and Customs Enforcement since June 2, 2026, and is currently in removal proceedings before the New York Immigration Court (Varick Street), with hearings conducted via internet-based video from his place of detention at the Metropolitan Detention Center Brooklyn, located at 80 29th Street, Brooklyn, New York 11232. DHS invoked INA § 236, 8 U.S.C. § 1226(a), as the express authority for Petitioner's detention, as reflected on the Notice of Custody Determination (Form I-286) issued June 2, 2026. Under that statute, Petitioner is entitled to an individualized bond hearing before an Immigration Judge. Despite requesting such a hearing on June 2, 2026, the very day of his detention, and despite having no criminal history whatsoever, Petitioner has not received any individualized custody determination. His continued detention without that hearing violates INA § 236(a), binding Second Circuit precedent, and the Due Process Clause of the Fifth Amendment. No adequate or available administrative remedy exists to correct this error.

2. Pursuant to this Court's inherent authority under 28 U.S.C. § 2241, Petitioner respectfully requests that this Court enjoin Respondents from continuing to detain him and order his immediate release from custody, or in the alternative, order the Respondents to provide Petitioner a constitutionally adequate opportunity for an individualized custody hearing before a neutral decisionmaker under INA § 236(a), 8 U.S.C. § 1226(a).

3. Petitioner has been subjected to civil immigration detention far exceeding the brief and limited period constitutionally permitted to facilitate removal. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001); *Demore v. Kim*, 538 U.S. 510, 530 (2003). His detention does not serve any legitimate governmental purpose and has become arbitrary, punitive, and excessive in relation to its stated goals, in violation of the Due Process Clause of the Fifth Amendment.

4. The binding decision of the United States Court of Appeals for the Second Circuit in *Cunha v. Freden*, No. 25-3141 (2d Cir. Apr. 28, 2026), controls this Court's analysis. In that decision, the Second Circuit held that INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), does not authorize mandatory detention of long-term interior residents, including individuals who entered without inspection and resided openly in the community for years before arrest. Petitioner's circumstances are directly covered by *Cunha*. Petitioner entered the United States in December 2022, lived openly in the New York metropolitan area for over three years, has no criminal history, and was apprehended by ICE in June 2026 in a non-border encounter. His detention is governed by INA § 236(a), 8 U.S.C. § 1226(a), which requires an individualized custody determination, not by mandatory detention under § 1225(b)(2)(A).

5. Because the administrative process offers no meaningful opportunity for relief and because this Court is the sole forum that can safeguard Petitioner's liberty, habeas corpus is the only mechanism available. *See INS v. St. Cyr*, 533 U.S. 289, 314 (2001) (recognizing federal habeas jurisdiction where no other judicial forum is available to test the legality of executive detention).

I. PARTIES

6. Petitioner Jose Manuel Sanchez Panora is a native and citizen of Ecuador, born , who entered the United States on or about December 5, 2022, at or near Paso del Norte, Texas. He has resided continuously in the New York metropolitan area since his entry. He was taken into the custody of U.S. Immigration and Customs Enforcement on June 2, 2026, and is currently detained at the Metropolitan Detention Center Brooklyn, located at 80 29th Street, Brooklyn, New York 11232 (A-File No. ). He is in removal proceedings before the New York Immigration Court (Varick Street).

7. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security (“DHS”), the federal agency responsible for the enforcement of the immigration laws, including the arrest, detention, and removal of noncitizens. Respondent Mullin is sued in his official capacity. His official address is 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.

8. Respondent Todd M. Lyons is the Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement. In this capacity, he is responsible for the nationwide administration and oversight of immigration detention and enforcement. Respondent Lyons is sued in his official capacity. His office is located at 500 12th Street SW, Washington, DC 20536.

9. Respondent, Raul Maldonado Jr., Warden of the Metropolitan Detention Center Brooklyn is the immediate physical custodian of Petitioner and is responsible for the day-to-day operation of the facility where Petitioner is detained. The Warden is sued in his official capacity. The facility is located at 80 29th Street, Brooklyn, New York 11232.

II. JURISDICTION & VENUE

10. The Court has jurisdiction under the Suspension Clause. The Suspension Clause provides: “The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.” U.S. Const. Art. I § 9, cl. 2. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241, as protected by the Suspension Clause, and federal question jurisdiction under 28 U.S.C. § 1331. This case arises under the United States Constitution, the Immigration and Nationality Act, 8 U.S.C. §§ 1101 et seq., the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq., and the Due Process Clause of the Fifth Amendment. Petitioner’s current detention constitutes a severe restraint on his

individual liberty such that he is in custody in violation of the laws of the United States. See *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241(c)(3).

11. While the courts of appeals have jurisdiction to review removal orders directly through petitions for review, see 8 U.S.C. § 1252, federal district courts retain jurisdiction under 28 U.S.C. § 2241 to hear habeas claims brought by noncitizens challenging the legality or constitutionality of their detention. See *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Venue is proper in the United States District Court for the Eastern District of New York because Petitioner is detained within this District at the Metropolitan Detention Center Brooklyn, and a substantial part of the events giving rise to this action occurred here. 28 U.S.C. § 1391(b)(2).

III. FACTS GIVING RISE TO THE HABEAS PETITION

12. Petitioner Jose Manuel Sanchez Panora is a native and citizen of Ecuador, born , in Cuenca, Ecuador See **Exhibit “A”**. He entered the United States at or near Paso del Norte, Texas Bridge, on or about December 5, 2022. Petitioner was not admitted or paroled after inspection by an Immigration Officer. Upon entry, he was issued a Notice to Appear charged with inadmissibility under INA § 212(a)(6)(A)(i) and placed into removal proceedings under INA § 240. See **Exhibit “B”**.

13. Petitioner resided continuously and openly in the New York metropolitan area for over three years following his entry in December 2022, without incident. He has no criminal history of any kind, including no arrests, no charges, or convictions. He poses no danger to the community and is not a meaningful flight risk, as demonstrated by his presence in the New York area for over three years, filing of an application for relief from removal, and attending his scheduled ICE check ins.

14. On June 2, 2026, Petitioner was detained by U.S. Immigration and Customs Enforcement in New York during a routine check-in appointment. He was first held at the NYC Hold Room located at 26 Federal Plaza, New York, NY 10278, and subsequently transferred to the Metropolitan Detention Center in Brooklyn, where he remains in custody to this day. According to the Notice to EOIR filed by ICE on June 2, 2026, Petitioner was taken directly into ICE custody and transported to Brooklyn MDC, located at 80 (or 100) 29th Street, Brooklyn, NY 11232. He was not apprehended at or near the border.

15. On June 2, 2026, DHS issued a Notice of Custody Determination pursuant to INA § 236, determining that Petitioner would be detained by the Department of Homeland Security pending a final administrative determination in his case. Petitioner requested an immigration judge review of this custody determination, as reflected on the Form I-286, notwithstanding his refusal to sign the form. Despite this request, Petitioner did not receive a meaningful individualized bond hearing. *See Exhibit "C"*.

16. A master calendar hearing is currently scheduled before Immigration Judge DeCure in the New York Immigration Court (Varick Street) for June 12, 2026, and will be conducted remotely from Petitioner's place of detention. The hearing was rescheduled after Petitioner was not produced by the detention facility for the previously scheduled June 5, 2026 hearing, despite the Immigration Judge waiting approximately two hours for his appearance. Petitioner's removal proceedings remain in their infancy, no order of removal has been entered, and the merits of his claims have yet to be adjudicated.

17. To the extent the Government may seek to justify Petitioner's continued detention without a bond hearing by characterizing him as subject to mandatory detention under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), that position is legally incorrect and contradicted by

binding Second Circuit precedent. As set forth herein, DHS's own Notice of Custody Determination invoked INA § 236 as the detention authority, and Petitioner's circumstances as a long-term interior resident preclude application of the mandatory detention framework reserved for recent border arrivals.

18. Petitioner has been detained since June 2, 2026. His continued detention is arbitrary, serves no legitimate penological or removal purpose beyond those already served, and violates his constitutional rights under the Fifth Amendment.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

19. 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, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

20. 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).

V. APPLICABLE LAW

A. DHS Has Invoked INA § 236(a) as the Detention Authority, Which Entitles Petitioner to an Individualized Bond Hearing That Has Not Been Provided

21. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings. First, 8 U.S.C. § 1226 governs the arrest and detention of individuals placed in ordinary removal proceedings before an IJ pursuant to 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are subject to discretionary civil detention and are generally entitled to a bond hearing, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d). Second, the INA provides for

mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2). Third, 8 U.S.C. § 1231(a)–(b) governs detention of noncitizens who have been ordered removed.

22. DHS properly invoked INA § 236 / 8 U.S.C. § 1226(a) as the detention authority, as reflected on the Form I-286 dated June 2, 2026. Under § 1226(a), detention is discretionary, and Petitioner is entitled to an individualized bond hearing before an Immigration Judge *See Exhibit “C”*. Despite DHS's own acknowledgment that § 236 governs, and despite Petitioner's timely request for IJ review on June 2, 2026, no bond hearing has been provided. The Government's continued detention of Petitioner without that hearing violates § 1226(a), the regulations, and the Fifth Amendment.

B. The Second Circuit's Binding Decision in *Cunha v. Freden* Controls and Requires That Petitioner Be Afforded a Bond Hearing Where the Government Bears the Burden of Proving his Danger and Flight Risk.

23. On April 28, 2026, the United States Court of Appeals for the Second Circuit issued a controlling opinion in *Cunha v. Freden*, No. 25-3141 (2d Cir. Apr. 28, 2026). The Second Circuit held that INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), does not authorize mandatory detention of long-term interior residents, including individuals who entered without inspection, and that such individuals are properly detained under the discretionary framework of INA § 236(a), 8 U.S.C. § 1226(a). *Cunha v. Freden*, No. 25-3141, slip op. at 1–61 (2d Cir. Apr. 28, 2026). As binding circuit authority, this ruling controls this Court's analysis.

24. Petitioner falls squarely within the holding of *Cunha*. He entered the United States in December 2022, resided openly in New York for over three years, was not apprehended at or near the border, has no criminal history, and is charged solely with inadmissibility under INA §

212(a)(6)(A)(i). Under *Cunha*, he is properly detained under the discretionary framework of § 1226(a) and is entitled to an individualized bond hearing at which the Government must bear the burden of justifying continued detention.

25. This Court is bound by Second Circuit precedent, and Immigration Judges must follow controlling federal circuit court decisions interpreting the INA within their respective circuits. See *Matter of Garcia*, 28 I&N Dec. 693 (BIA 2023). *Cunha* confirms that Petitioner, a long-term interior resident detained under § 236, is entitled to an individualized bond hearing at which the Government bears the burden of justifying continued detention by clear and convincing evidence. The Government's failure to provide that hearing, notwithstanding Petitioner's timely request on June 2, 2026, is precisely the type of constitutional and legal error for which habeas corpus review is the appropriate remedy

C. *Matter of Q. Li* Does Not Apply to Petitioner

26. To the extent the Government may rely upon *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), that decision addressed the detention of individuals who were apprehended by DHS during the active inspection process, while in continuous or near-continuous DHS custody. Those circumstances are fundamentally inapplicable to Petitioner.

27. Petitioner was not detained at or near the border, was not apprehended during the inspection process, and was never in continuous or near-continuous DHS custody from the time of his entry. He resided freely in New York for over three years. By the time of his arrest, DHS had long since completed any inspection function. The rationale of *Matter of Q. Li* therefore does not reach his situation. Petitioner is a long-term interior resident, not an individual in continuous or active inspection proceedings, and his detention is governed by § 1226(a).

D. Petitioner Is Properly Detained Under INA § 236(a) and Is Not Subject to Mandatory Detention.

28. § 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal hearings are held under § 1229a. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a).

29. Section 1225(b) applies to people arriving at U.S. ports of entry or recently entering the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). The Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to Petitioner, who entered in December 2022 and was apprehended years later in the interior of the United States. Not only does the law preclude § 1225(b)(2)(A) here, but the Government already agreed with that conclusion on June 2, 2026.

30. Petitioner is also not subject to mandatory detention under INA § 236(c), 8 U.S.C. § 1226(c), which applies exclusively to noncitizens removable on enumerated criminal grounds. Petitioner has no criminal history, has not been convicted of any offense, and has not been charged as removable on any criminal ground. Accordingly, § 1226(c) is inapplicable, and Petitioner’s detention is governed by the discretionary authority of § 1226(a).

E. Courts Throughout the Circuit Have Consistently Held That Long-Term Interior Residents Detained Under INA § 236(a) Are Entitled to an Individualized Bond Hearing

31. The law of this Circuit is clear: noncitizens who have resided in the interior of the United States for an extended period and are detained by ICE in a non-border encounter are detained under the discretionary framework of INA § 236(a), 8 U.S.C. § 1226(a), and are entitled to an individualized bond hearing at which the Government bears the burden of justifying continued detention. *Velasco Lopez v. Decker*, 978 F.3d 842, 847 (2d Cir. 2020). That principle applies with full force here. DHS itself acknowledged on the Notice of Custody Determination (Form I-286, June 2, 2026) that Petitioner's detention is governed by INA § 236 — not by the mandatory detention provisions of § 1225(b). Notwithstanding that acknowledgment, and notwithstanding Petitioner's timely request for IJ review on that same date, no individualized bond hearing has been provided.

32. In *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020), the Second Circuit held that an individual who had lived in the United States for years and was arrested by ICE in the interior, not at or near the border, was properly detained under § 1226(a) and entitled to an individualized custody determination. The Court further held that the Government bears the burden of justifying continued detention by clear and convincing evidence at any such hearing. *Id.* at 855. Petitioner's circumstances are directly on point: he entered the United States in December 2022, resided openly in the New York metropolitan area for over three years, and was detained by ICE on June 2, 2026, in a non-border encounter at 26 Federal Plaza, New York. He is entitled to the same individualized process the Second Circuit mandated in *Velasco Lopez*.

33. Courts in this Circuit and throughout the country have consistently applied this principle. In *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y.

Aug. 13, 2025), the Southern District of New York held that a long-term interior resident detained by ICE was entitled to an individualized bond hearing under § 1226(a), with the Government bearing the burden of proof. Similarly, in *Alvarez Ortiz v. Freden*, 2025 WL 3085032 (W.D.N.Y. Nov. 4, 2025), the Court held that noncitizens present in the interior without having been admitted or paroled are not subject to mandatory detention but are instead properly detained under § 1226(a), with full due process protections. *See also Cunha v. Freden*, No. 25-3141 (2d Cir. Apr. 28, 2026) (reaffirming that § 1225(b)(2)(A) mandatory detention does not reach long-term interior residents, who are entitled to discretionary custody review under § 1226(a)).

34. Petitioner has been detained since June 2, 2026, without any individualized assessment of whether his detention is necessary or whether less restrictive alternatives exist. He has no criminal history, has not been charged with any criminal offense, and poses no danger to the community. Under binding Second Circuit precedent, he is entitled to a bond hearing at which the Government must demonstrate by clear and convincing evidence that his continued detention is justified. The failure to provide that hearing violates § 1226(a), the Due Process Clause of the Fifth Amendment, and the controlling authority of this Circuit.

F. Petitioner's Continued Detention Violates The Fifth Amendment's Due Process Clause

35. The Due Process Clause applies to all persons in the United States, “whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. at 693; *see also Yick Wo v. Hopkins*, 118 U.S. 356 (1886). The Supreme Court declared “that the Due Process Clause protects individuals against two types of government action” giving rise to distinct claims of substantive and procedural due process violations. *United States v. Salerno*, 481 U.S. 739, 746 (1987).

36. Petitioner's detention without an individualized bond hearing is not temporary or brief. He has been detained since June 2, 2026, without any meaningful process to contest the necessity of his confinement. His continued detention is indefinite and lacks individualized justification, violating both procedural and substantive due process. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (recognizing that the Due Process Clause places firm limits on the Government's power to detain noncitizens and that detention becomes unlawful where it is no longer tied to a legitimate governmental purpose); *Velasco Lopez v. Decker*, 978 F.3d 842, 847 (2d Cir. 2020) (holding that prolonged detention without an individualized hearing violates due process where the Government fails to justify continued confinement). Petitioner respectfully submits that the appropriate remedy is either immediate release or, in the alternative, an order directing Respondents to provide a prompt individualized bond hearing before a neutral Immigration Judge at which the Government bears the burden of justifying continued detention by clear and convincing evidence. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (procedural due process requires a meaningful opportunity to be heard at a meaningful time).

37. Habeas corpus is "at its core, an equitable remedy." *Schlup v. Delo*, 513 U.S. 298, 319 (1995). Judges have "broad discretion" to fashion an appropriate remedy. These protections extend fully to noncitizens in removal proceedings. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001).

G. Respondents' Conduct Violates The Administrative Procedure Act (5 U.S.C. §§ 701–706).

38. Respondents' continued detention of Petitioner without an individualized bond hearing constitutes final agency action that is arbitrary, capricious, an abuse of discretion, and contrary to law within the meaning of 5 U.S.C. § 706(2)(A), (C). DHS expressly invoked INA § 236, 8 U.S.C. § 1226(a), as the authority for Petitioner's detention on the Notice of Custody Determination (Form I-286) issued June 2, 2026. That statutory provision affords detained

noncitizens the right to an individualized custody determination before an Immigration Judge. See 8 C.F.R. §§ 1003.19(a), 1236.1(d). Petitioner timely requested such a hearing on June 2, 2026, as reflected on the same Form I-286. Respondents' failure to provide that hearing, despite their own invocation of § 236 as the governing detention authority, is arbitrary, capricious, an abuse of discretion, and contrary to law. *See* 5 U.S.C. § 706(2)(A), (C). Because this failure exceeds DHS's statutory authority, is inconsistent with the agency's own detention determination, and reflects an impermissible deprivation of a right expressly afforded by the statute and regulations, it must be set aside under 5 U.S.C. § 706(2).

VI. CLAIMS FOR RELIEF

Count I

Habeas Corpus Under 28 U.S.C. § 2241 (Unlawful Executive Detention)

39. Petitioner is unlawfully detained in violation of 28 U.S.C. § 2241. DHS properly invoked INA § 236, 8 U.S.C. § 1226(a), as the authority for Petitioner's detention, as expressly reflected on the Notice of Custody Determination (Form I-286) issued June 2, 2026. Under that statutory framework, Petitioner is entitled to an individualized bond hearing before an Immigration Judge at which the Government bears the burden of justifying his continued detention by clear and convincing evidence. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020). Despite Petitioner's timely request for IJ review on June 2, 2026, no such hearing has been provided. Petitioner has no criminal history, poses no danger to the community, and has demonstrated his willingness to engage with immigration authorities. His continued detention without an individualized hearing is unauthorized, exceeds DHS's statutory jurisdiction, is not reasonably related to any legitimate removal purpose, and renders his confinement

unconstitutional and unlawful. Binding Second Circuit authority in *Cunha v. Freden* compels this conclusion.

Count II

Violation of the Fifth Amendment (Substantive and Procedural Due Process)

40. Respondents' detention of Petitioner violates the Fifth Amendment by subjecting him to unreviewable incarceration without any individualized custody determination. Petitioner has been held since June 2, 2026, without a hearing, without an opportunity to present evidence regarding his individual circumstances, and without any meaningful process to contest the necessity of his confinement. The absence of any mechanism for review, the Government's refusal to provide the bond hearing Petitioner requested on June 2, 2026, and the Government's failure to consider less restrictive alternatives, notwithstanding DHS's own invocation of the discretionary detention framework of INA § 236(a), constitute both procedural and substantive due process violations.

Count III

Violation of the INA and Administrative Procedure Act (5 U.S.C. §§ 701–706)

41. Respondents' continued detention of Petitioner without an individualized bond hearing constitutes final agency action that is arbitrary, capricious, and contrary to law within the meaning of 5 U.S.C. § 706(2)(A), (C). DHS expressly invoked INA § 236, 8 U.S.C. § 1226(a), as the authority for Petitioner's detention on the Notice of Custody Determination (Form I-286) issued June 2, 2026. That statutory provision affords detained noncitizens the right to an individualized custody determination before an Immigration Judge. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). Petitioner timely requested such a hearing on June 2, 2026, as reflected on the same Form I-286. Respondents' failure to provide that hearing, despite their own invocation of § 236 as the governing detention authority, is arbitrary, capricious, an abuse of discretion, and contrary to the INA and its implementing regulations. Because this failure exceeds DHS's statutory

authority, is inconsistent with the agency's own detention determination, and reflects an impermissible deprivation of a right expressly afforded by the statute and regulations, it must be set aside under 5 U.S.C. § 706(2).

Count IV
Violation of the Suspension Clause (U.S. Const. Art. I § 9, cl. 2)

42. By depriving Petitioner of any administrative mechanism to challenge his confinement and by foreclosing access to an Immigration Judge for a constitutionally adequate custody determination, Respondents have effectively suspended the privilege of the writ of habeas corpus as applied to him. The Suspension Clause prohibits the Government from erecting barriers that prevent individuals from obtaining meaningful judicial review of executive custody, and Respondents' actions violate that constitutional guarantee.

VII. REQUEST FOR RELIEF

43. Pending the adjudication of this Petition, Petitioner respectfully requests that the Court use its authority under 28 U.S.C. § 2243 to order Respondents to file a return within three days, unless they can show good cause for additional time. § 2243 provides that an order to show cause why a writ of habeas corpus should not be granted must be "returned within three days unless for good cause additional time, not exceeding twenty days, is allowed."

44. Petitioner respectfully requests that Respondents be restrained from removing him from the United States while his removal proceedings remain pending. Premature removal would extinguish his ability to pursue his pending immigration proceedings.

45. Petitioner further respectfully requests release from immigration detention pending resolution of his proceedings. He has been subjected to unlawful civil detention under INA § 236(a) without the individualized bond hearing to which he is entitled under that statute,

binding Second Circuit precedent, and the Due Process Clause of the Fifth Amendment, notwithstanding his timely request for IJ review on June 2, 2026. Continued detention without that hearing imposes severe hardship, deprives Petitioner of a meaningful opportunity to prepare and present his claims for relief, and serves no legitimate governmental purpose that could not be adequately addressed through a properly conducted bond hearing.

46. In the alternative, Petitioner requests that this Court order Respondents to provide him with a prompt and constitutionally adequate individualized bond hearing under INA § 236(a) at which: (1) the Government bears the burden to justify detention by clear and convincing evidence; (2) the Immigration Judge meaningfully considers alternatives to detention; and (3) any bond set takes into account Petitioner's ability to pay.

47. Petitioner further requests that the Court require Respondents to notify the Court and Petitioner's counsel at least five days prior to any attempt to remove him from the United States.

VIII. EXHAUSTION OF REMEDIES

48. Petitioner's claims regarding the constitutionally inadequate process and unlawful deprivation of liberty are not subject to any statutory requirement of administrative exhaustion. See *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). To the extent that prudential concerns might lead the Court to consider exhaustion as a discretionary matter, Petitioner has taken all reasonable steps available to him within the administrative framework.

49. Petitioner requested review of his custody determination by an Immigration Judge as indicated on the Notice of Custody Determination (Form I-286) served on June 2, 2026. Notwithstanding that request, no meaningful individualized bond hearing has been provided. Moreover, neither the Immigration Judge nor the Board of Immigration Appeals has jurisdiction

to adjudicate the constitutional claims raised in this habeas petition, which are well within the purview of this Court.

50. Petitioner faces irreparable harm in the form of continued unlawful detention without the individualized bond hearing to which he is entitled. Each day of confinement without constitutionally adequate process compounds the harm. Because the administrative process has failed to provide the custody review Petitioner requested on June 2, 2026, and because neither the Immigration Judge nor the BIA has jurisdiction to adjudicate the constitutional claims raised herein, exhaustion is not required. See *McCarthy*, 503 U.S. at 146–49 (exhaustion excused where administrative remedies are inadequate or futile); *INS v. St. Cyr*, 533 U.S. 289, 314 (2001).

IX. REQUEST FOR ORAL ARGUMENT

1. Petitioner respectfully requests oral argument on this Petition.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- (a) Assume jurisdiction over this matter;
- (b) Issue a Writ of Habeas Corpus on the ground that Petitioner's continued detention violates the Due Process Clause and order Petitioner's immediate release;
- (c) In the alternative, issue injunctive relief ordering Respondents to immediately release Petitioner on the ground that his continued detention violates the Due Process Clause;
- (d) In the alternative, order Respondents to provide Petitioner with a prompt, constitutionally adequate individualized bond hearing under INA § 236(a), at which the Government bears the burden of justifying detention by clear and convincing evidence, the Immigration Judge meaningfully considers alternatives to detention, and any bond set accounts for Petitioner's ability to pay;

- (e) Enjoin Respondents from removing Petitioner from the United States absent further order of this Court;
- (f) Order Respondents to file a return within three days pursuant to 28 U.S.C. § 2243;
- (g) Declare that the process as applied to Petitioner by Respondents violates the Suspension Clause, the Due Process Clause of the Fifth Amendment, the INA, the APA, and federal regulations;
- (h) Order Respondents to provide five days of advance notice to the Court and to Petitioner's counsel before seeking to transfer Petitioner to any other detention facility or executing any removal order;
- (i) Order Respondents to comply with all applicable rules, regulations, laws, and constitutional protections in relation to Petitioner's pending removal proceedings;
- (j) Award Petitioner his costs and reasonable attorney's fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other applicable statutes; and
- (k) Grant such further relief as the Court deems just and proper.

Dated: June 08, 2026

Respectfully submitted,

/s/ Andrea C. Soto

By: _____
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