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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MARIO R. MONROY VILLALTA, Petitioner, v. **JERRY GREENE**, Warden, Mahoning County Jail; **REBECCA ADDUCCI,** Director of Detroit Field Office, U.S. Immigration and Customs Enforcement; **KRISTI NOEM,** Secretary of the U.S. Department of Homeland Security; and **PAMELA BONDI**, Attorney General of the U.S., in their official capacities, Respondents.	Case No. 4:25-cv-1691 **PETITION FOR WRIT OF HABEAS CORPUS** **ORAL ARGUMENT REQUESTED**

INTRODUCTION

1. Petitioner, Mario Rodolfo Monroy Villalta, is currently under allegedly mandatory detention at the Mahoning County Jail in Ohio. He was detained on May 24, 2025, and has remained detained for the 81 days between then and the date of this filing, August 13, 2025.

2. His detention is unlawful where it violates Due Process rights as he was previously granted bond by an immigration judge on March 17, 2025, and then—

just months later and with no relevant change in circumstance—detained while Immigration and Customs Enforcement ("ICE") continued to hold the posted bond amount of $15,000. He was held for a month in this situation before ICE proceeded to state it was revoking his bond without any legal justification for doing so. Following *ex parte communications* between the Cleveland Immigration Court and the U.S. Department of Homeland Security attorney, Petitioner was then denied the opportunity to present this argument that he had already been awarded bond and circumstances had not materially changed.

3. He remains detained to this date in violation of his Due Process rights under the United States Constitution without the possibility of bond due the recent BIA decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Petitioner is being held without the opportunity to be heard regarding the lawfulness of his detention.

4. Petitioner initially challenged that he was subject to mandatory detention based on his not being ordered removed under 8 U.S.C. 1225(b)(1) for expedited removals and based on the improper *ex parte* communications that thwarted his bond hearing.

5. After a series of bad-faith negotiations and misleading communications by attorney for the U.S. Department of Homeland Security, Petitioner voluntarily dismissed his first habeas filing.

6. Petitioner is now filing a new petition for writ of habeas corpus. He has been improperly held in detention after re-issuance of a notice to appear and wrongly denied a bond hearing although he was previously granted bond and found not to be a flight risk or danger to society.

7. Holding Petitioner in detention when he has already been awarded and posted bond is a violation of his rights. He has now been detained for close to three months with no opportunity to have the legality of that detention adjudicated.

8. Absent an order from this Court, Petitioner will remain detained without Due Process of the law for the duration of his immigration removal proceedings—potentially months to years longer.

9. ICE has adopted the position that noncitizens who entered the United States without admission are ineligible for immigration court bond hearings, despite federal courts' continued rulings that immigration laws and the Constitution provide for such hearings. Because ICE relies on *Matter of Q. Li*, 29 I&N Dec. 66, 66 (BIA 2025), in subjecting Petitioner to mandatory detention, appeal to the Board of Immigration Appeals ("BIA") would be a time-consuming exercise in futility during which Petitioner would be forced to remain detained in violation of his rights.

10. Petitioner asks this Court to order his release from detention where his detention is fruit of the poisonous tree of, first, the wrongful arrest and detention when he was already granted bond and, subsequently, the *ex parte* communications between the Immigration Court and DHS, and where his detention without possibility of bond is part of the unconstitutional expansion of mandatory detention under *Matter of Q. Li.*

JURISDICTION

11. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Under 8 U.S.C. § 1252(e)(2), this Court has habeas authority to determine whether Petitioner was ordered removed under 8 U.S.C. § 1225(b)(1), whether ex parte communications took place between the Immigration Judge and the Department of Homeland Security, and whether the Immigration Court has jurisdiction to hear custody redetermination cases for noncitizens who have allegedly unlawfully entered the United States without inspection.

13. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

14. Venue is proper because Petitioner is detained at the Mahoning County Jail in Youngstown, Ohio, which is within the jurisdiction of this District.

15. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and Respondent resides in this District, a substantial part of the events or omissions giving rise to his claims occurred in this District,

and Petitioner resides in this District and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

16. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

17. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "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." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

EXHAUSTION

18. Petitioner need not exhaust his administrative remedies with the Board of Immigration Appeals ("BIA") before bringing his habeas challenge to this Honorable Court. *See Murillo v. Barr*, 795 F. App'x 437, 440 (6th Cir. 2019) (quoting *Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006) ("[A]n alien's due process challenge generally does not require exhaustion."); *Hernandez v. Prindle*, No. 15-10-ART, 2015 U.S. Dist. LEXIS 48091, at *2 (E.D. Ky. Apr. 13, 2015) ("ICE argues that Lopez Hernandez must exhaust his administrative remedies

with the Board of Immigration Appeals ("BIA") before bringing his habeas challenge to this Court. . . . ICE is incorrect.").

19. Courts have long recognized a requirement that parties exhaust administrative remedies before turning to federal courts. *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50–51, 58 S. Ct. 459, 82 L. Ed. 638 (1938). Despite the doctrine's judicial roots, courts cannot waive exhaustion when Congress requires it by statute. *See McCarthy v. Madigan*, 503 U.S. 140, 144, 112 S. Ct. 1081, 117 L. Ed. 2d 291 (1992).

20. But here, though Congress requires aliens to exhaust administrative remedies before challenging a final order of removal, *see* 8 U.S.C. § 1252(d), **it imposes no such requirement on challenges to mandatory detention pending a removal decision**. *See Abed Mosa Baidas v. Jennings*, 123 F. Supp. 2d 1052, 1057 (E.D. Mich. 2000) ("The Court concludes that it is highly likely that the BIA would uphold the mandatory detention provisions of [INA] § 236(c) and therefore an appeal to the BIA would be futile for petitioner. The Court also notes that, in several challenges to mandatory detention pursuant to § 236(c), other district courts have exercised jurisdiction even though the petitioner failed to exhaust administrative remedies. *Son Vo v. Greene*, 109 F. Supp. 2d 1281, 1281-82 (D. Colo. 2000); *Alwaday v. Beebe*, 43 F. Supp. 2d at 1132; *Welch v. Reno*, 101 F. Supp. 2d 347, 350-51 (D. Md. 2000)."); *Hernandez*, 2015 U.S. Dist. LEXIS 48091, at *3 (citing *Gonzalez v. O'Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004)).

21. In the absence of congressional mandate, courts waive the judge-made exhaustion requirement when (1) a long exhaustion process would create undue prejudice, (2)

an administrative remedy is inadequate, such as when an agency lacks the authority to resolve the constitutionality of a statute, and (3) the appeal would be futile because the agency has "predetermined the issue before it." *See McCarthy*, 503 U.S. at 146–48 (citing *Gibson v. Berryhill*, 411 U.S. 564, 575 n.14, 93 S. Ct. 1689, 36 L. Ed. 2d 488 (1973)).

22. The last two exceptions apply in the case of mandatory detention and not requiring exhaustion before the BIA before this District Court may take up this habeas petition. *See Hernandez*, 2015 U.S. Dist. LEXIS 48091, at *3–4 ("[T]he BIA has already ruled that the delay between release from criminal custody and detention by ICE does not exempt an alien from mandatory detention under 8 U.S.C. § 1226(c). *See In Re Rojas*, 23 I. & N. Dec. 117, 127 (BIA 2001)

> (Any efforts by Lopez Hernandez to exhaust his statutory claim would be futile because the respondent is subject to mandatory detention . . . , despite the fact that he was not taken into Service custody immediately upon his release from state custody. The BIA is similarly incapable of resolving the constitutionality of the mandatory detention provision at issue in this case. *See In Re Joseph*, 22 I. & N. Dec. 660, 665 (BIA 1999) ("We note that it is not within the purview of this Board to pass upon the constitutionality of the mandatory detention provision in section 236(c)(1) . . . ."); *Liu v. Waters*, 55 F.3d 421, 425 (9th Cir. 1995) ("[T]he BIA lacks jurisdiction to decide questions of the constitutionality of governing statutes or regulations."). Accordingly, Lopez Hernandez need not exhaust his claims before bringing them here.).

23. In light of the lack of statutory requirement of exhaustion in cases challenging detention pending issuance of a final removal order, the probable futility of petitioner's arguments before the BIA, and the current trend of district court cases, this Court should exercise jurisdiction over Petitioner's challenge to the application of § 236(c) to him and the constitutionality of the statute, despite

Petitioner's failure to exhaust administrative remedies. *See Abed Mosa Baidas*, 123 F. Supp. at 1057.

24. Petitioner's situation is parallel to that in *Hernandez*. The BIA has already ruled that a noncitizen who enters the United States without admission and is arrested and detained without a warrant, whether or not at a port of entry, and subsequently placed in removal proceedings is placed into mandatory detention under section 235(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b) (2018), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a) (2018). *See Matter of Q. Li*, 29 I&N Dec. 66, 70 (BIA 2025).

25. The BIA is similarly incapable of resolving the constitutionality of the mandatory detention provision at issue in this case. *See In Re Joseph*, 22 I. & N. Dec. 660, 665 (BIA 1999) ("We note that it is not within the purview of this Board to pass upon the constitutionality of the mandatory detention provision in section 236(c)(1) . . . ."); *Liu v. Waters*, 55 F.3d 421, 425 (9th Cir. 1995) ("[T]he BIA lacks jurisdiction to decide questions of the constitutionality of governing statutes or regulations."); *Hernandez v. Prindle*, No. 15-10-ART, 2015 U.S. Dist. LEXIS 48091, at *4 (E.D. Ky. Apr. 13, 2015).

26. Appeal to the Board would be an exercise in futility where the Board, like the Immigration Court, will simply dismiss the case for lack of jurisdiction rather than reaching the merits of the lawfulness and Constitutionality of Petitioner's detention and *Matter of Q. Li*, *supra*. Meanwhile, Petitioner will be forced to

remain detained during the months that this process plays out to await a chance to appeal the Board's denial just to find himself back before the federal courts.

PARTIES

27. Petitioner is an asylum seeker. Petitioner is currently detained at the Mahoning County Jail. He is in the custody, and under the direct control, of Respondents and their agents.

28. Respondent Jerry Greene is the Warden of the Mahoning County Jail, and has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Greene is a legal custodian of Petitioner.

29. Respondent Rebecca Adducci is sued in her official capacity as the Director of the Detroit Field Office of U.S. Immigration and Customs Enforcement. Respondent Adducci is a legal custodian of Petitioner and has authority to release him.

30. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

31. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee

the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

32. Petitioner is a 24-year-old citizen of Guatemala. Since 2021, Petitioner has been living in Cleveland, Ohio, with his step-mother—a lawful permanent resident of the U.S. Petitioner is a hardworking part of the community with close friends and regular employment. Petitioner has no criminal record.

33. Petitioner fears persecution should he be returned to Guatemala where [redacted] Petitioner has suffered severe stress and trauma as a result of the violence and threats against his family in Guatemala.

34. Petitioner arrived in the United States on his first and only entry in August 2021. He has a pending affirmative Form I-589 Application for Asylum and Withholding of Removal filed with the United States Citizenship and Immigration Service ("USCIS") on May 19, 2025.

35. Petitioner was detained by Immigration and Customs Enforcement ("ICE") once prior to his current detention. ICE officers picked up Petitioner while he was

turning on a car to warm it up in the morning. On February 9, 2025, more than two years after Petitioner's entry without inspection to the United States, DHS issued a Notice to Appear to Petitioner. On February 18, 2025, DHS filed a Form I-213 for an unrelated noncitizen irrelevant to Petitioner and his proceedings. On March 17, 2025, an immigration judge in Arizona found Petitioner not to be a flight risk or danger to the community and granted him bond. Petitioner was released from detention on March 20, 2025, after his stepmother (also his bond sponsor) posted his $15,000 bond with ICE. On March 26, 2025, the immigration judge dismissed the proceedings without prejudice based on an unopposed motion to dismiss filed by DHS.

36. On May 24, 2025, the Saturday of Memorial Day weekend, Petitioner was walking to work with his father when ICE detained his father and then him. Undersigned counsel's colleague, attorney Olaide Oseni, reached out to ICE multiple times to inquire about why Petitioner was detained while released on bond when there had been no change in circumstances to justify the action. ICE officers denied being the arresting agency and ignored all subsequent inquiries from Attorney Oseni. Attorney Oseni then reached out to the Mahoning County Sheriff's office and learned that Petitioner was detained by ICE at the Mahoning County Jail. He also observed Petitioner's inmate profile confirming ICE to be the arresting agency.

37. On June 24, 2025, Attorney Oseni filed Respondent's Motion for Bond Determination Hearing with Exhibits in Support of Bond Request. Therein, he explained that Petitioner remained detained after one month with no charges filed

against him and no removal order issued against him. Moreover, he stated Petitioner is not subject to expedited removal.

38. On June 26, 2025, Immigration Judge Jeremy Santoro of the Cleveland Immigration Court held a bond hearing, originally scheduled for 8:00 a.m. via video teleconference. Assistant Chief Counsel Gutridge ("ACC Gutridge") appeared for DHS. And Attorney Oseni represented Petitioner. Attorney Oseni waited to be allowed into Immigration Judge Santoro's virtual courtroom for more than four hours, until 12:30 p.m. At that time, Immigration Judge Santoro told Attorney Oseni that the delay was due to the many detained cases on the Immigration Judge's docket that morning and that he would take a 30-minute break before hearing Petitioner's case. Immigration Judge Santoro then informed Attorney Oseni that DHS would like to provide him with a notice—clearly indicating that ACC Gutridge had held an ex parte communication with the Court informing the Court of her intentions. During that 30-minute break, ACC Gutridge took advantage of the extensive delay and additional break time to inform Attorney Oseni that DHS would be filing an expedited removal order before Court would resume at 1:00 p.m. When Immigration Judge Santoro went back on the record at 1:07 p.m., he informed Attorney Oseni that DHS had just uploaded an expedited removal order to the online docket and that the Immigration Court, as a result, no longer had jurisdiction to hear the bond request. Attorney Oseni argued the order was unjustly issued and that the Immigration Judge should be able to examine the veracity of the order to which Petitioner is

not subject. The Immigration Judge refused to review, for lack of jurisdiction, and stated maybe a federal district court judge could look into the matter.

39. Petitioner reserved appeal.

40. The obviousness of the *ex parte* communication which provided DHS a clear procedural advantage and violated federal regulations is stark. The bond hearing was delayed for more than 5 hours, including a break during which, the Immigration Judge informed Attorney Oseni, Attorney Oseni would receive notice from DHS. That break allowed DHS to remove the case from the Immigration Judge's jurisdiction before the Immigration Court could hold the bond hearing in a case that merited a grant of bond—as evidenced by the decision of the Arizona Immigration Court just a few months prior. The timing and sequence of events and the Immigration Judge's own words to Attorney Oseni strongly indicate that ACC Gutridge engaged in an *ex parte* communication with the Immigration Judge requesting a delay to allow DHS to file the very expedited removal order that then removed the whole custodial matter from the Immigration Court's jurisdiction.

PROCEDURAL POSTURE

41. The convoluted procedural history of this case follows below in greater detail.

42. This is the second Petition for Writ of Habeas Corpus filed by Petitioner with this Honorable District Court. He filed his first Petition ("Habeas Petition 1") on July 1, 2025, (Civil Case, 4:25-cv-1389) after the United States Department of Homeland Security ("DHS") improperly placed Petitioner into expedited removal

proceedings. Petitioner was not subject to expedited removal proceedings as he had entered the United States in 2021 and first encountered U.S. immigration officials in February 2025, well over two years after his entry to the country.

43. Furthermore, Habeas Petition 1 described circumstances indicating that DHS engaged in *ex parte* communications with the Immigration Judge to delay Petitioner's bond hearing to allow DHS to initiate expedited removal proceedings that would then remove the bond case from the Immigration Judge's jurisdiction. The Immigration Judge then denied Petitioner bond for lack of jurisdiction due to Petitioner's being (wrongfully) in expedited removal proceedings, making his release not reasonably foreseeable. Accordingly, to vindicate Petitioner's constitutional, statutory, and regulatory rights, Petitioner filed Habeas Petition 1 to ask this Court to grant his petition for a writ of habeas corpus.

44. On July 2, 2025, this Honorable Court ordered Respondents to respond to Habeas Petition 1 and the concurrent motion to stay removal by July 8, 2025.

45. On July 8, 2025, Respondents filed a Motion for extension of time until July 11, 2025, to Respond to Petition for Habeas Corpus and Motion for Stay of Removal Proceedings. On July 9, 2025, this Honorable Court granted that motion.

46. On July 10, 2025, Assistant United States Attorney Kimberly L. Lubrani ("AUSA Lubrani") contacted Attorney Margaret Wong ("Attorney Wong") via electronic mail ("email") to explore informal resolution of Habeas Petition 1. In this email, AUSA Lubrani wrote, "If your client is agreeable to withdrawing his habeas petition, ICE will agree to convert your client's current expedited removal proceedings to 240 removal proceedings." *See* Exhibit A, attached hereto, Emails

between U.S. Attorney's Office and Office of Attorney Wong. Attorney Fabiola Cini at the law firm of Attorney Wong responded that same day as follows: "Once the new NTA has been docketed with the court, we will withdraw the Habeas Petition." *Id.*

47. On July 11, 2025, AUSA Ruchi Asher informed Attorney Cini that a new Notice to Appear charging document was issued for Petitioner and that the Executive Office for Immigration Review ("EOIR") "has moved the hearing to July 17th." *Id.*

48. Based on the representations made by AUSA Asher in the email communications attached at Exhibit A, Attorney Wong agreed to dismiss the proceedings and agreed to an extension of time for Respondents to respond to Habeas Petition 1.

49. Attorney Wong filed a motion to withdraw Habeas Petition 1 and dismiss proceedings in Case Number 4:25-cv-01389-JPC on July 14, 2025. The Court granted the motion to dismiss case the same day.

50. At the EOIR hearing on July 17, 2025, Immigration Judge Jeremy Santoro ("IJ Santoro") at the Cleveland Immigration Court indicated that he was skeptical as to why DHS re-issued a notice to appear. IJ Santoro indicated that the whole case was a waste of time, and the filings were unnecessary. He indicated he was confused about the whole case history and would need a brief before the next scheduled hearing for bond. Further, IJ Santoro wanted to know the details of the agreement between Attorney Wong and the federal attorney that led to the new NTA that was filed. Attorney Olaide Oseni with the law firm of Attorney Wong explained that it was the AUSA that reached out to Attorney Wong regarding the

case. IJ Santoro asked if there is any jurisdiction issue on the case, and Attorney Oseni responded that he was not aware of any issue on jurisdiction since the expedited removal order was vacated. Assistant Chief Counsel for DHS responded that there will be a jurisdiction issue based on new DHS policy. IJ Santoro set a bond hearing for July 24, 2025.

51. A series of telephone conversations between Attorney Oseni, ACC for DHS, and AUSA Asher followed, during which ACC Amy Sherman stated that DHS had made no concession on releasing Petitioner from detention. ACC Sherman stated that the instruction from above is for DHS to challenge EOIR jurisdiction over a bond hearing in every case involving a noncitizen with an alleged illegal entry. Attorney Oseni explained, to no avail, that an exception she should be utilized in Petitioner's case because the essence of withdrawing Habeas Petition 1 was that Petitioner would be returned to the position he was in prior to his second detention by ICE which had been based on the unfounded assumption of subjecting him to expedited removal.

52. Following the bond hearing on July 24, 2025, IJ Santoro denied Petitioner's request for a bond because, "the Respondent is an 'applicant for admission,' and the Court does not have jurisdiction to redetermine Respondent's bond. Matter of Q. Li, 26 I&N Dec. 66 (BIA 2025)." *See M-M-V*, [redacted] (EOIR Jul. 24, 2025), attached at Exhibit B.

LEGAL FRAMEWORK

53. Just as indicated by the Immigration Judge, Petitioner now comes before this Honorable Court for a review of the unlawful actions taken by DHS which have resulted in Petitioner's unmerited supposedly mandatory detention.

I. Petitioner's Wrongful Mandatory Detention Related to Expedited Removal

54. The statutory requirements for expedited removal are in 8 USC § 1225(b)(1). The relevant subsection reads as follows:

> **(I)In general**
> The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.
> **(II)Aliens described**
> An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.
>
> 8 USC §§ 1225(b)(1)(A)(iii)(I)–(II).

55. The evidence that Petitioner filed in support of his Motion for Bond Redetermination Hearing with Exhibits in Support of Bond Request made a strong affirmative showing that Petitioner was physically present in the United States continuously for more than the 2-year period immediately prior to the date of the determination of inadmissibility under the above-quoted subparagraph—which, in this case, is the date of the expedited removal order on June 26, 2025.

56. Once subject (even unlawfully) to 8 USC § 1225(b), Petitioner also fell subject to mandatory detention wherein he "shall be detained pending a final determination

of credible fear of persecution and, if found not to have such a fear, until removed." *See* 8 USC § 1225(b)(1)(A)(iii)(IV).

57. Because Petitioner has been in the United States for well over two years prior to the expedited removal order and even his first interaction with immigration officials, he is not subject to expedited removal proceedings. The evidence of this was before both the Immigration Judge and DHS who unlawfully proceeded to delay the bond hearing and file an expedited removal order. This placed Petitioner in mandatory detention and denied him a bond hearing, thereby violating his his statutory and constitutional rights.

58. DHS's actions also violated 28 CFR § 68.36, which provides as follows with respect to *ex parte* communications:

> (a) ***General.*** Except for other employees of the Executive Office for Immigration Review, the Administrative Law Judge shall not consult any person, or party, on any fact in issue unless upon notice and opportunity for all parties to participate. Communications by the Office of the Chief Administrative Hearing Officer, the assigned judge, or any party for the sole purpose of scheduling hearings, or requesting extensions of time are not considered *ex parte* communications, except that all other parties shall be notified of such request by the requesting party and be given an opportunity to respond thereto.
> (b) ***Sanctions.*** A party or participant who makes a prohibited *ex parte* communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions, including but not limited to, exclusion from the proceedings and **adverse ruling on the issue which is the subject of the prohibited communication**.

28 CFR §§ 68.36(a)–(b) (emphasis added).

59. Policy Memo 19-14, Allegations of Misconduct by EOIR Adjudicators and *Ex Parte* Communications, issued under the authority of 8 C.F.R. § 1003.0(b),

> To promote the integrity and professionalism of immigration adjudications, including immigration court proceedings, appellate reviews, and administrative hearings, EOIR expects all of its adjudicators, including immigration judges, members of the Board of Immigration Appeals, and administrative law judges, to

adhere to the highest standards of ethical conduct and professionalism and to maintain impartiality in order to ensure public confidence regarding proceedings before the agency.

Such conduct includes the general avoidance of *ex parte* communications, defined as contact between an adjudicator presiding over a proceeding and one party to the proceeding during which the opposing part is not present or included. *See Ethics and Professionalism Guide for Immigration Judges* (Guide); *Ethics and Professionalism Guide for Members of the Board of Immigration Appeals*; 5 C.F.R. Parts 2635 and 3801; and 28 C.F.R. Part 45.

The Guide, which closely tracks the Code of Conduct for U.S. Judges Canon 3(A)(4), provides that immigration judges should not initiate, permit, or consider *ex parte* communications concerning a pending matter - generally, *ex parte* communications are prohibited. If an immigration judge inadvertently receives an unauthorized ex parte communication bearing on the substance of the matter, the immigration judge should promptly notify the parties of the substance of that communication and provide the parties with an opportunity to respond. If appropriate, the immigration judge may recuse himself or herself from the case.

Notwithstanding this general prohibition, *ex parte* communications may be permissible in limited circumstances, such as administrative, scheduling, or emergency purposes. **Those *ex parte* communications are permissible if they do not address substantive matters and the adjudicator reasonably believes that no party will gain procedural, substantive, or tactical advantage from such communications.**

Office of the Director James R. McHenry III, U.S. Dep't of Justice, Allegations of Misconduct by EOIR Adjudicators and *Ex Parte* Communications, PM 19-14, at 2 (Sept. 15, 2004), https://www.justice.gov/eoir/page/file/1196341/dl (footnotes omitted) (emphasis added).

60. In this case, the Immigration Judge and DHS communicated without Petitioner's attorney's knowledge or presence, Petitioner had no opportunity to respond as evidenced by the Immigration Judge's simply providing DHS with time to file the expedited removal order and then refusing to hear any challenge to its validity. notified of such request by the requesting party and be given an opportunity to respond thereto. This communication provided DHS a procedural and tactical

advantage, removing the case from the Immigration Judge's jurisdiction and placing Petitioner in mandatory detention.

61. Because DHS made a prohibited *ex parte* communication with the Immigration Judge, it is appropriate for this Court to issue sanctions, including but not limited to, an adverse ruling on the validity of the expedited removal proceedings and subsequent denial of bond for lack of jurisdiction.

62. His allegedly mandatory detention under the current arguments was only justified with the legal bases posited in the most recent bond denial citing to *Matter of Q. Li*, 29 I&N Dec. 66, 66 (BIA 2025), for lack of jurisdiction after his wrongful and continued detention resulted from the *ex parte* communications.

II. Petitioner's Wrongful Continued Detention under Agency Precedential Decision

63. Respondent is not subject to mandatory detention, and the Immigration Court retained jurisdiction to grant him bond in custody redetermination proceedings where Respondent is detained pursuant to Immigration and Nationality Act ("INA") § 236(a) and his detention cannot be deemed to be governed by INA § 235(b).

64. Noncitizens detained under section 236(a) of the INA may be eligible for discretionary release on bond pursuant to section 236(a)(2) of the INA. But, noncitizens arriving in the United States who are detained under section 235(b)(1) or (b)(2) are ineligible for release on bond and their detention is mandatory until the conclusion of removal proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018).

65. "Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because the same terminology is used elsewhere in a context that makes its meaning clear . . . or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *See United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371, 98 L.Ed.2d 740, 108 S.Ct. 626 (1988).

66. The heading for INA § 235(b) is "Inspection of applicants for admission" with INA § 235(b)(1) titled "Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled." This section describes situations that mandate placing aliens in expedited removal, and includes two general categories of such aliens. The first category involves those "arriving in the United States" and found to be "inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title . . ." *See* INA § 235(b)(1)(A)(i). The second category includes "certain other aliens who have not been admitted or paroled" and applies to those who cannot show that they have been "physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility . . ." *See* INA § 235(b)(1)(A)(iii)(II).

67. Looking then at INA § 235(b)(2), titled "Inspection of other aliens," and following the statutory scheme of this section, the "other aliens" refers to those not found inadmissible under sections 212(a)(6)(C) or 212(a)(7), and mandates their detention for proceedings under INA § 240 if an immigration officer determines that they are not "clearly and beyond a doubt entitled to be admitted . . .". *See* INA §

235(b)(2)(A). Moreover, in addressing the treatment of aliens arriving from contiguous territory, INA § 235(b)(2)(C) distinguishes those aliens described in subparagraph (A) who are "arriving on land," as opposed to "arriving" in any other manner, again clearly signifying that Section 235(b)(2) is intended to cover only those applicants for admission "arriving" in the United States. This provision cannot be taken in isolation from the rest of Section 235 and interpreted to mandate detention for any and all aliens, regardless of time and place.

68. Interpreting the statute in such a manner would then render INA § 236(a) superfluous for all practical purposes, as anyone can be deemed to forever be an applicant for admission. For this reason, no court has ever interpreted the mandatory detention provisions under Section 235 to apply to anyone but applicants for admission who are "arriving" in the United States. "An 'applicant for admission' is defined, in relevant part, as an alien 'who arrives in the United States []whether or not at a designated port of arrival.'" *Matter of Q. Li* at 68. "§1225(b) applies primarily to aliens seeking entry into the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018). In *Jennings*, the Supreme Court clearly distinguishes between aliens "seeking admission" into the country at or near a port of entry, to which INA §§ 235(b)(1) and (b)(2) apply, and aliens "already in the country," who may be detained pursuant to INA § 236. *Jennings* at 298.

69. Respondent is, thus, now in the purview of INA § 236, because Respondent is already in the country and cannot be deemed to forever be an applicant for admission.

70. Furthermore, in no precedent decision has any court required that INA § 236 apply only to aliens "admitted" into the United States. In fact, the Supreme Court has held that Section 236 governs arrest and detention of aliens who may be removed, including "aliens who were inadmissible at the time of entry." *Id.* As the Court stated in *Zadvydas v. Davis*, "once 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." *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

71. It is therefore clear that the provisions of Section 235 of the INA can only apply to those seeking admission while "arriving" in the United States or those who trigger the statutory return to that same provision, as in *Matter of Q. Li.* The term "arriving" has been addressed previously by the BIA and has been defined in part by the Regulations.

72. The Regulations define an "arriving alien" as:

> an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.

See 8 C.F.R. § 1.2.

73. Although there is a dispute as to whether the term "arriving" as used in INA § 235 falls under the regulatory definition of "arriving alien," the BIA has also previously held that the "use of the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographical limit . . ." *See Matter of M-D-C-V-*, 28 I&N Dec. 18, 23 (BIA 2020).

74. Detention under INA § 235(b) cannot apply to anyone who has entered into the United States, as that would effectively do away with INA § 236(a) and any and all aliens can then be subject to mandatory detention without limit. Clearly this could not have been the intent of Congress, and the BIA's decision in *Matter of Q. Li* cannot be read to cast such a wide net.

75. Wherefore, in light of the foregoing, Respondent respectfully argues that this Immigration Court had jurisdiction to release him on bond and asks that this Honorable Court order his release from detention which has flowed from violations of Due Process and federal immigration law.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process

76. The allegations in the above paragraphs are realleged and incorporated herein.

77. Petitioner has been detained without any option to argue against the unlawful "mandatory" detention, other than this habeas petition.

78. Petitioner was subjected to mandatory detention flowing from an abuse of procedure by the Department in issuing an arbitrary and capricious expedited removal order in the face of an abundance of evidence that Petitioner was not subject to expedited removal due to being in the United States for more than two years prior to the date of the determination of inadmissibility under the relevant subparagraph.

79. Having the power to make a discretionary determination does not mean that DHS should be able to make that determination while flying in the face of the evidence

before it in an arbitrary and capricious manner by keeping Petitioner in detention despite his having posted bond set by the Immigration Court and then revoking bond without a meaningful change in circumstances. DHS does not even allege there has been a change justifying revocation of a previously set bond and continued detention.

80. DHS should not be allowed to violate procedure to gain a tactical and unethical advantage via *ex parte* communication with the Immigration Court that led to robbing Petitioner of his bond hearing and right to have his detention reviewed. The current detention stems from that *ex parte* communication which threw this case into the realm of mandatory detention in which the Immigration Court has stated it lacks jurisdiction to hear a custody redetermination request and the Board of Immigration Appeals will hold the same, as the Immigration Court decision was based on a recent Board decision, *Matter of Q. Li*. This sequence of events renders his current detention fundamentally unfair.

81. The Board's decision in *Matter of Q. Li* violates Petitioner's Fifth Amendment Due Process rights. That decision's expansion of warrantless arrest and mandatory detention without the possibility of bond to any noncitizen within the United States who initially entered the country without inspection, no matter how long ago violates Due Process rights of noncitizens triggered by their presence in the United States. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (holding all persons within the territory of the United States are entitled to the protection of the Constitution). "The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout

immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 694 (2001) (holding even non-citizens who are subject to deportation proceedings or are unlawfully present still possess constitutional due process rights).

82. The Supreme Court has suggested that the Constitution may well preclude granting "an administrative body the unreviewable authority to make determinations implicating fundamental rights." *Id.* at 692 (quoting *Superintendent, Mass. Correctional Institution at Walpole* v. *Hill,* 472 U. S. 445, 450 (1985) (O'CONNOR, J.)) (citing *Crowell v. Benson,* 285 U. S. 62, 87 (1932) (Brandeis, J., dissenting) ("[U]nder certain circumstances, the constitutional requirement of due process is a requirement of judicial process")).

83. The serious constitutional problem arising out of a statute that, in these circumstances, permits an indefinite, perhaps lasting many years as immigration removal proceedings often do, deprivation of human liberty without any such protection is obvious.

84. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO
Violation of 8 U.S.C. §§ 1225(b), 1226(a), and Implementing Regulations

85. The allegations in the above paragraphs are realleged and incorporated herein.

86. Petitioner has not been detained under 8 U.S.C. 1225(b) where he has affirmatively shown that he has been in the United States for over two years prior to the date of the determination of inadmissibility under the relevant subparagraph.

87. He has not been detained under 8 U.S.C. § 1225(b) where he should have been able to challenge his detention without losing that right based on *ex parte* communications in violation of 28 C.F.R. § 68.36.

88. For these reasons, Petitioner's detention violates 8 U.S.C. § 1225(b) and 28 C.F.R. § 68.36.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.

(3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1225(b), and/or 28 C.F.R. § 68.36;

(4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately under previously granted bond or, in the alternative, directing the Immigration Court to exercise jurisdiction over bond proceedings;

(5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Margaret W. Wong
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Dated: July 31, 2025

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

I represent Petitioner, Mario Rodolfo Monroy Villalta, 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.

Dated this 13th day of August, 2025.

/s/ Margaret W. Wong
Margaret W. Wong, Esq.