UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

ARTIGA, MARIO, Petitioner, -against- KENNETH GENALO, Acting Director of U.S. Immigration and Customs Enforcement and Removal Operations New York City Field Office KRISTI NOEM, in her official capacity as Secretary Of the U.S. Department of Homeland Security PAMELA BONDI, in her official capacity as U.S. Attorney General. Respondents.	**Docket No:** **PETITION FOR WRIT OF HABEAS CORPUS**

PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner, ARTIGA, Mario, hereby petitions this Court under 28 U.S.C. § 2241, *et seq.*, to issue a Writ of Habeas Corpus ordering Mr. Artiga's immediate release from immigration detention of the Department of Homeland Security, United States Immigration and Customs Enforcement ("ICE"). Mr. Artiga seeks immediate release from immigration detention due to: (1) that no removal order has ever been issued against him, (2) his long presence in the United States without any U.S. immigration or criminal infractions, (3) that he is in removal proceedings and has timely filed an application for U.S. asylum, and (4) that he is

noticed to appear at his Individual (Merits) Hearing before U.S. Immigration Judge McFarland in New York City Immigration Court on December 13, 2025 – less than three months from now.

JURISDICTION

2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), the Administrative Procedure Act (5 U.S.C. § 706), and Article I, Section 9, Clause 2 of the U.S. Constitution. The requirement that an alien released from ICE detention is non-discretionary. See *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001).

VENUE

3. Venue is proper in that Mr. Artiga is currently being detained at an ICE facility in Nassau County, New York.

PARTIES

4. Petitioner, Mario Artiga, is a native and citizen of El Salvador. He is currently under ICE custody.

5. Respondent Pamela Bondi is the duly appointed, qualified, and confirmed Attorney General of the United States, and as such is the official charged with the enforcement of the laws of the United States.

6. Respondent Kenneth Genalo is duly appointed and employed by the Department of U.S. Immigration and Customs Enforcement ("ICE") as the Acting Director of the New York City Field Office. He is responsible for the administration and enforcement of ICE functions relating to detention and removal of aliens, including maintaining and enforcing Petitioner's conditions of supervision.

7. Respondent Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). Secretary Noem's responsibilities are set forth in 8 U.S.C. §§1103(a)(1)-(3), among which are: to administer and enforce the Immigration Act and all other laws relating to the immigration and naturalization of aliens; to control, direct and supervise all employees; to establish such regulations, issue such instructions, and perform such other acts deemed necessary for carrying out her authority; and to require any employee of the Service of the Department of Justice to perform or exercise any other the powers, privileges, or duties conferred or imposed by this Act or regulations issued there under upon any other employee of the Service.

BACKGROUND

8. Petitioner, Mario Artiga, is a native and citizen of El Salvador. He was born on October 26, 1982 and is currently 42 years old. Mr. Artiga is married with three children.

9. Mr. Artiga entered the United States on or around August 31, 2018 seeking protection in the U.S. [redacted]

10. Mr. Artiga on December 1, 2018 completed a credible fear interview with the Houston, TX District Office Asylum Office, which determined that Petitioner established a credible fear of persecution if he returns to El Salvador. See, See, annexed hereto as Ex. ___, Credible Fear Worksheet, at 4.13.

11. Mr. Artiga upon his U.S. entry was detained in the U.S. Immigration and Customs Enforcement ("ICE") ERO South Texas Detention Center in Pearsall, TX on or around August 31, 2018. *Id.*

12. Mr. Artiga was released from ICE custody under a $2500 bond on December 4, 2018. See, annexed hereto as Exhibit C, U.S. Department of Homeland Security ("DHS") Notice of Custody Determination.

13. Respondents commenced removal proceedings against Mr. Artiga in U.S. immigration court on or around December 4, 2018, entitling Mr. Artiga to present an asylum claim with the due process rights under 8 U.S.C. § 1229a. See, annexed hereto as Exhibit D, DHS Notice to Appear.

14. Mr. Artiga timely filed a Form I-589, Application for Asylum or Withholding of Removal ("Asylum Application") with the New York City

Immigration Court on March 12, 2019. See, annexed hereto as Exhibit F, Court's Ordering Receipt of Plaintiff's Asylum Application

15. **MR. ARTIGA HAS THROUGH THE DATE HEREOF NEVER RECEIVED THE OPPORTUNITY TO APPEAR FOR HIS INDIVIDUAL (MERITS) HEARING IN IMMIGRATION COURT.**

16. **NO REMOVAL ORDER HAS EVER BEEN ISSUED AGAINST MR. ARTIGA.**

17. **MR. ARITGA HAS NEVER VIOLATED THE TERMS OF HIS BOND.**

18. **MR. ARTIGA HAS NO CRIMINAL HISTORY.**

19. **MR. ARTIGA IS SCHEDULED FOR HIS INDIVIDUAL (MERITS) HEARING BEFORE U.S. IMMIGRATION JUDGE MCFARLAND IN NEW YORK CITY IMIMGRATION COURT ON DECEMBER 11, 2025 – LESS THAN THREE MONTHS AWAY.** See, annexed hereto as Exhibit A, EOIR Case Portal notice of Petitioner's appearance.

20. Notwithstanding the foregoing, in a deceptive and brazen sleight of hand, Respondents arrested Mr. Artiga, have detained Mr. Artiga, and now seek to eject Mr. Artiga from his own asylum case; to continue his detention; and ostensibly to transfer Mr. Artiga away from the District of New York so that ostensibly

Respondents may rapidly deport Mr. Artiga in contravention of Mr. Artiga's Fifth Amendment due process rights.

21. Two days ago, on Monday, March 15, 2025 at or around 10:00 am, Mr. Artiga was arrested and taken into custody by ICE agents who came to his home in Long Island.

22. Counsel at 12:37 pm on September 15, 2025 spoke with ICE case Officer Charles at the ICE Central Islip facility by telephone, who told counsel that while Mr. Artiga was arrested, at that time Mr. Artiga had not been fully processed. The ICE Officer indicated to counsel that after processing Mr. Artiga may be released by the end of the day. Counsel informed the ICE Officer that Mr. Artiga is in removal proceedings and specifically inquired as to the reason for Mr. Artiga's arrest. No answer was provided. Mr. Artiga was not released by the end of day.

23. Counsel corresponded with ICE as of Monday, September 15, 2025 at 4:45 pm demanding Mr. Artiga's release and informing ICE that failure to comply with our demand will result in legal action. See, annexed hereto as Exhibit E, e-mail correspondence. ICE rebuffed counsel's demand and failed to provide any information related to the status of and provided no information about Mr. Artiga's detention. See, *Id.*

24. Yesterday, September 16, 2025, at 8:50 am, counsel spoke by telephone

with ICE Deportation Officer William Morrow. Counsel informed ICE Deportation Officer William Morrow that Mr. Artiga is in removal proceedings and scheduled for his Individual Hearing in December, 2025, to which the ICE Deportation Officer responded that "he is still here illegally." Counsel again asked why ICE arrested Mr. Artiga. ICE Deportation Officer William Morrow responded that "that's a silly question that you're asking. I mean, why is he here?...possibly could be the administration, the new policies...." ICE Deportation Officer William Morrow in the context of Mr. Artiga's arrest and detention further made jokes and otherwise acted unprofessionally, and directed counsel to "tell the judge."

25. Today, September 17, 2025, Mr. Ariga remains detained by ICE.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

26. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. See *Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010); *Garcia v. Shanahan*, 615 F. Supp. 2d 175, 180 (S.D.N.Y. 2009). Any requirement of administrative exhaustion is therefore purely discretionary.

27. In making that decision, the Court should consider the urgency of the need for immediate review. "Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas

corpus is more urgent." *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).

28. Moreover, where the agency has predetermined a dispositive issue, no further action with the agency is necessary. *See, e.g., Monestime v. Reilly,* 704 F. Supp. 2d 453, 456-57 (S.D.N.Y. 2010) (holding that administrative challenges to a noncitizen's classification under the mandatory detention statute would be futile given the agency's precedent on the issue); *Garcia,* 615 F. Supp. 2d at 180 (same).

LEGAL GROUNDS FOR RELIEF

A. FIFTH AMENDMENT DUE PROCESS VIOLATION

29. The Supreme Court has long recognized that the Fifth and Fourteenth Amendments refer to all "persons," not just "citizens." Aliens, even inadmissible or removable aliens, must be afforded due process protection. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) ("The Fourteenth Amendment to the Constitution is not confined to the protection of citizens."). As stated by the Court, the provisions of the Fourteenth Amendment "are universal in their application, *to all persons* within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality...." *Id.* (emphasis added).

30. The Supreme Court has held that "even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional

protection [of the Due Process Clauses of the Fifth and Fourteenth Amendments]" *Mathews v. Diaz.*, 426 U.S. 67, 75 n.7 (1976); *see also Plyler v. Doe*, 457 U.S. 202, 210 (1982) ("Whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term."); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) ("Persons within the territory of the United States... even aliens... [may not]... be deprived of life, liberty or property without due process of law.").

31. "A petitioner who was 'released on bond under government custody, … retain[s] a weighty liberty interest under the Due Process Clause in avoiding reincarceration. Id. at 18 (citing *Young v. Harper*, 520 U.S. 143, 146–147 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–782; *Morrissey v. Brewer*, 408 U.S. 471, 482–483 (1972)).) *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596, at *3 (E.D. Cal. July 14, 2025). *See also Barbecho v. Decker*, No. 20-CV-2821 (AJN), 2020 WL 2317876, at *5 (S.D.N.Y. May 11, 2020)(must balance the equities and the public interest where redetention is concerned).

32. Moreover, redetention is not justified where removal is not reasonably foreseeable, removal is not reasonably likely in the foreseeable future, *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 706 (S.D. Tex. 2020).

PRAYER FOR RELIEF

33. WHEREFORE, Petitioner respectfully requests that the Court:

A. Declare Mr. Artiga's continued detention unlawful;

B. Declare the continued detention of Mr. Artiga without a tenable justification a violation of the Due Process Clause of the U.S. Constitution;

C. Order Mr. Artiga's immediate release;

D. Order Respondents to show cause why Mr. Artiga is beingsubjected to unlawfully and unconstitutional detention; and

E. Grant any other relief that may be fit and proper.

Dated: New York, New York
September 17, 2025

/s/ Wade M. German
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CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Writ of Habeas Corpus and all Exhibits annexed thereto using the CM/ECF system, to which the Government subscribes and which will send a notice of electronic filing (NEM) to all counsel of record. I further served the attached Writ of Habeas Corpus and all Exhibits annexed on the U.S. Attorneys for the Eastern District of New York by USPS at Eastern District of New York, Main Office, 271 Cadman Plaza East, Brooklyn, NY 11201.

Dated: New York, New York
September 17, 2025

/s/ Wade M. German
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