UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

JHON KEVIN SARMIENTO GUERRERO,

Petitioner-Plaintiff,

v.

KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security;

TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;

JUDITH ALMODOVAR, in her official capacity as Acting Field Office Director of the New York Office of U.S. Immigration and Customs Enforcement;

PAMELA BONDI, in her official capacity as U.S. Attorney General;

RAUL MALDONADO, Jr., in his official capacity as Warden of the Metropolitan Detention Center;

Defendant-Respondents

Civil Action No. _____

ORAL ARGUMENT REQUESTED

EXPEDITED HEARING REQUESTED

PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

1. The U.S. Department of Homeland Security ("DHS"), through Immigration and Customs Enforcement ("ICE"), has been and is detaining Petitioner-Plaintiff Jhon Kevin Sarmiento Guerrero ("Mr. Sarmiento Guerrero" or "Petitioner") at the Metropolitan Detention Center ("MDC"), a federal incarceration facility located within this District, in violation of his statutory and constitutional rights. This Petition seeks Mr. Sarmiento Guerrero's immediate release from detention.[1]

2. Mr. Sarmiento Guerrero is a 26-year-old native of Colombia who lives with his partner of ten years and their two children, [redacted] and a [redacted] citizen son. Mr. Sarmiento Guerrero entered the United States on or about December 29, 2022, and was allowed to proceed to New York, with scheduled check-ins with DHS. He timely filed an affirmative application for asylum with U.S. Citizenship and Immigration Services ("USCIS") on December 28, 2023. Declaration of Alec Jessar ("Jessar Decl.") at ¶ 24.

3. As Mr. Sarmiento Guerrero awaited his USCIS Asylum Office interview, he developed strong community ties and friendships, obtained lawful employment, and was a consistent and much-needed caretaker for his young family. Ex. 1[2], Mem. Order of the Immigration Judge (Aug. 25, 2025) ("IJ Dec.") at 3–4; Jessar Decl. at ¶ 5. He has no criminal record, no history of evading law enforcement, Ex. 1, IJ Dec. at 3–4, and has complied dutifully with all required immigration check-ins.

4. On June 9, 2025, Mr. Sarmiento Guerrero arrived at a scheduled check-in with ICE, as he always has. At that check-in, ICE discretionarily arrested and detained him pursuant to

[1] Mr. Sarmiento Guerrero's name also appears as Sarmienta-Guerrero in certain documents from his immigration proceedings.

[2] All cited exhibits are exhibits to the Declaration of Joseph L. Sorkin, filed herewith.

Section 236 of the Immigration and Nationality Act ("INA"), articulating no individualized basis or changed circumstances that justified doing so. *See* Ex. 3, ICE's Notice of Custody Determination (June 9, 2025); Ex. 4, Warrant for Arrest of Alien (June 9, 2025); Jessar Decl. at ¶ 15. Accordingly, he was denied the opportunity to interview at the Asylum Office and was instead placed in adversarial removal proceedings in immigration court. Mr. Sarmiento Guerrero has remained detained ever since—approximately half the lifetime of his ten-month old son. Jessar Decl. at ¶ 20. That detention was and is unlawful.

5. As was his right, Mr. Sarmiento Guerrero filed a motion for bond with the immigration court to secure release from detention during his removal proceedings. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 1003.19; Ex. 6, Mr. Sarmiento Guerrero's Legal Br. in Supp. of Req. for Bond Redetermination (Aug. 5, 2025); Jessar Decl. at ¶¶ 9–10. On August 6, 2025, well over two months ago, an Immigration Judge ("IJ") held a bond hearing and granted bond to Mr. Sarmiento Guerrero in the amount of $1,500, the statutory minimum. Ex. 2, Order of the IJ (Aug. 6, 2025); Ex. 1, IJ Dec.; Jessar Decl. at ¶ 11; 8 U.S.C. § 1226(a)(2).

6. In the bond proceedings, ICE offered no evidence, briefing, or argument to support Mr. Sarmiento Guerrero's continued detention. Jessar Decl. at ¶¶ 10–11. Instead, ICE passively relied on the unfounded position that Mr. Sarmiento Guerrero was mandatorily detained pursuant to INA § 235(b)(2)(A) (codified at 8 U.S.C. § 1225(b)(2)(A))—a section of the INA that does not contemplate the possibility of bond—rather than INA § 236(a) (codified at 8 U.S.C. § 1226(a))—a section that does allow for bond.[3] ICE took this position in accordance with the agency's recent expansive reinterpretation of decades-old law—handed down a month after Mr. Sarmiento

[3] Throughout this Petition, INA Section 235 and subsections thereof are referred to interchangeably with the corresponding section of the U.S. Code, which is 8 U.S.C. § 1225. Similarly, INA Section 236 and subsections thereof are referred to interchangeably with the corresponding section of the U.S. Code, which is 8 U.S.C. § 1226.

Guerrero's arrest—asserting that any person who entered the country without inspection now is *required* to be detained, without any opportunity to seek bond. *See ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, Am. Immigr. Laws. Ass'n (July 8, 2025), https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (screen captures of July 8, 2025 ICE Memo announcing interim guidance); *see also* Ex. 8, Sam Levine, *'I'm not coming home': Trump policy holds people in Ice custody without bail*, Guardian (Aug. 30, 2025, at 07:00 EDT), https://www.theguardian.com/us-news/2025/aug/30/immigration-custody-bail-trump.

7. ICE's position—and a subsequent decision in accord by the Board of Immigration Appeals ("BIA")[4]—has no basis in fact, law, or historical practice. ICE's own documentation reflects that it discretionarily detained Mr. Sarmiento Guerrero pursuant to INA § 236(a), not INA § 235(b)(2)(A). And its newfound legal gymnastics are contradicted by decades of binding precedent. An ever-expanding number of federal district courts across the country have quickly acknowledged as much and rejected this "novel and illogical interpretation of the INA."[5]

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[4] *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), discussed *infra*.

[5] *See, e.g.*, *Hyppolite v. Noem*, No. 25-cv-4304 (NRM), 2025 WL 2829511, at *9 (E.D.N.Y. Oct. 6, 2025); *Artiga v. Genalo*, No. 25-cv-5208 (OEM), 2025 WL 2829434, at *4–8 (E.D.N.Y. Oct. 5, 2025); *J.U. v. Maldonado*, No. 25-cv-4836 (OEM), 2025 WL 2772765, at *4–9 (E.D.N.Y. Sept. 29, 2025); *Samb v. Joyce*, No. 25-cv-6373 (DEH), 2025 WL 2398831, at *3 (S.D.N.Y. Aug. 19, 2025); *Lopez Benitez v. Francis*, No. 25-cv-5937 (DEH), 2025 WL 2371588, at *3–9 (S.D.N.Y. Aug. 13, 2025); *B.D.V.S. v. Forestal*, No. 25-cv-1968, 2025 WL 2855743, at *2 (S.D. Ind. Oct. 8, 2025); *Eliseo A.A. v. Olson*, No. 25-cv-3381, 2025 WL 2886729, at *2–4 (D. Minn. Oct. 8, 2025); *Mena Torres v. Wamsley*, No. 25-cv-5772, 2025 WL 2855379, at *3–4 (W.D. Wash. Oct. 8, 2025); *Ledesma Gonzalez v. Bostock*, , No. 25-cv-1404, 2025 WL 2841574, at *2–4 (W.D. Wash. Oct. 7, 2025); *Cordero Pelico v. Kaiser*, No. 25-cv-7286, 2025 WL 2822876, at *7–15 (N.D. Cal. Oct. 3, 2025) (granting preliminary injunction); *Echevarria v. Bondi*, No. 25-cv-3252, 2025 WL 2821282, at *4–10 (D. Ariz. Oct. 3, 2025) (granting preliminary injunction); *Elias Escobar v. Hyde*, No. 25-cv-12620, 2025 WL 2823324, at *2–3 (D. Mass. Oct. 3, 2025); *Guerrero Orellana v. Moniz*, No. 25-cv-12664, 2025 WL 2809996, at *4–9 (D. Mass. Oct. 3, 2025) (granting preliminary injunction); *Ayala Casun v. Hyde*, No. 25-cv-427, 2025 WL 2806769, at *2 (D.R.I. Oct. 2, 2025); *Rocha v. Hyde*, No. 25-cv-12584, 2025 WL 2807692, at *2 (D. Mass. Oct. 2, 2025); *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947, at *5–7 (D. Minn. Oct. 1, 2025); *Rodriguez Vazquez v. Bostock*, No. 25-cv-5240, 2025 WL 2782499, at *16–26 (W.D. Wash. Sept. 30, 2025); *Santiago Helbrum v. Williams*, No. 25-cv-349, 2025 WL 2840273, at *4–7 (S.D. Iowa Sept. 30, 2025); *Quispe-Ardiles v. Noem*, No. 25-cv-1382, 2025 WL 2783800, at *4–7 (E.D. Va. Sept. 30, 2025); *Alves da Silva v. ICE*, No. 25-cv-284, 2025 WL 2778083, at *3 (D.N.H. Sept. 29, 2025); *Luna Quispe v. Crawford*, No. 25-cv-1471, 2025 WL 2783799, at *4–6 (E.D. Va. Sept. 29, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *4–9 (D. N.J.

Hyppolite v. Noem, No. 25-cv-4304 (NRM), 2025 WL 2829511, at *12 (E.D.N.Y. Oct. 6, 2025) (listing cases and observing that respondents and the Court were "aware of ***no federal court decision*** adopting [respondents'] current, expansive interpretation of § 1225") (emphasis added).

8. In the bond proceedings, the IJ rejected ICE's unsupported position and granted bond to Mr. Sarmiento Guerrero. Ex. 2, Order of the IJ; Ex. 1, IJ Dec.; Jessar Decl. at ¶ 11; 8 U.S.C. § 1226(a)(2). The IJ found 1) that he had jurisdiction to hear Mr. Sarmiento Guerrero's bond request because Mr. Sarmiento Guerrero was discretionarily detained pursuant to INA § 236(a), and 2) Mr. Sarmiento Guerrero was not a flight risk or danger to the community. Ex. 1, IJ Dec.

9. Nevertheless, for the months that followed, Mr. Sarmiento Guerrero remained detained because immediately after the IJ granted bond, ICE invoked an "automatic stay" provision, 8 C.F.R. § 1003.19(i)(2), that, until recently, was rarely used. *See* Ex. 7, Form EOIR-43 (Aug. 6, 2025); Jessar Decl. at ¶ 12. By doing so, ICE blocked Mr. Sarmiento Guerrero's

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Sept. 26, 2025); *Hernandez Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025) (granting preliminary injunction); *Brito Barrajas v. Noem*, No. 25-cv-322, 2025 WL 2717650, at *3–5 (S.D. Iowa Sept. 23, 2025) (granting preliminary injunction); *Giron Reyes v. Lyons*, No. 25-cv-4048, 2025 WL 2712427, at *4–5 (N.D. Iowa Sept. 23, 2025) (granting preliminary injunction); *Guerrero Lepe v. Andrews*, No. 25-cv-1163, 2025 WL 2716910, at *3–9 (E.D. Cal. Sept. 23, 2025) (granting preliminary injunction); *Sanchez Roman v. Noem*, No. 25-cv-1684, 2025 WL 2710211, at *5–7 (D. Nev. Sept. 23, 2025); *Chogllo Chafla v. Scott*, No. 25-cv-437, 2025 WL 2688541, at *7 (D. Me. Sept. 22, 2025) (granting preliminary injunction); *Campos Leon v. Forestal*, No. 25-cv-1774, 2025 WL 2694763, at *2–3 (S.D. Ind. Sept. 22, 2025); *Singh v. Lewis*, No. 25-cv-96, 2025 WL 2699219, at *3 (W.D. Ky. Sept. 22, 2025); *Beltran Barrera v. Tindall*, No. 25-cv-541, 2025 WL 2690565, at *2–4 (W.D. Ky. Sept. 19, 2025); *Hasan v. Crawford*, No. 25-cv-1408, 2025 WL 2682255, at *5–9 (E.D. Va. Sept. 19, 2025); *Maldonado Vazquez*, 2025 WL 2676082, at *11–23 (granting preliminary injunction); *Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729, at *4 (D.N.M. Sept. 17, 2025); *Garcia Cortes v. Noem*, No. 25-cv-2677, 2025 WL 2652880, at *2–3 (D. Colo. Sept. 16, 2025); *Salcedo Aceros v. Kaiser*, No. 25-cv-6924, 2025 WL 2637503, at *7–12 (N.D. Cal. Sept. 12, 2025) (granting preliminary injunction); *Lopez Santos v. Noem*, No. 25-cv-1193, 2025 WL 2642278, at *3–5 (W.D. La. Sept. 11, 2025); *Hernandez Marcelo v. Trump*, No. 25-cv-94, 2025 WL 2741230, at *6–8 (S.D. Iowa Sept. 10, 2025) (granting preliminary injunction in part); *Cuevas Guzman v. Andrews*, No. 25-cv-1015, 2025 WL 2617256, at *3–5 (E.D. Cal. Sept. 9, 2025) (granting preliminary injunction); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *4–8 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 25-cv-11981, 2025 WL 2607924, at *7–8 (D. Mass. Sept. 9, 2025); *Jimenez v. FCI Berlin*, No. 25-cv-326, 2025 WL 2639390, at *3–10 (D.N.H. Sept. 8, 2025); *Zaragoza Mosqueda et al. v. Noem*, No. 25-cv-2304, 2025 WL 2591530, at *4–5 (C.D. Cal. Sept. 8, 2025) (granting preliminary injunction); *Doe v. Moniz*, No. 25-cv-12094, 2025 WL 2576819, at *4–6 (D. Mass. Sept. 5, 2025); *Hernandez Nieves v. Kaiser*, No. 25-cv-692, 2025 WL 2533110, at *4 (N.D. Cal. Sept. 3, 2025) (granting preliminary injunction).

release while it appealed the IJ's bond decision to the BIA. The automatic stay provision, which allows ICE to unilaterally stay an IJ's order granting release on bond, is also unlawful, as an ever-expanding number of district courts across the country have also recognized.[6]

10. In its appeal of the IJ's bond grant, ICE maintained the unfounded position (once again unsupported by any briefing or oral argument) that Mr. Sarmiento Guerrero was mandatorily detained pursuant to INA § 235(b)(2), not INA § 236(a). Ex. 15, ICE's Notice of Appeal (Aug. 15, 2025) at 2 (declining oral argument and briefing) & Attach. A (presenting bases for appeal). Mr. Sarmiento Guerrero filed a motion to dismiss the appeal, arguing, *inter alia*, that the appeal lacked any arguable basis in law or fact and that the purpose of the appeal was to cause unnecessary delay. Jessar Decl. at ¶ 17. Separately, Mr. Sarmiento Guerrero also directly requested release and/or parole from ICE on multiple occasions, which ICE denied. Jessar Decl. at ¶¶ 8, 15, 18; Ex. 18, Correspondence between Alec Jessar and ICE Officers ("Release Requests") (July 24, 2025–Sept. 4, 2025).

11. While ICE's appeal was pending, the BIA issued a precedential decision adopting ICE's statutory construction of INA Sections 235 and 236. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That decision, like ICE's position, is wrong, and has also been explicitly rejected by many federal district courts.[7]

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[6] *See, e.g.*, *B.D.V.S.*, 2025 WL 2855743, at *2–3; *Platas Arcos v. Noem*, No. 25-cv-4599, 2025 WL 2856558, at *2–3 (S.D. Tex. Oct. 8, 2025); *Eliseo A.A.*, 2025 WL 2886729, at *7; *Ayala Casun*, 2025 WL 2806769, at *3–4; *Quispe-Ardiles*, 2025 WL 2783800, at *7–10; *Alves da Silva*, 2025 WL 2778083, at *3–6; *Luna Quispe*, 2025 WL 2783799, at *7–9; *Campos Leon*, 2025 WL 2694763, at *3–5; *Singh*, 2025 WL 2699219, at *3–5; *Beltran Barrera*, 2025 WL 2690565, at *6–7; *Hasan*, 2025 WL 2682255, at *9–13; *Maldonado Vazquez v. Feeley*, No. 25-cv-1542, 2025 WL 2676082, at *11–23 (D. Nev. Sept. 17, 2025) (granting preliminary injunction); *Sampiao*, 2025 WL 2607924, at *9–12; *Herrera v. Knight*, No. 25-cv-1366, 2025 WL 2581792, at *8–13 (D. Nev. Sept. 5, 2025); *Leal-Hernandez v. Noem*, No. 25-cv-2428, 2025 WL 2430025, at *12–13 (D. Md. Aug. 24, 2025); *Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (granting preliminary injunction); *Mohammed H. v. Trump*, 786 F. Supp. 3d 1149, 1158–59 (D. Minn. 2025); *Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1185–90 (D. Minn. 2025).

[7] *See, e.g.*, *Hyppolite*, 2025 WL 2829511, at *11; *Maldonado Vazquez*, 2025 WL 2676082, at *11–23 (granting preliminary injunction); *Sampiao*, at *11; *Elias Escobar*, 2025 WL 2823324, at *2–3; *Chogllo Chafla*, 2025 WL

12. Just last week on October 16, 2025, in a terse four-paragraph order, the BIA denied Mr. Sarmiento Guerrero's motion to dismiss ICE's appeal of the IJ's bond grant, and sustained ICE's appeal. The BIA held that *Matter of Yajure Hurtado* controls and that Mr. Sarmiento Guerrero is mandatorily detained under INA § 235(b)(2). Ex. 17, BIA Decision (Oct. 16, 2025).

13. As a result of ICE's unlawful steps at every turn, and the BIA's adoption of ICE's erroneous position, Mr. Sarmiento Guerrero remains detained in MDC in violation of his constitutional and statutory rights. Given the continued unlawful detention of Mr. Sarmiento Guerrero, the seriousness of ICE's constitutional and statutory violations, and the absence of any genuine administrative remedy, Mr. Sarmiento Guerrero now files this application for a writ of habeas corpus.

14. A court hearing a petition for a writ of habeas corpus must issue the writ or an order to show cause to the Respondents "forthwith." 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require the Respondents to respond "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* In light of the urgent nature of this Petition and the seriousness of the ongoing constitutional and statutory violations detailed herein, Mr. Sarmiento Guerrero respectfully requests that the Court issue the writ, or order Respondents to show cause in no more than three days why the Court should not issue the writ.

JURISDICTION & VENUE

15. "Federal courts have jurisdiction to review habeas petitions filed by immigration detainees who assert that they are 'in custody in violation of the Constitution or laws or treaties of

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2688541, at *7; *Jimenez*, 2025 WL 2639390, at *10 n.9; *Artiga*, 2025 WL 2829434, at *7 ; *Beltran Barrera*, 2025 WL 2690565, at *5; *Singh*, 2025 WL 2699219, at *3; *Pizarro*, 2025 WL 2609425, at *6–7; *Guerrero Lepe*, 2025 WL 2716910, at *4 & n.5 (granting preliminary injunction); *Salcedo Aceros*, 2025 WL 2637503, at *9–12; *Cordero Pelico*, 2025 WL 2822876, at *7–15; *Alvarez Puga v. Assistant Field Off. Dir.*, No. 25-cv- 24535, 2025 WL 2938369, at *5 (S.D. Fla. Oct. 15, 2025); *Aguilar Merino v. Ripa*, No. 25-cv-23845, 2025 WL 2941609, at *5 (S.D. Fla. Oct. 15, 2025); *Hernandez Hernandez v. Crawford*, No. 25-cv-01565, 2025 WL 2940702, at *2 n.4 (E.D. Va. Oct. 16, 2025).

the United States.'" *J.U. v. Maldonado*, No. 25-cv-4836 (OEM), 2025 WL 2772765, at *3 (E.D.N.Y. Sept. 29, 2025); *Lopez Benitez v. Francis*, No. 25-cv-5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (same); 28 U.S.C. § 2241(c)(3).

16. Mr. Sarmiento Guerrero was detained by Respondents on June 9, 2025. He is currently detained at MDC. Jessar Decl. at ¶ 20.

17. This Court has subject matter jurisdiction over this Petition pursuant to U.S. Const. art. I, § 9, cl. 2 (habeas corpus); 28 U.S.C. § 2241 *et seq*. (habeas corpus); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. § 1651 (All Writs Act).

18. This Court has authority to grant declaratory and injunctive relief, 28 U.S.C. §§ 2201, 2202, and to issue and enforce the writ of habeas corpus, U.S. Const. art. I, § 9, cl. 2 and 28 U.S.C. § 1651.

19. Respondents have waived sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

20. Venue is proper in this District pursuant to 28 U.S.C. § 2241(d) (stating that "the application [for habeas corpus] may be filed in the district court for the district wherein such person is in custody"); 28 U.S.C. § 1391(b) (stating that venue is proper in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred"). Venue is proper in this District because Mr. Sarmiento Guerrero is presently detained within this District and because a substantial part of the events or omissions giving rise to the claim occurred and are occurring in this District.

PARTIES

21. Petitioner-Plaintiff Mr. Sarmiento Guerrero is a Colombian national who was arrested and detained by ICE while attending a scheduled ICE check-in on June 9, 2025, pursuant

to INA § 236(a), 8 U.S.C. § 1226(a). *See* Ex. 3, Notice of Custody Determination; Ex. 4, Warrant for Arrest of Alien.

22. Mr. Sarmiento Guerrero has a pending application for asylum. Jessar Decl. at ¶¶ 24–28; *see also* Ex. 9, Notice of In-Person Hr'g on Oct. 29, 2025 (Oct. 8, 2025).

23. Mr. Sarmiento Guerrero is presently detained at the MDC in Kings County, New York, in this District. Jessar Decl. at ¶ 20.

24. Respondent Kristi Noem is named in her official capacity as the Secretary of the U.S. Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a), she routinely transacts business in the Eastern District of New York, she supervises Respondents Lyons and Almodovar, she is legally responsible for the pursuit of Petitioner's detention and removal, and, as such, is a legal custodian of Petitioner. Respondent Noem's office is located at the U.S. Department of Homeland Security, 500 12th Street SW, Washington, D.C. 20528.

25. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. In this capacity, Respondent Lyons is responsible for administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a), he routinely transacts business in the Eastern District of New York, he supervises Respondent Almodovar, he is legally responsible for the pursuit of Petitioner's detention and removal, and, as such, is a legal custodian of Petitioner. Respondent Lyons's office is located at the U.S. Department of Homeland Security, 500 12th Street SW, Washington, D.C. 20528.

26. Respondent Judith Almodovar is named in her official capacity as Acting Field Office Director of the New York Office for U.S. Immigration and Customs Enforcement. In this capacity, Respondent Almodovar is responsible for the administration of immigration laws and

execution of detention and removal determinations and, as such, is a legal custodian of Petitioner. Respondent Almodovar's office is located at 26 Federal Plaza, New York, NY 10278.

27. Respondent Pamela Bondi is named in her official capacity as the U.S. Attorney General. In this capacity, Attorney General Bondi is responsible for administration of the immigration laws as exercised by the Executive Office for Immigration Review, including immigration courts and the Board of Immigration Appeals, pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Eastern District of New York and is legally responsible for administering Petitioner's removal and custody redetermination proceedings and the standards used in those proceedings. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington D.C. 20530.

28. Respondent Raul Maldonado, Jr. is named in his official capacity as Warden of the MDC, a federal incarceration facility located within this District where Petitioner is currently detained. In his capacity as Warden, Respondent Maldonado oversees the administration and management of MDC, and, as such, is a legal custodian of Petitioner. His business address is 80 29th St, Brooklyn, NY 11232.

FACTS AND PROCEDURAL BACKGROUND

I. For two and a half years, Mr. Sarmiento Guerrero lives a law-abiding, family-oriented life as a contributing member of society in New York

29. Mr. Sarmiento Guerrero arrived in the United States on December 29, 2022, Ex. 1, IJ. Dec. at 1, and timely filed an application for asylum with USCIS on December 28, 2023, Jessar Decl. at ¶ 24. As a consequence of filing for asylum, USCIS granted him work authorization while he awaited his Asylum Office interview. *See* Ex. 10, Employment Authorization Document; Jessar Decl. at ¶ 24.

30. Since arriving in the United States, Mr. Sarmiento Guerrero has resided in Orange County, New York. He is the loving companion to his partner of ten years, with whom he lives, along with their [redacted] daughter and [redacted] U.S.-citizen son. Jessar Decl. at ¶ 4.

31. Mr. Sarmiento Guerrero has become a pillar of his community. His bond application was well supported by many attestations to his character submitted by family, friends, co-workers, and other members of the community. Jessar Decl. at ¶¶ 5, 10; Ex. 1, IJ Dec. at 4. Mr. Sarmiento Guerrero works at a grocery store and supports his family through lawful employment. Jessar Decl. at ¶¶ 5, 24; Ex. 10, Employment Authorization. He and his family attend church together every Sunday. Jessar Decl. at ¶ 5.

32. Mr. Sarmiento Guerrero has no criminal record, *see* Ex. 11, Criminal Record Search (July 15, 2025), no history of evading law enforcement, Ex. 1, IJ Dec. at 4, and he has dutifully complied with all immigration check-ins with ICE.

33. As a result of his detention, Mr. Sarmiento Guerrero lost the opportunity to present his claim for asylum in a non-adversarial USCIS Asylum Office interview and now must pursue his claims for protection in adversarial removal proceedings in immigration court and prepare for such proceedings from detention. *See* Ex. 12, Notice to Appear (June 22, 2025). Detention has inhibited Mr. Sarmiento Guerrero's ability to ably prepare for those proceedings. Jessar Decl. at ¶¶ 23, 26. More critically, since being detained, Mr. Sarmiento Guerrero is no longer able to support his young family, which has caused them significant hardship and left Mr. Guerrero feeling distraught and helpless. *Id.* at ¶¶ 22–23.

II. ICE unlawfully arrests and detains Mr. Sarmiento Guerrero

34. On June 9, 2025, Mr. Sarmiento Guerrero awoke prior to 5:30 a.m. and departed his home in Orange County, NY in order to ensure an on-time arrival at his 7:30 a.m. ICE check-in at 26 Federal Plaza in New York City. *See* Jessar Decl. at ¶ 20.

35. While attending that check-in, Mr. Sarmiento Guerrero was discretionarily detained by ICE pursuant to Section 236 of the INA, as reflected by ICE's own records. *See* Ex. 3, Notice of Custody Determination ("Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, pending a final administrative determination in your case, you will be: Detained by the Department of Homeland Security."); Ex. 4, Warrant for Arrest of Alien (warrant issued by "immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act"). ICE articulated no individualized basis or changed circumstances that justified Mr. Sarmiento Guerrero's sudden detention.

36. Mr. Sarmiento Guerrero has been detained by DHS, through ICE, since June 9, 2025. Jessar Decl. at ¶ 20.

37. ICE initially detained Mr. Sarmiento Guerrero at or near 26 Federal Plaza for a number of days in substandard conditions more akin to the conditions an immigrant might describe in an asylum application than what one should expect in U.S. detention.[8] *Id.* Over the ensuing weeks, Mr. Sarmiento Guerrero was detained in numerous facilities, including at or near 26 Federal Plaza. *Id.* Since June 20, 2025, Mr. Sarmiento Guerrero has been detained at MDC. *Id.*; Ex. 13, Notice to EOIR: Alien Address (Oct. 7, 2025).

[8] Recently, Judge Kaplan of S.D.N.Y. found the conditions at 26 Federal Plaza to present detainees with "imminent risk to their health, safety, and lives." *Barco Mercado v. Noem*, No. 25-cv-6568 (LAK), 2025 WL 2658779, at *24 (S.D.N.Y. Sept. 17, 2025).

38. Conditions at MDC are dire. Since Mr. Sarmiento Guerrero's arrival, there have been numerous lockdowns of longer than 48 hours in which Mr. Sarmiento Guerrero has been restricted to his cell. Jessar Decl. at ¶ 21. His cell is smaller than an individual legal visitation room, which is approximately ten feet by twelve feet. *Id.* Mr. Sarmiento Guerrero shares his cell with another individual, and they are forced to use the restroom in front of one another. *Id.* During lockdowns, Mr. Sarmiento Guerrero does not have access to drinking water beyond the tap in his cell. *Id.* The MDC guards mistreat the detainees, restrict them to their cells when they are not supposed to, and make noise and keep lights on at night, inhibiting detainees' ability to sleep. *Id.* at ¶ 22. Mr. Sarmiento Guerrero has been getting two to three hours of sleep per night, on a misshapen mattress that has caused his entire body to ache. *Id.* His appetite is diminished due to the low-quality, tasteless food that is served. *Id.* MDC has become notorious for its barbaric, violent, unsanitary, unsafe, and inhumane conditions, in which detainees like Mr. Sarmiento Guerrero are held alongside criminal detainees in conditions akin to solitary confinement. *See* Katie Rose Quandt and Maeve Brennan, *Lockdowns, Violence, and "Barbaric Conditions" in a Federal Jail Known for its Famous Detainees*, The Appeal (June 30, 2025), https://theappeal.org/brooklyn-metropolitan-detention-center-solitary-watch/.

39. The conditions at MDC and the constant stress of being detained without the ability to help his family have had a significant detrimental impact on Mr. Sarmiento Guerrero's mental and physical health. *See* Jessar Decl. at ¶¶ 21–23. These conditions of his detention have left Mr. Sarmiento Guerrero exhausted, made him feel like he is being driven crazy, and increased his feelings of sadness, powerlessness, and anxiety. *Id.* at ¶ 22. Mr. Sarmiento Guerrero has expressed feeling mentally "blocked," and unable to remember key dates, incidents, and other details, including as he has attempted to prepare for his upcoming asylum hearing—an effort that is

exceedingly difficult behind bars. *Id.* at ¶¶ 23, 26. Due to his worsening condition, his attorney and social worker ultimately referred him to a mental health professional for evaluation. *Id.*

III. The IJ grants Mr. Sarmiento Guerrero's release on $1,500 bond, despite ICE attempting to recategorize his detention as mandatory

40. Mr. Sarmiento Guerrero was originally scheduled for a bond hearing on July 16, 2025. At the hearing, the IJ informed counsel for Mr. Sarmiento Guerrero that ICE was newly arguing in such cases that all individuals charged with having entered the country without inspection are subject to mandatory detention. Jessar Decl. at ¶ 7; *see also ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, Am. Immigr. Laws. Ass'n (July 8, 2025), https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (screen captures of July 8, 2025 ICE Memo announcing interim guidance). In light of this new position, the IJ permitted Mr. Sarmiento Guerrero's attorney to withdraw the pending request for a bond hearing, and to re-file a new request along with briefing regarding ICE's unprecedented position. Jessar Decl. at ¶ 7.

41. On July 31, 2025, Mr. Sarmiento Guerrero submitted a Request for Bond Redetermination to the immigration court. *See* Ex. 5, Req. for Bond Redetermination (July 31, 2025); Jessar Decl. at ¶ 9.

42. On August 5, 2025, the IJ scheduled a bond hearing for August 6, 2025. *See* Ex. 14, Notice of Hr'g (Aug. 5, 2025); Jessar Decl. at ¶ 9.

43. Mr. Sarmiento Guerrero filed evidence in support of his request, along with a brief in support of his eligibility for release on bond. *See* Ex. 6, Mr. Sarmiento Guerrero's Legal Br. in Supp. of Req. for Bond Redetermination (Aug. 5, 2025); Jessar Decl. at ¶¶ 9–10.

44. In the bond proceedings, ICE did not file any evidence with the immigration court, nor did it brief any issues, including the issue of bond eligibility and the issue of whether Mr.

Sarmiento Guerrero should be subject to mandatory detention pursuant to INA § 235(b)(2)(A) or discretionary detention pursuant to INA § 236(a). Jessar Decl. at ¶ 10.

45. On August 6, 2025, the IJ heard argument with respect to Mr. Sarmiento Guerrero's eligibility for bond. At the hearing, ICE declined to present any arguments with respect to whether Mr. Sarmiento Guerrero was subject to mandatory or discretionary detention. *See* Ex. 1, IJ Dec. at 3; Jessar Decl. at ¶ 11. The IJ also heard arguments from Mr. Sarmiento Guerrero's counsel with respect to dangerousness and flight risk. Jessar Decl. at ¶ 11. The IJ gave ICE the opportunity to respond, which ICE declined to do, electing instead to defer to the Court. *Id.* The IJ then found that he had jurisdiction to hear Mr. Sarmiento Guerroro's bond request and that Mr. Sarmiento Guerrero was not mandatorily detained, and he granted bond in the amount of $1,500, the statutory minimum. *See* Ex. 2, Order of the IJ; *see* 8 U.S.C. § 1226(a)(2)(A).

46. On August 25, 2025, the IJ issued a written decision supporting his order granting bond on August 6, 2025. Ex. 1, IJ Dec. The IJ held that Mr. Sarmiento Guerrero "is not subject to mandatory detention under INA § 235(b), but rather is subject to discretionary detention under INA § 236(a)." *Id.* at 3. The IJ explained that Mr. Sarmiento Guerrero, "having resided in the United States for two years," "is not properly characterized as 'seeking admission'" such that he could be subject to mandatory detention under INA § 235(b). *Id.* at 2. Rather, contrary to ICE's position and consistent with binding BIA precedent, such individuals are "subject to discretionary detention under INA § 236(a)." *Id.* The IJ also pointed out the legal untenability of ICE's position, noting that applying INA § 235(b)(2) so broadly would render numerous provisions of a separate section, INA § 236(c)—which defines certain specific categories of noncitizens subject to mandatory detention—entirely superfluous. *Id.* at 2–3. Finally, the IJ pointed out that DHS "failed

to develop any argument" as to why Mr. Sarmiento Guerrero should be subject to mandatory detention under INA § 235(b)(2). *Id.* at 3.

47. The IJ also concluded that Mr. Sarmiento Guerrero is not a danger to the community or a flight risk, and that any flight risk concerns could be mitigated by Mr. Sarmiento Guerrero posting $1,500 bond. *Id.* at 4. The IJ acknowledged that Mr. Sarmiento Guerrero has no criminal history, no history of evading legal process, strong community ties including a U.S. citizen son, and support and character attestations from various members of the community, including U.S. citizens. *Id.* Again, the IJ acknowledged that ICE submitted no evidence to the contrary. *Id.*

IV. ICE immediately appeals the bond decision and invokes an automatic stay

48. On August 6, 2025, the same day as the IJ's order granting bond, ICE filed a Form EOIR-43, Notice of ICE Intent to Appeal Custody Redetermination. *See* Ex. 7, Form EOIR-43. The filing of that form "automatically stay[ed] the Immigration Judge's custody redetermination decision," pursuant to 8 C.F.R. § 1003.19(i)(2). *Id.* at 2; Jessar Decl. at ¶ 12; 8 C.F.R. § 1003.19(i)(2) ("In any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR-43) with the immigration court within one business day of the order . . . ").

49. On August 15, 2025, ICE purportedly timely filed a Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge. *See* Ex. 15, ICE's Notice of Appeal (Aug. 15, 2025); *but see* Jessar Decl. at ¶ 13 (attesting that ICE's filing was not visible on the immigration court's online filing system until August 21, 2025). ICE indicated that it would not submit any brief in support of its appeal and that it did not desire oral argument as part of its appeal. Ex. 15,

ICE's Notice of Appeal (Aug. 15, 2025) at 2. Instead, ICE filed only an "EOIR-43 Senior Legal Official Certification," accompanied by a short written statement stating its bases for appeal *Id.* at Attach. A.

50. These filings served to ensure that the automatic stay remained in effect pending resolution of ICE's appeal, pursuant to 8 C.F.R. § 1003.6(c)(4). *See* Ex. 7, Form EOIR-43 (citing 8 C.F.R. § 1003.6(c)(4)) ("The stay shall lapse if ICE does not file a notice of appeal along with appropriate certification within ten business days of the issuance of the order of the Immigration Judge").[9]

V. Mr. Sarmiento Guerrero remains unlawfully detained while the BIA considers and eventually sustains ICE's appeal pursuant to its own intervening decision in *Matter of Yajure Hurtado*

51. On appeal, ICE took the same position that was addressed and rejected by the IJ in its bond decision: that Mr. Sarmiento Guerrero is an "applicant for admission" subject to mandatory detention under INA § 235(b)(2)(A), and the IJ lacked authority to order his release on bond pursuant to INA § 236(a). *See* Ex. 15, ICE's Notice of Appeal at Attach. A.

52. On appeal, ICE also took the position for the first time that Mr. Sarmiento Guerrero is a flight risk. *See id.* ICE submitted no evidence in support of that position, which it had already waived by not raising it before the IJ. Instead, ICE merely submitted a single paragraph that ignores the findings and conclusions reached by the IJ, and that endeavors to minimize the fact

[9] The "EOIR-43 Senior Legal Official Certification" was also deficient in multiple respects. The certification identified no evidentiary or factual support, and relied entirely on frivolous legal arguments that ICE had waived. *See* 8 C.F.R. § 1003.6(c)(1)(ii) (requiring that where ICE invokes the automatic stay, a "senior legal official" must certify that they are "satisfied that the contentions justifying the continued detention of the alien *have evidentiary support, and the legal arguments are warranted* by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing precedent or the establishment of new precedent") (emphasis added). The document was also procedurally deficient because it did not properly specify the means of service. Mr. Sarmiento Guerrero raised these arguments in his motion to dismiss ICE's appeal. Jessar Decl. at ¶ 17. The BIA ultimately rejected that motion without addressing any of its arguments. *See* Ex. 17, BIA Dec.

that Mr. Sarmiento Guerrero has a [redacted] and [redacted] U.S. citizen son who rely upon him for their care and well-being. *See* Ex. 15, ICE Notice of Appeal at Attach. A.

53. On August 31, 2025, Mr. Sarmiento Guerrero filed a "Motion to Summarily Dismiss ICE's Appeal or, in the Alternative, Strike ICE's Stay from the Record." Jessar Decl. at ¶ 17.

54. Over the course of a number of months, Mr. Sarmiento Guerrero also submitted multiple direct requests to ICE requesting his release and/or parole. Jessar Decl. ¶¶ 8, 15, 18. ICE denied these requests. *Id.* at ¶¶ 8, 16, 18; Ex. 18, Release Requests.

55. On September 5, 2025, the BIA issued a new precedential decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting ICE's position and essentially rendering the outcome of the appeal a foregone conclusion.

56. On October 16, 2025, a panel for the BIA issued a summary, four-paragraph decision denying Mr. Sarmiento Guerrero's motion to dismiss the appeal, and sustaining ICE's appeal. Ex. 17, BIA Dec. The panel held that *Matter of Yajure Hurtado* controls, and that "[c]onsequently, the Immigration Judge did not have jurisdiction over the respondent's bond, because he is an applicant for admission subject to mandatory detention under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A)." *Id.* In so holding, the panel downplayed the fact that ICE's own documentation asserted that Mr. Sarmiento Guerrero was detained pursuant to INA § 236(a), stating without further explanation that the language appeared in a "preprinted statement," then inexplicably excusing ICE's invocation of Section 236 because the printed notice predated the BIA's decision in *Matter of Yajure Hurtado*. *Id.*

57. As of the date of this filing, Mr. Sarmiento Guerrero remains detained at MDC, in violation of his constitutional and statutory rights. ICE's position—rubber stamped by the BIA,

but unsupported by fact, law, and historical practice—continues to be that Mr. Sarmiento Guerrero is subject to mandatory detention and was never eligible for the bond that was granted to him.

VI. Mr. Sarmiento Guerrero's detention is unlawful

A. Mr. Sarmiento Guerrero is detained pursuant to an unlawful application of INA Section 235(b)(2)(A)

58. As relevant here, the INA contains two methods for detaining noncitizens: Sections 235 and 236, codified at 8 U.S.C. §§ 1225 and 1226, respectively. *See Jennings v. Rodriguez*, 583 U.S. 281, 287–89 (2018). Section 235 imposes mandatory detention on noncitizens who are "seeking admission" to the United States; Section 236 permits discretionary detention of noncitizens who are "already in the country." *Jennings*, 583 U.S. at 288–89 (stating that Section 235 governs "an alien seeking to enter the country" whereas Section 236 governs aliens "once inside the United States"). Mr. Sarmiento Gurrero was arrested and detained on June 9, 2025 pursuant to Section 236, per ICE's own warrant and the notice provided by ICE upon his detention. *See* Ex. 3, Notice of Custody Determination; Ex. 4, Warrant for Arrest of Alien.

59. INA Section 235(b) requires mandatory detention of certain noncitizens who are "seeking admission" to this country. 8 U.S.C. § 1225(b)(2)(A) ("[I]f the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained . . . .") (emphasis added); *Jennings*, 583 U.S. at 289 (stating that Section 235 applies to "an alien *seeking to enter* the country") (emphasis added). The only exception to detention under this section is temporary parole under INA Section 212(d)(5)(A) for humanitarian reasons or public benefit. 8 U.S.C. § 1182(d)(5)(A).

60. By contrast, INA Section 236(a), codified at 8 U.S.C. § 1226(a), provides discretionary authority to the government to detain noncitizens who are already in the country. 8 U.S.C. § 1226(a) ("[A]n alien *may be* arrested and detained pending a decision on whether the

alien is to be removed . . . .") (emphasis added); *Jennings*, 583 U.S. at 289 (stating that Section 236 "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings") (emphasis added).

61. The facts, law, and decades of historical practice make clear that Mr. Sarmiento Guerrero is detained, and may only be detained, pursuant to Section 236(a); yet ICE purports to be detaining him to Section 235(b)(2)(A). There is no basis for ICE's position.

i. DHS has admitted that Mr. Sarmiento Guerrero is detained pursuant to INA Section 236

62. DHS has admitted that Mr. Sarmiento Guerrero is subject to detention on a discretionary basis under INA Section 236.

63. When ICE indiscriminately arrested Mr. Sarmiento Guerrero on June 9, 2025 at 26 Federal Plaza in New York City, ICE issued him a "Notice of Custody Determination" explicitly informing him that he was being detained pursuant to Section 236. Ex. 3, Notice of Custody Determination ("Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, pending a final administrative determination in your case, you will be: Detained by the Department of Homeland Security.").

64. Likewise, ICE's own arrest warrant of Mr. Sarmiento Guerrero is issued by an immigration officer authorized pursuant to INA Section 236. Ex. 4, Warrant for Arrest of Alien (warrant issued by "[a]ny immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations").

65. These admissions alone are dispositive. *See, e.g.*, *Sampiao v. Hyde*, No. 25-cv-11981, 2025 WL 2607924, at *1 (D. Mass. Sept. 9, 2025) ("Because [petitioner] was arrested on

a warrant under Section 1226, his detention continues to be governed by Section 1226(a)'s discretionary framework.").

66. In addition to ICE's own admissions, Mr. Sarmiento Guerrero has now lived freely in New York for two and a half years. "As noted, § 1226 applies to aliens already present in the United States." *Jennings*, 583 U.S. at 303. By virtue of the fact that he is "already present in the United States"—and has been for years—Mr. Sarmiento Guerrero's detention is clearly pursuant to Section 236. As the IJ in this case correctly acknowledged, Mr. Sarmiento Guerrero "is not properly characterized as 'seeking admission,' having resided in the United States for two years." IJ Dec. at 2; *see also, e.g.*, *Hyppolite*, 2025 WL 2829511, at *9 (holding that petitioner who was "allowed to enter the country nearly three years ago, and who has followed all laws and procedures that accompanied his continued presence within the United States ever since that time," was detained pursuant to INA § 236(a), not § 235(b)(2)).

ii. ICE's recently concocted legal theory about the applicability of INA Section 235(b) to Mr. Sarmiento Guerrero has no basis in law

67. Despite that the facts of this case, including ICE's own records, demonstrate that Mr. Sarmiento Guerrero is currently detained pursuant to Section 236(a), ICE belatedly adopted a newfound legal theory and applied it to Mr. Sarmiento Guerrero in order to keep him detained pursuant to Section 235(b). The BIA subsequently endorsed that theory in *Matter of Yajure Hurtado* and relied on it to sustain ICE's appeal of the IJ's bond grant in this case. Ex. 17, BIA Dec.

68. ICE adopted this theory for the first time a month after its arrest of Mr. Sarmiento Guerrero, in line with an internal ICE agency memorandum from July 8, 2025. *See* Am. Immigr. Laws. Ass'n, https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission, *supra* (screen captures of July 8, 2025 ICE Memo announcing

interim guidance); Jessar Decl. at ¶ 7. The IJ addressed (and rejected) ICE's position in his bond decision. Ex. 1, IJ Dec. at 3.

69. The theory adopted by ICE and by the BIA in *Matter of Yajure Hurtado* has no basis in law. "Respondents' novel and expansive construction of § 1225(b)(2)(A) [INA § 235(b)(2)(A)] fails to withstand scrutiny because it disregards the plain meaning of that provision, would render § 1226 [INA § 236] and a recent amendment to it superfluous, and is inconsistent with [the] Supreme Court's prior statutory interpretations." *J.U.*, 2025 WL 2772765, at *7; *Artiga v. Genalo*, No. 25-cv-5208 (OEM), 2025 WL 2829434, at *7 (E.D.N.Y. Oct. 5, 2025); *Hyppolite*, 2025 WL 2829511, at *12 (holding same and listing cases reaching same conclusion); *supra* n.5 & n.7 (listing dozens of cases from recent months reaching the same conclusion).

70. As an initial matter, "Respondents' position violates the canon of statutory interpretation that 'every clause and word of a statute should have meaning.'" *Hyppolite*, 2025 WL 2829511, at *9. Section 235(b)(2)(A) states that, "in the case of an alien who is an *applicant for admission*, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). "If the mandatory detention provision in § 1225(b)(2) applied to *all* noncitizens who are 'applicants for admission,' then there would be no need for Congress to have separately referenced a sub-category of persons 'seeking admission' in the specific section that relates to mandatory detention." *Hyppolite*, 2025 WL 2829511, at *9. Adopting Respondents' position would thus require the Court to "elide[ ] or avoid[] section 1225(b)(2)(A)'s 'seeking admission' language . . ., treating it as mere surplusage of the 'applicant' requirement." *Id.* (listing cases holding same).

71. Respondents' position is further undermined when considering the statute's words in the context of the overall statutory scheme, as courts must. *See King v. Burwell*, 576 U.S. 473, 486 (2015); *see also Graham Cnty. Soil & Water Conservation Dist. v. U.S. ex rel. Wilson*, 559 U.S. 280, 290 (2010) (stating that the court's duty is to "construe statutes, not isolated provisions") (internal quotation marks omitted). "In considering § 1225(b)(2)(A) within its statutory context, it was clearly intended to apply to noncitizens who are presently seeking to enter the United States, and not those, like [Mr. Sarmiento Guerrero], who have lived in the country for almost three years." *Hyppolite*, 2025 WL 2829511, at *9. INA Section 235(b)(2)(A) is explicitly subject to subparagraphs (B) and (C), which set out specific exceptions and rules for "crewm[e]n", "stowaway[s]", and aliens "arriving" on land, making clear that "seeking admission" in that section "is meant to refer to those who are presenting themselves at the border, or who were recently apprehended just after entering"—not those like Mr. Sarmiento Guerrero who have been present for years. *Hyppolite*, 2025 WL 2829511, at *9.

72. Furthermore, it is a basic canon of statutory interpretation that a statute should be construed as to give effect to all its provisions and that no part will be superfluous. *Corley v. United States*, 556 U.S. 303, 314 (2009). If an interpretation of one provision "would render another provision superfluous, courts presume that interpretation is incorrect." *Bilski v. Kappos*, 561 U.S. 593, 607–08 (2010). This presumption is "strongest when an interpretation would render superfluous another part of the same statutory scheme." *Marx v. Gen. Rev. Corp.*, 568 U.S. 371, 386 (2013). Under ICE's newfound theory, nearly all noncitizens in the United States not previously admitted or who entered without inspection are suddenly subject to mandatory detention pursuant to Section 235(b). But if that were correct, then it would render superfluous

numerous provisions of the same statutory scheme, including Sections 236(c)(1)(A), (D), and (E) (codified at 8 U.S.C. §§ 1226(c)(1)(A), (D), and (E)).

73. Section 1226(c)(1)(A) provides that the "Attorney General shall take into custody any alien who is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title," such as crimes of moral turpitude and offenses relating to controlled substances. 8 U.S.C. § 1226(c)(1)(A). "[T]his mandatory detention under § 1226(c) would be unnecessary if all persons who have not been admitted into the United States were already subject to § 1225(b)'s mandatory detention provisions." *Hasan v. Crawford*, No. 25-cv-1408, 2025 WL 2682255, at *8 (E.D. Va. Sept. 19, 2025); *J.U.*, 2025 WL 2772765, at *8 (same).

74. Section 1226(c)(1)(D) provides that the "Attorney General shall take into custody any alien who is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title," which include aliens engaged in terrorist activities. Again, "this mandatory detention under § 1226(c) would be unnecessary if all persons who have not been admitted into the United States were already subject to § 1225(b)'s mandatory detention provisions." *Hasan*, 2025 WL 2682255, at *8; *J.U.*, 2025 WL 2772765, at *8 (same).

75. Section 1226(c)(1)(E)—added by amendment just this year via the enactment of the Laken Riley Act—makes certain noncitizens subject to mandatory detention if (1) they are inadmissible under certain provisions in 8 U.S.C. § 1182, and (2) they are charged with, arrested for, convicted of, or admit to having committed certain crimes. 8 U.S.C. § 1226(c)(1)(E). "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995). Yet, "if § 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless." *Hyppolite*, 2025 WL 2829511,

at *10 (quoting *Lopez-Campos v. Raycraft*, No. 25-cv-12486, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025)). ICE's theory that § 1225(b) applies to practically every noncitizen who entered without inspection and was then arrested while residing in the United States, regardless of whether they committed any crime, would make § 1226(c)(1)(E)'s criminal conduct requirement entirely superfluous. *Id.*; *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025).

76. In addition to these stark internal inconsistencies, ICE's new interpretation of the statutory scheme is also contrary to longstanding binding precedent. *See J.U.*, 2025 WL 2772765, at *8 (holding that "Respondent's interpretation of the statutory scheme does not square with more than a century of Supreme Court holdings interpreting the relationship between §§ 1225(b) and 1226(a)"). As far back as 1958, the Supreme Court held that "our immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality." *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958). "In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely on the threshold of initial entry." *Id.* "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, 693 (2001). "[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.*

77. In *Jennings*, the Supreme Court reaffirmed this principle, stating that Section 235(b) governs "aliens seeking admission into the country" whereas Section 236(a) governs "aliens already in the country." 583 U.S. at 289; *see also J.U.*, 2025 WL 2772765, at *8.

78. When Mr. Sarmiento Guerrero was arrested by ICE at 26 Federal Plaza on June 9, 2025, he was an "alien[] already in the country," and accordingly he "may only be subject to detention as a matter of discretion under [Section 236(a)]." *See J.U.*, 2025 WL 2772765, at *8 (finding that petitioner "effected entry into the United States in the past year since his release" near the border, in holding that petitioner may only be subject to discretionary detention under INA Section 236(a)).

79. The BIA's recent decision in *Matter of Yajure Hurtado*, which merely adopts the same position advocated by ICE, is in conflict with the applicable statutes passed by Congress and decades of binding Supreme Court precedent, for the reasons already explained. The Court has no obligation to credit *Matter of Yajure Hurtado*, and indeed, it can and should reject it outright.

80. "As a threshold matter, these administrative agency decisions are not entitled to substantial deference." *Hyppolite*, 2025 WL 2829511, at *11 (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 402 (2024)); *see also Loper Bright*, 603 U.S. at 402 ("Congress has [not] taken the power to authoritatively interpret [a] statute from the courts and given it to [an] agency.").

81. That the Court is not required to defer to the BIA's interpretation is especially so when the agency's view has not remained "consistent over time." *Loper Bright*, 603 U.S. at 385–86 ("'the longstanding practice of the government'—like any other interpretive aid—'can inform [a court's] determination of what the law is'"); *see also Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (stating that the "weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control").

82. *Matter of Yajure Hurtado* is not just inconsistent with prior interpretations of the law, but is a radical departure from decades of practice and understanding of Section 235. Accordingly, it is particularly uncompelling in light of the immigration courts' consistent prior statements and actions to the contrary. *See Matter of Yajure Hurtado*, 29 I&N Dec. at 225 n.6 ("We acknowledge that for years Immigration Judges have conducted [§ 1226(a)] bond hearings for aliens who entered the United States without inspection."); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (discussing prior BIA decisions "clearly holding that the detention of a non-citizen arrested within the United States is governed under section 1226, rather than section 1225"); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248 (W.D. Wash. 2025) (same).

83. In light of this history, the Court must treat this newfound "assertion of a 'previously unheralded power' to detain non-citizens present in the United States under Section 1225(b)(2)(A) with 'a measure of skepticism.'" *Martinez*, 2025 WL 2084238, at *8 (quoting *W. Virginia v. Env't Prot. Agency*, 597 U.S. 697, 748 (2022) (Gorsuch, J., concurring)).

84. Indeed, in the month and a half since the BIA decided *Matter of Yajure Hurtado*, a steadily increasing number of district courts across the country have explicitly rejected it. *See supra* n.7 (listing cases).

85. That is unsurprising, given that in the three and a half months since Respondents began to broadly invoke section 1225(b)(2)(A) to justify mandatory detention of noncitizens who already reside within the United States, an even greater number of district courts have rejected that "novel and illogical interpretation of the INA." *Hyppolite*, 2025 WL 2829511, at *12 (listing cases and observing that both Respondents and the Court were "aware of ***no federal court decision***

adopting [Respondents'] current, expansive interpretation of § 1225") (emphasis added); *see supra* n.5 (listing cases).

86. For these reasons, Mr. Sarmiento Guerrero detained pursuant to an unlawful application of INA § 235(b)(2)(A).[10]

B. Mr. Sarmiento Guerrero's detention violates his procedural due process rights

87. Mr. Sarmiento Guerrero is detained in violation of his procedural due process rights under the Fifth Amendment.

88. The Fifth Amendment to the United States Constitution provides that "[n]o person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const. amend. V.

89. In determining whether an individual's procedural due process rights have been violated, courts weigh three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Here, the *Mathews* test strongly supports Mr. Sarmiento Guerrero's claim to a procedural due process violation. *See, e.g.*, *Hyppolite*, 2025 WL 2829511, at *12–16 (finding procedural due process violation in analogous circumstances); *J.U.*, 2025 WL 2772765, at *9–10; *Lopez Benitez*, 2025 WL 2371588, at *9–13; *Artiga*, 2025 WL 2829434, at *8–9; *Savane v.*

[10] Whether Mr. Sarmiento Guerrero is lawfully detained pursuant to INA § 235(b)(2)(A) or § 236(a) is a necessary threshold question that the Court must address before addressing his remaining claims. *See Hyppolite*, 2025 WL 2829511, at *7 (describing this as "a critical threshold question the Court must answer" in adjudicating a similar habeas petition). Judge Morrison's analysis in *Hyppolite* is representative of how district courts nationwide have conducted this analysis.

Francis, No. 25-cv-6666-GHW, 2025 WL 2774452, at *6–10 (S.D.N.Y. Sept. 28, 2025); *Samb v. Joyce*, No. 25-cv-6373 (DEH), 2025 WL 2398831, at *3 (S.D.N.Y. Aug. 19, 2025).

90. As to the first *Mathews* factor, the private interest of Mr. Sarmiento Guerrero's that is being affected is of fundamental importance: "The interest in being free from physical detention," which is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see United States v. Salerno*, 481 U.S. 739, 755 (1987) ("In our society liberty is the norm, and detention . . . is the carefully limited exception."); *Zadvydas*, 533 U.S. at 690 (explaining that an individual's interest in being free from detention "lies at the heart of the liberty that [the Due Process] Clause protects").

91. Mr. Sarmiento Guerrero "was detained without any pre-detention, individualized determination as to whether he posed a flight risk or any risk of dangerousness," nor is there any indication "that there was any material change in circumstances that triggered [Mr. Sarmiento Guerrero's] sudden arrest and detention" on June 9, 2025. *Hyppolite*, 2025 WL 2829511, at *13.

92. Furthermore, Mr. Sarmiento Guerrero's liberty interest is of even greater import here, given that the IJ has already conducted a post-hoc individualized assessment and found the detention to be inappropriate. *See Hasan*, 2025 WL 2682255, at *11 (finding same); *Quispe-Ardiles v. Noem*, No. 25-cv-1382, 2025 WL 2783800, at *9 (E.D. Va. Sept. 30, 2025); *Luna Quispe v. Crawford*, No. 25-cv-1471, 2025 WL 2783799, at *8 (E.D. Va. Sept. 29, 2025); *Sampiao*, 2025 WL 2607924, at *10; *Leal-Hernandez v. Noem*, No. 25-cv-2428, 2025 WL 2430025, at *13 (D. Md. Aug. 24, 2025) ("[A]s to the private interest factor, there can be no question that Petitioner[, held in ICE detention after bond granted by IJ,] has perhaps the most acute private interest known to personkind short of life itself: bodily freedom.").

93. Mr. Sarmiento Guerrero is also being held at MDC, a facility notorious for barbaric, violent, unsanitary, unsafe, and inhumane conditions, in which detainees like Mr. Sarmiento Guerrero are held alongside criminal detainees in conditions akin to solitary confinement. *See* Quandt and Brennan, https://theappeal.org/brooklyn-metropolitan-detention-center-solitary-watch/, *supra*. Since Mr. Sarmiento Guerrero's arrival, there have been numerous lockdowns during which he has been detained in a small cell for more than 48 hours at a time, being forced to eat and go to the bathroom in the same room, and in front of his cellmate, with little or no access to exercise or recreation. *See* Jessar Decl. at ¶ 19. "When assessing the first *Mathews* factor, courts also consider the 'conditions under which detainees are currently held, including whether the detainee is held in conditions indistinguishable from criminal incarceration.'" *Hasan*, 2025 WL 2682255, at *11 (quoting *Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1187 (D. Minn. 2025)).

94. For these reasons, the first *Mathews* factor strongly supports Mr. Sarmiento Guerrero's claim of a procedural due process violation.

95. Under the second *Mathews* factor, the risk of erroneous deprivation is obvious in light of the fact that an IJ considered all the evidence and arguments before it, and granted bond to Mr. Sarmiento Guerrero for the statutory minimum amount of $1,500. Despite that the IJ granted him bond, the BIA subsequently sustained ICE's appeal and ruled, contrary to law, that Mr. Sarmiento Guerrero is subject to mandatory detention under INA § 235(b)(2). This "creates a substantial risk of erroneous deprivation of [Mr. Sarmiento Guerrero's] interest in being free from arbitrary confinement" because it "fails to account for any individualized facts." *Hasan*, 2025 WL 2682255, at *12 (citing *Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411, at *13 (D. Minn. Aug. 15, 2025)). Indeed, "petitioners in [Mr. Sarmiento Guerrero's] position face a particularly

high risk of erroneous deprivation" because they "have already prevailed in a judicial hearing." *Id.* (quoting *Günaydin*, 784 F. Supp. 3d at 1187).

96. Mr. Sarmiento Guerrero prevailed before the IJ and was granted bond. After ruling that Mr. Sarmiento Guerrero "is not subject to mandatory detention under INA § 235(b)," the IJ assessed the evidentiary record and concluded that Mr. Sarmiento Guerrero "met his burden of proof to establish that he does not pose a danger to the community of the United States if released" and "that he is not a flight risk." Ex. 1, IJ Dec. at 3–4. The IJ ruled that "any flight risk concerns can be mitigated by the Respondent posting bond in the amount of $1,500," the statutory minimum. *Id.* at 4; 8 U.S.C. § 1226(a)(2)(A). In front of the IJ, ICE never argued that Mr. Sarmiento Guerrero posed a danger to the community or a flight risk, instead deferring to the court. *See* Jessar Decl. at ¶¶ 10–11; Ex. 1, IJ Dec. at 4. Yet Mr. Sarmiento Guerrero remains detained on the basis of a BIA decision and analysis that federal district courts have repeatedly rejected. *See supra* n.5 & n.7. The risk of erroneous deprivation is firmly established.

97. Mr. Sarmiento Guerrero's personal circumstances furher demonstrate the "extremely high" risk inherent to an erroneous deprivation here: Mr. Sarmiento Guerrero has no criminal history; he has resided in the United States for almost three years; he has diligently attended all check-ins with ICE; he has timely filed for asylum and is awaiting the outcome of that process; he has extensive community ties; and he holds significant responsibilities as a caregiver for his partner and two young children, including his [redacted] U.S.-citizen son. *See Hyppolite*, 2025 WL 2829511, at *13 (finding "extremely high" risk of erroneous deprivation based on nearly identical considerations, in a case where a bond hearing had not even been held yet); *see also* IJ Dec.; Jessar Decl. ¶¶ 3–5, 8, 24.

98. For these reasons, the second *Mathews* factor also strongly supports Mr. Sarmiento Guerrero's claim of a procedural due process violation.

99. As to the third *Mathews* factor, the foregoing considerations heavily outweigh any interest of DHS in subjecting Mr. Sarmiento Guerrero to continued detention, or the burden of any substitute procedures. "The government's interest in detaining people on a discretionary, case-by-case basis under § 1226(a) includes 'ensuring the appearance of aliens at future immigration proceedings' and 'preventing danger to the community.'" *Hyppolite*, 2025 WL 2829511, at *14 (quoting *Valdez v. Joyce*, No. 25-cv-4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025)). Those interests have been adequately served by the individualized determination made by the IJ that Mr. Sarmiento Guerrero is not a danger or a flight risk, and that he should be released on bond. *See id.*; *Hasan*, 2025 WL 2682255, at *12 (finding same). More broadly, they are likewise served by separate mandatory detention procedures applicable to certain categories of noncitizens, such as those who have committed certain crimes. *See* 8 U.S.C. § 1226(c); *Hasan*, 2025 WL 2682255, at *12 (finding same).

100. In addition, in this case there are no "fiscal and administrative burdens that the additional or substitute procedural requirements would entail," because the bond hearing has already taken place. *See Hyppolite*, 2025 WL 2829511, at *13 (holding that the burden of continued deprivation still easily outweighed any countervailing fiscal or administrative burdens where the bond hearing had not yet been conducted). "By contrast, the fiscal and administrative burdens of keeping [Mr. Sarmiento Guerrero]—who [was found to not be a] flight risk nor a danger to the community — detained are extremely high." *Id.* (detailing horrid state of affairs at MDC).

101. Thus, the *Mathews* factors clearly establish Mr. Sarmiento Guerrero's claim that his detention violates his procedural due process rights under the Fifth Amendment.

C. Mr. Sarmiento Guerrero's detention also violates his substantive due process rights

102. In addition to its procedural protections, the Due Process Clause of the Fifth Amendment "includes a substantive component that mandates the application of strict scrutiny whenever the government infringes on fundamental liberty interests, regardless of what process the government provides." *Hasan*, 2025 WL 2682255, at *10 (citing *Reno v. Flores*, 507 U.S. 292, 302 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690.

103. "[G]overnment detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections or, in certain special and narrow nonpunitive circumstances where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (citation modified). "This guarantee extends to noncitizens present in the United States." *Hasan*, 2025 WL 2682255, at *10 (citing *Zadvydas*, 533 U.S. at 693).

104. Respondents have provided no special justification to deny Mr. Sarmiento Guerrero his liberty. Nor could they.

105. Indeed, any potential interests in ensuring that Mr. Sarmiento Guerrero appears at immigration proceedings, or ensuring that he does not pose a danger to the community, have already been accounted for by the IJ's imposition of bond—which in this case was imposed at the statutory minimum of $1,500. Ex. 1, IJ Dec.

106. The arbitrary nature of the deprivation in this case is particularly blatant, where ICE presented no argument and deferred to the IJ as to whether Mr. Sarmiento Guerrero posed a flight risk or danger to the community, *see* Jessar Decl. at ¶¶ 10–11, and has only taken the position that

he poses a flight risk (unsupported by any evidence) on appeal, *see* Ex. 15, ICE's Notice of Appeal at Attach. A. And ironically, ICE arrested Mr. Sarmiento Guerrero while he was attending a scheduled ICE check-in, which on its own evinces that he is not a flight risk.

107. Indeed, public reporting on the current administration's policy objectives strongly suggests that the risks of flight and danger to the community—the relevant considerations for purposes of bond determinations, *see Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006)—are in this case and many others mere pretext for the administration's true goal of using detention to pressure noncitizens, who otherwise have the right to have their case heard, into giving up and voluntarily leaving the country. *See* Kyle Cheney and Myah Ward, *Trump's new detention policy targets millions of immigrants. Judges keep saying it's illegal.*, (Sept. 20, 2025, at 4:00 PM EDT), https://www.politico.com/news/2025/09/20/ice-detention-immigration-policy-00573850 ("By targeting those inside the United States for detention, the administration is also hoping that many will choose to voluntarily leave, rather than face the prospect of indefinite detention. While advocates say this drive to force self-deportations is pernicious, administration allies say it's precisely the point. 'Do you really want to be locked up? No,' [Mark Krikorian, executive director of the Center for Immigration Studies, an administration ally] said. 'And so if the odds of your being locked up are pretty high, you're going to think hard about whether you want to pack up the kids and go back.'").

108. Accordingly, ICE's detention of Mr. Sarmiento Guerrero also violates his Fifth Amendment substantive due process rights.

D. The automatic stay is unlawful

109. Because ICE unlawfully deprived Mr. Sarmiento Guerrero of his constitutional and statutory rights for two and a half months—from August 6, 2025 until October 16, 2025—by invoking an unlawful automatic stay of his release, and because ICE could seek to reinvoke that

provision in its future attempts to keep Mr. Sarmiento Guerrero detained, the Court should likewise declare that the automatic stay is unlawful and enjoin Respondents from reapplying it to Mr. Sarmiento Guerrero.

110. From August 6, 2025 until October 16, 2025, ICE kept Mr. Sarmiento Guerrero detained by appealing the IJ's bond grant and invoking an automatic stay provision that, until recently, was rarely used. *See* Ex. 7, Form EOIR-43 (Aug. 6, 2025). The relevant regulation provides: "In any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR-43) with the immigration court within one business day of the order . . . ." 8 C.F.R. § 1003.19(i)(2); *see also* Ex. 7, Form EOIR-43.

111. The BIA sustained ICE's appeal of the IJ's bond grant on October 16, 2025, thereby terminating the need for a continued automatic stay. In deciding ICE's appeal, because the BIA decided (incorrectly) that Mr. Sarmiento Guerrero is mandatorily detained pursuant to INA § 235(b)(2), it did not address whether Mr. Sarmiento Guerrero poses a flight risk—a position that ICE waived by not arguing it in the immigration court, but nevertheless raised for the first time on appeal to the BIA. *See* Ex. 17, BIA Dec. ("In light of this disposition, we do not address the parties' arguments regarding the Immigration Judge's flight risk findings.").

112. The present Petition asks this Court to order Mr. Sarmiento Guerrero's immediate release. However, to the extent that the Court also orders reinstatement of the IJ's bond decision, Petitioner respectfully asks that the Court enjoin Respondents from reinvoking the automatic stay by renewing an appeal of that decision to the BIA on the issue of flight risk, or on any other issue.

113. The automatic stay provision is itself unlawful—as courts nationwide have found, *see supra* n.6—and the Court should declare the same in order to ensure 1) that the unlawfulness of Petitioner's prior detention pursuant to the automatic stay is clearly established, and 2) to enjoin ICE from continuing to erect constitutionally and statutorily impermissible hurdles to Mr. Sarmiento Guerrero's release.

114. The automatic stay is unlawful for at least three reasons.

115. First, the automatic stay regulation is *ultra vires* in that it contravenes the statutory authority granted to the Attorney General and DHS. *See Briggs v. Bremby*, 792 F.3d 239, 246 (2d Cir. 2015) (stating that regulations contrary to statute are *ultra vires* because "no agency regulation can overturn a clear statutory mandate"); *City of Arlington v. FCC*, 569 U.S. 290, 297–99 (2013). According to the automatic stay regulation, when an immigration judge—an agent of the Executive Office of Immigration Review ("EOIR") within the Department of Justice—exercises their statutory authority to grant bond under 8 U.S.C. § 1226(a)(2), DHS—an entirely separate agency—may nevertheless unilaterally and automatically stay that determination while its appeal is pending. But "[i]t is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). While Congress has permitted the Attorney General to delegate bond determinations to "any other officer, employee, or agency of the Department of Justice," such as IJs, *see* 28 U.S.C. § 510, it has not permitted the Attorney General to abdicate its responsibilities to an entirely separate executive department (here, DHS). But that is exactly what DOJ has done via the automatic stay regulation.

116. Federal district courts across the country have similarly concluded that the automatic stay is *ultra vires* in analogous cases.[11]

117. Second, the automatic stay regulation also violates Mr. Sarmiento Guerrero's procedural due process rights, for much the same reason that his mandatory detention does. The first *Mathews* factor is the same: the private interest of Mr. Sarmiento Guerrero's that is affected by the automatic stay is his "interest in being free from physical detention," which is "the most elemental of liberty interests." *Hamdi*, 542 U.S. at 529. The brutal conditions at MDC sharpen that interest further. *See Hasan*, 2025 WL 2682255, at *11. As to the second *Mathews* factor, the automatic stay provision—just as with mandatory detention—"creates a substantial risk of erroneous deprivation of [Mr. Sarmiento Guerrero's] interest in being free from arbitrary confinement because invocation of the automatic stay fails to account for any individualized facts." *Hasan*, 2025 WL 2682255, at *12 (citing *Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411, at *13 (D. Minn. Aug. 15, 2025)). And for the third factor, these considerations heavily outweigh any countervailing interest of DHS, particularly where the IJ has already made findings on flight risk and danger to the community; there will be no need to hold a duplicative bond hearing; and Respondents will no longer incur the burden and expense of detaining Mr. Sarmiento Guerrero.

118. "In essence, the automatic stay imposed in immigration cases constitutes an unequivocal violation of due process. It is, in effect, no process at all." *Hasan*, 2025 WL 2682255,

[11] *See, e.g.*, *Campos Leon*, 2025 WL 2694763, at *3–5; *Leal-Hernandez*, 2025 WL 2430025, at *14–15; *Luna Quispe*, 2025 WL 2783799, at *7–9; *B.D.V.S.*, 2025 WL 2855743, at *2–3.

at *13. Federal district courts across the country have likewise concluded that the automatic stay violates procedural due process.[12]

119. Finally, the automatic stay also violates Mr. Sarmiento Guerrero's substantive due process rights, for much the same reason that his mandatory detention does. Respondents have provided no special justification to deny Mr. Sarmiento Guerrero his "[f]reedom from imprisonment . . . [which] lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. Any potential interest in ensuring that Mr. Sarmiento Guerrero appears at immigration proceedings, or in ensuring that he does not pose a danger to the community, has already been accounted for by the IJ's imposition of bond. "The governmental interest in the continued detention of these least-dangerous individuals, in contravention of the order of a neutral fact-finder, does not outweigh the liberty interest at stake." *Hasan*, 2025 WL 2682255, at *10 (citation omitted).

120. Federal district courts across the country have similarly concluded that the automatic stay violates substantive due process.[13]

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[12] *See, e.g.*, *Hasan*, 2025 WL 2682255, at *11–13; *Günaydin*, 784 F. Supp. 3d at 1185–90; *Herrera*, 2025 WL 2581792, at *9–12; *Sampiao*, 2025 WL 2607924, at *9–12; *Maldonado v. Olson*, 2025 WL 2374411 (granting preliminary injunction), at *9–14; *Leal-Hernandez*, 2025 WL 2430025, at *13–14; *Ashley v. Ridge*, 288 F. Supp. 2d 662, 669–71; *Alves da Silva*, 2025 WL 2778083, at *3–6; *Ayala Casun*, 2025 WL 2806769, at *3–4; *Luna Quispe*, 2025 WL 2783799, at *7–9; *Beltran Barrera*, 2025 WL 2690565, at *6–7; *Singh*, 2025 WL 2699219, at *3–5; *Maldonado Vazquez*, 2025 WL 2676082, at *11–23 (granting preliminary injunction); *Quispe-Ardiles*, 2025 WL 2783800, at *9–10.

[13] *See, e.g.*, *Hasan*, 2025 WL 2682255, at *10–11; *Leal-Hernandez*, 2025 WL 2430025, at *12–13; *Quispe-Ardiles*, 2025 WL 2783800, at *8; *Luna Quispe*, 2025 WL 2783799, at *7–8; *Maldonado Vazquez*, 2025 WL 2676082, at *11–16 (granting preliminary injunction); *Mohammed H.*, 786 F. Supp. 3d at 1157–59; *see also Günaydin*, 784 F. Supp. 3d at 1190 n.13 (not reaching substantive due process argument but noting that "[n]evertheless, the Court is concerned that the automatic stay provision violates Günaydın's substantive due process rights, and Respondents advance no justification for Günaydın's ongoing detention past the termination of his removal proceedings."); *Ashley v. Ridge*, 288 F. Supp. 2d 662, 668 (D.N.J. 2003) ("In effect, the automatic stay provision renders the Immigration Judge's bail determination an empty gesture . . . ."); *Kambo v. Poppell*, No. 07-cv-800, 2007 WL 3051601, at *20 (W.D. Tex. Oct. 18, 2007); *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004).

VII. Administrative exhaustion has been satisfied or should be excused

A. Administrative exhaustion has been satisfied

121. Administrative exhaustion is not a statutory requirement. Rather, courts in this Circuit only "generally" require administrative exhaustion "as a prudential matter" before challenging immigration detention in a federal district court. *Lopez Benitez*, 2025 WL 2371588, at *13 (excusing administrative exhaustion and granting petition for writ of habeas corpus); *Quintanilla v. Decker*, No. 21-cv-417 (GBD), 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021) (same); *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014) ("There is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention.").

122. Mr. Sarmiento Guerrero properly requested and was granted release on bond by an immigration judge. ICE appealed that decision and invoked an unlawful automatic stay of Mr. Sarmiento Guerrero's release while arguing to the BIA that Mr. Sarmiento Guerrero is subject to mandatory detention under INA Section 235(b), and thus was never entitled to bond in the first place. The BIA sustained ICE's appeal in a four-paragraph opinion. The opinion did not consider further briefing from the parties, nor did it dispute the IJ's finding that Mr. Sarmiento Guerrero is neither a flight risk nor a danger to the community. *See* Ex. 17, BIA Dec.; Jessar Dec. at ¶ 19. Rather, the BIA's opinion was based on its own statutory misinterpretation in *Matter of Yajure Hurtado*, a decision that federal district courts nationwide have rejected. *See supra* n.7.

123. Furthermore, Mr. Sarmiento Guerrero has requested release from his detention multiple times based on his lack of criminal history and his need to be home supporting his family and young children. *See* Jessar Decl. ¶¶ 8, 15, 18; Ex. 18, Release Requests. ICE repeatedly denied these requests. *See* Jessar Decl. ¶¶ 8, 16, 18; Ex. 18, Release Requests.

124. Accordingly, Mr. Sarmiento Guerrero has no avenue to administrative remedy and has exhausted that requirement. *See Maldonado Vazquez v. Feeley*, No. 25-cv-1542, 2025 WL 2676082, at *9–10 (D. Nev. Sept. 17, 2025) (holding petitioner had exhausted administrative remedies when "he sought review of his custody from an IJ pursuant to the procedural protections he is afforded under § 1226(a) and successfully established that he should be released on bond"). There is no viable possibility of the agency remedying the past and ongoing violations of Mr. Sarmiento Guerrero's rights under the INA and the Constitution. Absent this Court's intervention, Mr. Sarmiento Guerrero will remain unlawfully detained.

B. To the extent administrative exhaustion has not been satisfied, it should be excused

125. Even if the Court determines administrative exhaustion has not been satisfied, it should be excused.

126. Courts in this Circuit excuse administrative exhaustion and grant habeas petitions for relief from custody when "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003), *as amended* (July 24, 2003). A petitioner need not demonstrate all four factors for a court to excuse administrative exhaustion. *Lopez Benitez*, 2025 WL 2371588, at *13–14 (excusing administrative exhaustion and granting habeas relief where petitioner demonstrated factors (1) and (4)).

127. Courts have excused the exhaustion requirement in cases like Mr. Sarmiento Guerrero's. *See, e.g.*, *Artiga*, 2025 WL 2829434, at *3–4; *J.U.*, 2025 WL 2772765, at *4; *Lopez Benitez*, 2025 WL 2371588, at *14; *Alvarez Puga v. Assistant Field Off. Dir.*, No. 25-cv- 24535, 2025 WL 2938369, at *2 (S.D. Fla. Oct. 15, 2025).

128. Considering Mr. Sarmiento Guerrero's successful request for bond, his subsequent statutory and constitutional challenge to his prolonged detention, the serious nature of the violations, and an administrative decision that leaves him no possibility of securing his lawful release at the agency level, this Court should find that Mr. Sarmiento Guerrero has satisfied or is excused from administrative exhaustion.

i. Mr. Sarmiento Guerrero has no genuine opportunity for adequate relief

129. First, Mr. Sarmiento Guerrero brings a constitutional claim against the government, and immigration courts have "no authority to address Petitioner's constitutional challenge[.]" *Quintanilla*, 2021 WL 707062, at *2 (excusing exhaustion for noncitizen habeas petitioner challenging immigration detention and awarding habeas relief); *Lopez Benitez*, 2025 WL 2371588, at *14 (stating that a constitutional challenge to immigration detention "cannot properly be adjudicated administratively") (citing *Valdez v. Joyce*, No. 25-cv-4627 (GBD), 2025 WL 1707737, at *1, n.1 (S.D.N.Y. June 18, 2025)). Ultimately, administrative courts such as the BIA do not present a "genuine opportunity for adequate relief" on a constitutional claim for a violation of the Fifth Amendment. *See Araujo-Cortes*, 35 F. Supp. 3d at 5338–39 (excusing administrative exhaustion for a habeas petitioner because the BIA "does not have jurisdiction to adjudicate constitutional issues"); *Maldonado Vazquez*, 2025 WL 2676082, at *10 (excusing administrative exhaustion where "[p]etitioner's constitutional challenge to his detention is necessarily beyond the scope of the BIA's review").

130. Second, "Congress has not taken the power to authoritatively interpret a statute from the courts and given it to an agency." *Hyppolite*, 2025 WL 2829511, at *11 (quoting *Loper Bright*, 603 U.S. at 402) (citation modified); *J.U.*, 2025 WL 2772765, at *7; *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *9 (D.N.J. Sept. 26, 2025). Rather, federal district

courts have rejected ICE's and the BIA's interpretation of INA Sections 235(b) and 236(a). *See supra* n.5 & n.7. As is evident from this very case: there is no "genuine opportunity" for ICE detainees to receive administrative relief when *Matter of Yajure Hurtado* is binding on immigration courts. *See, e.g.*, *Maldonado Vazquez*, 2025 WL 2676082, at *10; *Alvarez Puga*, 2025 WL 2938369, at *2.

ii. Mr. Sarmiento Guerrero has suffered and will continue to suffer irreparable injury absent immediate judicial relief

131. Mr. Sarmiento Guerrero's unlawful detention constitutes irreparable harm which will be wrongfully prolonged absent judicial intervention.

132. "[A]s a general matter, there is a presumption of irreparable harm when there is an alleged deprivation of constitutional rights." *Donohue v. Mangano*, 886 F. Supp. 2d 126, 150 (E.D.N.Y. 2012). Where plaintiffs "allege deprivation of a constitutional right, no separate showing of irreparable harm is necessary." *Statharos v. New York City Taxi and Limousine, Comm'n*, 198 F.3d 317, 322 (2d Cir. 1999); *Barbecho v. Decker*, No. 20-cv-2821, 2020 WL 1876328, at *6 (S.D.N.Y. Apr. 15, 2020) ("[T]he alleged violation of a constitutional right . . . triggers a finding of irreparable harm.") (quoting *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996)). Mr. Sarmiento Guerrero clearly satisfies this requirement: the deprivation of Mr. Sarmiento Guerrero's freedom violates his due process rights under the Fifth Amendment of the Constitution.

133. Furthermore, in the time that Mr. Sarmiento Guerrero has been detained, he has been away from his partner, young daughter, and infant son, for whom he is the primary financial supporter. Jessar Decl. at ¶ 4. The harsh conditions of his detention have taken an observably detrimental toll on his mental, physical, and emotion health; caused feelings of intense distress, anxiety, and hopelessness; impacted his ability to think clearly and remember details; and resulted

in him being referred for a mental health evaluation. *Id.* at ¶¶ 21–23. This bolsters even further his showing of irreparable harm. *See Barbecho*, 2020 WL 1876328, at *6 ("[I]irreparable harm exists where, as here, petitioners 'face imminent risk to their health, safety, and lives.'") (quoting *Henrietta D. v. Giuliani*, 119 F. Supp. 2d 181, 214 (E.D.N.Y. 2000), *aff'd sub nom. Henrietta D. v. Bloomberg*, 331 F.3d 261 (2d Cir. 2003)).

iii. Further administrative appeal would be futile

134. Requiring Mr. Sarmiento Guerrero to pursue further administrative recourse would be futile as there is no mechanism to seek administrative review of ICE's constitutional violations. *See J.U.*, 2025 WL 2772765, at *3; *Maldonado Vazquez*, 2025 WL 2676082, at *10.

135. Furthermore, as to DHS's baseless position that Mr. Sarmiento Guerrero is subject to mandatory detention pursuant to INA Section 235(b), rather than bond-eligible discretionary detention pursuant to Section 236(a), the futility of an administrative appeal is readily apparent for the same reason that there is no genuine opportunity for adequate relief: the BIA has already incorrectly sustained ICE's position that Mr. Sarmiento Guerrero is mandatorily detained and ineligible for custody redetermination. *See* Ex. 17, BIA Dec.

136. Indeed, district courts have consistently found that pursuing administrative exhaustion would be futile for detainees who ICE asserts are mandatorily detained—even *before* the BIA has decided an appeal by ICE—given that such appeals have been rendered a "foregone conclusion" by *Matter of Yajure Hurtado*. *Maldonado Vazquez*, 2025 WL 2676082, at *10; *see also, e.g.*, *Sanchez Alvarez v. Noem*, No. 25-cv-1090, 2025 WL 2942648, at *3 (W.D. Mich. Oct. 17, 2025); *Alvarez Puga*, 2025 WL 2938369, at *2; *Sanchez Ballestros v. Noem*, No. 25-cv-594, 2025 WL 2880831, at *3 (W.D. Ky. Oct. 9, 2025).

137. Finally, Mr. Sarmiento Guerrero has also made direct requests for release to ICE, which have been denied. Jessar Decl. ¶¶ 8, 15–16, 18.

138. For these reasons, any further attempt at administrative recourse would be futile.

iv. Mr. Sarmiento Guerrero raises substantial constitutional questions

139. Finally, Mr. Sarmiento Guerrero's Petition raises significant constitutional questions regarding the lawfulness of his detention. Mr. Sarmiento Guerrero contends that his detention violates his procedural and substantive due process rights. These are substantial constitutional questions that "neither an immigration judge nor the BIA is positioned to properly adjudicate." *J.U.*, 2025 WL 2772765, at *4; *see also Lopez Benitez*, 2025 WL 2371588, at *14; *Artiga*, 2025 WL 2829434, at *4 ("Petitioner has raised a constitutional question and the only cure to his allegedly unlawful detention is the vacatur of detention—that is, the release of Petitioner from ICE custody."); *Maldonado Vazquez*, 2025 WL 2676082, at *10. The urgent and important questions presented in this Petition require prompt review by this Court.

140. For these reasons, to the extent that administrative exhaustion has not been satisfied, it should be excused.

CLAIMS FOR RELIEF

COUNT ONE
VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT
8 U.S.C. §§ 1225(b)(2) and 1226(a)

141. Petitioner realleges and incorporates by reference each and every allegation contained above.

142. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who entered without inspection.

143. Petitioner is detained under § 1226(a), as reflected by DHS's own documents, binding law, and longstanding historical practice; yet DHS contends, and the BIA held, Petitioner is subject to mandatory detention under § 1225(b)(2).

144. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT TWO
VIOLATION OF PROCEDURAL DUE PROCESS
U.S. Const. amend. V

145. Petitioner realleges and incorporates by reference each and every allegation contained above.

146. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

147. In assessing whether a person has been deprived of the right to procedural due process, courts weigh the factors from *Mathews v. Eldridge*: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335.

148. Here, the *Mathews* test strongly supports that Mr. Sarmiento Guerrero's detention violates his procedural due process rights.

149. The *Mathews* test likewise supports that the automatic stay codified at 8 C.F.R. § 1003.19(i)(2)—pursuant to which Mr. Sarmiento Guerrero was detained for over two months, and which ICE may seek to re-invoke—violates Mr. Sarmiento Guerrero's procedural due process rights.

COUNT THREE
VIOLATION OF SUBSTANTIVE DUE PROCESS
U.S. Const. amend. V

150. Petitioner realleges and incorporates by reference each and every allegation contained above.

151. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

152. "This guarantee includes a substantive component that mandates the application of strict scrutiny whenever the government infringes on fundamental liberty interests, regardless of what process the government provides." *Hasan*, 2025 WL 2682255, at *10 (citing *Reno v. Flores*, 507 U.S. 292, 302 (1993)).

153. DHS's detention or Mr. Sarmiento Guerrero is arbitrary and unjustified, in violation of his substantive due process rights.

154. In addition, the automatic stay codified at 8 C.F.R. § 1003.19(i)(2)—pursuant to which Mr. Sarmiento Guerrero was detained for over two months, and which ICE may seek to re-invoke—violates Mr. Sarmiento Guerrero's substantive due process rights.

COUNT FOUR
***ULTRA VIRES* AGENCY ACTION**

155. Petitioner realleges and incorporates by reference each and every allegation contained above.

156. In evaluating whether an agency action is *ultra vires*, the Court examines whether the agency has taken an action other than that which Congress has permitted. *City of Arlington*, 569 U.S. at 297–99; *Briggs*, 792 F.3d at 246 (stating that regulations contrary to statute are *ultra vires* because "no agency regulation can overturn a clear statutory mandate").

157. The automatic stay regulation at 8 C.F.R. § 1003.19(i)(2)—pursuant to which Mr. Sarmiento Guerrero was detained for over two months, and which ICE may seek to re-invoke—is also *ultra vires* to the INA because it goes beyond how Congress has authorized the relevant agencies to act. Congress did not authorize DHS to have discretion over bond determinations, nor did it authorize DOJ to delegate such authority to DHS. The automatic stay regulation renders the IJ's determination a nullity and allows DHS to detain virtually any noncitizen it wishes.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Sarmiento Guerrero respectfully requests that this Court:

158. Exercise jurisdiction over this matter;

159. Declare that Mr. Sarmiento Guerrero's detention is pursuant to INA § 236(a);

160. Declare that Mr. Sarmiento Guerrero is not an alien "seeking admission" subject to mandatory detention under INA § 235(b)(2);

161. Declare that Mr. Sarmiento Guerrero's detention is and has been unlawful, in that it violates the INA and the Due Process Clause of the Fifth Amendment;

162. Issue a Writ of Habeas Corpus ordering Mr. Sarmiento Guerrero's immediate release from the custody of Respondents;

163. Enjoin Respondents from further detaining Mr. Sarmiento Guerrero;

164. Declare that the automatic stay codified at 8 C.F.R. § 1003.19(i)(2) is unlawful;

165. Enjoin Respondents from re-invoking the automatic stay to keep Mr. Sarmiento Guerrero detained;

166. Enjoin Respondents from moving Mr. Sarmiento Guerrero outside the jurisdiction of this Court and United States pending its adjudication of this petition;

167. Enjoin Respondents from moving Mr. Sarmiento Guerrero outside the United States pending its adjudication of this petition and full and fair adjudication of his immigration case, including any potential appeal;

168. Order that Mr. Sarmiento Guerrero will be allowed a full opportunity to apply for all forms of relief for which he is eligible, including any appeals;

169. Award Mr. Sarmiento Guerrero costs and reasonable attorneys' fees; and

170. Order such other relief as this Court may deem just and proper.[14]

[14] Should this Court schedule a hearing on this Petition, counsel for Mr. Sarmiento Guerrero is readily available with the exception of Friday, October 24 and Wednesday, October 29.

Date: October 21, 2025

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

By: */s/ Joseph L. Sorkin*

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

I, Joseph L. Sorkin, am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I have conferred with Petitioner's attorney in his immigration proceedings related to this case. I am familiar with those proceedings and the records from those proceedings. On the basis of these discussions and documents, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

/s/ Joseph L. Sorkin