**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF MAINE**

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| ANGEL JESUS GUAMAN CHIMBORAZO<br><br>Petitioner,<br><br>v.<br><br>CRAIG SHEPLEY, Deputy Chief Patrol Agent of Fort Fairfield Sector, U.S. Customs and Border Protection,<br>RODNEY S. SCOTT, Commissioner of Customs and Border Protection,<br>PETER R. FLORES, Customs and Border Protection Field Operations Executive Assistant Commissioner,<br>DIANE J. SABATINO, Acting Executive Assistant Commissioner Office of Field Operations,<br>and KRISTI NOEM, U.S. Secretary of Homeland Security,<br><br>Respondents. | Case No. 1:25-cv-00552-LEW<br><br>**AMENDED VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO FED. R. CIV. P. 15(a)(1)(A) AND R. 65(a)** |

## INTRODUCTION

1. Petitioner Angel Jesus Guaman Chimborazo is a citizen of Chunchi, Ecuador. He was born on [redacted]. He resides at [redacted], with his sister, M[redacted]

2. On November 4, 2025, Petitioner filed his first Petition for Writ of Habeas Corpus with this Court. On November 5, 2025, Petitioner obtained documents from his former attorney pertaining to his immigration history. Respondent hereby submits the instant Amended Petition with additional information and claims pertaining to the illegality of his current detention under 8 U.S.C. § 1225.

## PROCEDURAL HISTORY

3. Petitioner entered the United States on May 13, 2021, when he was sixteen (16) years old, as an Unaccompanied Alien Child ("UAC"). After Petitioner arrived to the United States border, the Department of Homeland Security ("DHS") placed Petitioner in the custody of Peco's Children's Center: a shelter in Pecos, Texas that was operated by the Office of Refugee Resettlement ("ORR"). ORR is a sub-agency of the United States Department of Health and Human Services ("HHS"). On June 5, 2021, ORR released Petitioner into the custody of his first cousin, R[redacted], pursuant to § 462 of the Homeland Security Act of 2002 and § 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. When Respondent arrived to the United States border, DHS never detained Respondent under 8 U.S.C. § 1225. Rather, DHS released Petitioner into the United States pursuant to 8 U.S.C. § 1232.

4. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ('TVPRA'), Pub. L. No. 110-457, 122 Stat. 5044 (2008), requires the Department of Homeland Security ('DHS') to transfer an unaccompanied noncitizen minor to the custody of the Secretary of Health and Human Services ('HHS') within 72 hours of determining that the minor is unaccompanied, absent 'exceptional circumstances.'" *Saravia for A.H. v. Sessions*, 905 F.3d 1137, 1140 (9th Cir. 2018) (quoting (8 U.S.C. § 1232(b)(3)). "ORR then must ensure that the minor is 'promptly placed in the least restrictive setting that is in the best interest of the child.'" *Id.* (quoting § 1232(c)(2)(A)). "**In 1997, the United States entered into a settlement agreement with a plaintiff class in *Flores v. Sessions*, providing a minor in an ORR facility the right to a bond hearing before an immigration judge to challenge the agency's initial determination that the minor is a danger to the community.**" *Id.* (citing *Flores v. Sessions*, 862 F.3d 863, 879 (9th Cir. 2017)) (emphasis added). When DHS transfers an unaccompanied

alien child to the Office of Refugee Resettlement, the transfer is made pursuant to 8 U.S.C. § 1232(b)(3) (TVPRA § 235), not under 8 U.S.C. § 1226(a) or 8 U.S.C. § 1182(d)(5)(A).

5. On September 29, 2021, DHS initiated removal proceedings against the Petitioner pursuant to 8 U.S.C. § 1229a. Petitioner diligently attended all of his Immigration Court hearings and check-ins with Immigration and Customs Enforcement. § 1229a removal proceedings are "the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States." 8 U.S.C. § 1229a(a)(3). Removal proceedings contain certain procedural protections required by the applicable statutes and regulations. The person attends hearings before an Immigration Judge and, if he or she is found removable, may apply for various forms of relief from removal. The decision of the Immigration Court is subject to appellate review by the Board of Immigration Appeals (the "BIA") and then via a petition for review to a U.S. Court of Appeals. While the removal proceeding is pending, people without a criminal record or involvement in terrorism are constitutionally entitled to a bond hearing with certain procedural protections, which may result in their release for the pendency of the proceeding. *See* 8 U.S.C. § 1226; *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021) (for § 1226(a) detainees, due process requires a bond hearing in which government bears burden of proof to show flight risk or dangerousness); *Brito v. Garland*, 22 F.4th 240, 256-57 (1st Cir. 2021) (affirming class-wide declaratory judgment of same).

6. **On March 15, 2023, United States Citizenship and Immigration Services ("USCIS") approved the Petitioner's Form I-360 Petition for Special Immigrant Juvenile Status ("SIJS") with Deferred Action from removal from the United States**. USCIS approved Petitioner's SIJS based on his abandonment by his biological parents and his placement into the

custody of his first cousin, R[redacted] "**[A] special immigrant described in section 1101(a)(27)(K) of this title, such an immigrant shall be deemed…to have been paroled into the United States.**" 8 USC 1255(g). "'The protections afforded to children with SIJ status include an array of statutory and regulatory rights and safeguards, such as eligibility for application of adjustment of status to that of lawful permanent residents ('LPR'), exemption from various grounds of in admissibility, and robust procedural protections to ensure their status is not revoked without good cause.'" *Inlago Tocagon v. Moniz*, No. 25-CV-12453-MJJ, 2025 WL 2778023, at *3 (D. Mass. Sept. 29, 2025) (quoting *Juarez Morales v. Noem*, No. 24-cv-12518, —— F.Supp.3d ——, ——, 2025 WL 1923096, at *3 (D. Mass. June 24, 2025)). **In the instant case, like in *Inlago Tocagon*, the Petitioner was "deemed to have been paroled into the United States. *See* 8 U.S.C. § 1255(h)(1). These facts further affirm that [Petitioner] is subject to Section 1226(a)'s discretionary detention framework and is thus eligible for bond.**" *Id.* at *4 (emphasis added).

7. On September 2, 2025, Petitioner was arrested in Bangor, Maine by local law enforcement for driving without a license and operating a vehicle under the influence of alcohol. Those charges remain pending and Petitioner is set for a hearing on December 2, 2025.

8. On November 1, 2025, Petitioner was arrested by local law enforcement in Harmon, Maine during a traffic stop while Petitioner was the passenger in the vehicle of a coworker. Petitioner's coworker was charged with driving without a license and operating under the influence of alcohol, but Petitioner was not charged with any crimes in that incident. Nonetheless, the Harmon Police Department arrested Petitioner, and then transferred him to the custody of Customs and Border Protection ("CBP") at the Fort Fairfield CBP Station in Fort Fairfield, Maine. CBP is a sub-agency of DHS.

9. Based on information and belief, DHS has detained Petitioner pursuant to 8 U.S.C. § 1225. However, the statute upon which the Respondents have relied to justify the Petitioners' detention—8 U.S.C. § 1225—is effectively a border processing statute that applies to noncitizens "seeking to enter the country." *Jennings v. Rodriguez*, 583 U.S. 281 (2018) ("That process of decision generally begins at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible") (citing 8 U.S.C. § 1225). Whereas 8 U.S.C. § 1225 applies to noncitizens *seeking* to enter the United States, "**§ 1226 applies to aliens already present in the United States**." *Id.* at 289 (emphases added). "Section 1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings." *Id.* 8 U.S.C. § 1225 does not—and did not at any point—apply to Petitioner because DHS classified him as a UAC pursuant to 8 U.S.C. § 1232 and released Petitioner into the custody of HHS, and therefore into the United States, pursuant to 8 U.S.C. § 1232.

10. DHS's 2021 release of Petitioner into the United States from the border, into HHS custody, constituted an "entry" within the meaning of *Zadvydas v Davis*, 533 U.S. 678 (2001). Because Petitioner has "effected an entry" into the United States as a UAC, and has been present in the United States for longer than two years, it is therefore unlawful for the Respondents to detain him without a bond hearing under 8 U.S.C. § 1225.

11. Because Respondents have unlawfully detained Petitioner under 8 U.S.C. § 1225, he will be unlawfully denied a bond hearing in which the government has the burden of proof in the Immigration Court, as well as certain forms of relief from removal that would be potentially available in the Immigration Court. *See, e.g., Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (holding that "Based on the plain language of section 235(b)(2)(A) of the Immigration and

Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.").

12. Petitioner's detention under 8 U.S.C. § 1225 will deprive Petitioner of the right to a bond hearing in which the government bears the burden of proof. Noncitizens detained under § 1225 are not eligible for bond. The First Circuit held in *Hernandez-Lara* that the Fifth Amendment's Due Process clause requires the government to provide detained noncitizens awaiting removal proceedings a bond hearing. *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021); *Flores v. Sessions*, 862 F.3d 863, 879 (9th Cir. 2017). The government must prove the noncitizen is a danger by clear and convincing evidence, or flight risk by preponderance of evidence. *See id.* If the government cannot meet its burden, it must offer bond or conditional parole. *See id.* The decision expanded the due process rights of noncitizens. The court also asserted that the decision ameliorates the "substantial societal costs" of unnecessary detention. *See id.*

13. Petitioner's wrongful detention under 8 U.S.C. § 1225 also violates his right to procedural due process. To determine whether a form of civil detention violates a detainee's due process rights under the Fifth Amendment, courts apply the three-part balancing test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under that test, a court must weigh the following 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*, 424 U.S. at 335. *See also Hernandez-Lara*, 10 F.4th at 27-28 (analyzing procedural due process challenge to the detention

of noncitizen held pursuant to Section 1226(a) using the *Mathews* test). "'Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that Clause protects.'" *Zadvydas v Davis*, 533 U.S. 678 (2001) (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). In this case, these factors, in conjunction with the Petitioner's SIJS, militate in favor of ordering the immediate release of the Petitioner. *See, e.g., Inlago Tocagon v. Moniz*, No. 25-CV-12453-MJJ, 2025 WL 2778023, at *4 (D. Mass. Sept. 29, 2025) (finding petitioner's "private interest in 'freedom from imprisonment' is strong, given his I-360 petition was granted"); *Doe v. Moniz*, No. 1:25-CV-12094-IT, 2025 WL 2576819, at *11 (D. Mass. Sept. 5, 2025) (concluding that "the *Mathews* factors weigh in favor of Petitioner, and the court finds that his detention without a bond hearing violates his Due Process rights" because "the public has no interest in the detention without bond of someone against whom no criminal charges are pending and who is an active member in his community.")

**VENUE AND JURISDICTION**

14. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question). This Court has 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 the United States." 28 U.S.C. § 2241(c)(3). Although a federal district court does not generally have subject-matter jurisdiction to review orders of removal issued by an immigration court, *see* 8 U.S.C. § 1252(a)(1), (g), it does have jurisdiction over habeas petitions. 28 U.S.C. § 2241(a); *see* U.S. CONST. art. I, § 9, cl. 2 (providing that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it").

15. Venue is proper because Petitioner resides in Maine, and is detained in the District of

Maine.

16. Respondent Craig Shepley is the Deputy Chief Patrol Agent (DCPA) of the Fort Fairfield Sector, U.S. Customs and Border Protection (CBP), in the state of Maine, and is Petitioner's immediate custodian.

17. Respondent Rodney S. Scott is the Commissioner of U.S. Customs and Border Protection.

18. Peter R. Flores is the Customs and Border Protection Field Operations Executive Assistant Commissioner.

19. Diane J. Sabatino is the Acting Executive Assistant Commissioner Office of Field Operations for Customs and Border Protection.

20. Respondent Kristi Noem is the U.S. Secretary of Homeland Security.

21. All respondents are named in their official capacities. One or more of the respondents is Petitioner's immediate custodian.

## CLAIMS FOR RELIEF

### COUNT ONE
### Violation of Fifth Amendment Right to Due Process

22. On information and belief, Petitioner is currently being detained and subjected to 8 U.S.C. § 1225 in violation of his constitutional right to due process of law.

23. Petitioner cannot be detained for, or subjected to, 8 U.S.C. § 1225 because he has effected an entry into the United States and has been continuously present in the United States for greater than two years.

24. The Expedited Removal statute, 8 U.S.C. § 1225, largely "precludes judicial review," and therefore challenges to "confinement and removal" under that statute fall within the "core" of the writ of habeas corpus. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1006-07 (2025); *cf. Dep't of*

*Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, (2020) (holding attempt "to obtain additional administrative review of his asylum claim" after Expedited Removal order was outside the "core" of habeas relief). However, *Thuraissigiam* is distinguishable from this case because in that case, the petitioner "was apprehended just 25 yards from the border" and was never released from Border Protection custody. *See Thuraissigiam*, 591 U.S. at 107. Moreover, in *Thuraissigiam*, DHS "detained [the petitioner for expedited removal," whereas in this case, expedited removal does not apply to Petitioner because he resided in the United States for more than two years before his detention. *Thuraissigiam* is further inapposite because in that case, the petitioner did not seek release from DHS custody, but rather a "vacatur of his 'removal order' and 'an order directing [the Department] to provide him with a new ... opportunity to apply for asylum and other relief from removal.'" *Id.* at 117-18.

25. Accordingly, to the extent 8 U.S.C. § 1252(e)(2) purports to preclude habeas review of whether Petitioner is ineligible for detention and removal via Expedited Removal due to the length of his presence in the United States, that limitation violates the Suspension Clause and is void and without effect.

26. Indeed, if there were no judicial review whatsoever of the immigration agencies' determinations that people have been present for less than two years, then the immigration agencies would be free to find that essentially any arrested noncitizen without status is subject to Expedited Removal, in direct violation of the procedures and safeguards required for removal proceedings by the laws and Constitution of the United States.

27. Even assuming Petitioner is eligible for detention for removal proceedings, he has not been provided any opportunity to receive a bond hearing to which he is entitled during any such proceedings pursuant to *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021). The only

current basis for Petitioner's detention and potential deportation—8 U.S.C. § 1225—is one that categorically does not apply to him. Therefore, Respondents' detention of Petitioner violates the Immigration and Nationality Act, 8 U.S.C. § 1232, and the Due Process Clause of the Fifth Amendment.

28. "[A] district court entertaining a petition for habeas corpus has inherent power to release the petitioner pending determination of the merits." *Gomes v. U.S. Dep't of Homeland Sec.*, 460 F. Supp. 3d 132, 144 (D.N.H. 2020) (quoting *Woodcock v. Donnelly*, 470 F.2d 93, 94 (1st Cir. 1972)). *See also Martinez v. Hyde et al.*, No. 1:25-cv-11613-BEM, slip op. at 4 (D. Mass. June 17, 2025) (ordering that the Respondents release the Petitioner because 8 U.S.C. §1225 did not apply and "Respondents identify no other basis for Petitioner's detention"); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025) (holding that "If Section 1225(b)(2) applied to noncitizens who are arrested on a warrant while residing in the United States, it would render Section 1126(c)(1)(E)'s criminal conduct criterion superfluous whenever the noncitizen is inadmissible under Sections 1182(a)(6)(A) or (a)(7)"); *Sampaio v. Hyde et al.*, 1:25-cv-11981-JEK, slip op. at *26 (D. Mass. Sept. 9, 2025) (concluding that "[t]he balance of the *Mathews* factors favors [the petitioner]" and that his detention "violates his procedural due process rights under the Fifth Amendment, and he is entitled to immediate release."); *Valdez v. Joyce*, 25-Civ. 4627, slip op. at *8 (S.D. N.Y. Jun 18, 2025) (ordering the petitioner's immediate release because "Respondents' ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights"); *Lopez Benitez v. Francis et al.*, 25-cv-5937, 2025 WL 2371588, at *29 (S.D.N.Y. Aug. 13, 2025) (ordering the petitioner's immediate release because the respondents "offer no explanation whatsoever of their purported 'exercise of discretion' to detain [the

petitioner] other than their initial assertion that his detention was non-discretionary."). Applying the reasoning in these recent cases, Respondents' detention of Petitioner under § 1225 is unlawful and supports ordering Petitioner's immediate release.

29. Petitioner is likely to experience irreparable harm in the form of indefinite detention if he is unable to seek habeas relief until the Immigration Court or Board of Immigration Appeals adjudicates his bond case. A noncitizen detained under 8 U.S.C. § 1225(b) is ineligible for bond. *See, e.g., Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *Matter of Q. LI*, 29 I&N Dec. 66, 68 (BIA 2025). Irreparable harm may be established where a petitioner will be incarcerated or detained pending the exhaustion of administrative remedies. *See Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021) ("[E]xhaustion might not be required if [the petitioner] were challenging her incarceration . . . or the ongoing deprivation of some other liberty interest.").

30. Based on information and belief, the Respondents intend to transfer the Petitioner outside of the District of Maine and outside of the First Circuit, where the Petitioner would be entitled to a bond hearing in which the government bears the burden of proof under *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021). Permitting the Respondents to transfer the Petitioner "would be promoting a peculiarly opportunistic type of forum shopping." *Vasquez v. Reno*, 233 F.3d 688, 696–97 (1st Cir. 2000). **Therefore, the Petitioner respectfully requests a prohibitory Preliminary Injunction enjoining the Respondents from transferring him outside of the District of Maine during the pendency of the instant request for Writ of Habeas Corpus, in order to maintain the status quo.**

31. "A preliminary injunction is an extraordinary and drastic remedy that is never awarded as of right." *Peoples Fed. Sav. Bank v. People's United Bank*, 672 F.3d 1, 8- 9 (1st Cir. 2012) (quoting *Voice of the Arab World, Inc. v. MDTV Med. News Now, Inc.*, 645 F.3d 26, 32 (1st Cir.

2011)). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Together Emps. v. Mass Gen. Brigham Inc.*, 32 F.4th 82, 85 (1st Cir. 2022). Of the four factors, likelihood of success "weighs most heavily" in the analysis. *Ryan v. U.S. Immigr. & Customs Enf't*, 974 F.3d 9, 18 (1st Cir. 2020). "[T]rial courts have wide discretion in making judgments regarding the appropriateness of" preliminary injunctive relief. *Sanchez v. Esso Standard Oil Co.*, 572 F.3d 1, 14 (1st Cir. 2010). "In deciding a motion for preliminary injunction, '[t]he court may accept as true well-pleaded allegations [in the complaint] and uncontroverted affidavits.'" *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 386–87 (D. Mass.) (quoting *C&W Facility Servs. Inc. v. Mercado*, 2018 WL 4854630, at *2 (D. Mass. Oct. 5, 2018)).

32. Here, the Petitioner has shown a strong likelihood of success on the merits in light of the widespread decisions of courts in this district and across the United States, cited *supra*. Regarding the second prong, the Petitioner will suffer irreparable harm if the Respondents transport him outside of Maine, away from counsel, as well as his family. "'In order to 'actually seek habeas relief,' a detainee must have sufficient time and information to reasonably be able to contact counsel, file a petition, and pursue appropriate relief." *A. A. R. P. v. Trump*, 605 U.S. 91, 95, 145 S. Ct. 1364, 1368, 221 L. Ed. 2d 765 (2025). Furthermore, the Petitioner's transfer outside of the First Circuit will effectively deny him of a bond hearing in which the Government bears the burden of proof pursuant to *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021) (holding that noncitizens detained under 8 U.S.C. § 1226(a) have the Due Process right to a bond hearing in which the government must "either (1) prove by clear and convincing evidence that [the noncitizen] poses a danger to the community or (2) prove by a preponderance of the

evidence that [the noncitizen] poses a flight risk."). Lastly, "'the balance of equities tips in [Petitioner's] favor.'" *Ambila v. Joyce*, No. 2:25-CV-00267-NT, 2025 WL 1534852, at *5 (D. Me. May 28, 2025) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Here, the prospective hardship to the Petitioner entails his transfer to an unknown location, which may obstruct access to counsel. Moreover, "there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm." *Nken v. Holder*, 556 U.S. 418, 436, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009). Because the prospective location where Respondents intend to transfer the Petitioner has not been disclosed to him—or counsel—these final factors in the analysis lean in the Petitioner's favor.

## PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Issue a Preliminary Injunction prohibiting Respondents from transferring the Petitioner outside the District of Maine;

(3) Set the case for hearing not more than five days after the Respondents' return on the Court's November 4, 2025 Order to Show Cause pursuant to 28 U.S.C. § 2243, unless for good cause additional time is allowed;

(4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately; and

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

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

I represent Petitioner, Angel Jesus Guaman Chimborazo, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.
Dated this 6th day of November, 2025.

Respectfully submitted,

*/s/ Shantanu Chatterjee*
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