UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Y.G.B.,

Petitioner,

v.

JUDITH ALMODOVAR, Acting Director of Enforcement and Removal Operations, New York City Field Office, Immigration and Customs Enforcement; TODD LYONS, Acting Director, U.S. Immigrations and Customs Enforcement; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAMELA BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, in their official capacities,

Respondents.

X

Case No. _____

PETITION FOR WRIT OF HABEAS CORPUS

ORAL ARGUMENT AND EXPEDITED HEARING REQUESTED

INTRODUCTION

1. Petitioner Mr. Y.G.B, a derivative asylum seeker from Colombia who has resided in the United States for over three years, was arrested by Immigration and Customs Enforcement ("ICE") while attending an asylum interview mandated by United States Citizenship and Immigration Services ("USCIS") at the agency's New York Asylum Office in Bethpage, New York on November 6, 2025.

2. At the time of Petitioner's detention, ICE agents informed his counsel that he would be taken first to Central Islip for processing and then, by November 7, 2025, to 26 Federal Plaza. As of the time of submission of this petition, the ICE online detainee locator system does not show Petitioner's location. A copy of the ICE online detainee locator system for Petitioner,

captured at or around 4:00 PM on November 7, 2025 is attached hereto as Exhibit A. Petitioner's counsel believes he is in Nassau County.

3. Petitioner—along with his wife, Ms. B.L.C.P, and her son—arrived to the United States via entry into California on August 25, 2022, at which point they each received parole valid for 60 days. Petitioner was not issued a Notice to Appear in removal proceedings under 8 U.S.C. § 1229(a), nor was he referred for a credible fear interview under 8 U.S.C. § 1225. Petitioner's parole was valid until October 25, 2022, as evidence by his parole documents. A copy of his parole documents is attached hereto as Exhibit B.

4. Ms. P applied to USCIS for asylum, including Petitioner and her son as derivatives to her claim, on August 24, 2023, within one year of their entry into the United States. On September 23, 2025, USCIS summoned Ms. P—as well as Petitioner and their son, as derivatives to her application—to appear for an interview at the Bethpage Asylum Office on November 6, 2025. After asking the family bar questions as a group and interviewing Ms. P individually, the USCIS officer reviewing the family's case, Bianka Espinal, asked to interview Petitioner separately.

5. During this "interview," Petitioner was arbitrarily detained by ICE agents badge numbers 7439, 1094, 2696, and 6642, even though less than an hour prior, Officer Espinal had informed Ms. P that no decision on the family's asylum case would be rendered that day and that Ms. P, Petitioner, and Ms. P's son were all required to return on a different day to receive their decision. When asked by Petitioner's counsel for the basis of Petitioner's detention, ICE agents offered a litany of changing, illogical justifications, including that Colombia had issued a warrant for his arrest, which they later admitted was not true, before eventually writing and issuing an arrest warrant for Petitioner on the grounds that:

biometric confirmation of the subject's identity and records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removeable under U.S. immigration law.

6. Based on the representations ICE agents made at the time of Petitioner's detention, on information and belief, Respondents appear to be taking the position that Petitioner is being held simply because his parole has expired and he therefore holds no legal status in the U.S. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

7. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

8. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

JURISDICTION

9. Petitioner is in the physical custody of Respondents. Upon information and belief, Petitioner is being held at Nassau County Jail.

10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (the Suspension Clause).

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

VENUE

12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Eastern District of New York, the judicial district in which Petitioner currently is detained.

13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of New York.

REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If the Court issues an order to show cause, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

15. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it

and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

16. Petitioner is a citizen of Colombia seeking asylum in the United States. Upon information and belief, following Plaintiff's arrest at the Asylum Office in Bethpage, Petitioner was processed in Central Islip and then taken into custody at Nassau County Jail, where he is under the direct control of Respondents and their agents.

17. Respondent Judith Almodovar is the Acting Director of the New York City Field Office of ICE's Enforcement and Removal Operations division. As such, Acting Director Almodovar is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She named in her official capacity.

18. Respondent Todd Lyons is sued in his official capacity as the Acting Director of the U.S. Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of Petitioner and has authority to release him.

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

20. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review, which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

21. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

STATEMENT OF FACTS

22. Petitioner, is a 30-year-old citizen of Colombia. After members of the [redacted] repeatedly threatened to kill Petitioner, Ms. P, and their son, the family fled the country fearing for their lives.

23. Petitioner has no criminal history. He has lived continuously in the United States since his arrival over three years ago. During that time, Petitioner has been a hardworking, contributing member of society. He has work authorization and, along with Ms. P, owns and operates a day care facility from the family's home in Queens.

24. Petitioner has provided his fingerprints and submitted to background checks on multiple occasions. Upon entering the U.S. on August 25, 2022, Petitioner provided his fingerprints to ICE. A copy of his parole documents and Form I-385 are attached hereto as Exhibit B.

25. Pursuant to his ASC Appointment Notice received on August 26, 2023 in connection with his Asylum application, Petitioner provided his biometrics on September 11, 2023. In addition, in order to operate and work as an assistant in the day care facility owned and operated by Ms. P and Petitioner out of their home, and pursuant to the New York State Social Services Law (SSL), the New York State Office of Children and Family Services (OCFS) conducted a Comprehensive Background Check of Petitioner.

26. Specifically, OCFS completed its review of the following: (1) FBI and NYS Criminal History Check; (2) Statewide Central Register of Child Abuse and Maltreatment; (3) NYS Justice Center for the Protection of People with Special Needs; (4) NYS Sex Offender Registry; (5) National Sex Offender Registry; and (6) Out-of-State checks if they lived outside NYS in the last 5 years. Following this extensive background check, OCFS concluded that Petitioner was eligible to work and reside at the day care.

27. Upon information and belief, Petitioner has no criminal record in the United States, Colombia, or anywhere else in the world.

28. Petitioner and his family crossed the U.S.-Mexico border into California to seek asylum on August 25, 2022. Following their arrival in California, Petitioner and his family turned themselves in to immigration, where they remained at an immigration center from August 25 until their release on August 28. During this time, they received parole valid for 60 days, until October 25, 2022.

29. On August 24, 2023, within one year of the date that they had entered the United States, Ms. P filed a Form I-589, Application for Asylum, affirmatively with USCIS. Petitioner and their son joined Ms. P's application as dependents.

30. On September 23, 2025, USCIS issued a notice requiring Ms. P, Petitioner, and their son to appear at the Bethpage Asylum Office on November 6, 2025 at 7:30 AM for an asylum interview. Following USCIS direction, the family appeared at the Bethpage office on November 6, 2025. Accompanying the family were their counsel, an interpreter, and Petitioner and Ms. P's [redacted]son, who was born in New York and is a citizen of the United States.

31. During this "interview," Petitioner was arbitrarily detained by ICE agents badge numbers 7439, 1094, 2696, and 6642, even though less than an hour prior, Office Espinal had

informed Ms. P that no decision on the family's asylum case would be rendered that day and that Ms. P, Petitioner, and Ms. P's son were all required to return on a different day to receive their decision. When asked by Petitioner's counsel for the basis of Petitioner's detention, ICE agents offered a litany of changing, illogical justifications, including that Colombia had issued a warrant for his arrest, which they later admitted was not true, before eventually writing and issuing an arrest warrant for Petitioner on the grounds that:

> biometric confirmation of the subject's identity and records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removeable under U.S. immigration law.

LEGAL FRAMEWORK

32. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

33. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge ("IJ"). *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

34. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

35. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

36. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

37. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

38. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

39. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

40. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

41. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

42. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

43. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

44. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here.

45. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

46. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.*, *Palma Perez*

v. Berg, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

47. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

48. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

49. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

50. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

51. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. §1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

52. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

CLAIMS FOR RELIEF

COUNT ONE
Violation of INA

53. Petitioner restates and realleges all paragraphs as if fully set forth here.

54. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

COUNT TWO
Violation of Fifth Amendment Right to Due Process

56. Petitioner restates and realleges all paragraphs as if fully set forth here.

57. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693; accord Flores, 507 U.S. at 306.

58. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

59. While the government has discretion to detain individuals under 8 U.S.C. §1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not "unlimited" and must comport with constitutional due process. *See Zadvydas*, 533 U.S. at 698.

60. Here, Respondents have chosen to revoke Petitioner's release in an arbitrary manner and not based on a rational and individualized determination of whether he is a safety or flight risk, in violation of due process. Because no individualized custody revocation has been made and no circumstances have changed to make Petitioner a flight risk or a danger to the community, Respondents' revocation of Petitioner's release violates his right to due process.

COUNT THREE
Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Abuse of Discretion
Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)

61. Petitioner restates and realleges all paragraphs as if fully set forth here.

62. Under the APA, a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

63. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (*quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut Auto.* Ins. Co., 463 U.S. 29, 43 (1983)).

64. To survive an APA challenge, the agency must articulate a satisfactory explanation for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

65. By categorically revoking Petitioner's 2022 release on parole without consideration of his individualized facts and circumstances, Respondents have violated the APA.

66. By detaining Petitioner categorically, Respondents have further abused their discretion because there have been no changes to his facts or circumstances since the agency made its initial custody determinations that support the revocation of his release from custody.

67. To the contrary, since his release, Petitioner has demonstrated at every opportunity that he is not a flight risk, establishing deep ties to the community, working to help support his family of asylees, filing affirmatively for asylum following his release and appearing for an Asylum Interview when summoned. Petitioner has no criminal record and no indication that he poses a danger of any kind to the community.

68. Respondents have already considered Petitioner's facts and circumstances and determined that he was not a flight risk or danger to the community. There have been no changes to the facts that justify this revocation of his release on his own recognizance. The fact that Petitioner has already been granted release, and parole, by Respondents

under less favorable facts and circumstances shows that Respondents do not consider him, on an individualized basis to be a danger to the community or a flight risk.

COUNT FOUR
Violation of 8 U.S.C. § 1226(a) and Implementing Regulations

69. Petitioner was arrested on an administrative warrant and is currently detained under § 1226(a). Under the plain language of § 1226(a), Petitioner is eligible for release on bond. *See, e.g., Guerrero Orellana v. Moniz*, No. 25-cv-12664-PBS, 2025 WL 2809996 (D. Mass. Oct. 3, 2025).

70. However, it is a near certainty that the Respondents will deny Petitioner an individualized bond hearing under the Board of Immigration Appeals' recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) which provides that Immigration Judges lack authority to hear bond requests or to grant bond to noncitizens who are present in the United States without admission because such noncitizens are, according to the Board of Immigration Appeals, "applicants for admission" under § 1225(b).

71. However, Petitioner is not properly detained under § 1225(b). Rather, to the extent that any immigration statute permits his detention, it would be § 1226(a).

72. Accordingly, Petitioner is not subject to mandatory detention and, if this Court does not order his immediate release, this Court should order for the Respondents to provide him with an individualized bond hearing.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Order that Petitioner shall not be transferred outside the Eastern District of New York while this habeas petition is pending;

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

4. Declare that Petitioner's detention violates the Administrative Procedure Act, the Due Process Clause of the Fifth Amendment, and 8 U.S.C. § 1226(a).

5. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately or, in the alternative, to schedule a bond hearing before an immigration judge;

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

7. Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Marlin Duro-Martinez
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Petitioner, 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 7th day of November, 2025

/s/ Marlin Duro-Martinez
Marlin Duro-Martinez