**UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF LOUISIANA**
**MONROE DIVISION**

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| GERMAN ANTONIO LOPEZ-SANTOS ([redacted])<br><br>*Petitioner*<br><br>v.<br><br>KRISTI NOEM, in her official capacity as U.S. Secretary of Homeland Security; PAMELA JO BONDI, in her official capacity as Attorney General of the United States TODD M. LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; STANLEY CROCKETT, in his official capacity as Field Director of the ICE New Orleans Field Office; WARDEN, JACKSON PARISH CORRECTIONAL CENTER, in their official capacity,<br><br>*Respondents* | Case No. 3:25-cv-01193-TAD-KDM<br><br>**AMENDED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241** |

## INTRODUCTION

1. Petitioner German Lopez Santos is a native and citizen of Honduras. He has resided continuously in the United States for the past twenty years. During that time, he has never been convicted of a crime, he maintains a job as an assistant superintendent for a construction company that has employed him for the past thirteen years, and he supports his three U.S. citizen children.

2. On May 31, 2025, Mr. Lopez Santos was stopped, detained, and ultimately arrested by Immigration and Customs Enforcement officers while he was driving in the vicinity of a Home Depot in Randallstown, Maryland. Apart from his skin tone, there were no articulable facts that would establish the reasonable suspicion necessary to stop and detain Mr. Lopez Santos. Nevertheless, he remains detained at Jackson Parish Correctional Center.

3. Although Mr. Lopez Santos is subject to discretionary detention pending his removal proceedings, as a noncitizen who has been continuously present in the United States for the last twenty years, he is entitled to a bond hearing under 8 U.S.C. § 1226(a). However, in a complete departure from established case law, its own charging document, and the plain text reading of the Immigration and Nationality Act that it embraced for decades, the Department of Homeland Security (DHS) argues that Mr. Lopez is subject to a mandatory detention provision reserved for noncitizens in expedited removal proceedings.
4. Offering no legal analysis, the immigration court agreed and held that it had no jurisdiction to consider Mr. Lopez Santos for bond. Mr. Lopez Santos brings this suit to challenge his unlawful arrest and detention and to obtain the bond hearing that has been unlawfully denied to him.

## JURISDICTION AND VENUE

5. This action arises under the Fourth Amendment, the Due Process Clause of the Fifth Amendment and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.
6. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 (federal questions), 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1346 (civil actions against the United States), 28 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. §§ 2201-02 (declaratory relief).
7. Venue is proper because Mr. Lopez Santos's immediate custodian at Jackson Parish Correctional Center is located in this district and a "substantial part of the events or omissions giving rise to the claim" have occurred in this District. 28 U.S.C. § 1391(e)(1).

**EXHAUSTION**

8. DHS and the immigration court's denial of an opportunity to seek bond is subject to challenge through a petition for a writ of habeas corpus and Mr. Lopez Santos need not exhaust any administrative remedies which might be available to him before seeking this Court's review.
9. "Where Congress specifically mandates, exhaustion is required. But where Congress does not clearly require exhaustion, sound judicial discretion governs." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). Here, no statute "clearly require[s] exhaustion." *Id.*
10. And while the Fifth Circuit generally requires petitioners to exhaust administrative remedies prior to seeking habeas relief, it has recognized that "[e]xceptions to the exhaustion requirement are appropriate where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action." *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (per curiam).
11. Here, Mr. Lopez Santos moved for a custody redetermination before an immigration judge who held that it lacked jurisdiction to even consider his request. It is unclear whether Mr. Lopez Santos can even seek further review of this jurisdictional holding to the Board of Immigration Appeals. Moreover, Respondents themselves represented in their opposition to Mr. Lopez Santos's motion that relief is foreclosed by BIA precedent, which would make an administrative appeal, by Respondent's own estimation, futile. *See* Ex. E, DHS Opposition to Bond.
12. Further, because his continued detention raises "substantial constitutional questions," administrative exhaustion is excused. *See Postels v. Peters*, No. 99-cv-2369, 2000 U.S. Dist.

LEXIS 3356, at *17 (E.D. La. Mar. 15, 2000) (citing *Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992)).

## PARTIES

13. Petitioner German Antonio Lopez Santos is a native and citizen of Honduras. He resides in Gwynn Oak, Maryland with his three U.S. citizen children. As of the filing of this Amended Petition, ICE is detaining him at Jackson Parish Correctional Center in Jonesboro, Louisiana.

14. Respondent Kristi Noem is the Secretary of Homeland Security, and in that capacity is responsible for the Department of Homeland Security (DHS) and all sub-cabinet agencies of DHS, including ICE. She is also responsible for DHS and ICE policies. She is sued in her official capacity.

15. Respondent Pamela Jo Bondi is the United States Attorney General. She has supervisory authority over the Executive Office of Immigration Review (EOIR), which oversees the immigration courts. She is sued in her official capacity.

16. Respondent Todd M. Lyons is the Acting Director of ICE, responsible for ICE's detention and removal operations and all its other functions. He is sued in his official capacity.

17. Respondent Stanley Crockett, Field Office Director of the ICE New Orleans Field Office and is responsible for ICE's operations in Louisiana where Mr. Lopez Santos is held. He is sued in his official capacity.

18. Warden, Jackson Parish Correctional Center, is the immediate custodian of Mr. Lopez Santos. The Warden is sued in his/her official capacity.

## LEGAL BACKGROUND

### *Warrantless Arrests*

19. The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. amend. IV. "Except at the border and

its functional equivalents," immigration officers may stop individuals in public only after identifying "specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion" of a violation of immigration law. *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975).

20. A stop, however brief, must be supported by reasonable suspicion if "a reasonable person would [believe] that he was not free to leave." *See United States v. Mendenhall*, 446 U.S. 544, 554 (1980).

21. Reasonable suspicion cannot be based "on broad profiles which cast suspicion on entire categories of people without any individualized suspicion of the particular person to be stopped." *United States v. Rodriguez Sanchez*, 23 F.3d 1488, 1492 (9th Cir. 1994). Further, "ethnicity alone cannot supply reasonable suspicion." *United States v. Lopez*, 817 F. Supp. 2d 918, 926 n.57 (S.D. Miss. 2011) (citing *Brignoni-Prince*, 422 U.S. at 885-87); *Sanchez v. Sessions*, 885 F.3d 782, 792 (4th Cir. 2018) (recognizing that "a stop based *solely* on race or ethnicity is *per se* egregious. In other words, since race or ethnicity cannot provide reasonable suspicion for a stop or seizure, where an officer relies *only* on race or ethnicity, he necessarily lacks reasonable suspicion for his actions.").

22. Like the authority to stop and question individuals, both the INA and the Fourth Amendment limit ICE's authority to arrest noncitizens without a warrant. *See* 8 U.S.C. § 1357(a); *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975).

23. Under the INA, immigration officers are generally required to obtain a warrant prior to arresting and detaining noncitizens. *See* 8 U.S.C. § 1226(a) ("*On a warrant issued by the Attorney General*, a[ noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed.").

24. The Immigration and Nationality Act (INA) allows ICE officers to make warrantless arrests. 8 U.S.C. § 1357(a). But its authority is limited to exigent circumstances and constrained by Fourth Amendment principles.

25. Apart from noncitizens observed at the border entering or attempting to enter the United States, the statute only authorizes ICE to "arrest a[ noncitizen] in the United States [without a warrant], if he has reason to believe that the [noncitizen] so arrested is in the United States in violation of any [immigration] law or regulation *and is likely to escape before a warrant can be obtained for his arrest.*" *Id.* U.S.C. § 1357(a)(2) (emphasis added).

26. Courts "have consistently held that the 'reason to believe' phrase in § 1357 'must be read in light of constitutional standards, so that 'reason to believe' must be considered the equivalent of probable cause." *United States v. Varkonyi*, 645 F.2d 453, 458 (5th Cir. 1981); *see also Morales v. Chadbourne*, 793 F.3d 208, 216 (1st Cir. 2015). *See also United States v. Santos-Portillo*, 997 F.3d 159, 162 (4th Cir. 2021) (holding that probable cause is required for a warrantless arrest under § 1357); *United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir. 2010) ("Because the Fourth Amendment applies to arrests of illegal aliens, the term 'reason to believe' in § 1357(a)(2) means constitutionally required probable cause."); *Tejeda-Mata v. I.N.S.*, 626 F.2d 721, 725 (9th Cir. 1980) ("The phrase 'has reason to believe' has been equated with the constitutional requirement of probable cause.") (citing *United States v. Cantu*, 519 F.2d 494, 496 (7th Cir. 1975)).

27. The likelihood of escape requirement "is always seriously applied." *Cantu*, 519 F.2d at 496-97; *see also Diogo v. Holland*, 243 F.2d 571 (3d Cir. 1957).

28. Courts have repeatedly held, consistent with the statute's plain language, that ICE exceeds its statutory authority under 8 U.S.C. § 1357(a) when it makes a warrantless arrest without a

determination that a suspected removable individual is likely to escape before a warrant can be obtained. *De La Paz v. Coy*, 786 F.3d 367, 376 (5th Cir. 2015) ("[E]ven if an agent has reasonable belief, before making an arrest, there must also be a likelihood of the person escaping before a warrant can be obtained for his arrest.") (internal quotations omitted); *Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995) ("Section 1357(a)(2) requires that the arresting officer reasonably believe that the alien is in the country illegally *and* that she 'is likely to escape before a warrant can be obtained for [her] arrest.'") (quoting 8 U.S.C. § 1357(a)(2)) (emphasis in original); *Westover v. Reno*, 202 F.3d 475, 479-80 (1st Cir. 2000) (noting that an immigration arrest was "in direct violation" of Section 1357(a)(2) because "[w]hile INS agents may have had probable cause to arrest [plaintiff] by the time they took her into custody, there is no evidence that [plaintiff] was likely to escape before a warrant could be obtained for her arrest").

29. Federal regulations track these strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii) ("A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained.").

*Detention Authority*

30. For decades, the Supreme Court has recognized a clear distinction between noncitizens who are stopped at our borders and those who have entered the United States, even illegally. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *United States* v. *Verdugo Urquidez,* 494 U. S. 259, 269 (1990) (Fifth Amendment's protections do not extend to noncitizens outside the territorial boundaries); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953).

31. Accordingly, "[i]t is well established that certain constitutional protections available to persons inside the United States are unavailable to [noncitizens] outside of our geographic borders." *Zadvydas*, 533 U.S. at 693. For noncitizens "on the threshold of initial entry," "[w]hatever the procedure authorized by Congress is, it is due process as far as a[ noncitizen] denied entry is concerned." *Mezei*, 345 U.S. at 212. But for noncitizens who have "once passed through our gates, even illegally," they "may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Id.*

32. Indeed, the Supreme Court has stressed that once noncitizens "enter 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." *Zadvydas*, 533 U.S. at 693.

33. Consistent with that distinction, the INA establishes separates procedures for the removal and detention of arriving or recently arrived noncitizens and those who have entered and established a presence in the United States, even those who have done so in violation of the immigration laws.

34. For the latter, the INA mandates that "an immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of a [noncitizen]." 8 U.S.C. § 1229a(a)(1). Removal proceedings under 8 U.S.C. § 1229(a)(1) "shall be the sole and exclusive procedure from the United States" unless otherwise specified in the INA. 8 U.S.C. § 1229a(a)(3).

35. For noncitizens in standard removal proceedings under § 1229a (§ 240 of the INA), the INA mandates detention pending proceedings for certain classes of criminal noncitizens, 8 U.S.C. § 1226(c). For all others, the noncitizen "may be arrested and detained" pending removal "[o]n a warrant issued by the Attorney General." 8 U.S.C. § 1226(a).

For noncitizens held under § 1226(a), DHS makes an initial custody determination. 8 C.F.R. §§ 1003.19(a), 1236.1(d). The noncitizen may continue to be detained, released on conditional parole, or released on a bond of at least $1,500. *See* 8 U.S.C. § 1226(a). The noncitizen may, upon request, have the initial custody determination reviewed by an immigration judge, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), and ultimately by the Board of Immigration Appeals (BIA), *see* 8 C.F.R. § 1236.1(d)(3).

36. Congress created separate, expedited procedures for "arriving aliens"[1] and certain "applicants for admission." 8 U.S.C. § 1225(b). The INA defines an applicant for admission as a noncitizen "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including a[ noncitizen] who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1).

37. Critically, these expedited removal proceedings do not apply to all "applicants for admission." Instead, they may be applied only to: (1) individuals who are arriving in the United States at a port of entry without valid documents; and (2) those without valid documents who have been in the United States for less than two years and have not been admitted or paroled. 8 U.S.C. § 1225(b)(1)(A)(iii)(II); *see Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020). Further, this second subset of individuals—noncitizens who have been in the United States less than two years and have not been admitted or paroled—only become subject to expedited

[1] "Arriving alien" is a term of art defined by regulation as "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port of entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to designated port of entry and regardless of the means of transport." 8 C.F.R. § 1.2.

removal if so designated by DHS.[2] *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I) (granting discretionary authority to apply expedited removal to any or all noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II)); *Thuraissigiam*, 591 U.S. at 109; *United States v. Texas*, 144 F.4th 632 (5th Cir. 2025).

38. Noncitizens placed in expedited removal proceedings are referred to standard removal proceedings under § 1229a if they establish a credible fear of persecution if removed. *See* 8 U.S.C. § 1225(b). Otherwise, the noncitizen is ordered removed "without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii).

39. Further, any noncitizen "subject to the procedures under [8 U.S.C. § 1225(b)] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iv).

40. Courts and the U.S. Government have consistently taken the position that noncitizens who have entered without inspection and are encountered in the United States years after their initial entry are entitled to removal proceedings under § 1229a and subject to detention under § 1226. *See, e.g.*, *Jennings v. Rodriguez*, 538 U.S. 281, 303 (2018) (affirming that "§ 1226 applies to aliens already present in the United States."); IIRIRA Implementing Regulation, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.").

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[2] On January 24, 2025, DHS issued a notice designating the entire subset of noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II) subject to expedited removal: noncitizens "determined to be inadmissible under [8 U.S.C. §§ 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown . . . that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility." Notice, Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025).

41. Yet on July 8, 2025, the Government abruptly rejected the reading of 8 U.S.C. § 1226(a) it had employed for decades. In a complete reversal, "DHS, in coordination with the Department of Justice (DOJ) . . . revisited its legal position on detention and release authorities," and issued guidance instructing all ICE employees that 8 U.S.C. § 1225 rather than § 1226 "is the applicable immigration detention authority for all applicants for admission." Ex. A, Interim Guidance Regarding Detention Authority for Applicants for Admission.

**STATEMENT OF FACTS**

42. German Lopez Santos is a native and citizen of Honduras. In or around 2005, Mr. Lopez Santos entered the United States without inspection. Since his arrival, Mr. Lopez Santos has resided continuously in the United States. He has never been convicted of any crimes, and he has consistently paid his taxes. He has worked for the same employer for the past thirteen years, beginning as a carpenter and working his way up to his current position as an assistant construction superintendent.
43. Mr. Lopez-Santos currently resides in Gwynn Oak, Maryland with three U.S. citizen children, all of whom are dependent on their father for emotional and financial support.
44. Around 9:00 A.M. on May 31, 2025, Mr. Lopez Santos was driving to a friend's house to drop off a trailer. En route to his friend's house, he noticed that a vehicle had started following him as he passed through a roundabout near a Home Depot in Randallstown, Maryland.
45. As he stopped at a traffic light, he was approached by multiple (presumably) ICE officers who demanded to see his green card.
46. Upon information and belief, Mr. Lopez Santos was not speeding or violating any traffic laws. Further, ICE has no authority to enforce state and local traffic laws.

47. Mr. Lopez Santos provided his identification and was subsequently arrested and detained. Officers did not provide a justification for the initial vehicle stop.

48. That same day, ICE issued Mr. Lopez Santos a Notice to Appear (NTA) alleging that he is removable under 8 U.S.C. § 1182(a)(6)(A)(i) as a noncitizen "present in the United States who has not been admitted or paroled." *See* Ex. B, Notice to Appear. According to the NTA, Mr. Lopez Santos was placed in standard "removal proceedings under Section 240 of the Immigration and Nationality Act," not expedited removal. *See id.*

49. After ICE denied Mr. Lopez-Santos's request for release on an order of recognizance or bond, he filed a motion for a redetermination of this initial custody determination before an immigration judge, as he is entitled to under 8 U.S.C. § 1226(a). Ex. C, Bond Motion. In support of his motion, Mr. Lopez-Santos attached 55 pages of letters of support from neighbors and friends, tax returns, and other evidence demonstrating his deep ties to the community he has lived in for twenty years. *See* Ex. D, Exhibits in Support of Bond Motion.

50. Despite the language in the NTA affirming that Mr. Lopez Santos had been placed in removal proceedings under Section 240 of the INA, *see* Ex. A, DHS argued at the July 17, 2025 bond hearing that the immigration court lacked jurisdiction to grant bond because Mr. Lopez Santos was subject to the mandatory detention under 8 U.S.C. § 1225(b)—a provision limited to noncitizens subject to expedited removal proceedings. Ex. E, DHS Opposition to Bond.

51. In an order lacking any legal analysis, the immigration judge denied bond, stating in conclusory fashion that it "does not have jurisdiction to review this bond request. Respondent is subject to mandatory detention under section 235(b)(2)(A) of the INA." *See* Ex. C, Bond Order.

52. Mr. Lopez Santos remains in ICE custody at Jackson Parish Correctional Center.

## CLAIMS FOR RELIEF

### COUNT ONE
***Violation of the INA***
***(Denial of Bond Under 8 U.S.C. § 1226(a))***

53. Mr. Lopez Santos realleges and incorporates by reference the paragraphs above.

54. Expedited removal proceedings are reserved for noncitizens who are "arriving in" the United States without proper documentation or who are in the United States and are "inadmissible because [they] lack[] a valid entry document" and have not "been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." *Thuraissigiam*, 591 U.S. at 109; 8 U.S.C. § 1225(b).

55. Before his May 31, 2025 arrest and detention by ICE, Mr. Lopez Santos had resided in the United States continuously for twenty years.

56. Thus, ICE and the immigration court erred in their conclusion that the immigration court could not consider Mr. Lopez Santos for bond on the ground that he is subject to mandatory detention under 8 U.S.C. § 1225.

57. As ICE's own charging document makes clear, Mr. Lopez Santos was placed in standard removal proceedings under 8 U.S.C. § 1229a and is subject to detention under 8 U.S.C. § 1226(a).

58. Section 1226(a) and its implementing regulations entitle Mr. Lopez Santos to a bond hearing before an immigration judge.

59. Thus, the immigration court and ICE exceeded their statutory authority by detaining Mr. Lopez Santos without the opportunity to seek release on bond.

### COUNT TWO
**Violation of Substantive Due Process**

60. Mr. Lopez Santos realleges and incorporates by reference the paragraphs above.

61. As a person who has "passed through our gates" and has lived in the United States for 20 years, Mr. Lopez Santos is entitled to due process of law. *Mezei*, 345 U.S. at 212; U.S. Const. amend. V; *Zadvydas*, 533 U.S. at 693.

62. The "Fifth and Fourteenth Amendments' guarantee of 'due process of law' [] include[s] a substantive component, which forbids the government to infringe certain 'fundamental' liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (emphasis in original).

63. Substantive due process "prevents the government from engaging in conduct that shocks the conscience, or interferes with rights implicit in the concept of ordered liberty." *United States v. Salerno*, 481 U.S. 739, 746 (1987).

64. The substantive due process right to be free from arbitrary detention extends to noncitizens detained during removal proceedings. *See Zadvydas*, 533 U.S. at 690 (permitting detention in non-punitive circumstances only where "special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint.").

65. Here, DHS abruptly departed from an interpretation and understanding of the INA that it has espoused for three decades and adopted an unlawful and incorrect reading of the expedited removal statute that allows it to subject countless noncitizens, like Mr. Lopez Santos, who have lived continuously in the United States for years to mandatory detention and summary removal without any opportunity to seek relief or an individualized determination that their continued detention is necessary to prevent their flight and/or protect the community. *See id.*

66. The national policy adopted by DHS in early July 2025 reflects an unconstitutional and arbitrary use of immigration detention that punishes individuals for exercising their right to

apply for relief with no consideration of whether detention is necessary to ensure future appearances or protect the community generally. *See Zadvydas*, 533 U.S. at 690. The application of this policy to Mr. Lopez Santos and his continued detention without the opportunity to apply for bond deprives him of substantive due process.

**COUNT THREE**
***Violation of Procedural Due Process***
***(Bond Ineligibility)***

67. Mr. Lopez Santos realleges and incorporates by reference the paragraphs above.

68. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

69. A procedural due process challenge is governed by a three-factor balancing test weighing: (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, or 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.

70. Each of these factors weigh in Mr. Lopez Santos's favor and support a finding that he may not be detained without an opportunity to seek release on bond before an immigration judge.

71. Mr. Lopez Santos has a strong private interest in remaining free from detention. Indeed, the Supreme Court has affirmed that even for noncitizens, "[f]reedom 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. And the Supreme Court, recognizing the strong private interest in remaining free from detention, has held "that detention violates that Clause unless the detention is ordered in a *criminal* proceeding

with adequate procedural protections, or, in certain special and narrow non-punitive circumstances where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (cleaned up).

72. While the Government has an interest in ensuring Mr. Lopez Santos's appearance at his removal proceedings and protecting the community, *see id.*, the bond procedures established under § 1226(a) adequately serve both interests by allowing an immigration judge to make an individualized assessment of a noncitizen's flight risk and the danger he or she may pose to the community.

73. And the Government cannot plausibly justify denying a bond hearing based on "administrative burdens" when it has, for the past three decades, consistently provided bond hearings to noncitizens like Mr. Lopez Santos have established a presence in the United States after previously entering without inspection.

74. Finally, this case demonstrates the high risk of erroneous deprivation that would result from allowing DHS to summarily detain noncitizens like Mr. Lopez Santos without any opportunity to challenge the detention before the administrative agency. Without a bond hearing, there is a high probability that individuals like Mr. Lopez Santos will be detained even though their detention is unnecessary to protect the community or ensure their appearance and serves no non-punitive purpose.

75. Thus, Mr. Lopez Santos's continued detention without a bond hearing violates procedural due process.

**COUNT FOUR**
***Violation of the Fourth Amendment***
***(Unreasonable Seizure)***

76. Mr. Lopez Santos realleges and incorporates by reference the paragraphs above.

77. On May 31, 2025, unidentified officers stopped Mr. Lopez Santos as he was driving in the vicinity of a Home Depot in Randallstown, Maryland.

78. The stop violated the Fourth Amendment as any "reasonable person" in Mr. Lopez Santos's position "would [believe] that he was not free to leave," *United States v. Mendenhall*, 446 U.S. 544, 554 (1980), and Respondents failed to articulable any reasonable suspicion that he was unlawfully in the United States.

79. Upon information and belief, Mr. Lopez Santos had no prior contact with immigration officials and has no criminal convictions that would have brought him to the attention of ICE officers. And as ICE has no authority to police or enforce traffic laws, moving violations cannot provide the basis or pretext for a stop.

80. Thus, Respondents' initial stop and Mr. Lopez Santos's resulting detention violate the Fourth Amendment.

**COUNT FIVE**
***Violation of Procedural Due Process***
***(Accardi Claim)***

81. Mr. Lopez Santos realleges and incorporates by reference the paragraphs above.

82. The Supreme Court's decision in *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) established the well-settled principle that agency actions in violation of its own regulations and procedures offends due process. 347 U.S. 260, 267-68 (1954).

83. Since *Accardi*, the Supreme Court and the Fifth Circuit have clarified that a claimant must demonstrate prejudice resulting from the violation, not merely a failure to follow agency regulations. *See Leyva v. Barr*, 838 F. App'x 13, 19 (5th Cir. 2020).

84. The *Accardi* doctrine applies with particular force "[w]here the rights of individuals are affected." *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). The doctrine's purpose is "to prevent the arbitrariness which is inherently characteristic of an agency's violation of its own procedures." *United States v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969).

85. In detaining Mr. Lopez Santos, ICE failed to abide by its own regulations limiting the circumstances under which it may make warrantless arrests.

86. ICE's failure to follow its own regulations prejudiced Mr. Lopez Santos by subjecting him to unlawful detention. *See* 8 C.F.R. § 241.4(l). Thus, ICE's departure from its own regulations and procedures violated his procedural due process rights.

**COUNT SIX**
***Violation of the Immigration and Nationality Act***
***(8 U.S.C. § 1357)***

87. Mr. Lopez Santos repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

88. ICE may only conduct a warrantless arrest in very limited circumstances. 8 U.S.C. § 1357(a).

89. But the statute only allows ICE to make a warrantless arrest away from the border if officers have probable cause to support their belief that the noncitizen is in the United States in violation of immigration laws *and* (2) is likely to escape before a warrant can be obtained for the noncitizen's arrest. 8 U.S.C. § 1357(a)(2); *Santos-Portillo*, 997 F.3d at 162.

90. ICE officers lacked probable cause to support a belief that Mr. Lopez Santos was likely to escape before a warrant could be obtained for his arrest. Mr. Lopez Santos has lived in the

United States for 20 years. He has deep ties to the community and has raised three U.S. citizen children.

91. He was not engaged in any criminal activity when he was stopped and he has never been in removal proceedings. Indeed, it seems dubious that ICE officers knew anything about him before they demanded his identification during their unconstitutional stop.

92. Thus, the arrest failed to comply with statutory requirements of the INA.

**PRAYER FOR RELIEF**

Based on the foregoing, Mr. Lopez Santos requests that this Court:

(1) Assume jurisdiction over the matter;

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

(3) Declare that Mr. Lopez Santos is not subject to mandatory detention and expedited removal under 8 U.S.C. § 1225;

(4) Declare that Mr. Lopez Santos's stop, arrest, and detention by ICE violates the Fourth Amendment, procedural due process, and the INA and order his release on that basis;

(5) Declare that Mr. Lopez Santos's continued detention without a bond hearing violates the INA and the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

(6) If it does not order release, issue an order compelling the Executive Office of Immigration Review to conduct a bond hearing for Mr. Lopez Santos under 8 U.S.C. § 1226(a) and its implementing regulations;

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

Dated: August 20, 2025

Respectfully submitted,

*/s/Sara A. Johnson*
SARA A. JOHNSON
Law Office of Sara A. Johnson
700 Camp St.
New Orleans, LA 70130
(504) 330-4333
sara@sarajohnsonlaw.com

*/s/ Kevin Hirst (Pro Hac Vice pending)*
KEVIN HIRST
Blessinger Legal PLLC
7389 Lee Highway, Suite 320
Falls Church, VA 22042
Tel: (703) 853-8094
Email: khirst@blessingerlegal.com

*Counsel for Petitioner*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 20, 2025, I presented the foregoing Amended Petition for Writ of Habeas Corpus to the Clerk of Court for filing and uploading to the CM/ECF system, and I hereby certify that I have sent this filing to the Government Respondents at the following address:

Acting United States Attorney
Western District of Louisiana
U.S. Attorney's Office
300 Fannin Street, Suite 3201
Shreveport, LA 71101

*/s/ Kevin Hirst (pro hac vice pending)*
KEVIN HIRST
Blessinger Legal PLLC
7389 Lee Highway, Suite 320
Falls Church, VA 22042
Tel: (703) 853-8094
Email: khirst@blessingerlegal.com