UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

ANTONIO AGUIRRE VILLA A# [redacted] Petitioner, vs. TONY NORMAND, *in his official capacity as Warden of Folkston Detention center*, and TODD LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement*, and GEORGE STERLING, *Field Office Director ICE Atlanta Field Office*, and KRISTI NOEM, *Secretary of Homeland Security* Respondents.	)	CASE NO.: 5:25-cv-89-LGW-BWC

AMENDED VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

AND COMPLAINT FOR DECLARATIVE AND INJUNCTIVE RELIEF

Petitioner respectfully submits this amended habeas complaint pursuant to Federal Rules of Civil Procedure (FRCP) 15(a), as a matter of course and without leave of court. This amendment is timely, having been filed within 21 days after service of the original complaint upon Respondents by the United States Marshals and prior to the filing of any answer by Respondents. The amended complaint is necessary to address and incorporate new factual and legal developments that have arisen since the initial filing, ensuring that the Court is presented with the most current and complete factual and legal basis in order to be able to grant relief.

I. INTRODUCTION

1. Petitioner realleges and incorporates by reference all paragraphs and evidence previously included in the original Complaint, ECF 1 and supporting documentation (ECF 1-1 through 1-4).
2. Petitioner, Mr. Antonio Aguirre Villa, is a 39-year-old Mexican national who has resided in Gainesville, Georgia, for approximately sixteen years. He lives with his long-time partner and supports four children, two of whom are U.S. citizens.
3. Mr. Aguirre Villa was detained by ICE on June 24, 2025, following a traffic violation. On July 14, 2025, an Immigration Judge ("IJ") ordered Mr. Aguirre Villa released on a $10,000 bond, finding he poses neither danger to the community nor a flight risk. The bond was required to appease DHS that he will appear for any future removal hearings. No additional conditions were imposed.
4. Immediately after the IJ's ruling, the Department of Homeland Security ("DHS") filed a Form EOIR-43, asserting its intent to appeal. Under DHS's interpretation of 8 C.F.R. § 1003.19(i)(2), this filing automatically stayed the IJ's order of release.
5. As of the time of filing of this Writ of Habeas, Mr. Aguirre Villa remains confined at Folkston Detention Center in Folkston, Georgia, solely because of DHS's invocation of the automatic-stay regulation.
6. The automatic-stay regulation, exceeds any authority Congress conferred in the Immigration and Nationality Act ("INA") and violates the Fifth Amendment's Due Process Clause. Even if DHS were to perfect or continue with its appeal, detention under § 1003.19(i)(2) would remain unlawful.
7. On September 11, 2025, attorneys for DHS, filed a motion for bond redetermination

with the IJ after filing the appeal to the Board of Immigration Appeals ("BIA"). *See* Exhibit 1. The was due to the BIA issuing a binding decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). On September 30, 2025, the IJ denied the bond previously granted based on having no jurisdiction to issue a bond under *Yajure Hurtado*. *See* Exhibit 2. For reasons stated below, the *Yajure Hurtado* decision is unlawful. Petitioner has been wrongfully classified as an "arriving alien" or "applicant for admission" and now deemed ineligible for bond in contravention of the plain language of the Immigration Nationality Act ("INA") and its regulations.

8. Respondents will argue that their position is grounded in the "plain reading" of the statute. However, courts are required to interpret statutory provisions in light of legislative intent and historical application. Until recently, INA §235 was never interpreted to apply to all noncitizens encountered within the United States years after entry. In any event, the Supreme Court case in *Loper Bright Enter. V. Raimondo*, 603 U.S. 369, 386 (2024) no longer offers deference to agency interpretation and instead courts must exercise their **independent judgment** to determine the best reading of the statute, giving due respect to the views of the executive but not yielding interpretive authority.

9. INA Section 235 was established to manage border control and port-of-entry procedures, reflecting the principle that rights and privileges should be carefully considered for individuals seeking entry into the country. This section is specifically designed to address noncitizens who are apprehended at or near the time of their entry, rather than those like the Respondent, who have established substantial ties to the United States over many years. Congress did not intend for INA § 235 to be applied

retroactively to any noncitizen already within the U.S., irrespective of their time or manner of entry. The Department of Homeland Security's recent broad interpretation of INA § 235 represents a significant shift from its traditional understanding and seems to be influenced more by current policy goals than by the statutory language itself.

10. Petitioner's continued detention by ICE is unlawful and unconstitutional. The government's recent policy shift—reclassifying noncitizens who entered without inspection as "arriving aliens" subject to mandatory detention under 8 U.S.C. § 1225(b)—contradicts the statute, decades of established statutory interpretation, agency regulations and practice, and binding precedent. Petitioner, apprehended in the interior of the United States years after entry, is entitled to discretionary bond hearings under 8 U.S.C. § 1226(a), not mandatory detention without judicial review.

11. Despite being apprehended within the interior of the United States long after arrival rather than at the border, Petitioner is now deemed ineligible for bond due to his entry without inspection. This stems from a controversial policy shift by ICE in July 2025, which aligns with *Yajure Hurtado* and conflicts with a January 2025 BIA decision in *Q Li.*. *Yajure Hurtado* disrupts decades of established legal precedent by introducing a novel interpretation of the Immigration and Nationality Act.. This interpretation, which contradicts both the statute's clear language and constitutional principles, reclassifies all noncitizens who entered without inspection, including the Petitioner, as "arriving aliens" or "applicants for admission." Consequently, they are subject to mandatory detention under 8 U.S.C. § 1225(b), rendering them ineligible for bond hearings by immigration judges.

12. For nearly thirty, years, the practice of DHS, ICE, and EOIR was that most individual noncitizens apprehended in the interior of the United States after being present in the US for over two years (as opposed to "arriving" at the port of entry or being apprehended near the border soon after they entered without inspection) were eligible for bond and if a bond was not granted by DHS, they were eligible to have a bond set by an immigration judge at a bond redetermination hearing. If either DHS or the immigration court determined they were neither a danger to the community or a flight risk, and granted a change in custody status, the detained person was normally released either after paying the bond that was set or by being released on their recognizance. 8 USC Section 1226(a)(2)(A).

13. Petitioner seeks a declaratory judgment from this Court affirming that his detention should be under 8 U.S.C. § 1226(a). The Petitioner requests an order for his release within 48 hours unless the government can demonstrate by clear and convincing evidence that he poses a danger to the community or is a flight risk. Alternatively, the Petitioner seeks an order for a discretionary bond hearing under § 1226(a) before an Immigration Judge within 3 days, where the government must prove by clear and convincing evidence that he is a danger to the community or a flight risk. Additionally, the Petitioner requests that Respondents be prohibited from re-detaining him unless they can meet the same evidentiary standard.

14. Respondents' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution by depriving Petitioner of liberty without individualized assessment or a meaningful opportunity to be heard before a neutral decisionmaker. The agencies' interpretation also contravenes the INA and its implementing regulations, the

Administrative Procedure Act ("APA"), and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions. Numerous federal courts have rejected the government's novel reading of the detention statutes, reaffirming that interior apprehensions are governed by § 1226(a) and entitled to bond review *See infra.*

15. Petitioner seeks immediate habeas, declaratory, and injunctive relief, ordering Respondents to be directed to immediately release Petitioner from custody. A detailed statement of facts and procedural history follows, supporting Petitioner's claims for relief.

II. JURISDICTION

16. This Court has jurisdiction under several legal provisions, including 28 U.S.C. § 2241, which grants federal courts the authority to issue writs of habeas corpus, and 28 U.S.C. § 1331, which provides for federal question jurisdiction. Jurisdiction over habeas claims is conferred by 28 U.S.C. § 2241, while non-habeas claims for declaratory and injunctive relief arise under 28 U.S.C. § 1331, the APA, and the Declaratory Judgment Act.

17. Additionally, jurisdiction is supported by Article I, § 9, cl. 2 of the Constitution, known as the Suspension Clause, and Article III, Section 2, which addresses the Court's authority to hear constitutional issues raised by the Petitioner. The Petitioner seeks immediate judicial intervention to address ongoing violations of constitutional rights by the Respondents. This action is grounded in the United States Constitution, the Immigration & Nationality Act of 1952, as amended (INA), 8 U.S.C. § 1101 *et seq.*,

and the APA, 5 U.S.C. § 551 *et seq*. Furthermore, the Court may also exercise jurisdiction under 28 U.S.C. § 1331, as the action arises under federal law, and may grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

18. The Court has authority to issue a declaratory judgement and to grant temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the FRCP, as well as 28 U.S.C. §§ 2201-2202. Additionally, the Court can utilize the All Writs Act and its inherent equitable powers to provide such relief. Furthermore, the Court has the authority to issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

19. This Court possesses federal question jurisdiction under the APA to "hold unlawful and set aside agency action" deemed "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," as outlined in 5 U.S.C. § 706(2)(A). In the absence of a specific statutory review process, APA review of final agency actions can proceed through "any applicable form of legal action," which includes actions for declaratory judgments, writs of prohibitory or mandatory injunction, or habeas corpus, in a court of competent jurisdiction, as specified in 5 U.S.C. § 703.

20. In *I.N.S. v. St. Cyr*, the Supreme Court held that federal courts retain *habeas corpus* jurisdiction under 28 USC § 2241, despite restrictions on judicial review enacted under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). 533 U.S. 289 (2001). Consequently, section 2241 habeas review remains available to Petitioner.

21. The U.S. Supreme Court has recognized district courts' jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation

of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law. Even though the government may detain individuals during removal proceedings, *see, e.g.*, *Denmore v. Kim*, 538 U.S. 510, 523(2003), there are limitations to this power of the executive branch. Limitations like the Due Process Clause restrict the Government's power to detain noncitizens. It is well settled that individuals in deportation proceedings are entitled to due process of law under the Fifth Amendment. *Reno v. Flores*, 507 U.S. 292, 306 (1993). Courts must review immigration procedures and ensure that they comport with the Constitution.

22. In this case, Petitioner asserts substantial constitutional violations—including deprivation of liberty without due process, arbitrary and capricious agency action, violations of the *Accardi* doctrine, and other injuries without notice or opportunity to be heard. These claims fall squarely within the scope of habeas review preserved by statute and recognized by controlling precedent. Accordingly, this Court has both the authority and the obligation to adjudicate the constitutional and statutory claims presented in this Petition and to grant appropriate relief to remedy ongoing violations of Petitioner's rights.

23. Petitioner's claims challenge only his civil immigration detention and the procedures used to prolong it—not the merits of removability or any final order of removal—and therefore fall outside 8 U.S.C. § 1252(b)(9)'s channeling provision. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (detention challenges are not "questions of law or fact arising from" removal proceedings). Consistent with that framing, any injunctive relief sought here is strictly as-applied to Petitioner—for example, directing Petitioner's release under § 1226(a) or barring application of § 1225 as to Petitioner—

and does not "enjoin or restrain the operation" of any statute within § 1252(f)(1)'s bar. In any event, § 1252(f)(1) permits individualized, as-applied relief for a single noncitizen, even while prohibiting class-wide injunctions. *See Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–49 (2022). Section 1252(f)(1) does not bar the individualized injunctive relief sought here. That provision limits lower courts' authority to "enjoin or restrain the operation" of the INA's detention and removal provisions on a class-wide or programmatic basis but expressly preserves injunctive relief "with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated." 8 U.S.C. § 1252(f)(1); *Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–50 (2022). Petitioner seeks only as-applied relief tailored to Petitioner —e.g., directing Petitioner's release under § 1226(a) or precluding DHS from enforcing the "arriving alien" definition of § 1225 toward Petitioner. The requested relief neither halts the general operation of any INA provision nor provides class-wide relief, and thus, falls squarely within § 1252(f)(1)'s carve-out.

24. Section 1252(g) is likewise inapplicable. It is a "narrow" jurisdictional bar that applies only to three discrete decisions or actions: "to commence proceedings, adjudicate cases, or execute removal orders." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Petitioner does not challenge any such decision. Petitioner challenges ongoing civil detention and DHS's use of an unlawful interpretation to nullify the plain language of the INA and the regulations interpreting the INA before the Department of Justice and DHS. Such detention-related claims and challenges to custody procedures fall outside § 1252(g). *See id.* at 482–83; *cf. Jennings v. Rodriguez*, 138 S. Ct. 830,

840–41 (2018) (§ 1252(b)(9) does not channel detention claims).

25. To prevent ouster of this Court's habeas jurisdiction, the Court should, pursuant to 28 U.S.C. § 1651(a) (All Writs Act) and 28 U.S.C. § 2241, issue an immediate limited order prohibiting Respondents from transferring Petitioner outside the court's District or otherwise changing Petitioner's immediate custodian without prior leave of Court while this action is pending. Such relief is necessary in aid of jurisdiction because habeas is governed by the district-of-confinement/immediate-custodian rule, and transfer can frustrate effective review. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441–42 (2004); *Ex parte Endo*, 323 U.S. 283, 307 (1944); *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966).

III. VENUE

26. Venue is proper in the United States District Court for the Southern District of Georgia because Petitioner is currently detained at the Folkston Detention Center, within the Southern Division, Brunswick, Georgia, in DHS's custody. Respondent Tony Normand, Warden for Folkston Detention Center, is his immediate custodian, and Respondents exercise authority over his custody in this jurisdiction, as supported by *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). Habeas petitions are generally filed in the district court with jurisdiction over the filer's place of custody, also known as the district of confinement, pursuant to 28 U.S.C. § 2241. Additionally, with respect to Petitioner's non-habeas claims seeking prospective declaratory and injunctive relief against federal officials (agencies and officers of the United States) sued in their official capacities, venue is proper under 28 U.S.C. § 1391(e)(1)(B) because a substantial part

of the events or omissions giving rise to these claims, including the initial arrest and continued detention of Petitioner and the enforcement of the mandatory detention agency interpretation, occurred in this District. Furthermore, the Respondents are officers of United States agencies. The Petitioner resides within this District, and there is no real property involved in this action.

IV. PARTIES

27. Petitioner, Mr. Antonio Aguirre Villa (A# [redacted]), is a 39-year-old Mexican national born in 1986, who has resided in Gainesville, Georgia, since approximately 2009 with his family. He has a stable residence in Gainesville, Georgia, 30507 where he has lived for approximately twelve years with his long-time partner and their children.

28. Despite an individualized determination by the IJ that he should be released on bond, Petitioner is currently detained at the Folkston Detention Center in Folkston, Georgia, because of the automatic stay regulation and the new EOIR case deeming all entrants without inspection, including Petitioner, as "arriving aliens" or "applicants for admission" and thus ineligible for a bond.

29. Respondent Tony Normand is the Warden of Folkston Detention Center. As such, Respondent Normand is responsible for the operation of the Detention Center where Mr. Aguirre Villa is detained. Because ICE contracts with private prisons such as Folkston to house immigration detainees, Respondent Normand has immediate physical custody of the Petitioner.

30. Respondent Todd Lyons is the Acting Director of Immigration and Customs

Enforcement (hereinafter "ICE"). As such, Respondent Lyons is responsible for the oversight of ICE operations. Respondent Lyons is being sued in his official capacity.

31. Respondent George Sterling is the Atlanta Field Office Director for Immigration and Customs Enforcement (hereinafter "FOD"). As such, Respondent Sterling is responsible for the oversight of ICE operations at the Folkston Detention Center. Respondent Sterling is being sued in his official capacity.

32. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (hereinafter "DHS"). As Secretary of DHS, Secretary Noem is responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Secretary Noem is being sued in her official capacity.

V. EXHAUSTION OF REMEDIES

33. **No statutory exhaustion requirement applies to habeas cases,** and the recent interpretations by DHS and EOIR have effectively closed all administrative avenues for securing release for noncitizens, like Petitioner, who entered the U.S. without inspection. ICE's internal policy from July 2025, coupled with the Executive Office for Immigration Review ("EOIR")'s BIA precedent, mandates that immigration judges deny bond to the Petitioner and similarly situated noncitizens, not on the merits of their claim, but due to lack of jurisdiction, rendering any further administrative steps futile. An administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it as noted in *Gibson v. Berryhill*, 411 U. S. 564, 575, n. 14 (1973). Requiring Petitioner to seek reconsideration with ICE or a bond hearing with an immigration judge "would be

to demand a futile act" as no relief would be granted while Petitioner languishes in detention, as highlighted in *Houghton v. Shafer*, 392 U.S. 639, 640 (1968). Moreover, even if any remedies were available, the habeas statute does not require Petitioner to exhaust them.

34. Furthermore, even if applied, the doctrine of exhaustion of administrative remedies would have been futile on claim attacking constitutionality of ICE's actions and ICE's and EOIR's current interpretations of the mandatory detention provisions. Administrative hearings cannot address the constitutional claims at issue, rendering further proceedings ineffective. Moreover, where ICE seeks to quickly remove noncitizens like Petitioner, even to third countries, without due process, particularly under the current administration's policies, it underscores the inadequacy of administrative remedies. *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992) (futility exception to exhaustion applies where administrative remedies are inadequate or unavailable). In such cases, these remedies do not offer a meaningful opportunity to address the constitutional violations in question, rendering their pursuit futile..

35. Petitioner has exhausted his administrative remedies to the extent required by law, and Petitioner's only remedy is by way of this judicial action.

VI. STATEMENT OF FACTS

36. Petitioner, Mr. Antonio Aguirre Villa (A# [redacted], is a 39-year-old native and citizen of Mexico, born in 1986. He entered the United States without inspection in approximately 2009 and has resided continuously in the country since that time.

37. Mr. Aguirre Villa has lived at the same address in Gainesville, Georgia, 30507 for approximately twelve years with his long-time partner and their four children. Two of the children, W.A. (born December 2012) and Y.C. (born May 2014), are U.S. citizens.
38. In 2011, Mr. Aguirre Villa was served with a Notice to Appear and placed in removal proceedings under INA § 240. Those proceedings were administratively closed by the immigration court on November 29, 2011 in an exercise of prosecutorial discretion.
39. He has a stable residence in Gainesville, Georgia, 30507 where he has lived for approximately twelve years with his long-time partner and their children. He is currently detained in Folkston Detention Center in South Georgia.
40. All four of Petitioner's children depend on him for financial and emotional support. Prior to his detention, Mr. Aguirre Villa was gainfully employed as a construction subcontractor, serving as the primary provider for his family.
41. Petitioner has no significant criminal history aside from traffic-related offenses (driving without a license and a DUI offense that he committed as a minor over twenty-three years ago), and the IJ expressly found he is neither a danger to the community nor a flight risk.
42. Petitioner was arrested in Idaho on November 18, 2001, for driving under the influence. He was seventeen years old at the time of his arrest. His subsequent arrests were for driving without a valid license. He was arrested on November 22, 2003, November 19, 2004, January 6, 2005, and November 14, 2005, in Idaho, for driving without a license. Petitioner was also arrested for driving without a license in Georgia on September 25, 2011.
43. On June 24, 2025, Petitioner was arrested in Gainesville, Georgia, for driving without

a license and transferred into ICE custody. ICE eventually moved him to Folkston detention center, and he has remained in custody since that time, now for over three months.

44. On July 7, 2025, Petitioner, through counsel, filed a Motion for Custody Redetermination before the Immigration Court at Stewart. *See* ECF 1-1. On July 14, 2025, IJ Rodger Harris granted the motion and ordered Mr. Aguirre Villa's release upon posting of a $10,000 bond, finding that he is neither a danger to the community nor a flight risk. No additional conditions were imposed. *See* ECF 1-1. That same day, DHS filed a Form EOIR-43 Notice of Intent to Appeal Custody Redetermination, which by regulation imposed an automatic stay of the IJ's order. *See* ECF 1-2. DHS then filed a form EOIR-26, notice of appeal and appealed the bond decision to the BIA.

45. On July 30, 2025, the Board of Immigration Appeals issued a briefing schedule in the bond appeal. *See* ECF 1-3. On August 18, 2025, Mr. Aguirre Villa, through counsel, filed a Reply Brief opposing DHS's appeal. On August 20, 2025, DHS filed its Appellate Brief.

46. DHS subsequently perfected its appeal by filing a brief with the BIA on August 20, 2025, arguing that Petitioner is an "applicant for admission" under INA § 235(b)(2)(A) and thus ineligible for bond, even though he has been residing in the U.S. for about 16 years and clearly could not possibly be an applicant for admission given that he has been residing here for this long. On August 18, 2025, Petitioner filed a Reply Brief opposing DHS's appeal, demonstrating that his custody is properly governed by 8 U.S.C. § 1226(a), not § 1225(b).

47. On September 11, 2025, while the BIA appeal is still pending, attorneys for DHS, filed

a motion for bond redetermination with the IJ after filing the appeal to the BIA. *See* Exhibit 1. This was based on the BIA issuing a binding decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). On September 30, 2025, the IJ denied the bond previously granted based on having no jurisdiction to issue a bond under that *Yajure Hurtado* BIA decision. *See* Exhibit 2.

48. For reasons stated below, that decision is unlawful on a number of grounds and dozens of federal courts around the United States have declared that applicants who entered without inspection, similar to Petitioner, are eligible for a bond under 8 U.S.C § 1226(a), and they are not "arriving aliens" as the government contends and therefore not subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). Petitioner has been wrongfully classified as an "arriving alien" or "applicant for admission" and now deemed ineligible for bond in contravention of the plain language of the INA and its regulations.

49. Since his arrest, Mr. Aguirre Villa has remained detained for over 3 months now. During his detention, counsel and family have reported serious concerns about his safety and mental wellbeing. In August 2025, his family informed previous counsel that Mr. Aguirre Villa was the victim of harassment and an attempted sexual assault by another detainee after which he expressed suicidal thoughts and was reportedly hospitalized following a suicide attempt. *See* ECF 1-4 (correspondence regarding detainee safety).

As of the filing of this Petition, Mr. Aguirre Villa remains in ICE custody at Folkston, confined because of DHS' invocation of the automatic stay regulation, despite an individualized determination by the IJ that he should be released on bond, and because

of the subsequent bond redetermination, which, pursuant to *Matter of Yajure Hurtado*, the IJ does not have jurisdiction to issue bond.

Harm to Petitioner's Mental Health and Wellbeing

50. Since his arrest and subsequent detention, Mr. Aguirre Villa has suffered severe and escalating harm to his mental health and overall wellbeing. The conditions of confinement at Folkston Detention Center have exposed him to persistent stress, anxiety, and fear, culminating in a significant deterioration of his psychological state. In August 2025, Mr. Aguirre Villa was subjected to harassment and an attempted sexual assault by another detainee, after which he experienced acute psychological distress, including suicidal ideation. He was reportedly hospitalized following a suicide attempt, underscoring the gravity of his suffering and the immediate risk to his life.
51. The prolonged and indefinite nature of his detention, especially after an Immigration Judge found him neither a danger to the community nor a flight risk, has exacerbated his mental anguish. Mr. Aguirre Villa's separation from his partner and four children—two of whom are U.S. citizens—has inflicted profound emotional trauma on both him and his family. His children, who depend on him for financial and emotional support, have exhibited signs of distress and instability due to his absence. The loss of his role as a father and provider has further deepened his sense of hopelessness and despair.
52. Medical and psychological support within the detention facility has been inadequate to address the severity of Mr. Aguirre Villa's mental health needs. The lack of access to appropriate care, coupled with the constant threat of harm and uncertainty regarding his future, has placed him at ongoing risk of self-harm and long-term psychological

damage. These harms are not speculative; they are documented and immediate, and they weigh heavily in the balance of equities and the urgency of judicial relief.

53. The continued detention of Mr. Aguirre Villa, in the face of these documented harms, constitutes not only a deprivation of liberty but also a direct threat to his health and life. The government's refusal to release him, despite an individualized determination of eligibility for bond, has transformed his confinement into a punitive and life-threatening ordeal, in violation of statutory, regulatory, and constitutional protections.

VII. LEGAL AND STATUTORY BACKGROUND

A. Noncitizens Are Entitled to Due Process

54. The principle that noncitizens present in the United States must be afforded due process is deeply rooted in our legal history for hundreds of years. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (Fourteenth Amendment applies to all persons within the territorial jurisdiction of the United States, regardless of race, color, or nationality); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) ("Fifth Amendment . . . protects every person within the jurisdiction of the United States from deprivation of life, liberty, or property without due process of law . . . [i]ncluding those whose presence in this country is unlawful, involuntary, or transitory[.]") (citation omitted)).

55. These landmark Supreme Court cases affirm that due process protections apply to all persons within the U.S., regardless of their immigration status. These foundational principles are not merely historical artifacts but are vital, living tenets that must guide current immigration practices. The Court has consistently recognized that noncitizens

facing deportation are entitled to due process under the Fifth Amendment, as seen in *Landon v. Plasencia*, 459 U.S. 21 (1982) (noncitizens facing deportation are entitled to due process under the Fifth Amendment, which includes a full and fair hearing and notice of that hearing). *See also Zadvydas v. Davis*, 533 U.S. 678 (2001) (Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent).

B. <u>The Erosion of Well-Established Immigration Law In 2025</u>

56. The specific type of liberty deprivation suffered by Petitioner is not unique in 2025. Indeed, the recent, dramatic expansion of civil immigration detention powers by the U.S. government, has quietly eroded over 70 years of immigration law history. This expansion has occurred not through explicit legislative change, but via broad agency interpretations—leading to a normalization of widespread, unreviewable detention of noncitizens. Tens of thousands of noncitizens, no matter how long they have been living in the country, are now subject to automatic, non-reviewable loss of liberty, contravening our immigration laws, Supreme Court precedents, and the U.S. Constitution. The vast majority of ICE detainees are non-criminals, like Petitioner[1]. Many others have minor criminal backgrounds.

57. Traditionally, procedural safeguards such as individualized bond hearings and judicial review have served as critical checks against arbitrary detention. Immigration detention decisions involved two procedural layers: an initial custody determination by ICE (or

[1] According to the Transactional Records Access Clearinghouse, 71.5% of detainees have no criminal conviction as of September 21, 2025. Immigration Detention Quick Facts, available at: https://tracreports.org/immigration/quickfacts/

CBP for noncitizens confronted at the border) followed by a custody redetermination (bond hearing) before an Immigration Judge (IJ) with appellate review by the BIA. **Detention was permitted only upon finding of flight risk or danger to the community**, and noncitizens had the right to challenge their detention before an IJ and seek release on their own recognizance or a bond See 8 USC Section 1226(a)(2)(A). With the exception of significant criminal history making an individual a danger to the community or extremely negative immigration history indicating flight risk, the vast majority of noncitizens in the country were not detained, including those in removal proceedings who were either released on their own recognizance or ordered to post a bond (most under $5,000) in order to appease DHS that they will show up for their removal hearings granted reasonable bonds, which ensured they would attend their removal hearings. In most cases, ICE attorneys did not object to bond grants; and if the IJ ordered a bond, few appeals were being filed, ICE did not commonly object or appeal these decisions. Most noncitizens show up for their hearings, as they want to plead their case and obtain relief from removal and permanent status in the United States[2].

58. In the initial months of the second Trump administration, ICE abruptly shifted its enforcement strategy, initiating widespread arrests of noncitizens without any individualized assessment of flight risk or danger to the community. These detentions were not incidental; they were executed in a targeted and systematic fashion, often in highly visible public spaces—including churches, schools, during their appearance for ICE reporting and even immigration court hearings where noncitizens appeared for

[2] According to American Immigration Council, 83% of Respondents show up for their removal hearings. 96% percent of represented Respondents attend their removal hearings. Individuals who applied for relief from removal had the highest rates of appearance. *See https://www.americanimmigrationcouncil.org/report/measuring-absentia-removal-immigration-court/*

scheduled proceedings.[3] This approach enabled ICE to detain large numbers of individuals quickly, apparently to satisfy newly imposed detention quotas. Notably, ICE disregarded less restrictive and more cost-effective alternatives for ensuring appearance at immigration hearings, such as reporting requirements and electronic ankle monitoring. While an ankle monitor costs the agency approximately $5 to $40 per day, detention costs soar to roughly $1,000 per day for each individual. This policy not only imposes a substantial financial burden on the government, but also results in unnecessary and punitive deprivation of liberty for noncitizens who pose no threat to public safety or risk of absconding.

59. While detention of noncitizens is within the purview of the agency, according to 8 C.F.R. 236.1, a noncitizen who is detained can appeal their detention to an IJ and request a bond. Many Immigration Judges around the country were still granting bonds , notwithstanding ICE's detention; however, that has drastically changed in the last two months. Recent administrative expansions have systematically stripped noncitizens of their fundamental rights to challenge detention, thereby undermining the very fabric of due process protections.

The first case that was a published decision by the BIA, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) held that an applicant for admission arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings, is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b). This case deals with the detention of an "applicant for admission" who is arrested while arriving in the United States, but it is relevant because

[3] Despite these individuals appearing for their appointments to show compliance, they were detained nevertheless.

now DHS alleges Petitioner is detained under INA Section 235(b), in direct contradiction with *Q Li*. *Q Li* states that it applies only to individuals who are at the border or a port of entry and are seeking admission into the country. It states that it does not apply to those who have already entered the United States and are apprehended within its interior.

Matter of Q. Li, explicitly limited the scope of INA §235 detention. *Q. Li* held that mandatory detention under INA §235(b)(2)(A) applies to a specific subset of individuals who are (1) Applicants for admission (2) arrested and detained without a warrant while "arriving" in the United States, and (3) subsequently placed in removal proceedings. *Id.* at 66. The BIA further clarified on page 68 that "arriving" refers to noncitizens apprehended *just inside* the southern border—not at a port of entry—and *on the same day* they entered the United States. *Id.* at 68. Petitioner does not fit this narrow definition. In *Q. Li*, the Board reasoned that if a noncitizen is initially detained under INA §236, the government cannot later claim that the detention is governed by INA §235 merely to avoid a bond hearing. This is the situation here because the I-213 indicates the issuance of an administrative warrant; therefore, DHS cannot subsequently reclassify the Respondent as a detainee under INA Section 235. The Board also holds in *Q Li*, that if a Respondent is detained under INA Section 235, even if placed in removal proceedings under INA Section 240, he cannot be reclassified under INA Section 236, and in that situation would not be eligible for bond. *Id.* at 66. The *Yajure Hurtado* decision attempts to solidify this unlawful classification under the statute.

The second published decision from the BIA, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), significantly expanded the agency's mandatory detention interpretation

to include all noncitizens who enter without inspection, denying eligibility for bond hearings under section 236(a) of the INA and finding that suddenly, there is no jurisdiction to grant bond, even though there has been jurisdiction under INA Section 236(a) for at least thirty years. The above-mentioned ICE memo, coupled with this decision, which will be discussed below, prevents Petitioner's release and violates Petitioner's Due Process rights.

C. Immigration Detention Legal Framework

60. When a noncitizen is alleged to have violated immigration laws, they are generally placed into traditional removal proceedings, during which an immigration judge has to determine whether they are removable and then whether they have a legal basis to remain in the United States. 8 U.S.C. § 1229a.

61. Detention is authorized for "certain aliens already in the country pending the outcome of removal proceedings under § 1226(a) and § 1226(c)." See *Jennings v. Rodriguez*, 584 U.S. 281, 289 (2018). The INA provides that an individual may be subject to either discretionary detention under 8 U.S.C. § 1226(a) generally, or mandatory detention under 8 U.S.C. § 1226(c) if they have been arrested or convicted of certain crimes. Discretionary relief under § 1226(a) has been described as the "default" provision for immigration detention for those subject to traditional removal proceedings. *Id.* at 288. Under § 1226(a), "except as provided in subsection (c)" (which refers to certain criminal aliens), the Attorney General "may release the alien on" "bond" ... or "conditional parole." *Id.*

62. Discretionary detention under 8 U.S.C. § 1226(a) applies equally to noncitizens who entered legally with a visa or for those who entered without inspection, like the

Petitioner. This provision grants the Attorney General the authority to arrest and detain any noncitizen pending a decision on their removal from the United States. **The statute explicitly allows for the detention of noncitizens regardless of their manner of entry, as it does not distinguish between those who entered with inspection and those who did not**. The discretionary nature of § 1226(a) is further supported by case law, such as *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018), which emphasizes that the use of the word "may" in the statute implies discretion rather than a mandate. Additionally, the Ninth Circuit in *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022), recognized that § 1226(a) provides extensive procedural protections, including bond hearings, **to all noncitizens detained under this provision, irrespective of their entry status**. This interpretation ensures that all noncitizens, whether they entered legally or without inspection, are subject to the same discretionary detention framework under § 1226(a).

63. Other than certain criminal aliens, mandatory detention is authorized for "certain aliens ***seeking admission*** into the country under §§ 1225(b)(1) and 1225(b)(2)," [emphasis added]. *Jennings*, 583 U.S. at 289. Individuals inspected under § 1225(b) and determined to be "applicants for admission" may be subject to mandatory detention under two separate subsections. Applicants for admission include someone who is:

> "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 an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission." § 1225(a)(1)

64. Under §§1225(b)(1), if someone is determined to be an "arriving alien," they may be subject to removal and mandatory detention (if they have not been physically present

in the United States continuously for a two-year period immediately prior.) Regulations define an "arriving alien" 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 a designated port-of-entry, and regardless of the means of transport."
>
> 8 C.F.R. § 1.2.

65. Otherwise, 8 U.S.C. § 1225(b)(2) provides for the detention of "applicant for admission" specifically when "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," i.e. for traditional removal proceedings [emphasis added].

66. An "arriving alien" or an applicant for admission "seeking admission" may only be released from detention on parole (which is a form of release on recognizance), under 8 U.S.C. § 1182(d)(5). *Jennings*, 583 U.S. at 288. There is no bond available to an arriving alien or applicant for admission seeking admission. *Id.* There is no such thing as a "parole bond" – a release must be either parole under § 1182(d)(5) or a bond (conditional parole) under § 1226(a). *Id.*

67. For a noncitizen subject to discretionary detention under 8 U.S.C. § 1226(a), ICE makes an initial custody determination to either set a bond or hold the individual at no bond. The noncitizen may then seek a review of ICE's initial custody determination before the IJ (a "custody review hearing"), who has the authority to modify ICE's custody determination and set bond in a case in which ICE has designated no bond, lower bond when ICE has set a cash bond amount or deny bond completely. 8 C.F.R. §§ 1003.19,

1236.1(d).

68. Custody review hearings and bond determinations are distinct from the hearings on the merits of the removal case, as outlined in 8 C.F.R. § 1003.19(d). Even if a noncitizen is granted bond by the IJ, they are still required to appear in immigration court for the IJ to assess their removability and consider any claims for relief from removal. During a custody review hearing, once the IJ establishes jurisdiction over the bond, the focus is solely on determining whether the detainee poses a danger to the community or is a flight risk. The regulation ensures that the focus of custody and bond hearings is on the immediate question of detention, rather than the broader issues of removability or eligibility for relief. Bond can only be granted if the IJ concludes that the detainee has met their burden of proving they are neither a danger nor a flight risk, as established in *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

69. 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).

70. 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).

71. 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)).

72. For decades, Respondents have consistently provided discretionary bond hearings and custody review hearings under § 1226(a) to individuals encountered within the interior of the United States, meaning those who are neither at a point of entry nor actively seeking admission. There are far too many authorities to name in support, some will be named in the following sections as controlling authority to rebut the government's application of § 1225, but for example see the following: *Rosado v. Figueroa*, No. CV-25-02157 PHX DLR (CDB), 2025 WL 2337099, at *10 (D. Ariz. Aug. 11, 2025), report and recommendation adopted sub nom. *Rocha Rosado v. Figueroa*, No. CV-25-02157 PHX DLR (CDB), 2025 WL 2349133, at *10 (D. Ariz. Aug. 13, 2025) (citing *Loper Bright Enter. V. Raimondo*, 603 U.S. 369, 386 (2024)) ("Respondents' proposed application of § 1226 is also belied by the Department of Homeland Security's 'longstanding practice' of treating noncitizens taken into custody while living in the United States, including those detained and found inadmissible upon inspection and then released into the United States with the government's acquiescence, who have committed no crime after release, as detained under § 1226(a).").

73. The Supreme Court has only recognized two legitimate objectives of immigration detention: **preventing danger to the community or preventing flight prior to removal**. *See Jennings,* 583 U.S. 281 at 300–01; *Demore v. Kim,* 538 U.S. 510, 523 (2003).

74. Due to due process concerns regarding the deprivation of liberty in civil contexts, most circuit courts addressing immigration detention issues for individuals not subject to a final order of removal have determined that the government bears the burden of proving that such individuals are a flight risk or a danger. The Ninth Circuit has ruled that noncitizens detained under § 1226(a) are "entitled to release on bond unless the government establishes that they are a flight risk or will be a danger to the community," as seen in *Diaz v. Garland,* 53 F.4th 1189, 1196 (9th Cir. 2022), where the court emphasized that they have a right to contest their custody before an IJ, **at which time the government bears the burden to prove that detention is justified**. The Second Circuit in *Velasco Lopez v. Decker*, 978 F.3d 842, 853–56 (2d Cir. 2020), also held that the government must prove a noncitizen is a danger to the community or a flight risk to deny bond. Furthermore, the First Circuit in *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021), stated that a noncitizen must be released if the government cannot meet its burden of proving they are a danger or flight risk.

D. <u>New ICE Memo Reinterpreting 8 U.S.C. § 1225(b)(2)</u>

75. On July 8, 2025, ICE issued new interim guidance that significantly broadens the interpretation of 8 U.S.C. § 1225(b)(2). This guidance, detailed in the ICE memorandum titled "Interim Guidance Regarding Detention Authority for Applications for Admission," (*See* Exhibit 3), addresses the detention of "applicants

for admission" as defined by § 1225(a)(1). The Department of Homeland Security (DHS) has declared that, "Effective immediately, it is the position of DHS that such aliens are subject to [mandatory] detention under INA § 235(b) [8 U.S.C. § 1225(b)(2)] and may not be released from ICE custody except by INA § 212(d)(5) [8 U.S.C. § 1182(d)(5)]." *Id.* This policy represents a significant departure from previous interpretations and practices concerning the treatment of noncitizens, aligning them with the historical treatment of "arriving aliens." Importantly, this memorandum was not made public or subjected to the notice and comment process required by the APA, but was instead issued covertly without public disclosure. The exhibit was obtained through the American Immigration Lawyers Association website

76. In addition to the announcement re-interpreting § 1225(b)(2), the memo further clarifies that "[t]he only aliens eligible for a custody determination and release on recognizance, bond or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237 [8 U.S.C.§ 1227], with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)]." *Id.*

77. Moreover, ICE maintains that "DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position." *Id.* ICE fails to clarify under what legal authority, then that those prior releases were effectuated. Rather, ICE signals the resulting lack of "correct" paperwork is nonetheless permissible. *Id.* ("Accordingly, ERO [Enforcement and Removal Operations] and HSI [Homeland Security Investigations] are not required to 'correct' the release paperwork by issuing INA §

212(d)(5) parole paperwork.")

E. Recent BIA Decision *Matter of Yajure Hurtado*

78. On September 5, 2025, the BIA, which oversees all appeals of IJ decisions including custody redeterminations, upheld ICE's re-interpretation of §1225(b)(2). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA held that the respondent, who entered without inspection years previously, was an "applicant for admission" within the scope of § 1225(b), and therefore subject to mandatory detention.

79. The BIA characterized the issue before it as "one of statutory construction: Does the INA require that ***all*** applicants for admission, even those like the respondent who have entered without admission or inspection and have been residing in the United States for years without lawful status, be subject to mandatory detention for the duration of their immigration proceedings, and thus the Immigration Judge lacks authority over a bond request filed by an alien in this category?" [emphasis added]. ***Id***. at 220.

80. The BIA reasoned that individuals "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer." *Id*. at 228.In the Petitioner's case, that means he remains an applicant for admission even though he entered the United States sixteen years ago and even though he was place in removal proceedings years ago that were administratively closed in 2011 due to prosecutorial discretion.

81. The BIA acknowledged the decades of precedent preceding its decision that authorized release of individuals present without having been inspected and admitted or paroled under § 1226(a). *Id*. at 225 n.6 ("We acknowledge that for years Immigration Judges

have conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the current issue that is before us. In fact, the supplemental information for the 1997 Interim Rule titled '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), reflects that the Immigration and Naturalization Service took the position at that time that '[d]espite 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.'").

82. Ultimately, the BIA upheld the decision that the IJ lacked jurisdiction under 8 U.S.C. § 1225(b)(2) to consider the respondent for discretionary bond. *Id.* at 229. The BIA decision is binding on all immigration judges nationwide.

83. Respondents' new policy and interpretation of 8 U.S.C. § 1225(b)(2) stand to sweep millions of noncitizens into mandatory detention, without any consideration for release on bond (regardless of their ties to their community or lack of dangerousness or flight risk). Rosado, 2025 WL 2337099, at *11 ("It has been estimated that this novel interpretation would require the detention of millions of immigrants currently residing in the United States.")

F. Recent Federal Court Cases Rejecting DHS' and EOIR's New Interpretation

84. 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.

85. Subsequently, noncitizens who entered without inspection had only one choice to secure their release: by filing habeas petitions. Court after court all over the country that has dealt with this issue rejected ICE and EOIR's new interpretation and has adopted the same reading of the INA's detention authorities for individuals who entered without inspection as authorized by 8 U.S.C. § 1226(a), not under § 1225.

86. Similar court cases known to undersigned counsel that have dealt with the same issue are as follows (although this is certainly not an exhaustive list, just illustrative of the overwhelming authority around the country): *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025) (granting petitioner's habeas corpus petition, who was released on his own recognizance and in immigration removal proceedings, ordering the government to provide the petitioner with a bond hearing pursuant to section 1226(a)); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (granting a TRO for a native Ukraine citizen, who entered the U.S. without being inspected by an immigration officer and applied for asylum, because her due process rights were violated without a bond hearing pursuant to section 1225(a)); *Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL 1918679, at *1, 10 (E.D. Cal. July 11, 2025) (granting preliminary injunction in favor of releasing an asylum seeker who was in immigration removal proceedings and detained by ICE because he cannot be detained without due process, which would be a

bond hearing to decide if he is a danger to the community or a flight risk); *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC), 2025 WL 2716910, at *4 n.5, *8 (E.D. Cal. Sept. 23, 2025) (holding that petitioner was likely to succeed under the merits that he was not subject to section 1225 and was wrongfully denied a bond hearing pursuant to section 1226(a), stating "[t]he Court is not bound by Matter of Yajure Hurtado's interpretation of sections 1225 and 1226[,]" and may look to the "longstanding practice of government" and "the BIA's interpretations of the INA for guidance, but [it] must not defer to the agency.") (citations omitted); *Singh v. Lewis*, No. 4:25-cv-96-RGJ, 2025 WL 2699219, at *3, *5 (W.D. KY. Sept. 22, 2025) (stating that petitioner present in the United States for over 12 years was not "seeking admission" into the United States and was therefore under the purview of section 1226, subsequently finding that the petitioner's detention via an automatic stay violated his due process rights); *Lopez-Campos v. Raycroft*, No. 2:25-cv-12486, 2025 WL 2496379, at *5-6 (E.D. Mich. Aug. 29, 2025) (granting petition for writ of habeas corpus ordering immediate release or bond hearing, where, for 30 years, courts have applied section 1226(a) to noncitizens like the petitioner who was already in the United States but facing removal, rejecting the government's argument that section 1225 applied so no bond hearing was required; *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *4-5 (E.D. Mich. Sept. 9, 2025) (granting petition for writ of habeas corpus for petitioner for government's failure to conduct a bond hearing pursuant to section 1226(a), rejecting the government's argument that section 1225 applied because petitioner did not enter lawfully so was still "seeking admission", where the petitioner had been living in the United States since 2005 and the amendment

to section 1226 via the Laken Riley Act would have been redundant were section 1225 to apply); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427, at * (N.D. Iowa Sept. 23, 2025) (ordering petitioner was entitled to bond hearing under section 1226, because applying section 1225 would act to require "mandatory detention of every unadmitted alien" even if the alien falls within an exception provided, where petitioner had built a life and presence in the community in the United States for two decades, and requiring the government to hold a bond hearing had limited imposition on government's interest in controlling aliens in the United States); *Hernandez Marcelo v. Trump*, No. 3:25-cv-00094-RGE-WPK, 2025 WL 2741230, at *7-8 (S.D. Iowa Sept. 10, 2025) (refusing to apply BIA's *Yajure Hurtado* decision finding that all applicants for admission are necessarily "seeking admission" for purposes of warranting application of section 1225, because "the legislative history and congressional intent of the Immigration and Nationality Act do not support mandatory detention for all noncitizens present in the United States" as further supported by the "weight of caselaw"); *Ozuna Carlon v. Kramer*, No. 4:25CV3178, 2025 WL 2624386, at *2-3 (D. Neb. Sept. 11, 2025) (holding petitioner under section 1226 was unlawfully detained by an ultra vires stay during appeal of petitioner's bond approval, and was entitled to release pursuant to bond hearing where (1) the government itself charged petitioner as an "alien present in the United States who has not been admitted or paroled", i.e. section 1226, instead of an "arriving alien", i.e. section 1225; (2) petitioner was being held in county jail with criminal inmates and without her family pursuant to a stay challenging an authorized bond; and (3) the government made no showing of any special justification or compelling interest that would justify depriving petitioner of her ordered

liberty); *Zaragoza Mosqueda et al. v. Noem*, No. 5:25-cv-02304 CAS (BFM), 2025 WL 2591530, at *4–5, 7 (C.D. Cal. Sep. 8, 2025) (holding that the petitioners are entitled to an individual bond hearing by an immigration judge if the government chooses to continue to detain petitioners, agreeing that the plain text of section 1226(a) applies to the petitioners); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (holding that the petitioners are entitled to an individual bond hearing by an immigration judge if the government chooses to continue to detain petitioners, agreeing that the plain text of section 1226(a) applies to the petitioners).

87. Additional cases in support of Petitioner's position include: *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); *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); *Hernandez Nieves v. Kaiser*, No. 25-cv-06921-LB, 2025 WL 2533110, at *4–5 (N.D. Cal. Sep. 3, 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); See *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF, 2025 WL 2783800, at *1, 10 (E.D. Va. Sep. 30, 2025) (finding that the noncitizen petitioner was subject to section 1226(a) because he was detained after entering the U.S. illegally, issued an order of recognizance, and placed in immigration removal proceedings; therefore, his detention by ICE was unlawful unless he was released on bond); *Hasan v. Crawford*, No. 1:25-cv-1408 (LMB/IDD), 2025 WL 2682255, at *1, 13 (E.D. Va. Sep. 19, 2025) (finding that due process was required for a noncitizen from Bangladesh who entered the U.S. without inspection, applied for asylum, and was released on his own recognizance because he was detained by ICE without due process).

88. As the *Lopez Benitez* Court explained: "This understanding accords with the plain, ordinary meaning of the words "seeking" and "admission." For example, someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the

first few minutes of a film would not ordinarily then be described as "seeking admission" to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as "seeking admission" (or "seeking" "lawful entry") at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there. As § 1225(b)(2)(A) applies only to those noncitizens who are actively "seeking admission" to the United States, it cannot, according to its ordinary meaning, apply to Mr. Lopez Benitez, because he has already been residing in the United States for several years." *Lopez Benitez v. Francis*, —— F.Supp.3d at ——–, 2025 WL 2371588, at *7.

89. "Moreover, Respondents' novel position would expand § 1225(b) far beyond how it has been enforced historically, potentially subjecting millions more undocumented immigrants to mandatory detention, while simultaneously narrowing § 1226(a) such that it would have extremely limited (if any) application. If, as Respondents contend, anyone who has entered the country unlawfully, regardless of how long they have resided here, is subject to mandatory detention under § 1225(b)(2)(A), see Conf. Tr. 19:9-20:4, then it is not clear under what circumstances § 1226(a)'s authorization of detention on a discretionary basis would ever apply. Perhaps it might still apply to a subset of noncitizens who are lawfully admitted (e.g., on a visa of some sort), and who then remain present unlawfully. But there is no indication that Congress intended § 1226 to be limited only to visa overstays. And there is nothing in the history or application of § 1226 to even remotely suggest that it was intended to have such a narrow reach." *Id.* at *8.

90. Courts all over the country have consistently rejected the new interpretation by DHS and EOIR, as it contradicts the INA. These courts have clarified that the plain language of the statutory provisions indicates that § 1226(a), rather than § 1225(b), governs the detention of individuals like the Petitioner who entered without inspection. The challenge lies in the fact that habeas relief is granted on an individual basis, not on a class-wide scale, necessitating that courts tailor their findings to the specific circumstances of each person applying for a writ of habeas corpus. See additional recent decision issued in another one of undersigned counsel's cases from another jurisdiction, *B.D.V.S. v. Forestal*, No.: 1:25-cv-01968-SEB-TAB (SD. Ind. October 8, 2025), Exhibit 4.

VI. LEGAL FRAMEWORK FOR RELIEF SOUGHT

A. Habeas Jurisdiction

91. Habeas corpus relief extends to a person "in custody under or by color of the authority of the United States" if the person can show she is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241 (c)(1), (c)(3); see also *Antonelli v. Warden, U.S.P. Atlanta*, 542 F.3d 1348, 1352 (11th Cir. 2008) (holding a petitioner's claims are proper under 28 U.S.C. section 2241 if they concern the continuation or execution of confinement). The U.S. Constitution guarantees that the writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004), (citing U.S. Const., Art. I, § 9, cl. 2). This includes immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

92. "[H]abeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513 U.S. 298, 319 (1995), that "[t]he court shall … dispose of [] as law and justice require," 28 U.S.C. § 2243. "[T]he court's role was most extensive in cases of pretrial and noncriminal detention." *Boumediene v. Bush*, 553 U.S. 723, 779– 80 (2008) (citations omitted). "[W]hen the judicial power to issue habeas corpus properly is invoked the judicial officer must have adequate authority to make a determination in light of the relevant law and facts and to formulate and issue appropriate orders for relief, including, if necessary, an order directing the prisoner's release." *Id.* at 787. The petitioner seeking habeas relief must demonstrate he is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

B. The Administrative Procedure Act (APA)

93. The APA authorizes judicial review of final agency action. 5 U.S.C. § 704. The APA sets minimum standards for final agency action.

94. Final agency actions are those (1) that "mark the consummation of the agency's decisionmaking process" and (2) "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).

95. ICE's "Interim Guidance Regarding Detention Authority for Applications for Admission" constitutes a final agency action, making it subject to this Court's review in the Petitioner's case. Under this new interpretation, the agency asserts that the Petitioner is subject to mandatory detention without bond. This guidance represents the culmination of ICE's decision-making process concerning the Petitioner's custody.

96. Likewise, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is a final agency action subject to this Court's review in Petitioner's case.

97. Both the ICE memo referenced herein and *Matter of Yajure Hurtado* led ICE to detain Petitioner in violation of due process rights under the Constitution, statutes, and regulations.

C. The *Accardi* Doctrine Requires Agencies to Follow Internal Rules

98. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

Accardi is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. See *Morton v. Ruiz*, 415 U.S. 199, 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

VII. CAUSES OF ACTION AND CLAIMS FOR RELIEF

COUNT ONE

Declaratory Judgement

Summary of Claim of Petitioner's First Claim for Relief: *Petitioner seeks a declaratory judgment that Petitioner is not an "applicant for admission" or "arriving alien" subject to mandatory detention under 8 U.S.C. § 1225(b), and that Petitioner's detention is governed solely by 8 U.S.C. § 1226(a), which provides for discretionary bond hearings. This claim is grounded in the statutory text, longstanding agency practice, and recent federal court decisions rejecting the government's contrary interpretation.*

99. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

Petitioner requests a declaration from this Court that Petitioner is not an applicant for admission "seeking admission" or "an arriving alien" subject to mandatory detention under 8 U.S.C. §§ 1225(b)(1) or (b)(2). Petitioner further requests a declaration that Petitioner's current detention by Respondents, if justified at all, is governed solely by 8 U.S.C. § 1226(a).

COUNT TWO

Statutory Violation of the Immigration and Nationality Act:

No-Bond Detention in Violation of 8 U.S.C. § 1226(a) and Unlawful Detention

Under Improper Statutory Classification (INA §§ 1225 vs. 1226)

***Summary of Claim of Petitioner's Second Claim for Relief*:** *Petitioner challenges the no-bond detention as a violation of the INA, specifically 8 U.S.C. § 1226(a), which entitles*

Petitioner to a bond hearing before an immigration judge, and frustrate that initial determination. The government's application of § 1225(b) to Petitioner is contrary to the statute and decades of agency and judicial practice.

100. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

101. Notwithstanding the first IJ order to release Petitioner on bond, Respondents' new interpretation and caselaw frustrates the initial IJ determination that Petitioner is not a flight risk nor a danger and is eligible to be released on bond.

102. Because Petitioner is not an applicant for admission "seeking admission" or an "arriving alien" subject to 8 U.S.C. §§ 1225(b)(1) or (b)(2) and has no disqualifying criminal arrests or convictions subject to 8 U.S.C. § 1226(c), Petitioner is entitled to a bond redetermination hearing by an immigration judge pursuant to 8 U.S.C. § 1226(a).

103. 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 (which is not the case with Petitioner).

104. Respondents' actions, as detailed herein, infringe upon the Petitioner's statutory right to a bond redetermination hearing before an immigration judge. Additionally, the Respondents' application of § 1225(b)(2) to the Petitioner unlawfully enforces continued detention, contravening both the Immigration and Nationality Act (INA) and

the Petitioner's constitutional rights, which will be further addressed below.

105. Petitioner's continued detention under § 1225(b)(2) is therefore unauthorized by statute, contrary to longstanding agency practice, and in violation of the INA and APA.

106. Even if the Petitioner were to have a bond hearing before an immigration judge, the judge would likely deny bond based on the same unlawful and novel statutory interpretation outlined in the *Matter of Yajure Hurtado*, as previously discussed. Consequently, even if such a hearing were granted, Respondents would still infringe upon Petitioner's constitutional rights to a full and fair hearing (as immigration judges are no longer neutral arbitrators), thereby violating his lawful right to bond consideration.

COUNT THREE

Violation of the Bond Regulations

Summary of Claim of Petitioner's Third Claim for Relief: *Petitioner alleges that Respondents' refusal to provide a bond hearing violates binding agency regulations, including 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, which require that noncitizens apprehended* ***in the interior*** *be eligible for bond and custody review under § 1226(a).*

107. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

108. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service (now DHS) issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for

admission, [noncitizens] **who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination**." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

109. Nonetheless, pursuant to the afore-mentioned ICE memo from July 2025 upending DHS' policy and similarly *Matter of Yajure Hurtado* upending EOIR policy to apply § 1225(b)(2) to individual like Petitioner instead of § 1226 and deny bond.

110. The application of § 1225(b)(2) to Petitioner unlawfully mandates these agencies to continually detain Petitioner and violates these agencies own regulations at 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT FOUR
The Regulation is *Ultra Vires*

111. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

112. The Immigration and Nationality Act, 8 U.S.C. § 1226(a), authorizes discretionary detention subject to an Immigration Judge's bond decision; it does not authorize Immigration and Customs Enforcement to nullify that judicial decision by administrative fiat.

113. The automatic stay is a unilateral decision by ICE through a one-page form EOIR 43 which does not provide any reason, evidence, argument, or analysis of why the noncitizen should remain in custody. This results in ICE, the party whose argument

failed in the immigration court, being able to unilaterally, without any articulated reason, immediately prevent the execution of the IJ's Order of Release, which is founded on an individualized analysis that the noncitizen can be safely returned to the community.

114. The automatic stay is not subject to review or appeal. "'In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.'... Detention after a bail hearing rendered meaningless by an automatic stay likewise should not be the norm." *Ashley v. Ridge*, 288 F. Supp 2d 662, 675 (D.N.J. 2003) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

115. Petitioner is detained today solely because ICE made a unilateral decision not to release him., due to a regulation written by executive agencies, not Congress 8 CFR Section 1003.19(i)(2). The regulations expand on the related procedures in 8 CFR Section 1003.6(c). "If the Board has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal." 8 CFR Section 100.36(c)(4). However, the regulations provide for DHS's continued power to keep a noncitizen detained even after an automatic stay lapses. "DHS may seek a discretionary stay pursuant to 8 CFR Section 1003.19(i)(1) to stay the immigration judge's order in the event the Board does not issue a decision on the custody appeal within the period of the automatic stay." 8 CFR Section 1003.6(c)(5). DHS only needs to submit a motion and incorporate its legal arguments. *Id.* If the BIA has not resolved the custody issue within 90 days and if "the Board fails to adjudicate a previously filed stay motion by the end of the 90-day period, the stay will remain in effect (but not more than 30 days) during the time it takes the Board to decide whether

or not to grant a discretionary stay." 8 CFR Section 1003.6(c)(5).

116. If the BIA rules in a noncitizen's favor either to authorize release on bond or to rule against a discretionary stay, "the alien's release shall be automatically stayed for five business days." 8 CFR Section 1003.6(d). This additional five-day automatic stay provides DHS with another opportunity to keep the person detained.

117. Additionally, "[i]f, within that five-day [secondary automatic stay] period, the Secretary of Homeland Security or other designated official refers the custody case to the Attorney General pursuant to 8 CFR Section 1003.1(h)(1), the alien's release shall continue to be stayed pending the Attorney General's consideration of the case. The automatic stay will expire 15 business days after the case is referred to the Attorney General." 8 CFR 1003.6(d).

118. "DHS may submit a motion and proposed order for a discretionary stay in connection with referring the case to the Attorney General...The Attorney General may order a discretionary stay pending the disposition of any custody case by the Attorney General or the Board." 8 CFR Section 1003.6(d).

119. There is therefore an unlimited framework of discretionary and automatic stays to keep a noncitizen detained

120. By turning discretionary custody into de facto mandatory detention for detainees not subject to 8 U.S.C. § 1226(c), § 1003.19(i)(2) exceeds the statutory power Congress delegated and violates the separation-of-powers principle.

121. **Nowhere in the INA does Congress authorize the executive branch to impose an automatic stay of a custody redetermination order, nor does it provide for a period during which DHS may unilaterally delay a noncitizen's release by merely**

indicating an intent to appeal. The automatic stay provision in 8 CFR § 1003.19(i)(2) thus creates a substantive restriction on the statutory right to release that is not contemplated by, and is inconsistent with, the INA's text and structure.

122. By promulgating this regulation, the agency has exceeded the authority delegated to it by Congress, effectively rewriting the statutory scheme to permit DHS to prolong detention without judicial determination or individualized findings. This regulatory overreach undermines the statutory guarantee of prompt review and release and is inconsistent with the principles of separation of powers and the nondelegation doctrine. Accordingly, the Court should find that 8 C.F.R. § 1003.19(i)(2) is ultra vires, and that the automatic stay provision is invalid as applied to Petitioner's continued detention.

123. "Agency actions beyond delegated authority are 'ultra vires,' and courts must invalidate them." *U.S. ex rel. O'Keefe v. McDonnell Douglas Corp.*, 132 F.3d 1252, 1257 (8th Cir. 1998); *see also Romero v. INS*, 39 F.3d 977, 980 (9th Cir. 1994) (holding that an immigration regulation that is inconsistent with the statutory scheme is invalid).

124. The statutory section under which Petitioner is charged permits the Attorney General to detain or release aliens on bond. 8 U.S.C. § 1226(a). Congress has permitted the Attorney General to delegate detention determinations to "any other officer, employee, or agency of the Department of Justice." 28 U.S.C. § 510. IJs are administrative law judges within the DOJ and are thus properly delegated bond-determination authority. *See* 8 U.S.C. § 1101(b)(4). By contrast, DHS, the party that invoked the automatic stay provision, is not within the Department of Justice, but is a separate executive department. *See* 6 U.S.C. § 111. ICE under DHS is charged with immigration enforcement activities, while the DOJ appoints judges as neutral arbitrators to decide

whether a noncitizen merits relief from removal and qualifies for a bond.

125. By permitting DHS to unliterally extend the detention of an individual, in contravention of the findings of an agent (the IJ) properly delegated the authority to make such a determination, 8 C.F.R § 1003.19(i)(2) exceeds the statutory authority Congress gave to the Attorney General. In effect, the automatic stay provision renders the Immigration Judge's bail determination an empty gesture. "Because this back-ended approach effectively transforms a discretionary decision by the immigration judge to a mandatory detention imposed by [DHS], it flouts the express intent of Congress and is ultra vires to the statute." *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1079 (N.D. Cal. 2004). Accordingly, the challenged regulation is invalid and Petitioner's detention on that basis is unlawful. Detention premised solely on this ultra vires regulation is "not in accordance with law," "in excess of statutory jurisdiction," and "arbitrary [and] capricious" under 5 U.S.C. § 706(2), entitling Petitioner to immediate release.

126. Other courts considering the same automatic stay provision have found this unconstitutional as well. *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Palma v. Trump*, No. 4:25CV3176, 2025 WL 2624385 (D. Neb. Sept. 11, 2025); *Carlon v. Kramer*, No. 4:25CV3178, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Perez v. Kramer*, No. 4:25CV3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Martinez v. Secretary of Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025); *Herrera Torralba v. Knight*,

No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Fernandez v. Lyons*, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, No. 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Mohammed H. v. Trump*, No. CV 25-1576 (JWB/DTS), 2025 WL 1692739, at *5–6 (D. Minn. June 17, 2025); *Günaydin v. Trump*, 784 F. Supp. 3d 1175 (D. Minn. 2025); and *Campos Leon v. Forestal*, No. 1:25-cv-01774-SEB-MJD, 2025 WL 2694763 (SD Ind., Sep. 22, 2025). See also as Exhibit 4 another case issued just now granting habeas relief to undersigned counsel's case in similar circumstances. *B.D.V.S. v. Forestal*, No.: 1:25-cv-01968-SEB-TAB (S.D. Ind., October 8, 2025).

COUNT FIVE

Procedural Due Process: Violation of the Fifth Amendment of the U.S. Constitution

Summary of Claim of Petitioner's Fifth Claim for Relief: *8 C.F.R. § 1003.19(i)(2) is both ultra vires and unconstitutional because it authorizes DHS to impose automatic, prolonged detention on noncitizens who have already been found eligible for release, without meaningful process or individualized assessment, in violation of the Fifth Amendment's due process protections. All three Mathews factors weigh in favor of the Petitioner, and the regulation should be invalidated.*

127. Petitioner realleges and incorporates by reference all paragraphs above as if fully set

forth here.

128. The Fifth Amendment forbids deprivation of liberty without notice and a meaningful opportunity to be heard before a **neutral** decision-maker. The Supreme Court and several circuit courts of appeal have repeatedly affirmed that procedural due process applies to all persons within the United States, including noncitizens, and that civil detention must be accompanied by robust procedural safeguards.

129. In addition to being ultra vires, the automatic stay provision in 8 C.F.R. § 1003.19(i)(2) violates the due process rights of noncitizens by subjecting them to continued detention solely on the basis of DHS's intent to appeal, without any individualized assessment of flight risk or danger. The regulation allows DHS to unilaterally trigger a mandatory stay of release for up to ten days, and potentially longer if a notice of appeal is filed, for 90 days, irrespective of the immigration judge's determination that the noncitizen is eligible for release on bond. This automatic and prolonged detention deprives noncitizens of their liberty without adequate procedural safeguards, contravening the fundamental requirements of due process under the Fifth Amendment. The Supreme Court has repeatedly recognized that civil detention must be accompanied by meaningful process and individualized findings; yet, 8 C.F.R. § 1003.19(i)(2) permits detention based on agency procedure rather than judicial determination. As a result, noncitizens are forced to remain in custody for an extended period, suffering significant harm and disruption to their lives—including documented psychological trauma, suicidal ideation, and hospitalization for self-harm—without any statutory or constitutional justification. This regulatory scheme is not only beyond the authority granted by Congress, but also fundamentally unfair and unconstitutional.

130. The irreparable harm suffered by Petitioner is immediate and severe. As detailed in the Statement of Facts, Mr. Aguirre Villa has endured escalating psychological distress during his detention, including harassment, an attempted sexual assault, and a suicide attempt resulting in hospitalization. The ongoing confinement has exacerbated his mental health crisis, placing him at continued risk of self-harm and long-term psychological damage. The separation from his partner and children has inflicted profound emotional trauma on both Petitioner and his family, further amplifying the urgency for judicial intervention. These harms are not speculative; they are documented, acute, and directly attributable to the unlawful and prolonged detention imposed by Respondents.

131. Subsection 1003.19(i)(2) strips Petitioner of that protection by allowing the prosecuting agency (ICE)—after losing at the bond hearing—to veto the Immigration Judge's order with a one-page notice that requires no showing of danger, flight risk, or likelihood of success on appeal.

132. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, (1976). Pursuant to *Mathews*, courts 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.

Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976), test, Petitioner's liberty

interest is paramount; the risk of erroneous deprivation is extreme considering the Immigration Judge's determination that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c), is not a flight risk, and does not pose a danger to the community. Being free from physical detention by one's own government "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The right to be free of detention of indefinite duration pending a bail determination, is "without question, a weighty one." *Landon v. Plasencia*, 459 U.S. at 34, 103 S.Ct. 321. Petitioner is being held at a county jail in the same conditions as criminal inmates and is far from his family. Likewise, the risk of erroneous deprivation of liberty is great due to the lack of a non-independent adjudicator. *Marcello v. Bonds*, 39 U.S. 302, 305-306 (1955). The risk of deprivation is high because the only individuals subject to the automatic stay are those who, by definition, **prevailed** at their bond hearing. Despite a neutral decision-maker finding a bond was warranted, the automatic stay provision allowed DHS, the party who lost its bond argument, to unliterally deprive Petitioner of his liberty. In this case, the Immigration Judge found Petitioner was not a threat to public safety and determined the $10,000 bond would mitigate any risk of flight. In filing the Form EOIR-43, ICE is acting as both the prosecutor as well as the adjudicator. ICE can effectuate long detention periods for Petitioner and others in his situation just because they disagree with the Immigration Judge's bond determination. Unlike the typical requests for a stay which require a demonstration of the "likelihood of success on the merits," the automatic stay provision demands no such showing; in fact, it was enacted precisely to avoid the need for such an individualized determination. Noncitizens like Petitioner can consequently remain in detention no matter how frivolous the appeal by

the Government (which in this case is prima facie frivolous contending Petitioner is an applicant for admission or arriving alien after having resided in the United States for over 16 years). Lastly, the interest of the government in being able to invoke the challenged regulation is minimal, as there is a substitute administrative provision available. Under 8 C.F.R. §1003.19(i)(1), DHS may request an emergency stay from the BIA on the merits of the Immigration Judge's decision to release Petitioner on bond. Finally, the government's interest in ensuring Petitioner's availability for his immigration hearings - this interest has already been secured by the IJ's finding that Petitioner is neither a danger nor a flight risk. In conclusion, all three *Mathews* factors favor Petitioner's position. The automatic stay regulation at 8 C.F.R § 1003.19(i)(2) violates Petitioner's procedural due process rights under the Fifth Amendment.

COUNT SIX

Substantive Due Process

Summary of Claim of Petitioner's Sixth Claim for Relief: *the challenged detention regime is arbitrary, excessive, and not reasonably related to any legitimate government purpose, violating substantive due process under the Fifth Amendment. The government's actions lack statutory authority, fail to provide meaningful process, and result in unjustified, prolonged detention of individuals who have already been found eligible for release. All relevant legal standards and precedents weigh in favor of finding the regulation and agency interpretation unconstitutional.*

133. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

134. All persons residing in the United States are protected by the Due Process Clause of the Fifth Amendment.

135. The Due Process Clause of the Fifth Amendment provides that "[n]o person shall be ... deprived of life, liberty, or property, without due process of law." U.S. CONT. amend. V. "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, 690 (2001). This vital liberty interest is at stake when an individual is subject to detention by the federal government.

136. Under the civil-detention framework set out in *Zadvydas* and its progeny, the Government may deprive a non-citizen of physical liberty only when the confinement serves a legitimate purpose—such as ensuring appearance or protecting the community—and is reasonably related to, and not excessive in relation to, that purpose.

137. Once the Immigration Judge found Petitioner neither dangerous nor a flight risk and set a bond, the Government's lawful objectives were satisfied; continued confinement therefore bears no reasonable, non-punitive relationship to any legitimate aim and is unconstitutionally arbitrary under *Zadvydas*.

138. The regulation is also excessive because an alternative provision enables ICE to seek an emergency stay of the immigration judge's release order on the merits. The "emergency stay" provision at 8 C.F.R. § 1003.19(i)(1) permits ICE to file an emergency request for a stay of release with the BIA, just as in any other proceeding in which the losing party seeks appellate review of an adverse decision and a stay pending appeal. In addition to being ultra vires, the novel interpretation of DHS and EOIR of Petitioner's detention under § 1225(b)(2) violates the due process rights of noncitizens

like Petitioner by subjecting them to continued mandatory detention solely on the basis of these agencies' wrongful interpretations, without any individualized assessment of flight risk or danger. This automatic and prolonged detention deprives noncitizens of their liberty without adequate procedural safeguards, contravening the fundamental requirements of due process under the Fifth Amendment.

139. The Supreme Court has repeatedly recognized that civil detention must be accompanied by meaningful process and individualized findings; yet, Respondents are now permitted prolonged detention based on agency *interpretation* rather than judicial determination and legal basis. As a result, noncitizens are forced to remain in custody for an extended period, suffering significant harm and disruption to their lives—including severe psychological distress, suicidal ideation, and hospitalization for self-harm—without any statutory, regulatory, or constitutional justification. This scheme is not only beyond the authority granted by Congress, but also fundamentally unfair and unconstitutional. The documented mental health crisis faced by Petitioner underscores the life-threatening consequences of continued detention and the urgent need for immediate judicial relief.

140. The Supreme Court states in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976): "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Noncitizens are entitled to due process protections in removal proceedings, including notice and a hearing. *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Due process applies to all

persons within the United States, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

141. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, (1976). Pursuant to *Mathews*, courts 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.

142. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976), test to Petitioner's case:

a. Petitioner's liberty interest is paramount; the risk of erroneous deprivation is extreme considering that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c), is not a flight risk, and does not pose a danger to the community. Being free from physical detention by one's own government "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The right to be free of detention of indefinite duration pending a bail determination, is "without question, a weighty one." *Landon v. Plasencia*, 459 U.S. at 34, 103 S.Ct. 321. Petitioner is being held at a county jail in the same conditions as criminal inmates, unable to work and is far from his family. At minimum, the government must come forward with concrete, case-specific reasons that outweigh Petitioner's substantial liberty interest in continued release.

b. The risk of erroneous deprivation of liberty is significant due to the absence of an

independent adjudicator, as highlighted in *Marcello v. Bonds*, 349 U.S. 302, 305-306 (1955). This risk is exacerbated by the coordinated actions of both DHS and EOIR, which operate under a unified approach that effectively denies bond to noncitizens in Petitioner's situation, thereby unilaterally depriving them of their liberty.

ICE is acting as both the prosecutor as well as the adjudicator. ICE can effectuate long detention periods for Petitioner and others in his situation just because they now interpret Petitioner as being subject to mandatory detention as an "arriving alien" and immigration judges at EOIR are prevented from considering bonds under the same circumstances.

c. Lastly, the interest of the government in being able to invoke the challenged ICE memorandum and novel interpretation and EOIR's *Matter of Yajure Hurtado* is minimal. This is primarily because the interpretation is not supported by the plain reading of the INA, which clearly delineates the circumstances under which noncitizens are subject to mandatory detention. The interpretation also conflicts with existing DHS and EOIR regulations that have historically distinguished between arriving aliens and those apprehended in the interior, providing the latter with the opportunity for bond hearings under 8 U.S.C. § 1226(a). When the government ignores the law (and an agency breaks its own regulations, policies and procedures), it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus petition

in federal court to compel Respondents to comply with law, requiring Respondents to instead follow the law and their regulations, reducing fiscal and administrative burdens on the government. Furthermore, the government's interest is further diminished by the potential constitutional violations that arise from denying noncitizens their due process rights, as the interpretation effectively eliminates the procedural safeguards intended to prevent erroneous deprivation of liberty.

In conclusion, all three *Mathews* factors favor Petitioner's position. The novel DHS and EOIR interpretations violate Petitioner's procedural due process rights under the Fifth Amendment. Collateral harms from detention—including separation from Petitioner's family and friends and Petitioner's ability to maintain employment and support his family financially and by providing a stable home environment for his children—further underscore the weight of the private interest and the risk of erroneous deprivation. These are collateral consequences of continued confinement that amplify the ongoing liberty deprivation, are not compensable by money damages, and therefore weigh heavily in the *Mathews* balance and the equitable analysis, without expanding the scope of relief requested.

COUNT SEVEN

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)

Arbitrary and Capricious

Summary of Claim of Petitioner's Seventh Claim for Relief: *Petitioner asserts that Respondents' actions are arbitrary and capricious under the APA, 5 U.S.C. § 706(2)(A),*

because they depart from established law and practice without reasoned explanation, fail to consider reliance interests, and ignore less-restrictive alternatives.

143. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

144. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

145. Respondents' revocation of Petitioner's order of supervision was arbitrary and capricious because it violated statute, regulation, and the Constitution, as described above.

146. An agency decision that "runs counter to the evidence before the agency" is also arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983).

147. Petitioner's detention, beyond being unlawful and ultra vires, also "failed to consider important aspects of the problem." Petitioner's detention is arbitrary and capricious and exceeds statutory authority because DHS: (1) failed to consider Petitioner's reliance interests; (2) failed to consider less-restrictive alternatives to detention; (3) failed to explain a reasoned basis for departing from its prior re determination; and (4) failed to comply with various regulations. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020) (reliance interests). *See* also *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983) (requirement of reasoned decision-making).

148. For these and other reasons, Respondents' actions leading to Petitioner's detention and his continued detention was arbitrary and capricious and should be held unlawful and

set aside.

COUNT EIGHT

Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B)

Contrary to Law and Constitutional Rights

Summary of Claim of Petitioner's Eighth Claim for Relief: *Petitioner alleges that the July 2025 ICE memorandum and the BIA's decision in Yajure Hurtado constitute final agency actions that are not in accordance with law and are contrary to constitutional rights, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B).*

149. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

150. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B).

151. The APA's reference to "law" in the phrase "not in accordance with law," "means, of course, any law, and not merely those laws that the agency itself is charged with administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

152. The July 2025 ICE memorandum and the EOIR's decision in *Yajure Hurtado* represent a significant and unauthorized expansion of § 1225(b)(2), categorizing individuals who entered the United States without inspection years ago as perpetual "applicants for admission." This expansion constitutes a violation of the APA. The ICE memorandum was issued in stealth, without public notice or opportunity for comment, in direct contravention of the APA's requirements for transparency and public participation in

rulemaking.

153. Furthermore, while *Yajure Hurtado* was a published decision by the Executive Office for Immigration Review ("EOIR"), it conflicts with the plain language of the INA and existing EOIR regulations. The decision appears to have been strategically published by the BIA to constrain immigration judges nationwide, effectively preventing them from granting bond to affected individuals, thereby undermining the procedural fairness guaranteed by the INA and the APA. Up until its publication, immigration judges were granting bonds to individuals who entered without inspection. *See, e.g.*, *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

154. These actions were contrary to the agencies' constitutional power under the Fifth Amendment's Due Process Clause, as explained above. These recent changes were not in accordance with the plain language of the INA and implementing regulations governing who is an "applicant for admission" or an "arriving alien," as cited and discussed in the Statutory Framework section, *supra*.

155. DHS acted contrary to law. *See also Accardi* v. Shaughnessy, 347 U.S. 260, 268 (1954) (agency must follow its own regulations) (a separate claim to relief under *Accardi* is forthcoming below). These novel interpretations should be held unlawful and set aside because it was contrary to the agency's constitutional power and not in accordance with the INA and implementing regulations.

156. By issuing this ICE memo and publishing *Yajure Hurtado*, this regulation, the agencies have exceeded the authority delegated to them by Congress, effectively rewriting the statutory scheme to permit DHS to prolong detention without judicial determination or individualized findings for almost anyone present in the U.S. without an immigration

judge review. This regulatory overreach undermines the statutory guarantee of prompt review and release and is inconsistent with the principles of separation of powers and the nondelegation doctrine.

157. "Agency actions beyond delegated authority, are 'ultra vires,' and courts must invalidate them." *U.S. ex rel. O'Keefe v. McDonnell Douglas Corp.*, 132 F.3d 1252, 1257 (8th Cir. 1998); *see also Romero v. INS*, 39 F.3d 977, 980 (9th Cir. 1994) (holding that an immigration regulation that is inconsistent with the statutory scheme is invalid). Similarly, agency regulations that conflict with statutory text or structure must be invalidated.

158. Because these agencies' interpretations effectively transform a discretionary detention for people who are flight risks or a danger to mandatory detention to all without the possibility for release on bond, and as they directly contravene the plain language of the INA and its regulations, these decisions must be invalidated by this Court.

Petitioner's detention, premised solely on this ultra vires interpretation is "not in accordance with law," "in excess of statutory jurisdiction," and "arbitrary [and] capricious" under 5 U.S.C. § 706(2), entitling Petitioner to immediate release.

COUNT NINE

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C)

In Excess of Statutory Authority

Summary of Claim of Petitioner's Ninth Claim for Relief: *Petitioner claims that Respondents acted in excess of statutory authority by detaining Petitioner under § 1225(b) when only § 1226(a) applies, in violation of 5 U.S.C. § 706(2)(C).*

159. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

160. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

161. "An agency . . . literally has no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute." FEC v. Cruz, 596 U.S. 289, 301 (2022) (internal quotation marks and citation omitted).

162. Respondents' actions in publishing the ICE memo and Yajure Hurtado were in excess of statutory authority and should be held unlawful and set aside. Petitioner's mandatory detention pursuant to these actions violated the APA.

COUNT TEN

Violation of the Accardi Doctrine

Summary of Claim of Petitioner's Tenth Claim for Relief: *Petitioner alleges that Respondents violated the Accardi doctrine by failing to follow their own regulations and procedures, as required by Accardi and its progeny.*

163. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

164. The *Accardi* doctrine mandates that federal agencies must adhere to their own established regulations and policies. This principle ensures that agency actions are consistent, fair, and predictable, thereby safeguarding individual rights. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated agency

procedures, rules, or instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 ("If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").

165. "[The ambit of the Accardi doctrine] is not limited to rules attaining the status of formal regulations." *Montilla v. Immigr. & Naturalization Serv.*, 926 F. 2d 162, 167 (2d Cir. 1991). Agency rules, whether codified or issued through internal guidance, are binding where they implicate important substantive and procedural rights. *See*, e.g., *Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 521, 538 (1970) (*Accardi* applies most forcefully where agency rules are "intended primarily to confer important procedural benefits upon individuals in the face of otherwise unfettered discretion"); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 336 (D.D.C. 2018) (ICE bound by internal directive intended to protect noncitizens' procedural rights). Where these criteria are satisfied, the reviewing court must invalidate agency action or policy violating the agency's own rules.

166. The recent policy shifts by ICE and EOIR, as outlined in ICE's July 2025 memorandum and EOIR's *Yajure Hurtado* decision, violate the *Accardi* doctrine by failing to adhere to established agency regulations and procedures. The *Accardi* doctrine mandates that federal agencies must follow their own rules and regulations, particularly when these rules are designed to protect individual rights.

167. By reclassifying individuals who entered without inspection apprehended in the interior of the United States as "applicants for admission" or as "arriving aliens" subject to mandatory detention under § 1225(b)(2), ICE and EOIR have disregarded the procedural safeguards and discretionary bond provisions outlined in § 1226(a). ICE's

and EOIR's reclassification policy effectively nullifies § 1226(a)'s statutory provision by subjecting all noncitizens to mandatory detention, regardless of their actual circumstances. This interpretation is contrary to the plain language of the INA and disrupts decades of settled law, which recognized the distinct legal status and rights of noncitizens apprehended in the interior. This departure from established regulations and legal standards not only contravenes the statutory framework of the INA but also undermines the procedural rights and protections intended to ensure fair and consistent treatment of noncitizens, warranting immediate judicial intervention.

168. The issuance of the ICE memorandum without public notice or comment further exemplifies a breach of procedural norms, as it was implemented in a manner that bypassed the transparency and accountability required by the APA. Consequently, these actions represent an arbitrary and capricious exercise of agency power, infringing upon the rights of noncitizens and violating the principles enshrined in the *Accardi* doctrine.

The policy's blanket application denies noncitizens the due process rights afforded under the Fifth Amendment, which guarantees fair procedures before depriving individuals of their liberty. By eliminating bond eligibility, ICE's policy strips noncitizens of the opportunity to meaningfully contest their detention. This issue is further exacerbated by EOIR's decision in *Yajure Hurtado*, which entrenches this denial of due process by reclassifying noncitizens who entered without inspection as "arriving aliens," thereby subjecting them to mandatory detention without the possibility of bond from immigration judges. Together, these agency actions undermine the statutory and constitutional protections afforded to noncitizens, and therefore, this

Court should declare these actions unlawful and set them aside.

COUNT ELEVEN

APA Violation – Arbitrary and Capricious Revocation of Prosecutorial Discretion

Summary of Claim of Petitioner's Eleventh Claim for Relief: *Petitioner alleges that Respondents violated the APA and his reliance interests by arbitrarily revoking his release on recognizance and the administrative closure of his proceedings in 2011.*

Petitioner respectfully asserts that reliance on agency discretion, including prior prosecutorial decisions such as administrative closure, creates a protected expectation under the law. Arbitrary revocation of such discretion, without notice or reasoned explanation, violates fundamental principles of due process and administrative law. In 2011, Petitioner's removal proceedings were administratively closed pursuant to prosecutorial discretion, and Petitioner has since relied on this agency action. ICE then released him on his own recognizance, and **there was an "implied promise" that their liberty would not be revoked unless they "failed to live up to the conditions of [their] release.**" (*Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

This principle is reinforced by Supreme Court precedent, that reliance interests created by government action cannot be disregarded arbitrarily or capriciously, and that any change in policy must be accompanied by a reasoned explanation and consideration of those interests. *See Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1 (2020), which addressed the issue of reliance interests in the context of the rescission of the Deferred Action for Childhood Arrivals (DACA) program. The Court found that DHS failed to adequately consider the reliance interests of DACA

recipients when deciding to rescind the program, rendering the decision arbitrary and capricious under the Administrative Procedure Act (APA). The Court emphasized that when an agency changes its policy, it must consider the reliance interests that have developed under the previous policy. In the case of DACA, recipients had made significant life decisions based on the program, such as enrolling in educational programs, starting careers, and purchasing homes. The Court held that DHS's failure to consider these reliance interests was arbitrary and capricious, violating the APA. The agency was required to provide a reasoned explanation for its decision, which included assessing the impact on those who had relied on the program. **The decision underscored that the rescission of DACA was not merely a matter of agency discretion but was subject to judicial review**. The Court rejected the argument that DACA was an unreviewable non-enforcement policy, affirming that a rescission of even a discretionary decision by an executive branch agency is subject to judicial review under these circumstances. The rescission of Petitioner's liberty, even if discretionary, is subject to judicial review and must comply with the APA and constitutional due process

Noncitizens released on recognizance and cases administratively closed cannot be arbitrarily re-detained without individualized findings, notice, and a meaningful opportunity to be heard. These courts have granted habeas relief and injunctive orders where the government failed to honor the reliance interests and procedural safeguards inherent in its own release decisions. Arbitrary re-detention, absent evidence of noncompliance, flight risk, or danger, is unlawful and subject to judicial remedy.

Petitioner's removal proceedings were administratively closed in 2011 as a result of prosecutorial discretion exercised by the agency. For over a decade, Petitioner has relied

on this closure to maintain family stability, employment, and community ties. The expectation that this discretion would not be arbitrarily revoked is protected by due process and administrative law principles, as Petitioner structured his life around the agency's settled decision and absence of removal proceedings.

The agency's recent revocation of prosecutorial discretion, absent a reasoned basis, notice, or opportunity to be heard, constitutes an arbitrary and capricious action in violation of due process and the non-arbitrariness principle established in *Regents of California*. Such conduct disregards Petitioner's reliance interests and undermines the integrity of agency decision-making. The agency's action is inconsistent with constitutional protections and established legal standards requiring fair process and consideration of settled expectations before altering discretionary determinations.

CONCLUSION

Petitioner respectfully submits that the record and legal authorities presented herein establish that his continued detention is unlawful, unconstitutional, and in direct contravention of the statutory and regulatory framework governing immigration custody. The challenged agency actions—namely, the application of 8 C.F.R. § 1003.19(i)(2), the July 2025 ICE memorandum, and the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*—are ultra vires, arbitrary and capricious, and violate both procedural and substantive due process under the Fifth Amendment.

Petitioner's case exemplifies the urgent need for judicial intervention to safeguard constitutional rights and the integrity of the statutory framework. While the government

may assert broad authority over immigration detention, courts across the country have consistently rejected the agency's novel interpretation of the INA and have reaffirmed the necessity of individualized review and due process. The judiciary serves as a critical check on executive overreach, ensuring that agencies do not exceed their delegated powers or undermine fundamental liberties.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter under 28 U.S.C. §§ 2241 and 1331 and the Suspension Clause;

(2) Grant Petitioner a Writ of Habeas Corpus and order Respondents to immediately release Petitioner from custody, or, in the alternative, in accordance with the original IJ bond order;

(3) Directing the Respondents to immediately release him from custody, under reasonable conditions of supervision or, In the alternative, direct Respondents to provide Petitioner with a prompt bond hearing before a neutral Immigration Judge, at which the government must prove by clear and convincing evidence that Petitioner is a danger to the community or a flight risk;

(4) Issue an Order to Show Cause, ordering Respondents to justify why this writ should not be granted to Petitioner and the basis of Petitioner's detention in fact and law, within the 3 days authorized by the statute;

(5) Enjoin Respondents from enforcing the automatic stay provision of 8 C.F.R.

§ 1003.19(i)(2) during the pendency of this Court's consideration of the Petition for a Writ of Habeas Corpus;

(6) Enjoin Petitioner's transfer outside this District and removal from the United States, and prohibit any change of Petitioner's immediate custodian, without prior leave of Court while this action is pending, pursuant to 28 U.S.C. §§ 1651(a) and 2241;

(7) Declare that Petitioner is not an "arriving alien" or "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b), and that his detention is governed solely by 8 U.S.C. § 1226(a), entitling him to a bond hearing before an Immigration Judge and that his current detention is unlawful;

(8) Declare that Respondents may properly detain Petitioner, if at all, only pursuant to 8 U.S.C. § 1226(a);

(9) Declare the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2) ultra vires, or alternatively, violates Petitioner's Due Process; Hold unlawful and set aside the July 2025 ICE memorandum, the automatic stay provision at 8 C.F.R. § 1003.19(i)(2), and the BIA's decision in *Matter of Yajure Hurtado*, as ultra vires, arbitrary and capricious, and contrary to law and constitutional rights as it relates to Petitioner;

(10) Declare that Respondents' actions, as set forth herein, and Petitioner's continued detention violate the Due Process Clause of the Fifth Amendment, the INA and its implementing regulations, the Administrative Procedure Act, and the *Accardi* doctrine;

(11) Enjoin Respondents from re-detaining Petitioner in the future pursuant to 8 U.S.C. § 1225 and unless they can meet the same evidentiary standard in a new bond hearing;

(12) Issue a declaratory judgment that the agency may not arbitrarily revoke prosecutorial discretion and administrative closure previously granted, and an injunction prohibiting such revocation absent proper legal process and justification;

(13) Waive or set a nominal security under Fed. R. Civ. P. 65(c);

(14) Granting attorney's fees and court costs to Plaintiff; and

(15) Granting such other and further relief as this Court deems proper or equitable under the circumstances.

Respectfully Submitted,

This 9th Day of October, 2025

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VERIFICATION

Pursuant to 28 USC § 2242, the undersigned certifies under penalty of perjury that she has reviewed the foregoing petition and that the facts state therein concerning Petitioner are true and correct based on her knowledge or belief.

This 9th day of October, 2025.

/s/ Karen Weinstock
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CERTIFICATE OF SERVICE

I certify that on October 9, 2025, I electronically filed the foregoing AMENDED VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATIVE AND INJUNCTIVE RELIEF with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

/s/ Karen Weinstock
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