

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

VIJAYKUMAR GANDABHAI
PATEL,

Petitioner,

v.

JOHN TSOUKARIS, Field Office
Director of Enforcement and Removal
Operations, ATLANTA Field Office,
Immigration and Customs Enforcement;
KRISTI NOEM, Secretary, U.S.
Department of Homeland Security; U.S.
DEPARTMENT OF HOMELAND
SECURITY;
PAMELA BONDI, U.S. Attorney
General; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW;
JASON STREEVAL, Warden of
STEWART DETENTION CENTER,

Respondents.

Case No. 25-145

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner VIJAYKUMAR GANDABHAI PATEL is in the physical custody of Respondents at the STEWART DETENTION CENTER. He now faces unlawful detention because the Department of Homeland Security (DHS), in direct collaboration with the adjudicative body with jurisdiction over immigrants (the Executive Office of Immigration Review) (EOIR) have concluded Petitioner is subject to mandatory detention.

2. Petitioner is charged with, *inter alia*, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

3. Based on this allegation in Petitioner's removal proceedings consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

4. On September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals

1 like Petitioner who previously entered and are now residing in the United States. Instead,
2 such individuals are subject to a different statute, § 1226(a), that allows for release on
3 conditional parole or bond. That statute expressly applies to people who, like Petitioner,
4 are charged as inadmissible for having entered the United States without inspection.

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

8 7. More importantly, the Government itself has made an abrupt about-face
9 on this issue. Respondents should be judicially estopped from asserting their current
10 interpretation of 8 U.S.C. § 1225(b)(2)(A), because they previously prevailed in litigation
11 after asserting the opposite interpretation. As explained in *New Hampshire v. Maine*, 532
12 U.S. 742 (2001), judicial estoppel applies when a party assumes a position in a legal
13 proceeding, succeeds in maintaining that position, and then adopts a contrary position in
14 a subsequent proceeding to gain an unfair advantage. Here, Respondents previously, and
15 successfully, argued that individuals who entered the United States without inspection
16 were subject to detention under § 1226(a), and not § 1225(b)(2)(A), and courts accepted
17 that position. Respondents now reverse course and assert that such individuals are subject
18 to mandatory detention under § 1225(b)(2)(A), thereby denying them bond hearings. This
19 shift in legal position undermines the integrity of the judicial process and imposes an
20 unfair detriment on Petitioners who relied on the prior interpretation. Accordingly,
21 Respondents should be estopped from asserting this inconsistent position.

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

JURISDICTION

9. Petitioner is in the physical custody of Respondents. Petitioner is detained at the STEWART DETENTION CENTER in LUMPKIN, GEORGIA.

10. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

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

VENUE

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

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

REQUIREMENTS OF 28 U.S.C. § 2243

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

15. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or

1 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application
2 for the writ usurps the attention and displaces the calendar of the judge or justice who
3 entertains it and receives prompt action from him within the four corners of the
4 application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

5 PARTIES

6 16. Petitioner VIJAYKUMAR GANDABHAI PATEL is a citizen of India who has been in
7 immigration detention since the 11th of October 2025. After arresting Petitioner at his
8 home in Marietta, Georgia, and transferring him to Stewart Detention Center, ICE did not
9 set bond and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the
10 Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Due to
11 this erroneous decision, it would be futile for Petitioner to apply to EOIR without the
12 intervention of this honorable Court.

13 17. Respondent JOHN TSOUKARIS is the Director of the Atlanta Field Office of ICE’s
14 Enforcement and Removal Operations division; however, on information and belief, the
15 DHS is rotating their Field Office Director without publishing a schedule of rotation. As
16 such, JOHN TSOUKARIS or his unknown, unannounced provisional replacement is
17 Petitioner’s immediate custodian and is responsible for Petitioner’s detention and
18 removal. He or his acting counterpart is named in his or her official capacity.

19 18. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is
20 responsible for the implementation and enforcement of the Immigration and Nationality
21 Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms. Noem
22 has ultimate custodial authority over Petitioner and is sued in her official capacity.

1 19. Respondent Department of Homeland Security (DHS) is the federal agency responsible
2 for implementing and enforcing the INA, including the detention and removal of
3 noncitizens.

4 20. Respondent Pamela Bondi is the Attorney General of the United States. She is
5 responsible for the Department of Justice, of which the Executive Office for Immigration
6 Review and the immigration court system it operates is a component agency. She is sued
7 in her official capacity.

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

11 22. Respondent, Warden Jason Streevalis, is employed by the private, for-profit detention
12 corporation contracted by the Government as an agent to confine immigrants at Stewart
13 Detention Center, where Petitioner is detained. He has immediate physical custody of
14 Petitioner. He is sued in his official capacity.

15 **LEGAL FRAMEWORK**

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

18 24. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal
19 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are
20 generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§
21 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or
22 convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

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

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

7 28. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal
8 Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.
9 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585.
10 Section 1226(a) was most recently amended earlier this year by the Laken Riley Act,
11 Pub. L. No. 119–1, 139 Stat. 3 (2025).

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

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

1 (noting that § 1226(a) simply “restates” the detention authority previously found at §
2 1252(a)).

3 31. In *Jennings v. Rodriguez*, the Department of Homeland Security (DHS) explicitly
4 acknowledged that individuals who have already entered the United States and are not
5 apprehended within 100 miles of the border or within 14 days of entry are subject to
6 discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under §
7 1225(b). During oral argument on November 30, 2016, then–Solicitor General Ian
8 Gershengorn stated: “If they are not detained within 100 miles of the border or within 14
9 days... then they are under 1226(a) and not 1226(c)” and further clarified, in response to
10 a question concerning “an alien who has come into the United States illegally without
11 being admitted [and] who takes up residence 50 miles from the border,” the Government
12 responded, “The answer is they are held under 1226(a) and that they get a bond
13 hearing...” Transcript of Oral Argument at 7–8, *Jennings v. Rodriguez*, 583 U.S. ____
14 (2018) (No. 15-1204). DHS reiterated that such individuals “would be held under
15 1226(a)” and cited the administrative record to support that position. *Id.* These statements
16 reflect DHS’s prior litigation stance that § 1226(a) governs detention for noncitizens who
17 have entered and are residing in the United States, a position directly contrary to the
18 agency’s current interpretation applying § 1225(b)(2)(A) to such individuals. Having
19 prevailed in *Jennings* after taking this position, they should be estopped from taking the
20 contrary position now simply because their political or litigation interests have changed.
21 Estoppel in this case is necessary to preserve the predictability inherent in the rule of law
22 and due process under the Fifth Amendment, as well as to protect the integrity of the
23 judicial system.

1 32. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected
2 well-established understanding of the statutory framework and reversed decades of
3 practice.

4 33. The new policy, entitled “Interim Guidance Regarding Detention Authority for
5 Applicants for Admission,”¹ claims that all persons who entered the United States
6 without inspection shall now be subject to mandatory detention provision under §
7 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and
8 affects those who have resided in the United States for months, years, and even decades.

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

13 35. Since Respondents adopted their new policies, several federal courts have rejected their
14 new interpretation of the INA’s detention authorities. Courts have likewise rejected
15 *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

16 36. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma,
17 Washington, immigration court stopped providing bond hearings for persons who entered
18 the United States without inspection and who have since resided here. There, the U.S.
19 District Court in the Western District of Washington found that such a reading of the INA
20 is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not
21 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F.
22 Supp. 3d 1239 (W.D. Wash. 2025).

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

1 37. A growing number of federal courts have rejected ICE and EOIR’s expanded
2 interpretation of the Immigration and Nationality Act’s detention provisions. These
3 courts have consistently held that § 1226(a), not § 1225(b)(2), governs the detention
4 authority applicable in these cases. For example, courts in Massachusetts, Arizona, New
5 York, Minnesota, California, and Nebraska have reached this conclusion. See: *Gomes v.*
6 *Hyde*, No. 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV
7 25-02157 PHX DLR (CDB) (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, No. 25
8 CIV. 5937 (DEH) (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-
9 SRN-SGE (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass.
10 Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21,
11 2025); *Palma Perez v. Berg*, No. 8:25CV494 (D. Neb. Sept. 3, 2025).

12 38. These decisions reflect a clear judicial consensus that the government’s reliance on §
13 1225(b)(2) is misplaced in cases involving those whose immigration status lawfully falls
14 under § 1226(a).

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

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

22 41. The text of § 1226 also explicitly applies to people charged as being inadmissible,
23 including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E).

1 Subparagraph (E)’s reference to such people makes clear that, by default, such people are
2 afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained,
3 “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that
4 absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp.
5 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S.
6 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

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

10 43. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently
11 entered the United States and were not free to mingle with the general population after
12 being free from official restraint. The statute’s entire framework is premised on
13 inspections at the border of people who are “seeking admission” to the United States. 8
14 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory
15 detention scheme applies “at the Nation’s borders and ports of entry, where the
16 Government must determine whether a[] [noncitizen] seeking to enter the country is
17 admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

18 44. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to
19 people like Petitioner, who were encountered at the border, detained, placed on an order
20 of supervision, released, and placed into removal proceedings. The Government’s release
21 of the Petitioner from custody reflects a discretionary, fact-based determination that
22 Petitioner was not subject to mandatory detention under § 1225(b)(2)(A).

1 45. Once released, Due Process requires that a person like the Petitioner receives a hearing
2 before a neutral decisionmaker to determine whether any re-detention is justified, and
3 whether the person is a flight risk or danger to the community.

4 46. “Freedom from imprisonment—from government custody, detention, or other forms of
5 physical restraint—lies at the heart of the liberty protected by the Due Process Clause.”
6 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

7 47. Consistent with this principle, individuals released on parole or other forms of
8 conditional release have a liberty interest in their “continued liberty.” *Morrissey v.*
9 *Brewer*, 408 U.S. 471, 482 (1972).

10 48. Such liberty is protected by the Fifth Amendment because, “although indeterminate [it]
11 includes many of the core values of unqualified liberty,” such as the ability to be
12 gainfully employed and live with family, “and its termination inflicts a ‘grievous loss’ on
13 the [released individual] and often on others.” *Id.*

14 49. To guarantee against arbitrary re-detention and to guarantee the right to liberty, due
15 process requires “adequate procedural protections” that ensure the government’s asserted
16 justification for a noncitizen’s physical confinement “outweighs the individual’s
17 constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at
18 690 (citation modified).

19 50. Due process thus guarantees notice and individualized hearing before a neutral decision
20 maker to assess danger or flight risk before the revocation of an individual’s release.
21 *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) (“The fundamental requisite of due process
22 of law is the opportunity to be heard . . . at a meaningful time in a meaningful manner.”
23 (citation modified)); *see also, e.g., Morrissey*, 408 U.S. at 485 (requiring “preliminary

1 hearing to determine whether there is probable cause or reasonable ground to believe that
2 the arrested parolee has committed . . . a violation of parole conditions” and that such
3 determination be made “by someone not directly involved in the case” (citation
4 modified)).

5 **FACTS**

6 51. Mr. Vijaykumar Gandabhai Patel (“Mr. Patel”) is a 41 year old citizen and national of
7 India.

8 52. Mr. Patel fled India seeking asylum and related protections from persecution in the
9 United States. He fled India with his wife and two minor children.

10 53. On or about October 10, 2023, Mr. Patel came to the port of San Luis Arizona to seek
11 Asylum. That same day he was detained.

12 54. On or around October 18, 2023, Mr. Patel was placed on an Intensive Supervision
13 Appearance Program (“ISAP”), released, and Respondents commenced removal
14 proceedings and issued a Notice to Appear (“NTA”) under 8 U.S.C. 1229a.

15 55. Following his release, on March 27, 2024, Mr. Patel timely filed his application for
16 Asylum, Withholding of removal, and Convention Against Torture Protection with the
17 Atlanta Immigration Court.

18 56. On September 10, 2025, Mr. Patel appeared for his Individual Merits Hearing. The IJ
19 denied his Asylum Application. The Petitioner reserved appeal, and the appeal was to be
20 filed on or before October 10, 2025.

21 57. On September 12, 2025, Mr. Patel presented himself to his check-in appointment. He was
22 given an ankle monitor device and the phone with the designated ISAP mobile phone
23 application (“ISAP app”) was taken from him.

1 58. On September 22, 2025, Petitioner timely file an appeal of the IJ's decision.

2 59. To the best of his knowledge, Mr. Patel complied with all the ISAP requirements

3 following his release. Such requirements included phone and video check-ins through the
4 ISAP mobile phone application ("ISAP app") and maintaining his ankle monitoring
5 device.

6 60. On October 11, 2025, in Marietta, Georgia, officers arrived at Mr. Patel's home. They

7 told Mr. Patel that his ankle monitor device malfunctioned. Mr. Patel was then told he

8 would be transported to an ICE facility to "check" and "correct" the issue with the

9 device. Mr. Patel without written notice was re-detained. Mr. Patel is now detained at the

10 Stewart Detention Center.

11 61. Mr. Patel's detention has inflicted profound harm on his family, particularly his two young

12 children, who are experiencing emotional and developmental hardship in his absence. As

13 emphasized, Mr. Patel is a devoted father and husband whose presence is essential to his

14 children's well-being and stability.

15 62. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider

16 Petitioner's bond request, and his unlawful detention cannot be litigated before that body,

17 who collaborated with the DHS – who is a party to these contested proceedings – to adopt

18 the DHS position wholesale, because such efforts would be futile.

19 63. As a result, Petitioner remains in detention. Without relief from this court, he faces the

20 prospect of months, or even years, in immigration custody, separated from his family and

21 community while his appeal of his removal proceedings remains pending.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

64. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

65. 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 received an I-220A and who were subsequently accused by DHS of having “entered” the United States. Those actions by DHS, followed by the Petitioner’s concession to those charges before EOIR, represent a quasi-judicial determination by an agency which precludes further litigation of the issue unless new, material, and previously unavailable facts emerge. Such noncitizens continue to be detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

COUNT II

Violation of the Bond Regulations

67. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

68. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply

1 IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of
2 [Noncitizens],” the agencies explained that “[d]espite being applicants for admission,
3 [noncitizens] who are present without having been admitted or paroled (formerly referred
4 to as [noncitizens] who entered without inspection) will be eligible for bond and bond
5 redetermination.” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear
6 that individuals who had entered without inspection were eligible for consideration for
7 bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing
8 regulations.

9 69. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of
10 applying § 1225(b)(2) to individual like Petitioner.

11 70. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued
12 detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

13 **COUNT III**

14 **Violation of Due Process**

15 71. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in
16 the preceding paragraphs as if fully set forth herein.

17 72. The government may not deprive a person of life, liberty, or property without due process
18 of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody,
19 detention, or other forms of physical restraint—lies at the heart of the liberty that the
20 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

21 73. Petitioner has a fundamental interest in liberty and being free from official restraint.

22 74. The government’s detention of Petitioner without a bond redetermination hearing to
23 determine whether he is a flight risk or danger to others violates his right to due process.

Judicial Estoppel

75. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

76. The Government is judicially estopped from asserting that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). In prior litigation, including *Jennings v. Rodriguez*, the Government successfully argued that individuals who entered without inspection and were not apprehended near the border or within 14 days were subject to discretionary detention under § 1226(a), not mandatory detention under § 1225(b)(2)(A). See *Jennings v. Rodriguez*, No. 15-1204, Tr. of Oral Arg. at 7–8 (Nov. 30, 2016). Courts accepted that position. Now, the Government reverses course and asserts the opposite interpretation to deny bond hearings. Under *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial estoppel applies where a party assumes a position, prevails, and then adopts a contrary position to gain an unfair advantage. The Government’s reversal undermines the integrity of the judicial process and prejudices Petitioners who relied on the prior interpretation.

PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Order that Petitioner shall not be transferred outside the Middle District of Georgia while this habeas petition is pending;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

- 1 d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in
2 the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §
3 1226(a) within seven days;
- 4 e. Declare that Petitioner's detention is unlawful;
- 5 f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
6 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
7 law; and
- 8 g. Grant any other and further relief that this Court deems just and proper.
9

10 DATED this 17th of October 2025.

11 /s/ Peter Tadeo, Esq.
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