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5 **IN THE UNITED STATES DISTRICT COURT**  
6 **FOR THE DISTRICT OF ARIZONA**

7  
8 Jose Antonio Najarro Zuniga,

Case No.:

9 Petitioner,

10 File No: A# 

11 vs.

12 Pamela Bondi, Attorney General of the  
13 United States;

**VERIFIED PETITION FOR WRIT  
OF HABEAS CORPUS AND  
COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF**

14 John Cantu, U.S. Immigration and  
15 Customs Enforcement Phoenix Field

Office Director;

Challenge to Unlawful Incarceration  
Under Color of Immigration Detention  
Statutes; Request for Declaratory and  
Injunctive Relief

17 Kristi Noem, Secretary of the U.S.  
18 Department of Homeland Security;

19 Luis Rocha, Warden, Florence  
20 Correctional Center;

21 Todd M. Lyons, Acting Director,  
22 Immigration and Customs Enforcement,  
U.S. Department of Homeland Security;

**ORAL ARGUMENT  
REQUESTED**

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## INTRODUCTION

Comes now, Petitioner, Jose Antonio Najarro Zuniga, brings this Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief pursuant to 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; the Immigration and Nationality Act (“INA”) and regulations thereunder; the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*; Article I, Section 9, Clause 2 of the United States Constitution (“Suspension Clause”). The efforts to continually detain petitioner constitute a “severe restraint” on his individual liberty such that Petitioner is “in custody” of the Respondents in violation of the ... laws of the United States. *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241. DHS asserts that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), however, that provision does not apply to him. Instead, Petitioner’s custody is governed by 8 U.S.C. § 1226(a), which authorizes release on bond or conditional parole. By denying Petitioner an individualized bond hearing, Respondents violate the Immigration and Nationality Act (“INA”), the Administrative Procedure Act (“APA”), and the United States Constitution.

Petitioner, who entered the United States in 2003 and has resided here ever since, is not an applicant for admission. His custody is properly governed by 8 U.S.C. § 1226(a), which authorizes release on bond or conditional parole.

1 The Board of Immigration Appeals recently issued *Matter of Yajure*  
2 *Hurtado*, 29 I&N Dec. 216 (BIA 2025), interpreting INA § 235(b)(2)(A) to require  
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4 mandatory detention of all individuals who entered without inspection. That  
5 decision represents the agency's most recent view of the detention statute, but it  
6 illustrates DHS's unlawful expansion of § 235(b)(2)(A). That decision does not  
7 control this Court. Petitioner entered the United States on 2003 and lived in the  
8 U.S. ever since before ICE arrested him. He is not an "arriving alien" at the  
9 threshold seeking admission, but rather a long-term resident who falls under §  
10 236(a).  
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13 Pursuant to this Court's inherent powers in habeas corpus proceedings, Jose  
14 Antonio Najarro Zuniga respectfully requests this Court order Respondents to  
15 release him from detention.  
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18 **I. PARTIES**

19 A. Petitioner Jose Antonio Najarro Zuniga is a native of Guatemala. He is  
20 currently detained at Florence Correctional Center, 1100 Bowling Rd,  
21 Florence, AZ 85132.  
22

23 B. Respondent Pamela Bondi is named in her official capacity as the Attorney  
24 General of the United States. In this capacity, she is responsible for the  
25 administration of the immigration laws as exercised by the Executive Office  
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1 for Immigration Review, pursuant to section 103(g) of the INA, 8 U.S.C. §  
2 1103(g). She routinely transacts business in the District of Arizona, is legally  
3 responsible for administering Petitioner's removal proceedings and the  
4 standards used in those proceedings, and as such, is the legal custodian of  
5 Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950  
6 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.  
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9 C. Respondent, John Cantu, is the Phoenix Field Office Director for  
10 Enforcement and Removal Operations, U.S. Immigration and Customs  
11 Enforcement. He is the local ICE official who has immediate authority over  
12 the Petitioner. Respondent Cantu's address is Field Office Director,  
13 Enforcement and Removal Operations, U.S. Immigration and Customs  
14 Enforcement, Phoenix Field Office, 2035 N. Central Avenue, Phoenix, AZ,  
15 85004.  
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19 D. Respondent, Kristi Noem, is the Acting Secretary of the U.S. Department of  
20 Homeland Security ("DHS"), the federal agency responsible for enforcing  
21 Petitioner's arrest, detention and removal. DHS's address is U.S.  
22 Department of Homeland Security, Washington, DC 20528.  
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1 E. Respondent, Luis Rocha., is the warden of the Florence Correctional Center,  
2 where Petitioner is being held. He is the custodian of Petitioner and is named  
3 in his official capacity.  
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5 F. Todd M. Lyons is the Acting Director, Immigration and Customs  
6 Enforcement, U.S. Department of Homeland Security, the federal agency  
7 responsible for enforcing Petitioner's arrest, detention and removal. DHS's  
8 address is U.S. Department of Homeland Security, Washington, DC 20528.  
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## 11 **II. JURISDICTION AND VENUE**

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13 The Court has jurisdiction under the Suspension Clause. The Suspension  
14 Clause provides, "The privilege of the Writ of Habeas Corpus shall not be  
15 suspended, unless when in Cases of Rebellion or Invasion the public Safety may  
16 require it." U.S. Const. Art. I § 9, cl. 2.  
17

18 This case arises under the United States Constitution; the INA, 8 U.S.C. §§  
19 1101 et seq.; the APA, 5 U.S.C §§ 701 et seq.; the Due Process Clause of the Fifth  
20 Amendment and the Fourteenth Amendment. Petitioner's current detention  
21 pending his removal order as enforced by Respondents constitutes a "severe  
22 restraint [] on [Petitioner's] individual liberty," such that Petitioner is "in custody  
23 in violation of the . . . laws . . . of the United States." *See Hensley*, 411 U.S. at 351  
24 (1973); 28 U.S.C. § 2241(c)(3).  
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1 No Supreme Court or Ninth Circuit precedent applicable to immigration  
2 detainees, nor the habeas statute, indicate that venue is not proper in the District of  
3 Arizona. See 28 U.S.C. § 2241. Venue is proper in the District of Arizona because  
4 a substantial part of the events and omissions which gave rise to this action  
5 occurred in the district. 28 U.S.C. § 1391(b)(2). Petitioner is currently being held at  
6 the Florence Correctional Center in Eloy, Arizona. He is in removal proceedings  
7 before the Immigration Court in Florence, Arizona, and on October 28, 2025, his  
8 request for a custody redetermination was denied on the grounds that Petitioner  
9 had been classified as subject to mandatory detention under 8 U.S.C. § 1225(b)(2).  
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### 14 **III. FACTS GIVING RISE TO THE HABEAS PETITION**

15 Petitioner, Jose Antonio Najarro Zuniga, is a native and citizen of  
16 Guatemala. He entered the United States without inspection on 2003 and has  
17 resided continuously in in the U.S since that date.  
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19 Officers of U.S. Immigration and Customs Enforcement (“ICE”) arrested  
20 Petitioner in Arizona and placed him in removal proceedings under § 240 of the  
21 Immigration and Nationality Act (“INA”). He was taken into custody and  
22 transported to the Florence Correctional Center in Florence, Arizona, where he  
23 remains detained today.  
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1 Following his arrest, ICE determined that Petitioner was subject to  
2 mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). On October 28, 2025,  
3 Petitioner requested a custody redetermination before an Immigration Judge, but  
4 his request was denied on the grounds that the Immigration Court lacked  
5 jurisdiction because DHS had classified him as subject to § 1225(b)(2) on  
6 November 3, 2025.  
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9 On September 5, 2025, the Board of Immigration Appeals issued *Matter of*  
10 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that individuals who  
11 entered without inspection are “applicants for admission” subject to mandatory  
12 detention under INA § 235(b)(2)(A). That decision does not bind this Court.  
13  
14 Petitioner, who entered the United States in 2003 and has lived here ever since is  
15 not an arriving alien at the border but a long-term resident whose custody falls  
16 under § 236(a). For decades, Immigration Judges conducted bond hearings for  
17 individuals in Petitioner’s position, a practice the Board itself acknowledged before  
18 abruptly reversing course. DHS’s reliance on § 1225(b)(2) to justify Petitioner’s  
19 detention is contrary to the statute’s plain text, longstanding administrative  
20 practice, and decades of settled interpretation. Because DHS has improperly  
21 categorized him under § 1225(b)(2), Petitioner has been deprived of the  
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1 opportunity for an individualized bond hearing, leaving him in prolonged and  
2 unlawful detention in violation of the INA, the APA, and the U.S. Constitution.  
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4 Petitioner has no disqualifying criminal convictions that would render him  
5 subject to mandatory detention under 8 U.S.C. § 1226(c). Nor is he an applicant for  
6 admission apprehended at a port of entry. Instead, he has lived in the interior of the  
7 United States for more than a decade, working, raising his family, and establishing  
8 significant ties to the community in the U.S.  
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10 DHS's reliance on § 1225(b)(2) to justify Petitioner's detention is contrary  
11 to the statute's plain text, longstanding administrative practice, and decades of  
12 settled interpretation.  
13

14 Because Petitioner has improperly been categorized under § 1225(b)(2),  
15 Petitioner has been deprived of the opportunity for an individualized bond hearing,  
16 leaving him in prolonged and unlawful detention in violation of the INA, the APA,  
17 and the U.S. Constitution.  
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#### 19 **IV. APPLICABLE LAW**

20 Respondents' power to detain and deport someone is not limitless, nor is it  
21 shielded from judicial review. *See Calderon v. Sessions*, 330 F. Supp. 3d 944, 950  
22 (S.D.N.Y. 2018) (appeal withdrawn sub nom.).  
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1 “Habeas corpus is at its core, an equitable remedy.” *Schlup v. Delo*, 513 U.S.  
2 298, 319 (1995). Judges have “broad discretion” to fashion an appropriate remedy.  
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4 *Carafas v. La Vallee*, 391 U.S. 234 (1968). It may extend beyond simply ordering  
5 the release of a petitioner and is to “be administered with the initiative and  
6 flexibility essential to ensure that miscarriages of justices within its reach are  
7 surfaced and corrected.” *Harris v. Nelson*, 394 U.S. 286, 291 (1969). Habeas  
8 corpus “never has been a static, narrow, formalistic remedy; its scope has been to  
9 achieve its grand purpose - the protection of individuals against erosion of their  
10 right to be free from wrongful restraints upon their liberty.” *Jones v. Cunningham*,  
11 371 U.S. 236, 243 (1963). At its historical core, habeas corpus “has served as a  
12 means of reviewing the legality of Executive detention, and it is in that context that  
13 its protections have been strongest.” *Rasul v. Bush*, 542 U.S. 466, 474 (2004)  
14 (citations omitted). These protections extend fully to noncitizens subject to an  
15 order of removal. *See Martinez v. McAleenan*, 385 F.Supp.3d 349, 355 (“Due to its  
16 talismanic significance in protecting individual liberty from unlawful detention,  
17 habeas corpus is fundamentally governed by equity. The Supreme Court has  
18 granted the writ when justice has so required.”) (citing *Munaf v. Grren*, 128 S.Ct.  
19 2207 (2008) and *Carafas v. LaVallee*, 392 U.S. 234 (1968)). The Supreme Court  
20 has noted the writ’s “scope and flexibility—its capacity to reach all manner of  
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1 illegal detention--its ability to cut through barriers of form and procedural mazes.”

2 *Harris*, 394 U.S. at 291.

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4 **V. REQUEST FOR RELIEF**

5 Pending the adjudication of this Petition, Petitioner respectfully requests that  
6 the Court use its authority under 28 U.S.C. § 2243 to order the Respondents to file  
7 a return within three days, unless they can show good cause for additional time.  
8 See 28 U.S.C. §2243. (Order to show cause why a petition for a writ of habeas  
9 corpus should not be granted should be “returned within three days unless for good  
10 cause additional time, not exceeding twenty days, is allowed”).  
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14 Petitioner requests that this Court issue an order that Respondents must  
15 notify the Court and Petitioner’s counsel five days prior to any removal of  
16 Petitioner.  
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18 Petitioner further asks this Court to declare that he is not subject to  
19 mandatory detention under 8 U.S.C. § 1225(b)(2). Petitioner also requests that the  
20 Court grant such other and further relief as it deems just and proper.  
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22 Furthermore, Petitioner requests to be released from detention.

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24 **VI. EXHAUSTION OF REMEDIES**

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26 Exhaustion of remedies is not required for this habeas petition because  
27 Petitioner challenges the government’s unlawful classification of his detention as  
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1 mandatory under 8 U.S.C. § 1225(b)(2). The Immigration Court has taken the  
2 position that it lack jurisdiction to review custody where DHS asserts mandatory  
3 detention. Any further attempt to pursue administrative remedies would therefore  
4 be futile.  
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7 Even if exhaustion were required, Petitioner has already sought custody  
8 redetermination before an Immigration Judge. On October 28, 2025, his request for  
9 bond was denied on the grounds that Petitioner falls under § 1225(b)(2) under  
10 *Matter of Yajure Hurtado*. Having raised the issue and been denied relief,  
11 Petitioner has satisfied or, in the alternative, is excused from any exhaustion  
12 requirement.  
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15 Because the BIA has ruled in *Yajure Hurtado* that § 235(b)(2)(A) mandates  
16 detention, further pursuit of administrative remedies would be futile. Only this  
17 Court has the authority to determine whether that interpretation is lawful and  
18 constitutional.  
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## 20 **PRELIMINARY INJUNCTION**

### 21 **1. Legal Standard**

22  
23 The legal standard for granting preliminary injunction relief is well  
24 established. *See Lopez v. Heckler*, 713 F.2d 1432, 1435 (9<sup>th</sup> Cir.1983). This Court  
25 may issue injunctive relief maintaining the status quo when the movant  
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1 demonstrates: (1) a likelihood of irreparable harm in the absence of the injunction;  
2 and (2) either a likelihood of success on the merits or sufficiently serious questions  
3 going to the merits to make them a fair ground for litigation, with a balance of  
4 hardships tipping decidedly in the movant's favor. *Id.* While a petitioner seeking a  
5 preliminary injunction has the burden of demonstrating likelihood of success on the  
6 merits, they are not required to prove their case in full at the preliminary injunction  
7 stage, but only such portions that enable them to obtain the injunctive relief that they  
8 seek. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981).  
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## 12 **2. Petitioner is Entitled to Injunctive Relief**

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14 Petitioner is unlawfully detained under the government's assertion that he is  
15 subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). This position is  
16 contrary to the plain text of the statute, longstanding agency practice, and recent  
17 federal district court rulings. As a noncitizen who entered the United States on 2003  
18 and was arrested more than two decades later inside the country, Petitioner is not  
19 "seeking admission" at a port of entry and therefore cannot be held under §  
20 1225(b)(2). His custody is properly governed by 8 U.S.C. § 1226(a), which  
21 authorizes an individualized custody determination and potential release on bond.  
22 The denial of a bond hearing deprives Petitioner of liberty without due process of  
23 law.  
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1 Under the Due Process Clause of the Fifth Amendment, no person shall be  
2 deprived of life, liberty, or property, without due process of law. U.S. Const. Amend.  
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4 V. Non-citizens on U.S. soil have constitutional rights, including the right to due  
5 process of law. *Yick Wo v. Hopkins*, 118 U.S. 356, 368-69 (1886); *Matthew v. Diaz*,  
6 426 U.S. 67, 77 (1976). By refusing to provide Petitioner with a bond hearing,  
7 Respondents subject him to prolonged and arbitrary detention beyond what the  
8 Constitution and the statute allow.  
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11 In this circumstance, if the noncitizen “provides good reason to believe that  
12 there is no significant likelihood of removal in the reasonably foreseeable future,  
13 the Government must respond with evidence sufficient to rebut that showing.” *Id.*  
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15 **a. Irreparable Harm in the Absence of an Injunction**

16 An injury is “irreparable” if it is “not accurately measurable or adequately  
17 compensable by money damages.” *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*  
18 102 F.3d 12, 19 (1st Cir. 1996); *see also United Steelworkers of Am., AFL-CIO v.*  
19 *Textron, Inc.* 836 F.2d 6, 8 (1st Cir. 1987).  
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22 Due process cases recognize a broad liberty interest rooted in the fact of  
23 deportation, not just the process of removal proceedings. *See Bridges v. Wixon*,  
24 326 U.S. 135, 154 (1945) (deportation “visits a great hardship on the individual  
25 and deprives him of the right to stay and live and work in this land of freedom.”);  
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1 *see also Chhoeun v. Marin*, 2018 WL 566821, at \*9 (C.D. Cal., Jan. 25, 2018)  
2 (finding a “strong liberty interest” where being deported means being separated  
3 from home and family). While this liberty interest typically arises in removal  
4 proceedings, courts have found procedural due process violations for persons not  
5 in removal proceedings. *See, e.g., Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998)  
6 (forms issued to noncitizens charged with civil document fraud violated due  
7 process clause); *Rojas v. Johnson*, 305 F.Supp.3d 1176, 1180 (W.D. Wash. Mar.  
8 29, 2018) (concluding that “Agency Defendants do not provide sufficient notice of  
9 the one-year deadline to satisfy the Due Process clause” to asylum-seeker  
10 subclasses both in and out of removal proceedings).  
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15 Here, Petitioner suffers irreparable harm with each additional day of  
16 detention without an opportunity to demonstrate that he is neither a danger to the  
17 community nor a flight risk. The deprivation of liberty cannot be remedied by  
18 monetary damages. Moreover, the balance of equities favors Petitioner because the  
19 government has no legitimate interest in detaining him under an unlawful statutory  
20 framework. The public interest also favors ensuring compliance with constitutional  
21 guarantees and statutory limits on detention authority.  
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25 **b. Likelihood of Success on the Merits and Serious Questions Going**  
26 **to the Merits**  
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1 Immigrants who pursue lawful immigrant status in the United States have  
2 rights under the Due Process Clause of the Fifth Amendment. Once a petitioner  
3 has identified protected liberty or property interest, the Court must determine  
4 whether a constitutionally sufficient process has been provided. *Mathews*, 424 U.S.  
5 at 335. In making this determination, the Court balances (1) “the private interest  
6 that will be affected by the official action”; (2) “the risk of an erroneous  
7 deprivation of such interest through the procedures used, and the probable value, if  
8 any, of additional or substitute procedural requirement would entail;” and (3) “the  
9 government’s interest, including the function involved and the fiscal and  
10 administrative burdens that the additional or substitute procedural requirement  
11 would entail.” *Id.* Interpreted under the Constitution, the INA and its applicable  
12 regulations do not permit continual detention of Petitioner after he has been  
13 granted immigration relief and surpassed the 90-day removal allotment given  
14 under the INA. 8 U.S.C. § 1231.

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21 Due process protects a noncitizen’s liberty interest in the adjudication of  
22 discretionary applications for relief and benefits made available under the  
23 immigration laws. *See Arevalo v. Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003)  
24 (recognizing protected interests in the “right to seek relief” even when there is no  
25 “right to the relief itself”). Petitioner has a protected due process interest in his  
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1 claim of unlawful detention, and due process requires that since he cannot be  
2 removed to Guatemala, and he cannot stay detained, that he must be released.  
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4 The Government's actions toward Petitioner violate or will violate the APA  
5 and the Fifth Amendment. The APA provides that a court "shall. . . hold unlawful  
6 and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of  
7 discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). To  
8 satisfy the APA, an agency must "examine the relevant data and articulate a  
9 satisfactory explanation for its action including a rational connection between the  
10 facts found and the choice made." *Encino Motorcars, LLC v. Navarro*, 136 S. Ct.  
11 2117, 2125 (2016) (quoting *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut.*  
12 *Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).  
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16 When the Government has promulgated "[r]egulations with the force and  
17 effect of law," those regulations "supplement the bare bones" of federal statutes  
18 and in areas of the law, such that agencies must follow their own "existing valid  
19 regulations," even where Government officers have broad discretion, such as in  
20 immigration. *United States ex rel. Accardi Shaughnessy*, 347 U.S. 260, 266, 268  
21 (1954) (reversing in immigration case after review of warrant for deportation); *see*  
22 *also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("[I]t is incumbent upon agencies to  
23 follow their own procedures . . . even where [they] are possibly more rigorous than  
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1 otherwise would be required.”); *Battle v. FAA*, 393 F.3d 1330, 1336 (D.C. Cir.  
2 2005) (“*Accardi* has come to stand for the proposition that agencies may not  
3 violate their own rules and regulations to the prejudice of others.”). Breaches of  
4 *Accardi*’s rule constitute violations of both the APA and the Fifth Amendment’s  
5 Due Process Clause. *See Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991)  
6 (“*Accardi* doctrine is premised on fundamental notions of fair play underlying the  
7 concept of due process”); *see also Wilson v. Comm’r of Soc. Sec.*, 378 F.3d 541,  
8 545, 546 (6th Cir. 2004) (noting that an *Accardi* violation may be a due process  
9 violation, and the Government’s action may be set aside pursuant to the APA);  
10 *Sameena, Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) (“An  
11 agency’s failure to follow its own regulations . . . may result in a violation of an  
12 individual’s constitutional right to due process.”).

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18 1. *Accardi*’s “ambit” is “not limited” to “rules attaining the status of  
19 formal regulation.” *Montilla*, 926 F.2d at 167. It applies to both promulgated  
20 regulations and other processes and programs that guide the Government’s  
21 discretion. *See Zhang v. Slattery*, 840 F. Supp. 292, 293- 96 (S.D.N.Y. 1994)  
22 (holding that the Government violated the APA by ignoring its non- promulgated  
23 immigration “program”); *see also Pasquini v. Morris*, 700 F.2d 658, 661-63 (11th  
24 Cir. 1983) (same, but for informal criteria). *Accardi* means that when the  
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1 Government sets out a process whereby relief can be pursued, a “right to seek  
2 relief” is created, even when there is no “right to the relief itself.” *Arevalo v.*  
3 *Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) (emphasis added) (citing *Accardi*, 347 U.S.  
4 at 268).

5  
6 Federal district courts have already recognized that DHS’s reliance on §  
7 1225(b)(2) to categorically deny bond hearings is unlawful. In *Ramon Rodriguez*  
8 *Vazquez v. Bostock*, No. 3:25-cv-05240 (N.D. Cal. Apr. 24, 2025), the court issued  
9 a preliminary injunction requiring ICE to provide a bond hearing to a petitioner  
10 detained under § 1225(b)(2), holding that custody in such circumstances properly  
11 falls under § 1226(a). Similarly, in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-  
12 01873 (C.D. Cal. 2025), the court granted a temporary restraining order requiring  
13 bond hearings within seven days and prohibiting ICE from transferring or  
14 removing petitioners without court approval. These rulings demonstrate both the  
15 statutory error and constitutional infirmity of Respondents’ position. Petitioner’s  
16 claim is therefore not novel, but squarely aligned with other federal courts that  
17 have already granted the precise relief sought here.

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23 **c. There is No Substantial Injury to Other Parties and Injunctive**  
24 **Relief is in the Public Interest**

25 The issuing of a temporary restraining order and a preliminary injunction is  
26 warranted because the balance of equities tips in the favor of the Petitioner and the  
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1 injunction is squarely within the public interest. The government's equities also  
2 weigh in favor of issuing a preliminary injunction here.  
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4 The Petitioner, the public, and the Government all have a vested interest in  
5 fair and equitable legal proceedings for all people, citizens and non-citizens alike.  
6  
7 *See Reno v. Flores*, 507 U.S. 292 (1993) (Finding that non-citizens are entitled to  
8 5th Amendment due process).

9 Further, granting injunctive relief in this case will not cause substantial injury  
10 to Respondents or to the government. The government has no legally cognizable  
11 interest in detaining Petitioner under an unlawful statutory framework. An injunction  
12 requiring that Petitioner be provided a custody hearing under 8 U.S.C. § 1226(a)  
13 merely enforces the law as written and ensures compliance with constitutional  
14 protections. As courts have consistently recognized, the government cannot be  
15 harmed by an order that prevents it from engaging in unlawful conduct.  
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19 The Government "cannot suffer harm from an injunction that merely ends an  
20 unlawful practice or reads a statute as required to avoid constitutional concerns."  
21  
22 *R.I.L.-R v. Johnson*, 80 F. Supp. 3d at 191 (D.D.C. Feb. 20, 2015) (citing *Rodriguez*  
23 *v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013)). Further, "the public interest is  
24 served when administrative agencies comply with [the requirements of U.S. law]."  
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26 *Id.*  
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1 **d. Matter of Yajure Hurtado Is Not Binding on this Court and Should**  
2 **Not Be Followed**

3 The BIA's recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216  
4 (BIA 2025), extends § 235(b)(2)(A) beyond its text and purpose to bar bond for all  
5 individuals who entered without inspection, no matter how long they have resided  
6 in the United States. That interpretation is deeply flawed.

7  
8 First, it contradicts the statutory scheme. Section 235(b)(2)(A) governs  
9 "applicants for admission", those encountered at or near the border. Petitioner, who  
10 has resided in the interior of the United States for more than two decades, is not in  
11 that category. Section 236(a) is the detention authority that properly applies.

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14 Second, the decision departs from decades of agency practice. The Board  
15 itself acknowledged that "for years Immigration Judges conducted bond hearings for  
16 aliens who entered the United States without inspection." *Id.* at 225. This admission  
17 underscores that § 236(a) has long been understood to provide custody authority in  
18 such cases. The Board's sudden reversal represents an unexplained break from  
19 settled practice, rendering it arbitrary and unexplained under the APA.

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21  
22 Although the Board later attempted to walk back this acknowledgment, stating  
23 that "our acknowledgment that aliens detained under § 236 may be eligible for  
24 discretionary release on bond does not mean all aliens are eligible," *id.* at 227, this  
25 disclaimer does not erase the historical fact of settled agency practice. Nor does it

1 explain why individuals like Petitioner who entered more than two decades ago,  
2 established long-term residence, and were arrested in the interior should suddenly  
3 be stripped of bond eligibility. The Board's narrowing language only underscores  
4 the arbitrariness of its reinterpretation. By conceding the longstanding bond practice  
5 yet declaring it "beyond the scope" to resolve, the BIA effectively confirmed that its  
6 shift was policy-driven, not compelled by statutory text. That makes the decision  
7 both unpersuasive and invalid.  
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11 Third, the decision raises serious constitutional problems. Mandatory  
12 detention without access to a bond hearing, especially for long-term residents like  
13 Petitioner with strong family and community ties, violates the Due Process Clause.  
14 Courts construe statutes to avoid such constitutional infirmities. This Court should  
15 therefore reject *Yajure Hurtado*'s interpretation and apply § 236(a), which  
16 authorizes discretionary release on bond.  
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19 The Board's interpretation in *Matter of Yajure Hurtado* is not only  
20 inconsistent with statutory text and decades of settled practice but has also already  
21 faced judicial correction. Federal courts considering the same issue have recognized  
22 that DHS's expansion of § 1225(b)(2) produces unlawful and unconstitutional  
23 results. In recent cases from the Northern and Central Districts of California, the  
24 courts required ICE to provide bond hearings to noncitizens whom DHS had  
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1 classified under § 1225(b)(2), making clear that custody in such cases is properly  
2 governed by § 236(a). These rulings reflect a growing recognition among Article III  
3 courts that DHS's reading of § 1225(b)(2) cannot stand. This Court should follow  
4 the same reasoning and hold that Petitioner's detention without access to bond is  
5 unlawful.  
6

7  
8 **e. Federal Courts have rejected DHS's position.**

9  
10 Recent federal court decisions confirm that Respondents' reliance on §  
11 1225(b)(2) to detain Petitioner without a bond hearing is unlawful. In *Cuevas*  
12 *Guzman v. Andrews*, 2025 WL 2617256, at \*3 n.4 (E.D. Cal. Sept. 9, 2025), the  
13 district court expressly distinguished *Matter of Yajure Hurtado*, it rejected its  
14 sweeping application of § 1225(b)(2) and held that noncitizens apprehended in the  
15 interior after long residence in the United States are properly detained under §  
16 236(a), not § 1225(b)(2). *Cuevas Guzman* reaffirmed the longstanding rule that entry  
17 without inspection does not permanently bar a person from eligibility for bond once  
18 they are living in the country. That holding directly applies here.  
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22 Similarly, in *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at \*7 (C.D.  
23 Cal. Sept. 8, 2025), the court recognized that the BIA's interpretation in *Yajure*  
24 forecloses administrative relief, rendering exhaustion futile. The same is true for  
25 Petitioner, who cannot meaningfully seek bond redetermination before EOIR given  
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1 that the IJ held that he had no jurisdiction.

2 Finally, in *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash.  
3 2025), the district court issued a preliminary injunction requiring ICE to provide a  
4 bond hearing to a petitioner detained under § 1225(b)(2), holding that custody in  
5 such circumstances falls under § 1226(a). That decision confirms that habeas relief  
6 is the proper vehicle and that this Court has the authority to order the same remedy  
7 for Petitioner.  
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10 These cases establish that DHS's reliance on § 1225(b)(2) for long-term  
11 residents like Petitioner is inconsistent with statutory text, contrary to constitutional  
12 protections, and already rejected by multiple courts within this Circuit.  
13  
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15 In *Singh v. Lewis*, No. 4:25-cv-96 (W.D. Ky. Sept. 22, 2025), the district court  
16 granted a habeas petition and ordered release, finding that DHS's reclassification of  
17 interior arrests under § 1225(b)(2) violated both the INA and due process. The court  
18 rejected the government's reliance on *Matter of Yajure Hurtado*, concluding that "an  
19 individual is not 'seeking admission' when he never attempted to do so," and held  
20 that detention must proceed under § 1226(a). The court further found that the  
21 automatic-stay regulation at 8 C.F.R. § 1003.19(i)(2) unlawfully deprived the  
22 petitioner of liberty without due process and ordered his immediate release upon  
23 posting bond.  
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1 Similarly, in *Beltrán Barrera v. Tindall*, No. 3:25-cv-541 (W.D. Ky. Sept. 19,  
2 2025), the court held that DHS's blanket application of § 1225(b)(2) to individuals  
3 apprehended years after entering the United States was contrary to the statutory text  
4 and structure of the INA. The court emphasized that Congress intended § 1225 to  
5 govern only applicants for admission encountered at the border, and it therefore  
6 ordered the petitioner's release under § 1226(a)  
7

8  
9 Finally, in *Benítez-Cornejo v. Cantu*, No. CV-25-03672-PHX-JJT (ESW) (D.  
10 Ariz. 2025), the District of Arizona granted habeas relief on the same statutory  
11 question presented here, holding that individuals arrested in Arizona after years of  
12 residence fall under § 1226(a) and must receive individualized bond hearings. The  
13 court rejected DHS's reliance on *Yajure Hurtado* as inconsistent with the Ninth  
14 Circuit's due-process jurisprudence and the statutory framework of the INA  
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17

18 Aside from the Ninth Circuit, numerous district courts have disagreed with  
19 the BIA's analysis in *Matter of Yajure Hurtado* and granted habeas relief to  
20 petitioners similarly situated to Petitioner, recognizing that custody in such cases  
21 properly falls under § 236(a).  
22

- 23 • **First Circuit:** *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025)  
24 (expressly disagreeing with BIA's analysis in *Yajure Hurtado*); *Jimenez v.*  
25 *FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v.*  
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1 *Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025  
2 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238  
3 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass.  
4 Aug. 14, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025).

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- 6
- 7 • **Second Circuit:** *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug.  
8 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025).
- 9
- 10 • **Fourth Circuit:** *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug.  
11 24, 2025).
- 12
- 13 • **Fifth Circuit:** *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025).
- 14
- 15 • **Sixth Circuit:** *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich.  
16 Sept. 9, 2025) (rejecting BIA's analysis in *Yajure Hurtado*); *Lopez-Campos*  
17 *v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025).
- 18
- 19 • **Eighth Circuit:** *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb.  
20 Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept.  
21 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025);  
22 *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Jacinto v. Trump*,  
23 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Maldonado v. Olson*, 2025 WL  
24 2374411 (D. Minn. Aug. 15, 2025); *Garcia Jimenez v. Kramer*, 2025 WL  
25 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224  
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1 (D. Neb. Aug. 14, 2025).

- 2 • **Ninth Circuit:** *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal.  
3 Sept. 9, 2025). *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal.  
4 Sept. 3, 2025). *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal.  
5 Sept. 3, 2025). *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal.  
6 Aug. 15, 2025). *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11,  
7 2025).

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9  
10 Because multiple courts have already recognized the unlawfulness of DHS's  
11 reliance on § 1225(b)(2) to deny bond hearings. Petitioner's claim for relief thus  
12 aligns with an established and growing consensus.  
13  
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15 **VII. CLAIMS FOR RELIEF**

16 **1. PETITIONER'S CONTINUED DETENTION VIOLATES DUE**  
17 **PROCESS, THE INA, AND THE APPLICABLE REGULATIONS**

18 Petitioner re-alleges and incorporates by reference each and every allegation  
19 contained in the preceding paragraphs as if set forth fully herein. Due process  
20 protects a noncitizen's liberty interest in freedom from arbitrary civil confinement.  
21 Petitioner has a protected due process interest in seeking judicial review of his  
22 continued detention and in obtaining a custody determination in accordance with  
23 the INA. By treating Petitioner as subject to mandatory detention under §  
24 1225(b)(2) rather than discretionary custody under § 1226(a), Respondents have  
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1 deprived him of his liberty without adequate process and in excess of their  
2 statutory authority.  
3

4 Respondents' reliance on INA § 235(b)(2)(A), as reinforced by the BIA's  
5 recent decision in *Matter of Yajure Hurtado*, unlawfully deprives Petitioner of his  
6 statutory right to a bond hearing under § 236(a). Even the Board admitted that for  
7 years Immigration Judges conducted such hearings for EWIs before abruptly  
8 reversing course. That reversal is inconsistent with the INA, arbitrary and  
9 capricious under the APA, and unconstitutional under the Due Process Clause of  
10 the Fifth Amendment. This Court is not bound by *Yajure Hurtado* and should  
11 decline to follow it.  
12  
13  
14

15 **2. CONTNUED DETENTION OF PETITIONER VIOLATES THE**  
16 **ADMINISTRATIVE PROCEDURE ACT**

17 Petitioner re-alleges and incorporates by reference each and every allegation  
18 contained in the preceding paragraphs as if set forth fully herein. Respondents'  
19 actions are "arbitrary, capricious, an abuse of discretion, or otherwise not in  
20 accordance with law" and "in excess of statutory jurisdiction, authority, or  
21 limitations." 5 U.S.C. §§ 706(2)(A), (C). For decades, DHS and EOIR interpreted  
22 the INA to mean that individuals like Petitioner, those apprehended in the interior  
23 long after entry, are detained under § 1226(a). The abrupt reversal of this settled  
24 interpretation, without explanation or notice-and-comment, violates the APA.  
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1 Absent this Court's intervention, Petitioner has no adequate remedy to challenge  
2 the unlawful classification of his custody.  
3

4 **3. PETITIONER'S CONTINUED DETENTION VIOLATES THE**  
5 **SUSPENSION CLAUSE**

6 Petitioner re-alleges and incorporates by reference each and every allegation  
7 contained in the preceding paragraphs as if set forth fully herein. The government's  
8 assertion that § 1225(b)(2) mandates detention for individuals like Petitioner  
9 effectively forecloses meaningful habeas review by depriving him of any  
10 opportunity to obtain a bond hearing or individualized custody determination. Such  
11 a denial of judicial review undermines the Suspension Clause of the United States  
12 Constitution, which guarantees the right to challenge unlawful detention through  
13 habeas corpus.  
14  
15

16 **4. FIFTH AMENDMENT DUE PROCESS – STATE-CREATED**  
17 **DANGER**

18 The Due Process Clause provides that no person shall "be deprived of life,  
19 liberty, or property, without due process of law." U.S. Const. amend. V. Its  
20 protections extend to "every person within the nation's borders," regardless of  
21 immigration status. *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 781 (9th Cir. 2014);  
22 *id.* ("Even one whose presence in this country is unlawful, involuntary, or  
23 transitory is entitled to that constitutional protection.") (quoting *Mathews v. Diaz*,  
24 426 U.S. 67, 77 (1976)). The government violates an individual's right to due  
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1 process when it (1) “affirmatively place[s] [the] individual in danger,” (2) by  
2 “acting with ‘deliberate indifference to [a] known or obvious danger.’” *Kennedy v.*  
3 *City of Ridgefield*, 439 F.3d 1055, 1062 (9th Cir. 2006) (quoting *Munger v. City of*  
4 *Glasgow*, 227 F.3d 1082, 1086 (9th Cir. 2000) and *L.W. v. Grubbs*, 92 F.3d 894,  
5 900 (9th Cir. 1996)). When the government’s actions leave an individual “in a  
6 situation that [is] more dangerous than the one in which [it] found him,” the  
7 government has affirmatively placed that individual in danger. *Hernandez v. City*  
8 *of San Jose*, 897 F.3d 1125, 1133 (9th Cir. 2018) (quoting *Munger*, F.3d at 1086).  
9 The critical inquiry is thus whether the government’s actions “create[d] or  
10 expose[d] an individual to a danger which he or she would not have otherwise  
11 faced.” *Kennedy*, 439 F.3d at 1061; *Cf. J.P. v. Sessions*, No. Civ. 18-06081 JAK  
12 (SKx), 2019 WL 6723686, at \*36 (C.D. Cal. Nov. 5, 2019) (federal government  
13 “‘acted with deliberate indifference to a known or obvious danger’ by  
14 implementing the [family separation] policy with awareness of the potential harm  
15 it would cause and intending to use that as a basis to deter future attempts by those  
16 similarly situated to enter the United States” (alterations omitted) (quoting  
17 *Hernandez*, 897 F.3d at 1137, and *Kennedy*, 439 F.3d at 1062)). Even if Petitioner  
18 was required to show deliberate indifference as civil detainees—and he is not, see  
19 *Jones v. Blanas*, 393 F.3d 918, 933 (9th Cir. 2004)—he could easily do so. The  
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1 government acts with deliberate indifference to a known or obvious danger when it  
2 “recognize[s] an unreasonable risk and actually intend[s] to expose [the plaintiff]  
3 to such risks without regard to the consequences to [the plaintiff].” *Hernandez*, 897  
4 F.3d at 11 (alterations omitted) (quoting *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974  
5 (9th Cir. 2011)). An unreasonable risk includes future harm caused by conditions  
6 of confinement. *See Helling v. McKinney*, 509 U.S. 25, 33 (1993).  
7  
8

9 Here, Respondents have placed Petitioner in greater danger by misclassifying  
10 him under § 1225(b)(2) and denying him the bond procedures guaranteed under §  
11 1226(a). By treating him as mandatorily detained without any individualized  
12 assessment of flight risk or danger, the government has subjected him to prolonged  
13 confinement in punitive conditions with no lawful basis for denying him access to  
14 bond. Respondents acted with deliberate indifference to the obvious risk of harm  
15 inherent in prolonged and unnecessary detention, including the physical,  
16 emotional, and familial harms that flow from being confined when the statute does  
17 not authorize it.  
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## 22 **VIII. REQUEST FOR ORAL ARGUMENT**

23 Petitioner respectfully requests oral argument on this Petition.  
24

## 25 **IX. PRAYER FOR RELIEF**

26  
27 **WHWEREFOR**, Petitioner respectfully requests that this Court:  
28

- 1
- 2 1. Assume jurisdiction over this matter;
- 3
- 4 2. Issue a Writ of Habeas Corpus on the ground that Petitioner's continued  
detention is unlawful and order his immediate release;
- 5
- 6 3. In the alternative, issue injunctive relief ordering Respondents to provide  
Petitioner with an individualized custody determination before an  
7 Immigration Judge under 8 U.S.C. § 1226(a) within seven (7) days, or to  
8 release him immediately;;
- 9
- 10 4. Order Respondents file a return within three days pursuant to 28 U.S.C. §  
2243;
- 11
- 12 5. Declare that the process as applied to Petitioner by Respondents violates the  
Suspension Clause, the Due Process Clause of the Fifth Amendment, the  
13 INA, the APA, and federal regulations;
- 14
- 15 6. Order Respondents to provide five days of notice to the Court and Petitioner  
of his imminent removal;
- 16
- 17 7. Order Respondents to follow the applicable rules, regulations, law, and the  
Constitution.
- 18
- 19 8. Award Petitioner his costs and reasonable attorneys' fees in this action as  
provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other  
20 statutes;
- 21
- 22 9. Grant such further relief as the Court deems just and proper.

22 Dated: November 7, 2025,  
23 Tucson, AZ,

Respectfully submitted,  
By: /s/ Siovhan Ayala  
Siovhan Ayala

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4  
5 **VERIFICATION PURSUANT TO 28 U.S.C. § 2242**  
6

7 I am submitting this verification on behalf of the Petitioner because I am one  
8 of the Petitioner's attorneys. I have discussed with the Petitioner's legal team the  
9 events described in this Petition. Based on those discussions, on information and  
10 belief, I hereby verify that the factual statements made in the attached Amended  
11 Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and  
12 Injunctive Relief are true and correct to the best of my knowledge.  
13  
14

15  
16 Dated: November 7, 2025,

17 Tucson, AZ,

18 *By: /s/ Ayala*  
19 Siovhan Ayala  
20 Attorney for the Petitioner  
21 AYALA LAW OFFICE, PC  
22 P.O. Box 18986  
23 Tucson, AZ 85731  
24 (520) 202-0391  
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