IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

WELITON LOPES COSTA,

Petitioner,

vs.

GARRETT J. RIPA, Acting Field Office Director, U.S. Immigration and Customs Enforcement, Miami Field Office; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement; PAMELA BONDI, U.S. Attorney General; and KRISTI NOEM, U.S. Secretary of Homeland Security,
Respondents.

Case No.:

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. 2241

Petitioner WELITON LOPES COSTA, by and through undersigned counsel, respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. 2241, and alleges as follows:

I.INTRODUCTION

1. Petitioner WELITON LOPES COSTA is an immigrant currently detained by U.S. Immigration and Customs Enforcement (ICE) at Baker County Detention Center in Sanderson, Florida located within the jurisdiction of the Middle District

of Florida.

2. Petitioner is being unlawfully detained in violation of the Constitution, laws, and treaties of the United States. Petitioner seeks immediate release from custody as their continued detention is not authorized by law and violates their rights under the Due Process Clause of the Fifth Amendment to the United States Constitution.

3. Petitioner entered the U.S. near Otay Mesa, California on or about May 13, 2022, and was apprehended by U.S. Border Patrol. On May 14, 2022, ICE issued a Notice of Custody Determination pursuant to Section 236 of the Immigration and Nationality Act—not Section 235. On May 18, 2022, ICE exercised its discretion under 8 U.S.C. § 1226(a) to release Petitioner on his own recognizance (Form I-220A) based on his lack of criminal history, family ties, and determination that he posed neither a danger to the community nor a flight risk. Petitioner was never granted parole under INA § 212(d)(5).

4. For more than three years—from May 2022 until September 2025—Petitioner fully complied with all conditions of his release. He attended every required ICE check-in without exception, maintained continuous contact with immigration authorities, obtained lawful employment, started his own business, married a U.S. citizen, and filed a T visa application based on his trafficking victimization. Throughout this period, Petitioner had no criminal arrests or charges.

5. On September 18, 2025, Petitioner was stopped by Florida Highway Patrol for speeding and operating a motor vehicle without a valid driver's license—minor traffic infractions. Despite his perfect three-year compliance record and the absence of any changed circumstances, ICE took custody of Petitioner on September 26, 2025, and has detained him at Baker County Detention Center under an interpretation of 8 U.S.C. § 1225(b)(2) that federal courts nationwide have uniformly rejected. This interpretation denies Petitioner access to a bond hearing, despite having lived in the United States for over three years with established family ties, pending applications for relief, and a demonstrated record of compliance.

6. Petitioner's detention not only violates his constitutional rights but also blocks his ability to pursue legal status through his U.S. citizen spouse. Petitioner and his wife, Nazareth G. Orozco Juarez, intend to file Form I-601A (Provisional Waiver of Unlawful Presence), which would allow Petitioner to adjust his status based on extreme hardship to his U.S. citizen spouse. However, USCIS regulations prohibit filing Form I-601A while an applicant is in detention or active removal proceedings. The detention thus forecloses Petitioner's primary path to legal status and inflicts extraordinary hardship on both Petitioner and his U.S. citizen spouse, who is deprived of her husband's presence and support while being unable to pursue the legal process that would allow them to remain together.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over this habeas corpus petition pursuant to 28 U.S.C. § 2241(a), which authorizes district courts to grant writs of habeas corpus, and 28 U.S.C. § 2241(c)(3), which provides that "[t]he writ of habeas corpus shall not extend to a prisoner unless . . . [h]e is in custody in violation of the Constitution or laws or treaties of the United States."

5. Venue is proper in the Middle District of Florida, Jacksonville Division, pursuant to 28 U.S.C. § 2241(d), as Petitioner is detained at Baker County Detention Center, located at 20706 FL-10, Sanderson, FL 32087, within this judicial district.

6. This Court has authority to grant declaratory and injunctive relief pursuant to 28 U.S.C. § 2201 and § 2202.

III. PARTIES

7. Petitioner Weliton Lopes Costa (A# [redacted] is a 36-year-old native and citizen of Brazil who is currently detained at Baker County Detention Center in Sanderson, Florida.

8. Respondent GARRETT J. RIPA is the Acting Field Office Director of the U.S. Immigration and Customs Enforcement Miami Field Office, which has jurisdiction over Jacksonville and Baker County. He is sued in his official capacity and has immediate custody and control over Petitioner's detention and authority

to release him.

9. Respondent TODD LYONS is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. He has supervisory authority over all ICE field offices, including the Miami Field Office, and authority over Petitioner's detention.

10. Respondent PAMELA BONDI is the Attorney General of the United States and is sued in her official capacity. She has ultimate supervisory authority over the Executive Office for Immigration Review and the immigration court system.

11. Respondent KRISTI NOEM is the Secretary of the U.S. Department of Homeland Security and is sued in her official capacity. She has ultimate authority over ICE and the custody and detention of immigration detainees, including Petitioner.

IV.CUSTODY

14. Petitioner is in the Respondents/Defendants' physical custody within this district at the Baker County Detention Center, in Sanderson, Florida, under the direct control of the Respondents/Defendants and their agents.

V. LEGAL BACKGROUND

A. The Statutory Framework: Section 1225 vs. Section 1226

15. Congress created two distinct detention schemes in adjacent sections of the Immigration and Nationality Act. The distinction between these provisions is dispositive in this case.

16. Section 1225(b)(2) mandates detention for 'applicants for admission' who are 'seeking admission' at ports of entry. The statute provides:

17. 'In the case of an alien who is an applicant for admission, if 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 240.' 8 U.S.C. § 1225(b)(2)(A).

18. The plain language of this provision limits its application to aliens actively seeking admission at the border. Every key phrase uses present tense and describes immediate border processing:

a. alien who is an applicant for admission' (present tense)

b. 'alien seeking admission' (present progressive tense)

c. 'examining immigration officer determines' (present tense, indicating contemporaneous inspection)

d. 'not clearly and beyond a doubt entitled to be admitted' (focusing on the admission decision itself)

19. This language indicates the statute applies only to aliens currently attempting to enter—those being inspected at the moment of arrival—not aliens

who entered years ago and have been residing in the interior of the United States.

20. The broader statutory context confirms this interpretation. Section 1225 is titled 'Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing' (emphasis added). Subsection (b) is titled 'Inspection of applicants for admission' (emphasis added). Subsection (b)(1), which addresses expedited removal, repeatedly references aliens 'arriving in the United States,' 'arriving at a port-of-entry,' and similar phrases focusing on the immediate moment and location of entry.

21. If Congress had intended Section 1225(b)(2) to apply to all aliens who entered without inspection years or decades ago, regardless of their current circumstances, it would not have used language so clearly focused on the immediate inspection of arriving aliens at ports of entry. Congress could have written 'any alien who entered without inspection' or 'any alien who has not been lawfully admitted.' Instead, it chose present-tense language describing the contemporaneous act of seeking admission.

22. In contrast to Section 1225's focus on arriving aliens, Section 1226(a) governs the detention of aliens who are 'arrested and detained pending a decision on whether the alien is to be removed from the United States.' 8 U.S.C. § 1226(a). This provision explicitly authorizes the Attorney General to either detain the alien OR 'release the alien on—(i) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (ii) conditional

parole.' Id.

23. Section 1226 applies to aliens who have been in the country and are arrested in the interior—not to aliens being inspected at the moment of entry. Unlike Section 1225's mandatory detention, Section 1226 provides for individualized custody determinations with the possibility of release on bond. Federal regulations implementing Section 1226 require that 'aliens detained under § 1226(a) receive bond hearings at the outset of detention.' *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

24. The distinction between these two provisions is critical. Section 1225 applies to aliens intercepted at the moment of entry who have no established presence in the United States. Section 1226 applies to aliens arrested in the interior who may have lived in the country for extended periods, developed family ties, established employment, and built lives in their communities. Congress created this distinction deliberately, recognizing that these two populations present fundamentally different circumstances warranting different detention procedures.

25. Petitioner is not 'seeking admission'—he sought admission over three years ago when he was apprehended at the border in May 2022. He is not being inspected by an immigration officer at a port of entry—he was arrested in the interior of Florida after living here for more than three years. He is not an 'arriving alien'—he has been residing in Orlando with his U.S. citizen spouse, attending ICE check-ins, working lawfully, pursuing applications for legal status,

and building a life in his community.

26. Petitioner is precisely the type of alien Congress intended Section 1226 to govern: an individual arrested in the interior who has established ties to the United States and whose detention requires an individualized determination of whether he poses a flight risk or danger to the community.

27. The government's contrary interpretation—that any alien who entered without inspection remains perpetually an 'applicant for admission' subject to Section 1225's mandatory detention, regardless of how many years or decades have passed—would render Section 1226 largely superfluous. Approximately 11 million undocumented immigrants currently reside in the United States, the vast majority of whom entered without inspection. If all such individuals remain 'applicants for admission' subject to mandatory detention under Section 1225, then Section 1226's bond hearing provisions would apply only to the small subset of aliens who entered with valid visas and subsequently fell out of status.

28. This cannot be what Congress intended. When Congress enacts adjacent provisions with different requirements, courts presume each provision has independent meaning and applies to different circumstances. See *Duncan v. Walker*, 533 U.S. 167, 174 (2001) ('We are reluctant to treat statutory terms as surplusage in any setting... [and] particularly so when the words appear in a subsection that does nothing but define terms.'). The only interpretation that gives independent meaning to both Section 1225 and Section 1226 is the one federal

courts nationwide have adopted: Section 1225 applies to aliens actively arriving at the border, while Section 1226 applies to aliens arrested in the interior."

29. The Supreme Court discussed the differences between Sections 1225 and 1226 in *Jennings*. It explained that Section 1225 "authorizes the Government to detain certain aliens seeking admission into the country[,]" while Section 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings[.]" *Jennings*, 583 U.S. at 289

B. Matter of Yajure-Hurtado Conflicts with Text

30. Presently, Petitioner is detained without a hearing. Under federal law, individuals detained under 8 U.S.C. 1226(a) are entitled to an individualized bond hearing to determine whether their detention is necessary.

31. ICE has asserted that Petitioner is subject to mandatory detention under the interpretation of 8 U.S.C. 1225(b)(2)(A) as articulated in *Matter of Yajure-Hurtado*, which denies immigration judges jurisdiction to conduct bond hearings for individuals who entered without inspection, regardless of the time elapsed since their entry or their circumstances.

32. As immigration judges no longer have jurisdiction over bond hearings for individuals such as Petitioner, they are left without a lawful path forward having de facto no access to Courts in hopes for a resolution within a foreseeable timeline.

33. Since Matter of Yajure-Hurtado was issued in September 2025, federal district courts across the country have uniformly rejected the BIA's interpretation of Section 1225(b)(2). Courts in this District and in at least eight other circuits have held that the statute's plain language limits its application to aliens actively seeking admission at ports of entry, not individuals who entered years ago and have been residing in the interior of the United States.

34. Two judges in this very District—the Middle District of Florida—have recently rejected the government's interpretation and ordered bond hearings for individuals in circumstances substantially similar to Petitioner's:

a. Hinojosa Garcia v. Noem, No. 2:25-cv-00879-SPC-NPM (M.D. Fla. Oct. 31, 2025) (Fort Myers Division) (18 years in U.S., pending U visa, two U.S. citizen children—court held 'the plain language of the statute supports Hinojosa Garcia's position, as do the legislative history and case law')

b. Hernandez Lopez v. Hardin, No. 2:25-cv-830-KCD-NPM (M.D. Fla. Oct. 29, 2025) (Fort Myers Division) (12 years in U.S., pending I-601A waiver, married with children—court held Section 1226, not Section 1225, governs detention)

35. Beyond this District, courts across the country have reached the same conclusion.

36. Petitioner has now been detained for over two months without any individualized determination of whether his detention is necessary to ensure his appearance at future proceedings or to protect the community.

C. Under Loper Bright v. Raimondo, the BIA's Interpretation Is Entitled to No Deference

37. In *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the Supreme Court overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and held that courts must exercise independent judgment when interpreting statutes. The Court explained that the Administrative Procedure Act requires courts to 'decide all relevant questions of law' and 'interpret constitutional and statutory provisions,' and therefore courts may not defer to an agency's interpretation of the law simply because a statute is ambiguous. *Loper Bright*, 603 U.S. at 391-92.

38. Under Loper Bright, this Court must exercise its independent judgment to determine whether Section 1225 or Section 1226 applies to Petitioner's detention. The BIA's interpretation in *Matter of Yajure-Hurtado* is entitled to no deference. For the reasons explained above—the plain language of the statute, its structure, its legislative history, and the need to give independent meaning to both Section

1225 and Section 1226—this Court should hold that Section 1226 governs Petitioner's detention.

39. Moreover, the BIA's interpretation warrants particularly skeptical review under Loper Bright because it:

a. **Dramatically expands the government's detention authority** to reach millions of individuals who entered the country years or decades ago and have established lives in the United States;

b. **Eliminates bond hearings for a vast category of noncitizens** based on an interpretation that stretches statutory language beyond its plain meaning and temporal limitations;

c. **Raises serious constitutional concerns** by authorizing potentially indefinite detention without any individualized determination of danger or flight risk;

d. **Conflicts with validly promulgated regulations** that establish specific procedures for re-detention based on changed circumstances (8 C.F.R. § 241.13(i)(2));

e. **Represents a reversal of longstanding agency practice** and was issued after a change in presidential administration; and

f. **Renders Section 1226 largely superfluous** by sweeping nearly all undocumented immigrants into Section 1225's mandatory detention scheme.

40. The Supreme Court in Loper Bright emphasized that when 'the agency's interpretation expands the agency's own power,' courts must be particularly vigilant in ensuring the interpretation is grounded in statutory text. Here, the BIA has dramatically expanded its detention authority through an interpretation that finds no support in the statutory text, structure, or history. The BIA has essentially rewritten Section 1225 to eliminate temporal limitations and transform a provision focused on immediate border inspection into a sweeping mandatory detention regime covering millions of long-term residents. This Court must exercise its independent judgment and reject the BIA's overreach.

D. Due Process Principles

41. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

42. Immigration detention must always "bear [...] a reasonable relation to the purpose for which the individual was committed." *See Demore v. Kim*, 538 U.S. 510, 527 (2003).

43. When a petitioner is not deportable insofar as a grant of deferred action bars deportation, the Due Process Clause requires that any deprivation of a petitioner's liberty be narrowly tailored to serve a compelling government

interest. *See Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (finding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest"); *See Denmore v Kim*, 538 U.S. at 528 (applying less rigorous standard for "deportable aliens").

44. Moreover, under the Fifth Amendment, ICE cannot deprive a petitioner of notice and an opportunity to be heard "at a meaningful time and in a meaningful manner." *See Mathews v. Elridge*, 424 U.S. 319, 333 (1976).

45. Procedural due process "imposes constraints on government decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Id.* at 332.

46. Once a petitioner has identified a protected liberty or property interest, the Court must determine whether respondents have provided constitutionally sufficient process. *Id.* at 332-33.

47. In making this determination, the Court balances (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." *Id.* at 335.

48. Due process cases recognize a broad liberty interest in deportation and removal proceedings. *See Bridges v. Wixon*, 326 U.S. 135, 154 (1945).

49. Due process also protects an alien's liberty interest in the adjudication of applications for relief and benefits under the INA. *See Arevalo v. Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) (recognizing protected interests in the "right to seek relief" even when there is no "right to the relief itself").

E. Changed Circumstances Requirement

50. When a re-detention occurs, DHS should identify facts to support changed circumstances that would show that a removal is significantly likely in the reasonably foreseeable future. *See* 8 C.F.R. § 241.13(f) (setting out factors to consider including "the history of the alien's efforts to comply with the order of removal, the history of the Service's efforts to remove aliens to the country in question or to third countries, including the ongoing nature of the Service's efforts to remove this alien and the alien's assistance with those efforts, the reasonably foreseeable results of those efforts, and the views of the Department of State regarding the prospects for removal of aliens to the country or countries in question").

51. ICE's decision to re-detain a noncitizen like who has been granted supervised release is governed by ICE's own regulation requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances,

(4) removal has become significantly likely in the reasonably foreseeable future." *See Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023) (citing 8 C.F.R. § 241.13(i)(2)).

52. Due process also protects a non-citizen subject to a final order of deportation from indefinite detention. "[a] statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem [under] . . . [t]he Fifth Amendment's Due Process Clause[.]" *See Zadvydas*, 533 U.S. at 690. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects (...) government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow nonpunitive circumstances. . . where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* "*Zadvydas* determined that detention becomes "indefinite" when there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *See Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (quoting *Zadvydas*, 533 U.S. at 701).

53. An assertion of a follow-up on the request for a travel document is not a substantive indication regarding how or when it is expected to obtain a necessary travel document. *See Sigh v. Gonzalez* 448 F. Supp. 2d at 1220.

54. Even if Petitioner's initial detention in May 2022 could have been characterized under Section 1225(b)(2)—which it was not—ICE's decision to re-detain him in September 2025 violates both federal regulations and constitutional due process.

55. Federal regulations establish specific procedures that ICE must follow when re-detaining an alien who was previously released. These regulations require ICE to identify 'changed circumstances' that justify renewed detention.

56. 8 C.F.R. § 241.4(l)(2) provides that ICE has authority to 'revoke release and return to Service custody an alien previously approved for release,' but only through 'the exercise of discretion' and following proper procedures including notice and an opportunity to respond.

57. 8 C.F.R. § 241.13(i)(2) provides: 'The Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.'

58. As the First Circuit explained in Kong v. United States, 62 F.4th 608, 619–20 (1st Cir. 2023), ICE's decision to re-detain an alien requires:

a. An individualized determination

b. By ICE

c. Based on changed circumstances

d. That removal has become significantly likely in the reasonably foreseeable future

59. These regulatory requirements apply regardless of whether the alien was on supervised release or released on recognizance. The regulations focus on 'changed circumstances'—specific, individualized facts showing why re-detention has become necessary when it was not necessary before.

60. Here, ICE released Petitioner on his own recognizance on May 18, 2022, based on a determination that he posed neither a flight risk nor a danger to the community. (Exhibit B - Order of Release on Recognizance, Form I-220A). ICE's custody determination explicitly noted:

a. No criminal history

b. Strong family ties in the United States

c. Not a danger to the community

d. Not a flight risk

61. For more than three years—from May 2022 through September 2025—Petitioner proved ICE's initial assessment was correct. His record during this period demonstrates perfect compliance.

62. ICE has not identified any changed circumstances that would justify Petitioner's re-detention. ICE has not alleged that:

a. Petitioner violated any condition of his release (he did not);

b. Petitioner failed to appear for any check-in or hearing (he did not);

c. Petitioner committed any crime involving violence, dishonesty, or moral turpitude (he did not);

d. Removal to Brazil has become more likely (it has not—with his pending T visa and marriage to a U.S. citizen, removal has become less likely);

e. Petitioner poses a danger to the community (he does not);

f. Petitioner poses a flight risk (he does not—his ties to the U.S. are stronger now than in May 2022);

63. The sole basis for Petitioner's re-detention appears to be his arrest by local law enforcement on September 18, 2025, for minor traffic violations: speeding and driving without a valid driver's license. These infractions do not constitute 'changed circumstances' under 8 C.F.R. § 241.13(i)(2). They are minor regulatory violations that millions of Americans commit without being deemed dangerous or prone to flight. Petitioner was not charged with any crime involving violence, dishonesty, or moral turpitude. He immediately cooperated with the Florida Highway Patrol and did not attempt to flee or resist arrest. If anything, his conduct during the traffic stop demonstrates continued respect for legal authority.

64. These traffic violations do not suggest that Petitioner suddenly poses a flight risk or danger to the community. They do not suggest that his removal has

become more likely in the reasonably foreseeable future. They simply do not constitute the type of 'changed circumstances' contemplated by the regulations.

65. ICE's re-detention without any showing of changed circumstances violates procedural due process. The Due Process Clause requires that deprivations of liberty be supported by an individualized determination based on current circumstances. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

F. **Petitioner's Detention Blocks His Path to Legal Status**

66. Petitioner's detention creates an additional constitutional concern: it forecloses Petitioner's ability to pursue legal status through his U.S. citizen spouse.

67. Petitioner married Nazareth G. Orozco Juarez, a U.S. citizen, on September 4, 2025. Based on this marriage, Petitioner is eligible to apply for adjustment of status. Because Petitioner entered without inspection, he must first obtain a provisional waiver of unlawful presence by filing Form I-601A pursuant to 8 U.S.C. § 1182(a)(9)(B)(v).

68. Form I-601A allows eligible aliens to apply for a provisional waiver before departing the United States for consular processing, avoiding prolonged separation from their U.S. citizen family members. However, USCIS regulations explicitly prohibit filing Form I-601A while in detention or active removal proceedings. This regulatory prohibition is absolute—there are no exceptions for

individuals with pending T visa applications, established equities, or records of compliance.

69. The detention thus creates a circular trap: The government justifies detention by asserting Petitioner lacks legal status, but the detention itself prevents Petitioner from pursuing legal status. This circularity violates due process. The government cannot rely on an individual's lack of status to justify detention while simultaneously preventing that individual from obtaining status.

70. Moreover, this is not a case where Petitioner lacks a viable path to legal status. He has two potential paths: (1) approval of his pending T visa application, which would grant him lawful status without requiring departure; or (2) the I-601A waiver process through his U.S. citizen wife. The detention blocks the second path entirely and delays the first.

STATEMENT OF FACTS

Petitioners Flight from Brazil and Trafficking Ordeal

71. In April 2022, at the age of 16, Petitioner fled Brazil after [redacted]

[redacted]

72. Petitioner was lured by traffickers who promised safe passage to the United States but instead subjected him to severe human trafficking.

73. Petitioner was held in a house in the forest in Mexico with approximately

50 other individuals, including women, children, and elderly persons, all under armed guard.

74. Petitioner and others were forced to discard their belongings and were controlled through fear and violence.

75. Petitioner attempted to cross the U.S.-Mexico border twice but was detained and extorted by Mexican officials, who forced him to pay money to avoid being taken to an unknown location.

76. Upon entering the United States, Petitioner was apprehended by U.S. immigration officials in California.

Initial Detention and Release

77. On or about May 14, 2022, Petitioner was detained by ICE and issued a Notice of Custody Determination pursuant to Section 236 of the Immigration and Nationality Act. (See Exhibit A - Notice of Custody Determination dated May 14, 2022).

78. On May 18, 2022, ICE released Petitioner on an Order of Release on Recognizance (Form I-220A) based on his lack of criminal history, strong family ties, and determination that he was neither a danger to the community nor a flight risk. (See Exhibit B - Order of Release on Recognizance dated May 18, 2022).

Compliance with Release Conditions

79. From May 2022 to September 2025, Petitioner fully complied with all conditions of his release.

80. Petitioner resided continuously in the United States, first with his sister in Massachusetts and later in Orlando, Florida.

81. Petitioner worked lawfully, started his own business, and became a productive member of his community.

82. On May 13, 2025, Petitioner filed a T visa application with USCIS based on his trafficking victimization. The application remains pending. (See Exhibit C - T Visa Application Package).

83. On September 4, 2025, Petitioner married Nazareth G. Orozco Juarez, a U.S. citizen, and (Form I-130) filed a Petition for Alien Relative on marriage grounds. (See Exhibit D - Marriage Certificate).

84. Petitioner attended all required immigration appointments and check-ins, maintained contact with immigration authorities, and had no criminal arrests or charges.

- **Re-Detention Without Changed Circumstances**

85. On September 18, 2025, Petitioner was stopped by the Florida Highway Patrol in Levy County, Florida, for speeding and operating a motor vehicle without a valid drivers license.

86. Petitioner was arrested for these traffic violations and booked into Levy County Jail.

87. On or about September 26, 2025, ICE took custody of Petitioner upon his release from Levy County Jail and transferred him to the Baker County Detention Center. (See Exhibit G - Notice to EOIR: Alien Address dated September 26, 2025).

88. ICE has not articulated any changed circumstances specific to Petitioner that would justify his re-detention after more than three years of compliance with all immigration requirements.

Intended Form I-601A Waiver Application (Blocked by Detention)

89. Based on his marriage to U.S. citizen Nazareth G. Orozco Juarez, Petitioner is eligible to apply for adjustment of status. However, because Petitioner entered without inspection, he cannot adjust status directly while in the United States. Instead, he must depart for consular processing abroad. To avoid the unlawful presence bars under 8 U.S.C. § 1182(a)(9)(B), Petitioner and his wife intend to file Form I-601A (Application for Provisional Unlawful Presence Waiver) pursuant to 8 U.S.C. § 1182(a)(9)(B)(v).

90. Form I-601A allows certain eligible aliens to apply for a provisional waiver of the unlawful presence bars before departing the United States for consular processing. To qualify, the applicant must demonstrate that refusal of admission would result in extreme hardship to a qualifying U.S. citizen or lawful permanent resident spouse or parent. Here, Petitioner can readily demonstrate extreme hardship to his U.S. citizen wife:

a. Nazareth is a U.S. citizen who has lived her entire life in the United States

b. Nazareth has established employment, community ties, and family in Orlando, Florida

c. Nazareth cannot relocate to Brazil—she does not speak Portuguese, has no ties to Brazil, and would face severe economic hardship

d. Nazareth depends on Petitioner emotionally and financially

e. Separation from Petitioner would cause severe emotional distress and economic hardship, for example, they had to return their car and apartment. (See Exhibit [__] - Declaration of Nazareth G. Orozco Juarez)

91. However, USCIS regulations prohibit filing Form I-601A while an applicant is in immigration detention or active removal proceedings. See USCIS Policy Manual, Vol. 9, Part B, Ch. 2(D)(2) ('USCIS may deny a Form I-601A if... [t]he applicant is in removal proceedings, unless the removal proceedings are administratively closed and have not been recalendared at the time of the decision on the application'). The detention thus blocks Petitioner's primary path to legal status.

92. This creates a conundrum: ICE claims Petitioner must remain detained because he lacks legal status, but the detention itself prevents Petitioner from pursuing legal status through his U.S. citizen wife. Meanwhile, his T visa application remains pending, and if approved, he would be entitled to lawful status without needing to depart for consular processing at all.

93. The detention therefore inflicts extraordinary hardship on both Petitioner and his U.S. citizen wife. Nazareth is deprived of her husband's presence and emotional and financial support. She cannot pursue the I-601A waiver that would allow them to remain together legally. She faces the prospect of indefinite separation from her spouse, without any individualized determination that Petitioner's detention is necessary.

CAUSES OF ACTION

FIRST CAUSE OF ACTION UNLAWFUL DETENTION IN VIOLATION of the Immigration and Nationality Act SECTION 1226(a)

94. The foregoing allegations are realleged and incorporated herein.

95. Petitioner is currently in the custody of the Respondents under or by color of the authority of the United States, based on her detainment at the Baker County Detention Center.

96. Petitioner is not an arriving alien seeking admission but has been living in the United States for years with established family ties, including a wife and child. These circumstances distinguish Petitioner from individuals who pose immediate flight risks or lack community connections as well as "arriving aliens".

97. Petitioner's detention violates Section 1226(a), which allows for release on Bond.

98. Petitioner has a right to a bond hearing under 1226(a).

99. The plain language of the statute supports Petitioner's position, as do the legislative history and case law.

100. Section 1225(b)(2) by its plain terms applies only to aliens seeking admission at the border. The statute states: 'In the case of an alien who is an applicant for admission, if 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 240.' 8 U.S.C. § 1225(b)(2)(A).

101. The statute's use of present-tense language—'seeking admission,' 'applicant for admission,' 'examining immigration officer determines'—indicates it applies only to aliens currently attempting to enter, not those who entered years ago. Moreover, subsection (b)(2)(B) discusses 'arrival' and 'port-of-entry,' further confirming the provision's temporal and geographic limitations.

102. Petitioner is not 'seeking admission.' He sought admission on May 13, 2022, when he was apprehended near Otay Mesa, California. At that time, ICE exercised its discretion under § 236 to release him on his own recognizance. Since then, Petitioner has been residing in the United States for over three years. He is no longer an 'applicant for admission' and should not be treated as one.

103. Section 1226(a), in contrast, governs the detention of aliens who are 'arrested and detained' in the interior. 8 U.S.C. § 1226(a). This provision applies to aliens like Petitioner who have been residing in the United States and are arrested

away from the border. Unlike Section 1225's mandatory detention, Section 1226 provides for individualized custody determinations with the possibility of release on bond.

104. The structural distinction between these provisions is clear: Section 1225 addresses immediate border inspection and expedited processing of arriving aliens. Section 1226 addresses detention of aliens who have been in the country and whose circumstances require individualized assessment. Petitioner—having lived in the United States for over three years, established family ties, maintained employment, and complied with all immigration requirements—falls squarely within the scope of Section 1226.

105. The Board of Immigration Appeals' decision in Matter of Yajure-Hurtado, 29 I&N Dec. 216 (BIA 2025), held that immigration judges lack jurisdiction to conduct bond hearings for any alien who entered without inspection, reasoning that such aliens are 'applicants for admission' under Section 1225(b)(2)(A) regardless of how long they have been in the United States or their current circumstances. Under this interpretation, the Immigration Court determined it has no authority to conduct a bond hearing for Petitioner, effectively denying him any meaningful opportunity to challenge his detention.

106. This interpretation conflicts with the plain language of Section 1225 for the reasons explained above. It also conflicts with validly promulgated federal regulations governing re-detention. When ICE releases an alien and subsequently

re-detains them, federal regulations require ICE to identify 'changed circumstances' that justify the renewed detention. See 8 C.F.R. § 241.13(i)(2) ('The Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.'); see also *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023) (ICE's re-detention decision requires '(1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future').

107. The BIA's interpretation in Yajure-Hurtado would allow ICE to re-detain aliens without any showing of changed circumstances, in direct conflict with these regulatory requirements. Moreover, following the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which overruled Chevron deference, the BIA's interpretation is entitled to no deference. This Court must exercise its independent judgment to determine whether Section 1225 or Section 1226 applies to Petitioner's detention.

108. Petitioner was previously detained and ICE could not remove him, and he was released on his own recognizance.

109. Petitioner is being detained for immigration purposes when ICE knows that it cannot effect his prompt removal from the United States, that Petitioner is neither a flight risk nor a danger, and that he has not violated conditions of his

recognizance Thus, ICE has no permissible basis for depriving Petitioner's liberty, in violation of 8 U.S.C. § 1226(a)) as well as their respective implementing regulations.

110. A judicial order requiring Petitioner's release from custody would remedy the Respondent's unlawful conduct.

SECOND CAUSE OF ACTION: UNLAWFUL DETENTION IN VIOLATION OF THE U.S. CONSTITUTION, FIFTH AMENDMENT

111. Petitioner realleges paragraphs 1-110.

112. Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment on multiple independent grounds.

A. Mandatory Detention Without Individualized Justification Violates Due Process

113. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

114. The Due Process Clause forbids the government from depriving individuals of liberty without an individualized determination of necessity. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (due process requires "notice and an opportunity to be heard at a meaningful time and in a meaningful manner"). When detention

is based solely on a categorical rule—here, manner of entry years ago—without any assessment of current circumstances, danger, or flight risk, it violates basic due process principles.

115. Petitioner has been detained since September 26, 2025, without any individualized determination that his detention is necessary. ICE has not conducted a bond hearing. ICE has not assessed whether Petitioner poses a current danger or flight risk. ICE has not considered:

a. Petitioner's three-year record of perfect compliance with all immigration requirements
b. His marriage to a U.S. citizen
c. His pending T visa application documenting trafficking victimization
d. His intention to file Form I-601A to adjust status through his U.S. citizen wife
e. His lack of any criminal history
f. His employment and economic self-sufficiency
g. His community ties through Uniglesia Ministries
h. His cooperation with law enforcement during the traffic stop that led to his re-detention

116. Instead, ICE relies entirely on the categorical assertion that anyone who entered without inspection must be detained under Section 1225(b)(2), regardless

of how long ago they entered or their current circumstances. This categorical approach—applying mandatory detention based solely on a status that existed three years ago, without any individualized assessment of current danger or flight risk—violates due process.

117. As the Supreme Court has explained, immigration detention must "bear a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003). Here, Petitioner's detention bears no reasonable relation to any legitimate government purpose:

a. It does not ensure appearance at future proceedings—Petitioner attended every check-in and hearing for three years
b. It does not protect public safety—Petitioner has no criminal history and poses no danger
c. It does not facilitate removal—Petitioner has two pending applications for legal status (T visa and intended I-601A waiver)

118. The detention is purely punitive and arbitrary, violating substantive due process.

B. Re-Detention Without Changed Circumstances Violates Procedural Due Process

119. When ICE releases an alien and subsequently re-detains them, procedural due process requires ICE to identify specific, individualized reasons—based on

changed circumstances—that warrant renewed detention.

120. In *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the Supreme Court established the framework for analyzing procedural due process claims. Courts must balance:

a. The private interest affected by the official action;

b. The risk of erroneous deprivation through the procedures used, and the value of additional procedural safeguards; and

c. The Government's interest, including the burdens that additional procedures would entail.

121. Applying this framework here:

122. Private Interest: The private interest at stake—Petitioner's liberty—is among the most fundamental interests protected by the Constitution. "Freedom from imprisonment lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. Petitioner has been deprived of this liberty since September 26, 2025, without any hearing or individualized determination.

123. Risk of Erroneous Deprivation: The risk of erroneous deprivation is extraordinarily high when ICE re-detains someone based solely on a categorical rule without any assessment of changed circumstances. ICE released Petitioner on May 18, 2022, based on a determination that he posed neither a flight risk nor a danger to the community. For more than three years, Petitioner proved that determination was correct through perfect compliance. ICE has not articulated

what changed between May 2022 and September 2025 that suddenly makes detention necessary.

124. The traffic violations that preceded his re-detention—speeding and driving without a valid license—do not constitute changed circumstances suggesting dangerousness or flight risk. These are minor regulatory violations. Petitioner immediately cooperated with law enforcement and did not attempt to flee. These infractions do not warrant the conclusion that someone who complied perfectly for three years suddenly poses a danger or flight risk.

125. Without any requirement that ICE identify changed circumstances, there is nothing to prevent arbitrary or pretextual re-detention. The government could release and re-detain individuals cyclically based on shifting policy preferences rather than individualized assessments of necessity.

126. Government's Interest and Burden: The government's interest in avoiding individualized hearings is minimal. The government already conducted an individualized assessment in May 2022 when it released Petitioner. Requiring the government to articulate what changed since then imposes no significant burden—it merely requires ICE to explain its decision-making. Moreover, federal regulations already require this showing. See 8 C.F.R. § 241.13(i)(2); *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023).

127. The Mathews balancing weighs heavily in favor of requiring an individualized determination before re-detention. Petitioner's interest in liberty is

fundamental; the risk of erroneous deprivation without such a requirement is high; and the burden on the government is minimal.

128. ICE's failure to provide Petitioner with notice of the reasons for his re-detention and an opportunity to respond violates procedural due process. At minimum, ICE must articulate the reasoning for this new detention.

129. ICE has provided no such explanation. This failure violates procedural due process.

C. Detention That Blocks Access to Legal Status Violates Substantive Due Process

130. Petitioner's detention creates an additional substantive due process violation: it forecloses Petitioner's ability to pursue legal status through his U.S. citizen spouse and infringes on the constitutionally protected liberty interests of his U.S. citizen wife.

131. Petitioner married Nazareth G. Orozco Juarez, a U.S. citizen, on September 4, 2025. Based on this bona fide marriage, Petitioner is eligible to apply for adjustment of status. However, because Petitioner entered without inspection, he cannot adjust status directly in the United States under 8 U.S.C. § 1255. Instead, he must depart for consular processing abroad pursuant to INA § 245(a).

132. The problem: If Petitioner departs the United States, he will trigger the unlawful presence bars under 8 U.S.C. § 1182(a)(9)(B). Because he has

accumulated more than one year of unlawful presence, departing would trigger a ten-year bar to re-admission. This would separate him from his U.S. citizen wife for a decade.

133. The solution: Congress created a remedy for this situation—the provisional waiver process under 8 U.S.C. § 1182(a)(9)(B)(v). This statute allows certain aliens to apply for a provisional waiver of the unlawful presence bars BEFORE departing the United States. If approved, the alien can depart for consular processing without triggering the ten-year bar. To qualify, the applicant must demonstrate that refusal of admission would result in extreme hardship to a qualifying U.S. citizen or lawful permanent resident spouse or parent.

134. Here, Petitioner can readily demonstrate extreme hardship to his U.S. citizen wife Nazareth.

135. The provisional waiver process is specifically designed to avoid unnecessarily separating U.S. citizen families while immigration cases are pending abroad.

136. However—and this is the constitutional problem—USCIS regulations prohibit filing Form I-601A while an applicant is in immigration detention or active removal proceedings. See USCIS Policy Manual, Vol. 9, Part B, Ch. 2(D)(2) (USCIS may deny Form I-601A if "the applicant is in removal proceedings, unless the removal proceedings are administratively closed and have not been recalendared at the time of the decision on the application").

137. The government justifies Petitioner's detention by asserting he lacks legal status and has no pending application that would allow him to remain in the United States

138. But the detention itself—and the active removal proceedings that accompany it—prevent Petitioner from filing the very application (Form I-601A) that would establish his path to legal status

139. The government is therefore relying on a lack of status that the government's own actions prevent Petitioner from remedying

140. This circular reasoning violates due process. The government cannot use an individual's lack of legal status to justify detention while simultaneously preventing that individual from pursuing legal status. See *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001) (detention violates due process where removal is not "reasonably foreseeable" and no legitimate government purpose is served).

141. Here, not only is Petitioner's removal not reasonably foreseeable—he has a pending T visa application that, if approved, would grant him lawful status without requiring departure, AND he has a viable path to adjustment through his U.S. citizen wife—but the government is actively preventing Petitioner from pursuing that path.

142. The detention therefore serves no legitimate government purpose. It does not make removal more likely; rather, it prevents Petitioner from legalizing his status. It does not protect public safety—Petitioner has no criminal record. It does

not ensure appearance—Petitioner complied perfectly for three years. The detention inflicts gratuitous harm on Petitioner and his U.S. citizen wife while blocking their path to remaining together legally in the United States.

143. This violates substantive due process.

144. Given these circumstances, Petitioner's removal is not "reasonably foreseeable," and his continued detention violates Zadvydas. The detention is therefore not "reasonably related to the purpose for which the individual was committed," *Demore v. Kim*, 538 U.S. 510, 527 (2003), and violates substantive due process.

145. The detention therefore violates substantive due process.

THIRD CAUSE OF ACTION: Declaratory and Injunctive Relief

146. Petitioner realleges Paragraphs 1-145

147. An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201(a). This action is ripe for adjudication because a substantial controversy of sufficient immediacy and reality exists between parties having adverse legal interests. Moreover, many other individuals are in circumstances identical or substantially similar to Petitioner's—individuals who entered without inspection years ago, were released under INA § 236, complied with all conditions of release, and were subsequently re-detained under the government's interpretation of INA § 1225(b)(2). Declaratory relief is therefore appropriate to

clarify the legal rights and obligations of the parties and to provide guidance for similarly situated individuals.

148. Petitioner requests that this Court enter declaratory judgment that:

a. Section 1226(a) of the Immigration and Nationality Act, not Section 1225(b)(2), governs the detention of aliens like Petitioner who entered the United States years ago, were released from custody, and were arrested in the interior of the country after establishing residence, family ties, and community connections;

b. Section 1225(b)(2), by its plain terms, applies only to aliens who are actively seeking admission at ports of entry and does not apply to aliens who entered years ago and have been residing in the interior of the United States;

c. The plain language, structure, and legislative history of the Immigration and Nationality Act confirm that Congress created distinct detention regimes: Section 1225 for arriving aliens at ports of entry subject to mandatory detention, and Section 1226 for aliens arrested in the interior entitled to individualized bond hearings;

d. Petitioner is entitled to a bond hearing under Section 1226(a) at which the government bears the burden of proving, by clear and convincing evidence, that his continued detention is necessary because he poses either a flight risk or a danger to the community;

e. Matter of Yajure-Hurtado, 29 I&N Dec. 216 (BIA 2025), is not entitled to deference under Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024), and its interpretation of Section 1225(b)(2) conflicts with the statute's plain language, structure, and purpose;

f. The interpretation of Section 1225(b)(2) in Matter of Yajure-Hurtado, which would mandate detention for any alien who entered without inspection regardless of how long ago or their current circumstances, would render Section 1226(a) largely superfluous in violation of the canon against surplusage;

g. Federal regulations at 8 C.F.R. § 241.13(i)(2) and § 241.4(l) require ICE to demonstrate changed circumstances before re-detaining individuals who were previously released from custody;

h. ICE's re-detention of Petitioner without identifying any changed circumstances that would justify renewed detention violates both federal regulations and the Fifth Amendment's Due Process Clause;

i. When an alien has been released from custody based on a determination that detention is not necessary, and that alien complies perfectly with all conditions of release for an extended period, due process requires ICE to articulate specific, individualized changed circumstances before re-detention may occur;

j. Government action that justifies detention based on an individual's lack of legal status while simultaneously preventing that individual from pursuing legal status violates the Fifth Amendment's Due Process Clause;

k. Detention that prevents a noncitizen from filing Form I-601A (Provisional Waiver of Unlawful Presence) to adjust status through a U.S. citizen spouse creates an unconstitutional Catch-22 that violates both the detained individual's due process rights and the liberty interest of the U.S. citizen spouse recognized in *Kerry v. Din*, 576 U.S. 86 (2015);

l. Categorical mandatory detention based solely on manner of entry years ago, without any individualized assessment of current danger or flight risk, violates the Fifth Amendment's Due Process Clause;

m. Petitioner's prolonged detention without any individualized determination of necessity and without a meaningful hearing violates the Fifth Amendment's Due Process Clause;

n. Detention where removal is not reasonably foreseeable—including where the detained individual has pending applications for legal status and a viable path to adjustment through a U.S. citizen spouse—violates the Fifth Amendment's Due Process Clause under *Zadvydas v. Davis*, 533 U.S. 678 (2001)

149. In addition to declaratory relief, Petitioner requests that this Court enter preliminary and permanent injunctive relief:

a. ENJOINING Respondents from continuing to detain Petitioner under Section 1225(b)(2) and ORDERING Respondents to treat Petitioner's detention as governed by Section 1226(a);

b. ENJOINING Respondents from denying Petitioner a bond hearing on the basis that he is subject to mandatory detention under Section 1225(b)(2);

c. ENJOINING Respondents from transferring or removing Petitioner from the jurisdiction of the Middle District of Florida pending final resolution of:

   i. His removal proceedings;

   ii. His T visa application pending with USCIS;

   iii. His intended Form I-601A waiver application (if he is released and able to file);

   iv. Any appeals of removal orders or denials of applications for relief;

d. ENJOINING Respondents from executing any order of removal against Petitioner until:

   i. He has been provided with the bond hearing required under Section 1226(a); OR

ii. The government has demonstrated by clear and convincing evidence at such a hearing that his detention is necessary; OR

iii. His T visa application has been adjudicated by USCIS; OR

iv. He has been afforded the opportunity to file Form I-601A and that application has been adjudicated.

150. Petitioner satisfies the requirements for preliminary and permanent injunctive relief:

151. Likelihood of Success on the Merits: For the reasons set forth extensively above, Petitioner is highly likely to succeed on the merits of his claims. Federal courts across the country, including two recent decisions from this very District (*Hinojosa Garcia v. Noem* and *Hernandez Lopez v. Hardin*), have rejected the interpretation of Section 1225(b)(2) on which Respondents rely. The statute's plain language, the nationwide judicial consensus, the requirements of Loper Bright, federal regulations requiring changed circumstances, and multiple constitutional violations all support Petitioner's position.

152. Irreparable Injury: Petitioner suffers irreparable injury from his continued detention. "It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Gayle v. Meade*, 614 F. Supp. 3d 1175, 1205 (S.D. Fla. 2020). Petitioner is deprived of his liberty without individualized justification. He is separated from his U.S. citizen wife. He is unable to work or support his family. He is blocked from filing Form I-601A to

pursue legal status. His U.S. citizen wife suffers ongoing harm. These injuries cannot be compensated with money damages and are therefore irreparable.

153. Moreover, without interim relief to maintain the status quo, Petitioner could be removed from this Court's jurisdiction or deported entirely, effectively foreclosing any recourse. See *Zapeta v. Exec. Dir. of the Fla. Div. of Emergency Mgmt.*, No. 2:25-CV-00697-JLB-KCD, 2025 WL 2432501, at *3 (M.D. Fla. Aug. 22, 2025) (denying habeas petition as moot where petitioner had been deported).

154. Balance of Equities: The balance of equities weighs heavily in favor of Petitioner. Petitioner has been detained for 2 months without any individualized showing of necessity. He has a three-year record proving he is neither a danger nor a flight risk. His continued detention serves no legitimate government interest—it does not protect public safety, does not ensure appearance, and does not facilitate removal (indeed, it prevents him from pursuing legal status).

155. In contrast, any burden on Respondents from granting relief is minimal. The Court is not ordering immediate release; rather, the Court is ordering the bond hearing that Petitioner is entitled to receive under Section 1226(a). The government may present evidence at that hearing if it believes detention is necessary. Alternatively, Petitioner can be released with conditions such as electronic monitoring, regular check-ins, and residential restrictions that would adequately ensure his appearance at future proceedings.

156. Public Interest: The public interest favors granting relief. "Of course there is

a public interest in preventing aliens from being wrongfully removed." *Nken v. Holder*, 556 U.S. 418, 436 (2009). There is also a strong public interest in ensuring that the government complies with statutory requirements and constitutional protections. Detaining individuals without statutory authority, in violation of federal regulations, and in violation of the Fifth Amendment is not in the public interest. Conversely, providing Petitioner with the bond hearing he is entitled to under Section 1226(a) serves the public interest in adherence to law.

157. Therefore a declaration from this Court is required to restore Constitutional rights of Plaintiff and others similarly positioned and to clarify the government's duties to protect them as well as the procedures that should be implemented and to:

158. Declare that 8 C.F.R. § 1003.19(e)(4) requires ICE to demonstrate changed circumstances before re-detaining individuals previously released under INA § 236;

159. Declare that *Matter of Yajure-Hurtado's* interpretation of INA § 235 is not entitled to deference under *Loper Bright v. Raimondo* when it conflicts with validly promulgated regulations and stretches statutory language beyond its plain meaning;

160. Declare that INA § 235(b)(2) does not apply to individuals who, like Petitioner were apprehended in the interior of the United States years after entry, after being previously released from custody;

161. Declare that Petitioner's prolonged detention without individualized justification and without a meaningful hearing violates the Fifth Amendment's Due Process Clause;

WHEREFORE, Petitioner respectfully requests that this Court:

a. Issue a writ of habeas corpus directing Respondents to provide Petitioner with the statutory process required under 8 U.S.C. § 1226(a), which includes a bond hearing before an Immigration Judge;

b. ORDER Respondents to provide Petitioner with the statutory process required under 8 U.S.C. § 1226(a), which includes:

i. A bond hearing before an Immigration Judge within fourteen (14) days of this Court's Order;

ii. At which the government bears the burden of proving, by clear and convincing evidence, that Petitioner's continued detention is necessary because he poses either a flight risk or a danger to the community;

iii. At which the Immigration Judge must consider:

1. Petitioner's three-year record of perfect compliance with all immigration requirements;

2. Petitioner's family ties, including his marriage to a U.S. citizen;

3. Petitioner's pending T visa application;

4. Petitioner's intention to file Form I-601A to adjust status through his

U.S. citizen spouse;

5. Petitioner's lack of any criminal history;

6. Petitioner's employment and community ties;

7. Petitioner's ability to pay any bond amount set; and

8. Alternative conditions of release;

c. In the alternative, if Respondents fail to provide the bond hearing required above within fourteen (14) days of this Court's Order, or if the government cannot meet its burden of proving by clear and convincing evidence that detention is necessary, ORDER Petitioner's immediate release from custody under reasonable conditions of supervision, which may include:

i. Electronic monitoring (GPS ankle bracelet);

ii. Weekly or bi-weekly in-person check-ins with ICE;

iii. Surrender of any travel documents to ICE;

iv. Residential restrictions requiring Petitioner to reside at a specified address;

v. Employment verification requirements;

vi. Any other conditions this Court deems appropriate to ensure appearance at future proceedings;

d. ENJOIN Respondents from transferring or removing Petitioner from the jurisdiction of the Middle District of Florida pending final resolution of his removal proceedings and adjudication of his applications for relief (T visa and Form I-601A waiver);

e. Award Petitioner reasonable attorneys fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412; and

f. Grant any other and further relief that this Court deems just and proper.

Date: November 13, 2025

Respectfully submitted,

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