UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

Evin Lorenzo DIAS CRUZ, A# [redacted] Petitioner, vs. JASON STREEVAL, *in his official capacity as Warden of Stewart Detention center*; and LADEON FRANCIS, *Field Office Director of ICE Atlanta Field Office*, and TODD LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement*; and KRISTI NOEM, *Secretary of Homeland Security*; and PAMELA BONDI, *U.S. Attorney General*. JOSEPH B. EDLOW, Director of the U.S Citizenship & Immigration Services; Respondents.	) CASE NO 25-cv-381-CDL-AGH

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

AND COMPLAINT FOR DECLARATIVE AND INJUNCTIVE RELIEF

Petitioner files an amended petition due to a typo in his name in the statement of facts of the prior filing.

I. INTRODUCTION

1. This Petition challenges the ongoing and unlawful detention of Petitioner, Evin Lorenzo Dias Cruz ("Petitioner"), A# [redacted], by U.S. Immigration and Customs Enforcement (ICE). He is currently detained in Stewart Detention Center in Lumpkin, Georgia. Exhibit 1, Automated Court Information Printout.

2. Petitioner's continued detention by ICE is unlawful and unconstitutional. The government's recent policy shift—reclassifying noncitizens who entered without inspection as "arriving aliens" subject to mandatory detention under 8 U.S.C. § 1225(b)—contradicts the statute, decades of established statutory interpretation, agency regulations and practice, and binding precedent. Petitioner, apprehended in the interior years after entry, is entitled to discretionary bond hearings under 8 U.S.C. § 1226(a), not mandatory detention without judicial review. See Exhibit 3 current list of over 150 district courts from around the country agreeing with Petitioner, all rejecting Respondent's position. Since habeas relief is individualized and cannot be brought as a class action, each case has to be litigated separately.
3. On in October 2025, Petitioner was arrested in Troupe County, Georgia, for child molestation, though further investigation did not substantiate the charges, and Troupe County dropped the charges.[1] See Exhibit 4 Dismissal Paperwork.
4. Petitioner was served with a notice to appear dated October 3, 2025 charging him as an alien present in the United States who had not been admitted or paroled.
5. Under the government's current interpretation, no immigration judge has authority to consider Petitioner's custody, rendering habeas corpus the only available remedy.
6. Despite being apprehended within the interior of the United States long after arrival rather than at the border, Petitioner is now deemed ineligible for bond due to his entry without inspection. This stems from a controversial policy shift by ICE in July 2025, which aligns with a recent Board of Immigration Appeals (BIA)

[1] Troupe County also charged the child's mother and babysitter with false statements to the police, and the mother is, to the best of counsel's knowledge, in ICE custody.

decision. This decision disrupts decades of established legal precedent by introducing a novel interpretation of the Immigration and Nationality Act (INA). This interpretation, which contradicts both the statute's clear language and constitutional principles, reclassifies all noncitizens who entered without inspection, including the Petitioner, as "arriving aliens" or "applicants for admission." Consequently, they are subject to mandatory detention under 8 U.S.C. § 1225(b), rendering them ineligible for bond hearings by immigration judges.

7. While § 1225 mandates detention without bond for noncitizens apprehended at the border as "seeking admission," it does not apply to those like the Petitioner, who were detained within the United States long after arrival here. Therefore, the Petitioner seeks a declaratory judgment from this Court affirming that his detention should be under 8 U.S.C. § 1226(a). The Petitioner requests an order for his immediate release without restrictions or conditions due to his unlawful arrest. Alternatively, the Petitioner seeks an order for a discretionary bond hearing under § 1226(a) before an Article III judge, where the government must prove by clear and convincing evidence that he is a danger to the community or a flight risk. Additionally, the Petitioner requests that Respondents be prohibited from re-detaining him or put any restraints on his liberty unless they can meet the same evidentiary standard.

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

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

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

10. The claim for mandamus, APA delays and injunctive relief seeks an order compelling Respondent to perform a duty Respondents owe to Petitioner, namely, to cause the Respondents to adjudicate his I-360 self-petition (under the Violence Against Women Act ("VAWA")) as the abused spouse of a lawful permanent resident, which has been unreasonably delayed. The claim for declaratory relief seeks a judicial declaration that Respondents are required under law to complete adjudication processes for Petitioner.

II. JURISDICTION

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

12. Additionally, jurisdiction is supported by Article I, § 9, cl. 2 of the Constitution, known as the Suspension Clause, and Article III, Section 2, which addresses the Court's authority to hear constitutional issues raised by the Petitioner. The Petitioner seeks immediate judicial intervention to address ongoing violations of constitutional rights by the Respondents. This action is grounded in the United States Constitution, the Immigration & Nationality Act of 1952, as amended (INA), 8 U.S.C. § 1101 *et seq.*, and the APA, 5 U.S.C. § 551 *et seq.* Furthermore, the Court may also exercise jurisdiction under 28 U.S.C. § 1331, as the action arises under federal law, and may grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
13. The Court has authority to issue a declaratory judgement and to grant temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure (FRCP), as well as 28 U.S.C. §§ 2201-2202. Additionally, the Court can utilize the All Writs Act and its inherent equitable powers to provide such relief. Furthermore, the Court has the authority to issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241.
14. This Court possesses federal question jurisdiction under the APA to "hold unlawful and set aside agency action" deemed "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," as outlined in 5 U.S.C. § 706(2)(A). In the absence of a specific statutory review process, APA review of final agency actions can proceed through "any applicable form of legal action," which includes actions for declaratory judgments, writs of prohibitory or mandatory injunction, or habeas corpus, in a court of competent jurisdiction, as specified in 5 U.S.C. § 703.

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

16. The U.S. Supreme Court has recognized district courts' jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law. Even though the government may detain individuals during removal proceedings, *Denmore v. Kim*, 538 U.S. 510, (2003) (although that case involved detention under §1226(c) of certain criminal aliens), there are limitations to this power of the executive branch. Limitations like the Due Process Clause restrict the Government's power to detain noncitizens. It is well settled that individuals in deportation proceedings are entitled to due process of law under the Fifth Amendment. *Reno v. Flores*, 507 U.S. 292, 306, (1993). Courts must review immigration procedures and ensure that they comport with the Constitution.

17. Federal courts have retained the statutory authority to grant writs of habeas corpus since enactment of the Judiciary Act of 1789. In *Felker v. Turpin*, 518 U.S. 651 (1996), the Supreme Court declined to find a repeal of § 2241 by implication as to its original habeas corpus jurisdiction. See also *Boumediene v. Bush,* 553 U.S. 723 (2008). In addition to the Supreme Court in many cases, all Circuit Courts of Appeals have recognized district courts' jurisdiction to entertain habeas petitions

raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law.

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

19. Petitioner's claims challenge only his civil immigration detention and the procedures used to prolong it—not the merits of removability or any final order of removal—and therefore fall outside 8 U.S.C. § 1252(b)(9)'s channeling provision. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (detention challenges are not "questions of law or fact arising from" removal proceedings). Consistent with that framing, any injunctive relief sought here is strictly as-applied to Petitioner—for example, directing Petitioner's release under § 1226(a) or barring application of § 1225 as to Petitioner —and does not "enjoin or restrain the operation" of any statute within § 1252(f)(1)'s bar. In any event, § 1252(f)(1) permits individualized, as-applied relief for a single noncitizen, even while prohibiting class-wide injunctions. *See Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–49 (2022).

20. Section 1252(f)(1) does not bar the individualized injunctive relief sought here.

That provision limits lower courts' authority to "enjoin or restrain the operation" of the INA's detention and removal provisions on a class-wide or programmatic basis but expressly preserves injunctive relief "with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated." 8 U.S.C. § 1252(f)(1); *Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–50 (2022). Petitioner seeks only as-applied relief tailored to Petitioner —e.g., directing Petitioner's release under § 1226(a) or precluding DHS from enforcing the "arriving alien" definition of § 1225 toward Petitioner. That relief neither halts the general operation of any INA provision nor provides class-wide relief and thus falls squarely within § 1252(f)(1)'s carve-out.

21. Section 1252(g) is likewise inapplicable. It is a "narrow" jurisdictional bar that applies only to three discrete decisions or actions: "to commence proceedings, adjudicate cases, or execute removal orders." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Petitioner does not challenge any such decision. Petitioner challenges ongoing civil detention and DHS's use of an unlawful interpretation to nullify the plain language of the INA and its regulations as applicable to these agencies. Such detention-related claims and challenges to custody procedures fall outside § 1252(g). *See id.* at 482–83; cf. *Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (§ 1252(b)(9) does not channel detention claims).

22. To prevent ouster of this Court's habeas jurisdiction, the Court should, pursuant to 28 U.S.C. § 1651(a) (All Writs Act) and 28 U.S.C. § 2241, issue an immediate limited order prohibiting Respondents from transferring Petitioner outside the

court's District or otherwise changing Petitioner's immediate custodian without prior leave of Court while this action is pending. Such relief is necessary in aid of jurisdiction because habeas is governed by the district-of-confinement/immediate-custodian rule, and transfer can frustrate effective review. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441–42 (2004); *Ex parte Endo*, 323 U.S. 283, 307 (1944); *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966).

23. This Complaint in part also seeks a civil action for mandamus, injunctive and declaratory relief brought pursuant to 8 U.S.C. §§ 1329, 1331, 1391, 2201 and 28 U.S.C. § 1361 (to compel an officer or employee of the United States or agency thereof to perform a duty owed to the plaintiff). Jurisdiction is also conferred by 5 U.S.C. §555(b) which directs agencies to conclude matters presented to them "within a reasonable time," § 704 (no other adequate remedy), and § 706 (to compel agency action unlawfully withheld or unreasonably delayed). *See* also 5 U.S.C. § 551 *et seq.*; 5 U.S.C. § 701 *et seq.* Relief is requested pursuant to said statutes and 28 U.S.C. § 1361 (Mandamus Act), (to compel an officer or employee of the United States or agency thereof to perform a duty owed to the plaintiff), 28 U.S.C. § 2201 (Declaratory Judgment Act), 28 U.S.C. § 2202 (injunctive relief), and 28 U.S.C. § 2412 (costs and fees). Relief is requested pursuant to said statutes.

III. VENUE

24. Venue is proper in the United States District Court for the Middle District of Georgia because Petitioner is currently detained at Stewart Detention Center in the Middle District, under the custody of the Department of Homeland Security

("DHS"). Respondents are the Petitioner's immediate custodians and Respondents exercise authority over Petitioner's custody in this jurisdiction, as supported by *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). Habeas petitions generally are filed in the district court with jurisdiction over the filer's place of custody, also known as the district of confinement, pursuant to 28 U.S.C. § 2241. Additionally, with respect to Petitioner's non-habeas claims seeking prospective declaratory and injunctive relief against federal officials (agencies and officers of the United States) sued in their official capacities, venue is proper under 28 U.S.C. § 1391(e)(1)(B) because a substantial part of the events or omissions giving rise to these claims, including the initial arrest and continued detention of Petitioner and the enforcement of the mandatory detention agency interpretation, occurred in this District. Furthermore, the Respondents are officers of United States agencies, the Petitioner resides within this District, and there is no real property involved in this action.

IV. PARTIES

25. Petitioner, Evin Lorenzo DIAS CRUZ, is a 51-year-old noncitizen who has resided in the United States for approximately thirty years, having entered without inspection at Nogales, Arizona. He was detained by police for child molestation charges, which have now been dismissed, and transferred to ICE custody.

26. Respondent Jason Streeval, Warden for Stewart Detention Center, with supervisory authority over Stewart Detention Center in Lumpkin, Georgia. As such, Respondent Streeval is responsible for the operation of the Detention Center where Petitioner is detained. Because ICE contracts with private prisons such as Stewart

to house immigration detainees, Respondent Streeval has immediate physical custody of the Petitioner.

27. Respondent Ladeon Francis is the Atlanta Field Office Director (FOD) for ICE. As such, Respondent Francis is responsible for the oversight of ICE operations at the Detention Centers around Georgia. Respondent Sterling is being sued in his official capacity. He is the head of the ICE office that unlawfully arrested Petitioner, and such arrest took place under his direction and supervision. He is the immediate *legal* custodian of Petitioner.

28. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE). As such, Respondent Lyons is responsible for the oversight of ICE operations and the head of the federal agency responsible for all immigration enforcement in the United States. Respondent Lyons is being sued in his official capacity.

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

30. Respondent Pamela Bondi is the Attorney General of the United States and is sued in her official capacity since U.S. government agencies are Respondents in this complaint. Furthermore, the Immigration Judges who decide removal cases and applications for bond and relief from removal do so as her designees at the Executive Office for Immigration Review (EOIR).

31. Respondent Joseph Edlow is the Director of United States Citizenship and Immigration Services ("USCIS"). As director of USCIS, Mr. Edlow is responsible for oversight of USCIS. USCIS is responsible for adjudicating petitions and applications for immigration benefits. In this case, the Respondent has a Form I-360 self-petition as a special immigrant under the violence against women act pending since 2022. Petitioner names Mr. Ludlow in his official capacity.

32. Petitioner names certain government officials in their official capacity solely to preserve alternative, non-habeas avenues for prospective relief—such as as-applied declaratory and injunctive orders under 28 U.S.C. § 1331, the APA's waiver of sovereign immunity, 5 U.S.C. § 702, the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, and the All Writs Act, 28 U.S.C. § 1651—necessary to enjoin enforcement of DHS regulations and their interpretation as applied to Petitioner, ensure compliance with DHS/EOIR custody regulations, prevent transfer or removal of Petitioner, and effectuate any release the Court orders at the agency level where policy and implementation authority reside. See, e.g., *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949); *Dugan v. Rank*, 372 U.S. 609 (1963).

33. Petitioner acknowledges that under *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), the proper respondent to the habeas claim is the immediate custodian, and Petitioner does not rely on these officials as "habeas respondents." Petitioner names federal officials in their official capacities solely to ensure the Court can issue effective relief on non-habeas claims, consistent with *Rumsfeld v. Padilla*. To the extent the Court deems them improper Respondents on the habeas count, Petitioner

respectfully requests that any dismissal be limited to that claim and without prejudice to their continued status as Respondents on the non-core claims, such as declaratory judgement and injunctive relief, so that effective, agency-directed relief can issue to the officials with authority to implement it.

VI. STATEMENT OF FACTS AND PROCEDURAL HISTORY

34. Petitioner, Evin Lorenzo Dias Cruz, is a 51-year-old noncitizen who has resided in the United States for over thirty years; he entered the United States without inspection at Nogales, Arizona in May 2005. He lives in LaGrange, Georgia; he owns his home and has lived in the same home for twenty-two years. He is self-employed and installs insulation. He has four children. Three are US citizens and one is a lawful permanent resident. Three of the four children are adults, and the petitioner also has grandchildren.

35. Petitioner is detained at the Stewart Detention Center in Lumpkin, Georgia.

36. Petitioner filed an I-360 self-petition under the violence against women act (VAWA) on November 3, 2022. Exhibit 2. USCIS has yet to adjudicate it. Petitioner also filed an application for adjustment of status to permanent resident, form I-485, at the same time he filed the I-360. Based on his pending applications, the petitioner has been authorized to work and travel and has a valid employment authorization document. He has a prima facie determination of eligibility letter, but he has no decision on the I-360 self-petition to date.

37. Petitioner has a four-year-old US citizen child, A. D.[2] He has joint legal custody

[2] The child's name is redacted due to her age.

of A. D. with her mother. Exhibit 5. The mother of petitioner's child falsely accused him of molesting his daughter. The LaGrange police initially arrested the Petitioner based on the mother's statements, but later learned her statements were false. She was arrested and charged with false statements to the police, and is currently in ICE custody.[3] The child is in the temporary custody of her maternal aunt. The charges against the Petitioner were never brought before a grand jury or filed with a criminal court. The district attorney declined to prosecute. Exhibit 4.

38. Petitioner does have a minor criminal record that includes two DUI charges and two simple battery charges. However, these charges are between 1998 to 2002; all of them are at least twenty-three years old. Petitioner and his three adult US citizen children are known as upstanding members of a small community. Petitioner owns a business, Diaz Insulation, that employs several people, including his oldest son, and his family is very close-knit.[4]

39. ICE initiated removal proceedings against Petitioner, and his next Master Calendar Hearing is scheduled for November 19, 2025, at 2 pm before Immigration Judge Jerrica Harness at the Stewart Detention Center in Lumpkin, Georgia. *See* Exhibit 1 (EOIR Automated Case Information System). Petitioner has also applied for cancellation of removal for non-permanent resident ("Non-LPR cancellation") by filing form EOIR-42B with the immigration court.

40. Petitioner was arrested in the interior of the United States approximately thirty (30)

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[3] Undersigned counsel does not wish to testify here, but has spoken with the police detective who confirmed the mother's arrest and stated she also has a removal order. The detective also reached out to the DHS' Homeland Security Investigations ("HSI") and informed them that the petitioner was not being charged after he was already in their custody.

[4] Petitioner and his children are very concerned for the welfare of Petitioner's young daughter, and they have retained a family lawyer.

years after entry and is therefore improperly detained under 8 U.S.C. § 1226(a), Petitioner and his counsel do not have a form I-213 in this case and are not aware of whether or not ICE issued an arrest warrant for the Petitioner, but they transferred him from Troupe County, Georgia to their custody. The notice to appear does not classify the Respondent as an "arriving alien," it states he is an "alien that has not been admitted or paroled." Exhibit 6. Nevertheless, Respondents have still classified him as an "applicant for admission" and detained him under 8 U.S.C. § 1225(b)(2)—rendering him ineligible for bond under their new, unlawful policy.

41. Petitioner's continued detention, now exceeding one month, is based solely on ICE's erroneous classification of him as an "arriving alien" or "applicant for admission", subject to mandatory detention under 8 U.S.C. § 1225(b). Petitioner was apprehended in the interior of the United States more than three decades after entry, and therefore his detention should be governed by 8 U.S.C. § 1226(a), which allows for discretionary release on bond or recognizance.

42. Because all Respondents continue to treat Petitioner as detained under § 1225(b), any request for bond redetermination before an Immigration Judge would be futile, as the Immigration Court has already disclaimed jurisdiction over such requests. Accordingly, habeas relief is the only available and effective remedy to secure Petitioner's release or a lawful custody hearing.

43. Petitioner is neither a danger nor a flight risk. He has lived in the same community for decades, raised a family, and has maintained steady employment. Less-restrictive alternatives remain available and adequate such as release on recognizance or posting a low bond.

44. Prolonged detention under these circumstances imposes unnecessary hardship on Petitioner and his family, depriving his children of their father's financial and emotional support, and violating Petitioner's right to due process and freedom from arbitrary detention.

45. Upon information and belief, as of the time of filing of this Writ of Habeas, Petitioner remains confined solely because of ICE's invocation of its new interpretation that Petitioner is an "arriving alien" or "applicant for admission" and is therefore subject to mandatory detention. Even Petitioner were to file for a bond redetermination with the immigration judge, they would deny it pursuant to *Matter of Yajure Hurtado,* 29 I. & N. Dec. 216. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). Accordingly, it would be futile for Petitioner to request a bond for release from an Immigration Judge. Due to the binding nature of *Matter of Yajure Hurtado*, all immigration courts known to counsel are denying bond requests for similarly situated noncitizens, making habeas the only effective remedy. Similarly, even in cases an Immigration Judge would grant bond, ICE would appeal it which would leave Petitioner incarcerated through the appeal, which would take months and end up dismissed based on *Yajure Hurtado.*

V. EXHAUSTION OF REMEDIES

46. **No statutory exhaustion requirement applies to habeas cases,** and the recent interpretations by DHS and EOIR have effectively closed all administrative avenues for securing release for noncitizens, like Petitioner, who entered the U.S. without inspection. ICE's internal policy from July 2025, coupled with the EOIR's

Board of Immigration Appeals (BIA) precedent, mandates that immigration judges deny bond to the Petitioner and similarly situated noncitizens, rendering any further administrative steps futile. An administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it as noted in *Gibson v. Berryhill*, 411 U. S. 564, 575, n. 14 (1973). Requiring Petitioner to seek reconsideration with ICE or a bond hearing with an immigration judge "would be to demand a futile act" as no relief would be granted while Petitioner languishes in detention, as highlighted in *Houghton v. Shafer*, 392 U.S. 639, 640 (1968). Moreover, even if any remedies were available, the habeas statute does not require Petitioner to exhaust them.

47. Furthermore, even if applied, the doctrine of exhaustion of administrative remedies would have been futile on claim attacking constitutionality of ICE's actions and ICE's and EOIR's current interpretations of the mandatory detention provisions. Administrative hearings cannot address the constitutional claims at issue, rendering further proceedings ineffective. Moreover, where ICE seeks to quickly remove noncitizens like Petitioner even to third countries, without due process, particularly under the current administration's policies, underscores the inadequacy of administrative remedies. *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992) (futility exception to exhaustion applies where administrative remedies are inadequate or unavailable). Thus, pursuing such remedies would be an exercise in futility, as they fail to provide any meaningful opportunity to address the constitutional violations at hand.

48. Petitioner has exhausted his administrative remedies to the extent required by law,

and Petitioner's only remedy is by way of this judicial action.

VI. LEGAL AND STATUTORY BACKGROUND

A. Noncitizens Are Entitled to Due Process

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

50. These landmark Supreme Court cases affirm that due process protections apply to all persons within the U.S., regardless of their immigration status. These foundational principles are not merely historical artifacts but are vital, living tenets that must guide current immigration practices. The Court has consistently recognized that noncitizens facing deportation are entitled to due process under the Fifth Amendment, as seen in *Landon v. Plasencia*, 459 U.S. 21 (1982) (noncitizens facing deportation are entitled to due process under the Fifth Amendment, which includes a full and fair hearing and notice of that hearing); *Zadvydas v. Davis*, 533 U.S. 678 (2001) (Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or

permanent).

B. The Erosion of Well-Established Immigration Law In 2025

51. The specific type of liberty deprivation suffered by Petitioner is not unique in 2025. Indeed, the recent, dramatic expansion of civil immigration detention powers by the U.S. government, has quietly eroded over 70 years of immigration law history. This expansion has occurred not through explicit legislative change but via broad agency interpretations, leading to a normalization of widespread, unreviewable detention of noncitizens. Tens of thousands of noncitiznes are now subject to automatic, non-reviewable loss of liberty, contravening our immigration laws, Supreme Court precedents, and the U.S. Constitution. The vast majority of ICE detainees are non-criminals, like Petitioner[5]. Many others have minor criminal backgrounds.

52. Traditionally, procedural safeguards such as individualized bond hearings and judicial review have served as critical checks against arbitrary detention. Immigration detention decisions involved two procedural layers: an initial custody determination by ICE (or CBP for noncitizens confronted at the border), followed by a custody redetermination (bond hearing) before an Immigration Judge (IJ), with appellate review by the BIA. **Detention was permitted only upon finding of flight risk or danger to the community**, and noncitizens had the right to challenge their detention before an IJ and seek release on their own recognizance or a bond. With the exception of significant criminal history or extremely negative immigration

[5] According to the Transactional Records Access Clearinghouse, 71.5% of detainees have no criminal conviction as of October 30, 2025. Immigration Detention Quick Facts, available at: https://tracreports.org/immigration/quickfacts/

history, the vast majority of noncitizens in the country were not detained, including those in removal proceedings, who were either released on their own recognizance or ordered to post a bond (most under $5,000), in order to appease DHS that they will show up for their removal hearings. In most cases, ICE attorneys did not object to bond grants and if the IJ ordered a bond, few appeals were being filed. Most noncitizens show up for their hearings, as they want to plead their case and obtain relief from removal and permanent status in the United States.

53. While detention of noncitizens is within the purview of the agency, according to 8 C.F.R. 236.1, a noncitizen who is detained is able to appeal their detention to an IJ and request a bond. Many bonds were still being granted by Immigration Judges around the country, notwithstanding ICE's detention, however that has drastically changed in the last several months. Recent administrative expansions have systematically stripped noncitizens of their fundamental rights to challenge detention, thereby undermining the very fabric of due process protections. In July 2025, ICE has issued a memo to all its employees without public disclosure, and without public comment and notice period. *See* Exhibit 7. The exhibit was obtained through the American Immigration Lawyers Association website. According to the new ICE "interpretation", any person who entered without inspection, like Petitioner, is now subject to mandatory detention without bond.

54. If Respondents' interpretation of § 1225 were truly grounded in the plain language and longstanding application of the statute—such that every noncitizen who entered without inspection is categorically subject to mandatory detention—there would have been no need for ICE to issue a stealth, unpublished memo in July 2025, nor

to bypass the established regulatory process, including notice-and-comment rulemaking under the APA. The fact that ICE chose to implement this sweeping policy shift through an internal, non-public directive, rather than through transparent rulemaking or publication in the Federal Register, strongly suggests that the agency itself recognized this was a controversial reinterpretation, not a faithful application of existing law. For decades, both agency practice and BIA precedent consistently treated interior apprehensions of long-term residents as subject to discretionary bond under § 1226(a), not mandatory detention under § 1225(b).

55. The abrupt change in July 2025—implemented without public notice, opportunity for comment, or regulatory justification—undermines Respondents' claim that their reading is compelled by statute. If the law were as clear as Respondents now assert, ICE would have had no reason to conceal its policy shift or avoid the procedural safeguards of the NPRM process. Instead, the agency's actions reflect an attempt to circumvent both statutory requirements and public accountability, further supporting Petitioner's argument that the new interpretation is not only unlawful, but also procedurally and substantively deficient under the APA and the Accardi doctrine.

56. Then two EOIR cases supporting the same statutory interpretation followed. The first case that was a published decision by the BIA, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), held that an applicant for admission arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings, is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b). This case is inapplicable to Petitioner because it deals

with the detention of an "applicant for admission" who is arrested while arriving in the United States. The case is relevant to individuals who are at the border or a port of entry and are seeking admission into the country. It does not apply to those who have already entered the United States and are apprehended within its interior. The second published decision from the BIA, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), significantly expanded the agency's mandatory detention interpretation to include all noncitizens who enter without inspection, denying them bond hearings under section 236(a) of the INA. The above-mentioned ICE memo, coupled with this decision, which will be discussed below, prevents Petitioner's release and violates Petitioner's Due Process rights.

57. *Matter of Yajure Hurtado* reclassified all Entrants Without Inspection (EWIs) as "arriving aliens" and/or "applicants for admission" and denied bond eligibility, overturning decades of precedent and agency guidance that had consistently applied § 1226(a) to interior apprehensions. The sudden change not only contradicts the statutory structure and legislative history, but also renders the separate inadmissibility charges superfluous, demonstrating that Congress never intended § 1225 to govern long-term residents apprehended far from any inspection point. The prior BIA decisions and longstanding EOIR guidance—consistently granted bond to such individuals, confirming that the government's new position is a radical departure from decades of established law and practice. See, for example, *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

C. <u>Immigration Detention Legal Framework</u>

58. When a noncitizen is alleged to have violated immigration laws, they are generally

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

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

60. Discretionary detention under 8 U.S.C. § 1226(a) applies equally to noncitizens who entered legally with a visa or for those who entered without inspection, like the Petitioner. This provision grants the Attorney General the authority to arrest and detain any noncitizen pending a decision on their removal from the United States. **The statute explicitly allows for the detention of noncitizens regardless of their manner of entry, as it does not distinguish between those who entered with inspection and those who did not.** The discretionary nature of § 1226(a) is further supported by case law, such as *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018), which emphasizes that the use of the word "may" in the statute implies discretion rather than a mandate. Additionally, the Ninth Circuit in *Rodriguez Diaz v.*

Garland, 53 F.4th 1189, 1202 (9th Cir. 2022), recognized that § 1226(a) provides extensive procedural protections, including bond hearings, **to all noncitizens detained under this provision, irrespective of their entry status**. This interpretation ensures that all noncitizens, whether they entered legally or without inspection, are subject to the same discretionary detention framework under § 1226(a).

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

> "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission." § 1225(a)(1)

62. Under §§1225(b)(1), if someone is determined to be an "arriving alien", they may be subject to removal and mandatory detention (if they have not been physically present in the United States continuously for a two-year period immediately prior.) Regulations define an "arriving alien" as:

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

63. Otherwise, 8 U.S.C. § 1225(b)(2) provides for the detention of "applicant for admission" specifically when "the examining immigration officer determines that an alien ***seeking admission*** is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title," i.e. for traditional removal proceedings [emphasis added].

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

65. For a noncitizen subject to discretionary detention under 8 U.S.C. § 1226(a), ICE makes an initial custody determination to either set a bond or hold the individual at no bond. The noncitizen may then seek a review of ICE's initial custody determination before the IJ (a "custody review hearing"), who has the authority to modify ICE's custody determination and set bond in a case in which ICE has designated no bond, lower bond when ICE has set a cash bond amount or deny bond completely. 8 C.F.R. §§ 1003.19, 1236.1(d).

66. Custody review hearings and bond determinations are distinct from the hearings on the merits of the removal case, as outlined in 8 C.F.R. § 1003.19(d). Even if a noncitizen is granted bond by the IJ, they are still required to appear in immigration court for the IJ to assess their removability and consider any claims for relief from removal. During a custody review hearing, once the IJ establishes jurisdiction over

the bond, the focus is solely on determining whether the detainee poses a danger to the community or is a flight risk. The regulation ensures that the focus of custody and bond hearings is on the immediate question of detention, rather than the broader issues of removability or eligibility for relief. Bond can only be granted if the IJ concludes that the detainee has met their burden of proving they are neither a danger nor a flight risk, as established in *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

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

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

69. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994); *see* also H.R.

Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

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

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

72. Due to due process concerns regarding the deprivation of liberty in civil contexts,

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

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

73. On July 8, 2025, ICE issued new interim guidance that significantly broadens the interpretation of 8 U.S.C. § 1225(b)(2). This guidance, detailed in the ICE memorandum titled "Interim Guidance Regarding Detention Authority for Applications for Admission," (*See* Exhibit 7), addresses the detention of "applicants for admission" as defined by § 1225(a)(1). The Department of Homeland Security (DHS) has declared that, "Effective immediately, it is the position of DHS that such aliens are subject to [mandatory] detention under INA § 235(b) [8 U.S.C. § 1225(b)(2)] and may not be released from ICE custody except

by INA § 212(d)(5) [8 U.S.C. § 1182(d)(5)]." *Id.* This policy represents a significant departure from previous interpretations and practices concerning the treatment of noncitizens, aligning them with the historical treatment of "arriving aliens." Importantly, this memorandum was not made public or subjected to the notice and comment process required by the APA.

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

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

E. Recent BIA Decision *Matter of Yajure Hurtado*

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

admission" within the scope of § 1225(b), and therefore subject to mandatory detention.

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

78. The BIA reasoned that individuals "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer." *Id.* at 228.

79. The BIA acknowledged the decades of precedent preceding its decision that authorized release of individuals present without having been inspected and admitted or paroled under § 1226(a). *Id.* at 225, FN6 ("We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the current issue that is before us. In fact, the supplemental information for the 1997 Interim Rule titled 'Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures,' 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997), reflects that the Immigration and Naturalization Service took the position at that time that '[d]espite being applicants

for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.'")

80. Ultimately, the BIA upheld the decision that the IJ lacked jurisdiction under 8 U.S.C. § 1225(b)(2) to consider the respondent for discretionary bond. *Id.* at 229. **Yajure Hurtado holds that there is no jurisdiction for the immigration judges to even have a hearing whether the person is eligible for a bond or not. The BIA decision is binding on all immigration judges nationwide.**

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

82. Harsh detention conditions for weeks and possibly months with hardened criminals, with the current immigration system case backlog (estimated at a few million cases) that could take years to resolve, results in mental health issues suffered by detained noncitizens like Petitioners. Unfortunately, they are becoming more common as non-criminals like him are put in prolonged detention by ICE. *See* Exhibit 8, New York Times article "People Are Losing Hope Inside ICE Detention Centers".

83. It would be futile for Petitioner to seek a bond hearing before an Immigration Judge because, under current immigration court practice and the binding effect of *Matter of Yajure Hurtado*, immigration judges lack jurisdiction to grant bond to individuals

classified as "arriving aliens"—including those who entered without inspection. If Petitioner moves for bond redetermination, the Immigration Judge will deny for lack of jurisdiction, resulting only in further unnecessary detention and additional legal expenses, without any prospect of meaningful relief. Under these circumstances, requiring Petitioner to pursue a bond hearing before an immigration judge would serve no practical purpose and would merely prolong his unlawful detention, contrary to the interests of justice and judicial economy.

84. With immigration cases backlogs reaching almost 3.5 million, and many cases taking months or years to resolve, Petitioner's detention is unreasonable and unconstitutional.[6] Even assuming Respondents could conduct a quick removal hearing and get an order of removal against Petitioner in the next several months, if Petitioner exercises the appellate rights to the BIA, their backlog is estimated in over 5 years as they have a considerable amount of cases and only 28 BIA members. This is not even including an appeal to a circuit court in a Petition for Review, which Petitioner could pursue even if the BIA denies his appeal several years down the road.

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

85. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the

[6] See https://tracreports.org/phptools/immigration/backlog/

statute as ICE. Exhibit 3. This court has also rejected the new interpretation. *See J.A.M. v Streeval et. Al*, 4:25-cv-342 (CDL).

86. Subsequently, noncitizens who entered without inspection had only one choice to secure their release: by filing habeas petitions. Court after court all over the country that has dealt with this issue rejected ICE and EOIR's new interpretation and has adopted the same reading of the INA's detention authorities for individuals who entered without inspection as authorized by 8 U.S.C. § 1226(a), not under § 1225(b)(2).

87. Courts all over the country have consistently rejected the new interpretation by DHS and EOIR, as it contradicts the INA. These courts have clarified that the plain language of the statutory provisions indicates that § 1226(a), rather than § 1225(b), governs the detention of individuals like the Petitioner who entered without inspection. The challenge lies in the fact that habeas relief is granted on an individual basis, not on a class-wide scale, necessitating that courts tailor their findings to the specific circumstances of each person applying for a writ of habeas corpus.

VII. STATUTORY FRAMEWORK OF THE INA

Section 1225 Is Titled "Inspection"

Section 1225 is titled "Inspection of applicants for admission" and is designed to govern the process of inspecting individuals at the border or port of entry. It is not intended to apply to noncitizens who entered unlawfully years ago and have since established residence in the interior. Congress provided a separate detention regime

under § 1226(a) for noncitizens apprehended in the interior, which allows for individualized bond hearings and discretionary release. To collapse these regimes and subject all interior apprehensions to mandatory detention under § 1225(b) would render § 1226(a) superfluous and contradict decades of agency and judicial practice.

The Supreme Court has repeatedly recognized that the title of a statute and the heading of a section are "tools available for the resolution of a doubt about the meaning of a statute" and can provide important cues about congressional intent, especially where the operative text is ambiguous or subject to competing interpretations. See *Yates v. United States*, 574 U.S. 528, 539–40 (2015); *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998); *Trainmen v. Baltimore & Ohio R. Co.*, 331 U.S. 519, 528–29 (1947). The heading of INA § 1225—"**Inspection of applicants for admission**"—signals that Congress intended this section to govern the process of inspecting individuals who are seeking entry into the United States **at a designated inspection point**, such as a border crossing or port of entry, not those who entered years ago and are apprehended in the interior. As the Supreme Court explained in *Yates*, statutory headings are not controlling, but they "supply cues" that Congress did not intend the operative provisions to sweep more broadly than their context suggests. If Congress had intended § 1225 to apply to all noncitizens present in the United States without admission, regardless of where or when they were apprehended, it would have chosen a more expansive heading and provided a clearer indication of that intent in the statutory text. Instead, the heading confines the scope of § 1225 to the inspection process at the threshold of entry, supporting the longstanding interpretation that its

mandatory detention provisions are relevant only for aliens caught at an inspection point, not for long-term residents apprehended in the interior.

8 U.S.C. § 1101's Definition of "Admission"

The term "admission" is defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A).

"Entry" has long been understood to mean "a crossing into the territorial limits of the United States." *Matter of Ching and Chen*, 19 I&N Dec. 203, 205 (BIA 1984) (citing *Matter of Pierre*, 14 I & N Dec. 467, 468 (BIA 1973)).

The phrase "seeking admission," accordingly, means that a noncitizen must be actively "seeking" "lawful entry." See *Lopez Benitez*, 2025 WL 2371588, at *7.

> "'[S]eeking admission' implies action–something that is **currently occurring**, and in this instance, would most logically occur at the border upon inspection." (emphasis added)

Lopez-Campos v. Raycraft, No. 2:25-CV-12486, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025).

Petitioner is not "seeking an admission" or "seeking lawful entry" because he cannot. The INA bars him from seeking lawful entry because he entered illegally and accrued unlawful presence of over one year.

Petitioner is, however, eligible to adjust his status in the U.S. if his I-360 is approved due to special rules for abuse victims under VAWA. See exception at 8 USC Section 1255(d) which explains that an individual who is battered by a US citizen or resident spouse may seek to adjust status in the US even if he entered without inspection. Petitioner also intends to seek relief from removal called "Cancellation of removal for non-permanent residents." 8 U.S.C. § 1229b(b). An applicant for

cancellation of removal cannot be considered as "seeking an admission" or "seeking lawful entry" because the legal framework and purpose of cancellation of removal are distinct from those of admission or entry into the United States. Cancellation of removal is a form of relief from removal available to certain noncitizens who are already present in the United States and are facing removal proceedings. It is not a mechanism for entering the country or adjusting one's status to that of a lawful entrant.

8 U.S.C. § 1101's Definition of "Application for Admission"

The statutory definition in 8 U.S.C. § 1101(a)(4) makes clear that the term "application for admission" refers **specifically to the act of seeking entry into the United States at a physical border or port of entry, and not to the process of applying for an immigrant or nonimmigrant visa abroad**. The statute provides: "The term 'application for admission' has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa." This language underscores that Congress intended "applicant for admission" to mean individuals who are at the threshold of entry, **actively seeking to be inspected and admitted by immigration authorities**. It does not encompass those who entered the country unlawfully years ago and have since established residence in the interior. To interpret § 1225 as applying to long-term residents apprehended far from any inspection point would disregard the plain meaning of "application for admission" as defined by Congress, collapse the statutory distinction between border and interior cases, and extend mandatory detention far beyond its intended scope (almost any noncitizen would be subject to mandatory detention other than a small percentage of people who entered on visas and overstayed). The statutory text thus

supports the longstanding practice that only those physically present at or near the border, or otherwise in the process of seeking entry, are "applicants for admission" under § 1225—not individuals who entered without inspection long ago and are now subject to removal proceedings in the interior

"Application for Admission" Is a Discrete, Temporal Event—

Not a Continuous Status

The Ninth Circuit had a case on point which supports Petitioner's case. The Ninth Circuit in *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020), held unequivocally that the phrase "application for admission" **refers to a discrete event: an actual attempt to physically enter the United States, not a continuous or indefinite status that persists after entry**. The court explained that "**application for admission" is not a status that attaches to a person indefinitely, but rather describes a specific moment in time when an individual presents themselves at a border or port of entry and seeks to be admitted.** The phrase "at the time of application for admission" imposes a temporal requirement, **referring to a single point in time, not a continuous period** (*Torres*, 976 F.3d at 926).

Torres further clarified that while 8 U.S.C. § 1225(a)(1) may "deem" certain noncitizens present in the United States without admission as "applicants for admission" **for procedural purposes, this legal fiction does not transform their status for substantive grounds of inadmissibility or mandatory detention**. The court distinguished between being "deemed" an applicant for admission for the purpose of placing someone in removal proceedings, and actually being an applicant for admission for the purposes of applying the substantive grounds of inadmissibility and mandatory detention under § 1225(b) (*Torres*, 976 F.3d at 928).

The Fifth Circuit in *Marques v. Lynch*, 834 F.3d 549 (5th Cir. 2016), reached a similar conclusion, holding that provisions like 8 U.S.C. § 1182(a)(7) apply only to **applicants for admission who are seeking to enter the country, not to those already present in the United States seeking post-entry adjustment of status.** The court reasoned that the statutory scheme distinguishes between those at the border seeking entry and those who have already entered, and that the grounds of inadmissibility and related detention provisions are not meant to apply retroactively to long-term residents apprehended in the interior (*Marques*, 834 F.3d at 553–54; cited in *Torres*, 976 F.3d at 927). Petitioner, who has lived in the United States for a substantial period and was apprehended far from any border or inspection point, cannot be considered an "applicant for admission" in the substantive sense required by § 1225(b). The government's reliance on the "deemed" language of § 1225(a)(1) ignores the temporal and contextual limitations recognized by the Ninth and Fifth Circuits. Petitioner's detention must be governed by § 1226(a), which provides for discretionary bond hearings, not by the mandatory detention provisions of § 1225(b).

8 U.S.C. § 1225(b)(2)(A)

It is clear from the plain language of 8 U.S.C. § 1225(b)(2)(A) that it applies to people in the process of entering the country:

> "Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, **if the examining immigration officer determines than an alien seeking admission** is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title."

At no point in time, other than at the border, airport or other port of entry into the country are there immigration officers examining admissions.

STATUTORY STRUCTURE OF § 1226

Section 1226 is titled "**Apprehension and detention of aliens.**" (plain language argument)

Congress's intent in enacting 8 U.S.C. § 1226(a) was to provide for discretionary detention of noncitizens during removal proceedings, not to impose mandatory detention on all such individuals. Section 1226(a) expressly authorizes the Attorney General to detain or release an arrested noncitizen on bond or conditional parole, reflecting a deliberate legislative choice to allow individualized custody determinations based on flight risk or danger to the community. Therefore, **for noncitizens subject to § 1226(a), the presumption is that they should not be detained.**

In sharp contrast, § 1226(c) mandates **mandatory detention** only for a narrowly defined subset of noncitizens—those with **certain criminal convictions or security concerns**—demonstrating that Congress knew how to require mandatory detention when it so intended. If Congress had wanted all noncitizens subject to § 1226(a) (including those who entered without inspection) to be mandatorily detained, it would have written § 1226(a) in the same unequivocal terms as § 1226(c). The existence of § 1226(a)'s discretionary framework, and the careful limitation of mandatory detention to specific categories in § 1226(c), make clear that Congress did not intend for all noncitizens apprehended in the interior, including EWIs, to be subject to mandatory detention by default. To read § 1226(a) otherwise would render its discretionary provisions—and the entire structure of individualized bond hearings—superfluous, contrary to basic principles of statutory interpretation and the longstanding practice recognized by courts and agencies alike.

It is therefore both logical and constitutionally sound for the government to bear the burden of proof in demonstrating that a noncitizen detained under 8 U.S.C. § 1226(a) is a flight risk or danger to the community. Section 1226(a) establishes a discretionary detention framework, expressly authorizing release on bond or conditional parole unless the government can show that continued detention is necessary. This structure reflects Congress's intent to protect the fundamental liberty interests at stake in civil immigration detention, which, unlike criminal incarceration, is not punitive and must be justified by legitimate government interests. Placing the burden on the government ensures that detention is not the default (as it has become with this Administration), but rather an **exception** justified by specific, individualized findings. This allocation of burden is consistent with due process principles, which require the government to justify any deprivation of liberty, and aligns with longstanding practice in both immigration and other civil detention contexts. If the government could detain by default and require the noncitizen to prove a negative, the statutory promise of individualized review and the presumption of liberty would be rendered meaningless. Thus, requiring the government to prove flight risk or dangerousness under § 1226(a) is essential to safeguard due process and effectuate the statute's purpose of individualized, non-punitive detention determinations.

The 11th Circuit has not yet addressed this question specifically in relation to noncitizens detained pursuant to § 1226(a), however, the circuits who have addressed it, all stated that the **government bears the burden to prove that detention is warranted**, i.e., that the noncitizen is either a danger to the community or a flight risk. No circuit court known to undersigned counsel put the burden on the noncitizen to

prove that he or she is not a flight risk or a danger. The Ninth Circuit has ruled that noncitizens detained under § 1226(a) are "entitled to release on bond unless the government establishes that they are a flight risk or will be a danger to the community," as seen in *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022), where the court emphasized that they have a right to contest their custody before an immigration judge, at which time the government bears the burden to prove that detention is justified (both require clear and convincing evidence). The Second Circuit in *Velasco Lopez v. Decker*, 978 F.3d 842, 853–56 (2d Cir. 2020), also held that the government must prove a noncitizen is a danger to the community or a flight risk to deny bond under § 1226(a) (both require clear and convincing evidence). Furthermore, the First Circuit in *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021), stated that a noncitizen must be released under § 1226(a) if the government cannot meet its burden of proving they are a danger or flight risk (the only difference is the standard: clear and convincing evidence for dangerousness or preponderance of the evidence for flight risk determinations). In any event, the government has not claimed that Petitioner is a danger nor a flight risk, let alone proved it. Their only contention is that Petitioner is subject to mandatory detention because he is an "arriving alien" or "applicant for admission."

8 U.S.C. § 1226(c): Targeted Mandatory Detention for Criminals

Section 1226(c) specifically mandates detention for noncitizens who are removable or inadmissible on certain criminal or national security grounds. The statute is detailed and precise, listing the categories of offenses and the circumstances under which mandatory detention applies. Congress's decision to enumerate these categories and to require mandatory detention **only for this subset of noncitizens** demonstrates a

deliberate legislative choice: **If all EWIs were already subject to mandatory detention under § 1225(b), there would be no need for § 1226(c) to exist as a separate, carefully crafted provision.** The existence of § 1226(c) presupposes that there are noncitizens in removal proceedings who are not subject to mandatory detention—i.e., those who are not "arriving aliens" or "applicants for admission" under § 1225(b), but who are EWIs may be subject to mandatory detention if they fall within the criminal or security categories of § 1226(c).

Laken Riley Amendments Expanded Not Duplicated Detention

The Laken Riley Act, enacted in 2025, amended § 1226(c) to further expand the categories of noncitizens subject to mandatory detention, including certain additional criminal offenses and public safety risks. The legislative history and statutory text make clear that Congress intended to **expand** the reach of mandatory detention for specific, **high-priority categories**—not to restate or duplicate a rule that, under Respondents' theory, would already apply to all EWIs.

If Respondents' interpretation were correct, the Laken Riley Act's amendments to § 1226(c) would be unnecessary and redundant. Congress would not have needed to specify new categories of mandatory detention if all EWIs were already mandatorily detained under § 1225(b). The careful drafting and expansion of § 1226(c) by Congress, including the Laken Riley Act amendments, only make sense if there is a significant population of noncitizens in removal proceedings who are not otherwise subject to mandatory detention—i.e., those detained under § 1226(a), including many EWIs apprehended in the interior.

Avoiding Surplusage and Giving Effect to All Provisions

The Supreme Court has repeatedly held that statutes must be interpreted to give effect to all provisions and to avoid rendering any part superfluous or redundant. See *Duncan v. Walker*, 533 U.S. 167, 174 (2001) ("It is our duty to give effect, if possible, to every clause and word of a statute."). **If every EWI is always an "applicant for admission" subject to § 1225(b) mandatory detention, then the entire framework of § 1226(a) and (c) for noncitizens apprehended in the interior would be largely meaningless for a vast class of cases.**

The government's reading would collapse the careful distinctions Congress drew between different categories of noncitizens (such as criminal noncitizens subject to mandatory detention under § 1226(c)), their procedural rights, and the availability of bond or release.

8 U.S.C. § 1182(a)(6) and § 1182(a)(7) Would Be Rendered Superfluous

The statutory distinction between 8 U.S.C. § 1225 and § 1226 is also underscored by the separate grounds of inadmissibility set forth in 8 U.S.C. § 1182(a)(6) (entry without inspection) and § 1182(a)(7) (lack of valid documentation). If all noncitizens who entered without inspection ("EWIs") were truly "arriving aliens" subject to § 1225, there would be no need for the INA to maintain different inadmissibility charges for those seeking entry at a port of entry versus those apprehended in the interior. The existence of these distinct statutory grounds reflects Congress's intent to treat border cases and interior apprehensions differently in removal proceedings. For decades, the Board of Immigration Appeals (BIA) and agency practice recognized this distinction: noncitizens apprehended in the interior after years of residence—regardless of their manner of entry—were routinely charged under § 1182(a)(6)(A)(i) and afforded bond

hearings under § 1226(a), with immigration judges empowered to grant release if the individual was not a danger or flight risk. This practice persisted until the abrupt policy shift in July–September 2025.

VIII. LEGAL FRAMEWORK FOR THE RELIEF SOUGHT

A. Habeas Jurisdiction

88. Habeas corpus relief extends to a person "in custody under or by color of the authority of the United States" if the person can show she is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241 (c)(1), (c)(3); *I.N.S. v. St. Cyr*, 533 U.S. 289, 314 (2001). *See* also *Antonelli v. Warden, U.S.P. Atlanta*, 542 F.3d 1348, 1352 (11th Cir. 2008) (holding a petitioner's claims are proper under 28 U.S.C. section 2241 if they concern the continuation or execution of confinement). The U.S. Constitution guarantees that the writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004), (citing U.S. Const., Art. I, § 9, cl. 2). This includes immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (addressing post final-removal order detention under § 1231). *Jennings v. Rodriguez*, 583 U.S. 281, 285–86 (2018) (addressing § 1226 detention, which is more applicable to this instant case as Petitioner does not have a final order of removal).

89. "[H]abeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513 U.S. 298, 319 (1995), that "[t]he court shall … dispose of [] as law and justice require," 28 U.S.C. § 2243. "[T]he court's role was most extensive in cases of pretrial and noncriminal detention." *Boumediene v. Bush*, 553 U.S. 723, 779– 80 (2008)

(citations omitted). "[W]hen the judicial power to issue habeas corpus properly is invoked the judicial officer must have adequate authority to make a determination in light of the relevant law and facts and to formulate and issue appropriate orders for relief, including, if necessary, an order directing the prisoner's release." Id. at 787. The Petitioner seeking habeas relief must demonstrate he is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

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

91. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000).

B. <u>The Administrative Procedure Act (APA)</u>

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

93. Final agency actions are those (1) that "mark the consummation of the agency's decisionmaking process" and (2) "by which rights or obligations have been

determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).

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

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

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

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

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

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

IX. CLAIMS FOR RELIEF

99. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

COUNT ONE

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

COUNT TWO

101. The automatic and prolonged detention deprives noncitizens of their liberty without adequate procedural safeguards, contravening the fundamental requirements of due process under the Fifth Amendment.

102. The Supreme Court states in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976): "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." "Freedom from imprisonment—

from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

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

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

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

ICE is acting as both the prosecutor as well as the adjudicator. ICE can

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

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

safeguards intended to prevent erroneous deprivation of liberty.

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

COUNT THREE

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

Contrary to Law and Constitutional Rights

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

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

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

106. The APA's reference to "law" in the phrase "not in accordance with law," "means,

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

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

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

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

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

111. By issuing this ICE memo and publishing *Yajure Hurtado*, this regulation, the agencies have exceeded the authority delegated to them by Congress, effectively rewriting the statutory scheme to permit DHS to prolong detention without judicial determination or individualized findings for almost anyone present in the U.S. without an immigration judge review. This regulatory overreach undermines the statutory guarantee of prompt review and release and is inconsistent with the principles of separation of powers and the nondelegation doctrine.

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

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

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

COUNT FOUR

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

Arbitrary and Capricious

Summary of Claim of Petitioner's Seventh Claim for Relief: *Petitioner asserts that Respondents' actions are arbitrary and capricious under the APA, 5 U.S.C. § 706(2)(A), because they depart from established law and practice without reasoned explanation, fail to consider reliance interests, and ignore less-restrictive alternatives.*

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

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

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

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

119. Petitioner's detention, beyond being unlawful and ultra vires, also "failed to consider important aspects of the problem". Petitioner's detention is arbitrary and capricious and in excess of statutory authority because DHS: (1) failed to consider

Petitioner's reliance interests; (2) failed to consider less-restrictive alternatives to detention; (3) failed to explain a reasoned basis for departing from its prior re determination; and (4) failed to comply with various regulations. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020) (reliance interests). *See* also *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983) (requirement of reasoned decisionmaking).

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

COUNT FIVE

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

In Excess of Statutory Authority

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

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

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

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

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

COUNT SIX

Ultra Vires Action

Summary of Claim of Petitioner's Ninth Claim for Relief: *Petitioner seeks to set aside Respondents' actions as ultra vires, as there is no statutory or constitutional authority for Petitioner's continued detention under the circumstances presented.*

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

126. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Petitioner under these circumstances.

127. Petitioner has a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires actions.

COUNT SEVEN

Violation of the *Accardi* Doctrine

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

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

129. The *Accardi* doctrine mandates that federal agencies must adhere to their own established regulations and policies. This principle ensures that agency actions are

consistent, fair, and predictable, thereby safeguarding individual rights. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated agency procedures, rules, or instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 ("If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").

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

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

132. By reclassifying individuals who entered without inspection apprehended in the interior of the United States as "applicants for admission" or as "arriving aliens"

subject to mandatory detention under § 1225(b)(2), ICE and EOIR have disregarded the procedural safeguards and discretionary bond provisions outlined in § 1226(a). ICE's and EOIR's reclassification policy effectively nullifies § 1226(a)'s statutory provision by subjecting all noncitizens to mandatory detention, regardless of their actual circumstances. This interpretation is contrary to the plain language of the INA and disrupts decades of settled law, which recognized the distinct legal status and rights of noncitizens apprehended in the interior. This departure from established regulations and legal standards not only contravenes the statutory framework of the INA but also undermines the procedural rights and protections intended to ensure fair and consistent treatment of noncitizens, warranting immediate judicial intervention.

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

134. The policy's blanket application denies noncitizens the due process rights afforded under the Fifth Amendment, which guarantees fair procedures before depriving individuals of their liberty. By eliminating bond eligibility, ICE's policy strips noncitizens of the opportunity to meaningfully contest their detention. This issue is further exacerbated by EOIR's decision in *Yajure Hurtado*, which entrenches this denial of due process by reclassifying noncitizens who entered without inspection

as "arriving aliens," thereby subjecting them to mandatory detention without the possibility of bond from immigration judges. Together, these agency actions undermine the statutory and constitutional protections afforded to noncitizens, and therefore, this Court should declare these actions unlawful and set them aside.

X. REMEDIES

THE APPROPRIATE REMEDY FOR PETITIONER'S UNLAWFUL DETENTION IS IMMEDIATE RELEASE

135. Even though some cases cited in the Exhibit 3 of the favorable Federal Court cases granted bond hearings to noncitizens who won TROs, PIs and habeas relief, some of those case (including the *Jose Alejandro* case) granted straight release relief to petitioners in similar circumstances. In addition, there are several important reasons that include new developments since those cases were decided that warrant a different relief now in this case.

136. Further, under a 2021 ICE directive, ICE should use a victim-centered approach and use discretion not to detain individuals with pending humanitarian relief including a case under VAWA such as this one where Petitioner has a prima facie determination.[7] As explained in the memorandum, a prima facie determination means that the application is complete and properly filed and found to have addressed each of the eligibility requirements. Here ICE has arrested and detained the Petitioner for over a month despite his pending applications, employment authorization document, and prima facie determination.

[7] See https://niwaplibrary.wcl.american.edu/wp-content/uploads/ICE-Victim-Centered-Directive-11005.3.pdf

Bond Hearing Will Require More Detention Time

137. If the Court orders a bond hearing before an immigration judge, it will take several more days or weeks to schedule a bond hearing, at additional costs to Petitioner, while he remains detained, in a situation where Respondents have not even alleged, yet alone proven, that he is a danger or flight risk. Respondents have not produced a single shred of evidence why he should not be released.

Bond Hearing With An Immigration Judge Will Be Biased

138. The Supreme Court has long held that once an individual has entered the United States—regardless of the legality of that entry—they are entitled to the full panoply of due process protections before being deprived of liberty, including a fair hearing and individualized assessment by a neutral decisionmaker. See Landon v. Plasencia, 459 U.S. 21, 32 (1982); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 (1953). These protections are not mere formalities; they are fundamental constitutional guarantees that ensure the government cannot arbitrarily detain individuals without meaningful process and an impartial adjudicator.

139. Recent developments have gravely undermined the neutrality and independence of the immigration court system. Widespread reports and credible evidence indicate that, following mass firings and administrative reshuffling, many immigration judges now operate under the threat of removal or discipline if they grant relief to noncitizens, including bond or release, and they basically do what DHS asks them to. See Exhibit 9, CNN article. This climate of fear and institutional pressure has eroded the essential independence of immigration judges, transforming them from neutral arbiters into functionaries who may feel compelled to deny relief to avoid

professional jeopardy. The result is a system where noncitizens cannot be assured of a fair and impartial hearing on their liberty—a core requirement of due process. There is no proper oversight over the immigration judges and as a result, if an immigration judge denies bond, Petitioner will continue to be detained for months or years while the bond appeal is pending with the BIA.

Even If An Immigration Judge Grants Bond – ICE Will Appeal and Continue Detention

140. Even in the rare circumstances these days where Immigration Judges are granting bonds, DHS is appealing all bond grants to the Board of Immigration Appeals and uses an ultra vires automatic stay regulation to keep people detained for months without cause or due process. What used to be a process used very sparingly (in undersigned counsel's 20 years of practice was never used by DHS on any one of her clients), is now an automatic process used by DHS every time an immigration judge grants bond. The regulation has been declared ultra vires and unconstitutional, as determined by dozens of courts around the country. For brevity, see the following cases and the reasons and analysis in these decisions: *Campos Leon v. Forestal*, No. 1:25-cv-01774-SEB-MJD, 2025 WL 2694763 (S.D. Ind., Sep. 22, 2025) and *B.D.V.S. v. Forestal*, No. 1:25-cv-01968-SEB-TAB, 2025 WL 2855743 (S.D. Ind., Oct. 8, 2025).

Only Bond Hearing In Federal Court Would Be Proper

141. Given these circumstances, if the Court determines that full release is unwarranted and a bond hearing is warranted, Petitioner respectfully requests that it be conducted in federal court, before an Article III judge. Federal judges are insulated from political and administrative pressures and are well-versed in the requirements

of due process, the standards for bond, and the constitutional imperative of neutrality. Only a truly independent judicial officer can ensure that Petitioner receives the fair, individualized assessment that the Constitution demands. Anything less would risk compounding the due process violations already at issue and would fail to provide the **meaningful** hearing required by *Landon, Kwong Hai Chew*, and the Fifth Amendment itself. The Court should therefore retain jurisdiction over any bond hearing to guarantee the integrity and fairness of the process.

If Court Grants Bond Hearing – Ensure Burdens Are Met

142. Should the Court grant a bond hearing, since there is no 11th Circuit caselaw on who carries the burden of proof, the Court should follow the 3 circuit courts who have decided the issue and determine that the government must prove, by clear and convincing evidence, that Petitioner is a flight risk or a danger and order so with very detailed instructions for Respondents to follow. *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022); *Velasco Lopez v. Decker*, 978 F.3d 842, 853–56 (2d Cir. 2020); *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021). The reason for that is the Congress's assumption was that for non-criminal noncitizens who are detained pursuant to § 1226(a) the default is release, not detention (in contrast to § 1226(c) that deals with mandatory detention for criminal aliens).

XI. COMPELLING NONDISCRETIONARY AGENCY ACTION

143. As part of this Writ of Habeas Corpus, Petitioner wishes to compel an agency action unreasonably delayed against Respondent USCIS.

144. Respondents have sufficient information to determine Petitioner's eligibility, pursuant to applicable requirements and complete the processing procedures of his pending I-360 self-petition, which has been pending for approximately three years. Petitioner has done everything in his power to ensure timely adjudication of his petition and applications, but Respondents have clearly failed cooperate with his requests and the agency has delayed adjudication. Now that he is detained and may be imminently removed from the United States if Respondents do not adjudicate his case, Petitioner asserts that Respondent USCIS is violating the APA unreasonably delaying his case.

145. Respondents, in violation of the Administrative Procedures Act, 5 U.S.C. § 555 (b), are unlawfully withholding or unreasonably delaying action on Petitioner's petition and applications and have failed to carry out the adjudicative functions delegated to them by law with regards to Petitioner's case.

146. There are no other steps Petitioner could have taken to have his applications immediately adjudicated or to at least ensure adjudication will occur prior to his removal—which, without a stay of his removal, could occur at any time. Absent action by this Court in the form of mandamus, injunctive, and declaratory relief, no other remedy exists for Petitioner to resolve Respondents' refusal to immediately adjudicate his case or ensure it is done before his removal.

147. Respondents, by willfully and unreasonably refusing to discharge their non-discretionary duty to adjudicate Petitioner's petition, are unlawfully withholding or unreasonably delaying action to pursue these immigration benefits, to which he has a clear right, in violation of 5 U.S.C. § 555 (b) of the APA, thereby causing

Petitioner tremendous harm. Due to the nature of his pending Applications, if Petitioner is deported prior to adjudication, the loss of eligibility will be permanent and cannot be cured post-removal, resulting in irreparable harm.

148. Considering the extremely severe consequences that will flow to Petitioner if his petition is not adjudicated before he is removed from the United States, it is entirely unreasonable for Respondents to refuse to immediately adjudicate his petition and applications, given the interest of justice and the public interest in protecting victims of crime. Petitioner filed his Form I-360 self-petition nearly three years ago and it is still pending with USCIS.

149. This action request for mandamus and injunctive and declaratory relief, wherein Petitioner seeks an order compelling Respondents to perform a duty they owe to Petitioner—namely, to cause Respondents to adjudicate the pending I-360 self-petition immediately. If Petitioner's petition and applications are not adjudicated before that time, he may lose the benefit forever and may be unable to acquire lawful permanent residence.[8]

150. Mandamus is proper if: (1) the petitioner can show a clear right to the relief sought; (2) the respondents have a clear, non-discretionary duty to act; and (3) no other remedy is available. *Heckler v. Ringer*, 466 U.S. 602, 617 (1984). In this case, Petitioner (1) can show a clear right to the relief sought—to cause Respondents to adjudicate their applications; (2) Respondents have a non-discretionary duty to

[8] At minimum, Petitioner would be subject to the ten year bar for unlawful presence if he is forced to depart the United States. 8 U.S.C. § 1182(a)(9)(B)(i)(II) Further, if he leaves under a removal order, he would be subject to a consecutive ten year bar under 8 U.S.C. § 1182(a)(9)(A). The current process of waiving these bars is a discretionary process, and even if all goes well, it would take many years for the adjudication of several applications.

Petitioner to act, to wit, to adjudicate the pending I-360 Petition; and (3) no other remedy is available to cause Respondents to adjudicate or to act on Petitioner's application.

151. A strong humanitarian factor genuinely exists here, given Petitioner is the victim of emotional, psychological, and physical abuse by a lawful permanent resident spouse and he has significant ties to the United States – his four children and his thirty years of residence here. He has made every effort to timely file and to provide all necessary documentation to the government as required to obtain the requested benefits and has diligently followed up to obtain a timely decision in his case.

152. Notwithstanding published USCIS processing times for adjudication of I-360 self-petitions, the lengthy adjudication (nearly three years) of his petition in Petitioner's case is unreasonable as ICE (another agency under DHS, a "sister" agency to USCIS) is detaining him and trying to remove him while USCIS is sitting on his application doing nothing. *See, e.g., Salehian v. Novak*, No. 3:06CV459(PCD), 2006 WL 3041109, at *3 (D. Conn. Oct. 23, 2006) (citations omitted) (finding a two-year delay unreasonable and acknowledging that "the [Government] simply does not possess unfettered discretion to relegate aliens to a state of 'limbo,' leaving them to languish there indefinitely. This result is explicitly foreclosed by the APA."); *see also Tang v. Chertoff*, 493 F. Supp. 2d 148, 156 (D. Mass. 2007) (citations omitted) (recognizing that several courts have "noted that to defer to agencies on the pace of adjudication would be effectively to lift the duty to adjudicate applications altogether"); *see also Agbemaple v. I.N.S.*, No. 97 C 8547, 1998 WL 292441, at *2 (N.D. Ill. May 18, 1998) (finding it possible for a

noncitizen to demonstrate that a 20-month delay in adjudication of his petition and application for immigration benefits was unreasonable); *see also Am. Acad. of Religion v. Chertoff*, 463 F. Supp. 2d 400, 421 (S.D.N.Y. 2006) (noting "the wide latitude given the Executive to grant or deny a visa application—a discretion bounded only by the U.S. Constitution and Congressional mandate—does not include the authority to refuse to adjudicate a visa application"); *see* also *Wang v. Chertoff*, 676 F. Supp. 2d 1086 (D. Idaho 2010) (applying the factors for determining whether an agency's delay in acting on a matter is unreasonable and finding, in part, that, "The TRAC factors also weigh against finding the delay in this case reasonable. Human welfare is at stake."); *see also Razik v. Perryman*, 2003 WL 21878726, *2 (N.D. Ill. Aug. 7, 2003) (finding the court had Mandamus jurisdiction and a two-year delay in adjustment of status was unreasonable); *see also Gelfer v. Chertoff*, 2007 WL 902382 (N.D. Cal March 22, 2007) (a two-year delay in processing an adjustment of status application is unreasonable as a matter of law); *see also Linville v. Barrows*, 2007 WL 1544118 (W.D. Okla. April 19, 2007) (fining respondents failed to show a two-year delay in processing an adjustment of status application was reasonable as a matter of law); *Huang v. Chertoff*, 2007 WL 1831105 (N.D. Cal. June 25, 2007) (concluding a two-year delay in adjustment of status case was unreasonable); *see also Nadler v. INS*, No. 88-1586, slip op. (D.D.C. Mar. 30, 1989) and related EAJA fees award at *Nadler v. I.N.S.*, 737 F. Supp. 658 (D.D.C. Dec 06, 1989) (finding a two year delay in adjustment of status context is unreasonable; *see also Yan Yang & Bin Li v. Gonzales*, Case 2:07-cv-00050-JLG-NMK (S.D. Ohio 2007) (22 month delay in

adjustment of status application is unreasonable); With many of the aforementioned cases, a two-year delay in deciding an adjustment of status application was found to be unreasonable.

153. Clearly in those cases, where the petitioner may lose the benefit forever, or suffer continued detention, balanced with the agency's adjudication at its own convenience and other administrative delays, the balance of equities favors expediting Petitioner's case. When agency inaction is by law unreasonable because it may cause irreparable harm and permanent ineligibility for the applicant. In those cases, the agency's normal "First-In-First-Out" ("FIFO") rule has been found to be unreasonable. In other words, petitioners who risk a significant harm such as a permanent loss of benefit must be expedited to the front of the line. The small inconvenience to the agency by expediting the case or pushing the case to the front of the line is the only reasonable thing to do when a person is faced with a permanent loss of benefit.

154. Petitioner's case may even fall within USCIS' expedite criteria as an emergency or urgent humanitarian situation. *See* USCIS, Expedite Requests, https://www.uscis.gov/forms/filing-guidance/expedite-requests (last accessed Nov. 13, 2025). Petitioner's detention and imminent removal that would result in a permanent loss of benefit, as well as the risk of suffering consequences due to his medical condition while detained and his potential separation from his three USC children, can clearly qualify as an emergency under which the agency should expedite his application. Even if it were not considered an emergency or urgent humanitarian situation by Defendants, there are several court decisions that are

applicable to the case at hand where courts found that permanent loss of benefit mandates government agencies to expedite cases under the APA. See *Kumykov v. Carlson*, No. 09-01217 (N.D. Ga. TRO granted Jun. 4, 2009) and *YER USA, Inc., et. al v. Walsh*, No. 22-cv-00698 (N.D. Ga, TRO granted). These cases involved Plaintiffs who filed an action under the APA and/or Mandamus seeking to have the U.S. Department of Labor to have a labor certification ETA-9089 adjudicated before a child aging out of the benefit of applying for permanent residency. The courts granted the Plaintiffs' TRO due to the impending permanent loss of benefit.

155. The application of the six-part test for assessing unreasonable delay under the Administrative Procedure Act, established in Telecommunications Research & Action Center v. FCC (TRAC), further demonstrates that Plaintiff is substantially likely to prevail on the merits. Courts applying the TRAC framework evaluate:

1. Whether the time the agency takes to make a decision is governed by a "rule of reason;"
2. Any statutory timetable or indication of the speed Congress expects;
3. **That delays are less tolerable when human health or welfare is at stake;**
4. **The effect of expediting delayed action on agency activities of a competing or higher priority;**
5. The nature and extent of the interests prejudiced by delay; and
6. That no impropriety is required to find the delay unreasonable.

750 F.2d 70 (D.C. Cir. 1984).

156. Each of these factors supports Petitioner's claim. No rule of reason justifies USCIS's failure to act upon properly filed petition. **Petitioner has health conditions, is currently detained, and is at risk of imminent removal, which will tear him from his four children and community he has developed from living in the United States for more than 30 years. Here, the evidence does not**

suggest that expedited processing would interfere with high-priority adjudications. This is because the prejudice to Petitioner is so significant—particularly loss of eligibility for permanent residence, familial separation, including separation from his young US citizen daughter whose mother is already in removal proceedings, and being unable to reenter the United States for ten years.

157. The Administrative Procedure Act and the Mandamus Act provide independent, but overlapping avenues for relief. The APA authorizes this Court to compel agency action that is unlawfully withheld or unreasonably delayed. See 5 U.S.C. § 706(1). The Mandamus Act, 28 U.S.C. § 1361, similarly allows a court to compel an officer of the United States to perform a duty owed to Petitioner. As here, where the government has failed to perform a nondiscretionary duty within a reasonable time, and the petitioner has no other adequate remedy, courts have held that both the APA and mandamus provide appropriate grounds for relief. See *Heckler v. Ringer*, 466 U.S. 602, 616–17 (1984); *Iddir v. INS*, 301 F.3d 492, 499 (7th Cir. 2002).

158. Petitioner meets the criteria for mandamus relief: (1) he has a clear right to adjudication of his properly filed applications; (2) Respondents have a nondiscretionary duty to adjudicate them; and (3) there is no other adequate remedy available to prevent the loss of that right. In the instant case, Respondent have violated both the APA, 5 U.S.C. § 555(b), and the Mandamus Act; and thus, Petitioner is justified in his suit and likely to prevail on its merits.

XII. CONCLUSION

The continued detention of Petitioner violates due process rights. But for

intervention by this Court, Petitioner has no means of release from ICE custody. Petitioner faces ongoing and irreparable harm as a result of unlawful detention, including deprivation of liberty, loss of employment, and separation from family. These injuries cannot be remedied by monetary damages and will continue absent immediate judicial intervention. The balance of equities and the public interest strongly favor expedited consideration and equitable relief, including immediate release or a prompt bond hearing. Without such relief, Petitioner will continue to suffer irreparable harm, and the constitutional and statutory violations at issue will persist.

XIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief. Petitioner respectfully requests expedited consideration of this Petition due to the ongoing deprivation of liberty and irreparable harm:

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

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

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

(4) Declare that Petitioner is not an "applicant for admission "1225(b), seeking admission" or an "arriving alien" and that Petitioner's detention

is unlawful;

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

(6) Grant Petitioner a Writ of Habeas Corpus and order Respondents to immediately release Petitioner from custody, or, in the alternative, order Respondents to conduct a bond hearing for Petitioner pursuant to 8 U.S.C. § 1226(a) within 3 days, before an Article III judge, where the *government* bears the burden to prove, by clear and convincing evidence, that Petitioner is a flight risk or a danger to the community;

(7) Enjoin Respondents from re-detaining Petitioner in the future pursuant to 8 U.S.C. § 1225 or pursuant to 8 U.S.C. § 1226(a) absent changed circumstances such as new criminal conduct;

(8) Compel Respondents and those acting under them to perform their duty owed to Petitioner, namely, to rule upon and adjudicate Petitioner's I-360 Self-Petition;

(9) Award Petitioner reasonable attorney's fees and costs;

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

(11) Grant such other and further relief as this Court deems just, proper or equitable under the circumstances.

Respectfully Submitted,

This 14th day of November, 2025.

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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with Petitioner's family members and have reviewed various documents for Petitioner. On the basis of those discussions, I hereby verify that I have reviewed the foregoing Petition and that the facts and statements made in this Petition and Complaint are true and correct to the best of my knowledge or belief pursuant to 28 USC § 2242.

This 14th day of November, 2025.

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