UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

J.S.L., A# [redacted] Petitioner, vs. TONY NORMAND, *in his official capacity as Warden of Folkston Detention center;* and LADEON FRANCIS, *Field Office Director for 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.* Respondents.	)	CASE NO.:

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

AND COMPLAINT FOR DECLARATIVE AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. This Petition challenges the ongoing and unlawful detention of Petitioner, J.S.L. (Petitioner), A# [redacted] by U.S. Immigration and Customs Enforcement (ICE) at the Folkston D Ray ICE Processing Center, Georgia. A motion to proceed under a pseudonym will be filed forthwith due to Petitioner's protected asylum applicant status. Petitioner is neither a flight risk nor a danger to the community. *See* Exhibit 1 (ICE Locator).

2. ICE detained Petitioner, despite having previously been granted an Order on

Release on Recognizance (OREC) after government determination that Petitioner is not a flight risk or danger and having a pending asylum application and approved Employment Authorization Document (EAD).

3. 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 2 current list of over 150 district courts from around the country agreeing with Petitioner, all rejecting Respondent's position. See also the landmark case from this Court rejecting the government's position and agreeing with Petitioner's that he is entitled to a bond hearing, *Antonio Aguirre Villa v. Warden Tony Normand et al., 2025 WL 3095969 (S.D. Ga. Nov. 4, 2025)* (Report and recommendation adopted by judge Wood on Nov. 14, 2025). Since habeas relief is individualized and cannot be brought as a class action, each case has to be litigated separately.
4. 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) 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.

5. 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 release within 48 hours unless the government can demonstrate, by clear and convincing evidence, that he poses a danger to the community or is a flight risk. Alternatively, the Petitioner seeks an order for a discretionary bond hearing under § 1226(a) before an Immigration Judge within 7 days, where the government must prove by clear and convincing evidence that he is a danger to the community or a flight risk. Additionally, the Petitioner requests that Respondents be prohibited from re-detaining him unless they can meet the same evidentiary standard.

6. 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.

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

II. JURISDICTION

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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).

17. 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.

18. 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).

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

III. VENUE

20. Venue is proper in the United States District Court for the Southern District of

Georgia because Petitioner is currently detained at the Folkston D Ray ICE Processing Center in, Georgia, under the custody of the Department of Homeland Security (DHS). Respondent Tony Normand, as the Warden of Folkston Detention center, is the Petitioner's immediate custodian 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

21. Petitioner, J.S.L., is a 35-year-old noncitizen of who has resided in the United States since August 2023, having entered through the southern border through Texas without inspection.. He is currently detained in Folkston D Ray ICE Processing Center

22. Respondent Tony Normand is the Warden of Folkston D Ray ICE Processing Center, in Georgia.. As such, Respondent Tony Normand is responsible for the

operation of the Detention Center where Petitioner is detained and is the immediate custodian who is currently holding Petitioner in physical custody. Because ICE contracts with private and county-operated detention facilities to house immigration detainees, Respondent Tony Normand has immediate physical custody of the Petitioner and is sued in his official capacity.

23. 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 the Folkston Jail. Respondent Francis 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 her direction and supervision. He is the immediate *legal* custodian of Petitioner.

24. 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.

25. 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.

26. 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).

27. Petitioner names certain federal officials in their official capacities 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).

28. 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

29. Petitioner, J.S.L., is a 35-year-old noncitizen who has resided in the United States since approximately August 2023, having entered through the Texas border without inspection , more than two (2) years ago. He has established strong family and community ties after living in the country. .

30. Petitioner resides in Pooler, Georgia, with his long-term partner and their children, ages 10 and a 16-month old infant. The infant is a U.S.-citizen. Petitioner has worked steadily to support his family and has no criminal history. He is regarded as a person of good moral character and an active member of his local community.

31. On August 15, 2023, Respondents (ICE or Customs and Border Protection (CBP), another branch of DHS), released Petitioner under an Order of Release on Recognizance (OREC) after determining he was not a flight risk or danger, based on the petitioner's promise to appear for all future hearings and comply with any conditions set by the court or immigration authorities. The application reflects the petitioner's intention to ensure full cooperation with the proceedings while awaiting adjudication of their case. *See* Exhibit 3 OREC.

32. On September 4, 2025, Petitioner was arrested by ICE officers in his place of employment in Georgia, as he was working as a Safety Manager at Hyundai, during the raid ICE conducted there. Petitioner did not run or hide as he had always comply with rules. Although he was legally employed with an approved Employment

Authorization Document (EAD), ICE detained him based on their new position that individuals who entered without inspection are "applicants for admission" or "arriving aliens" subject to mandatory detention.

33. Following his apprehension, ICE transferred him to immigration custody, and he is currently detained at the Folkston D Ray ICE Processing Center, in Georgia., under the custody of the Department of Homeland Security (DHS). *See* Exhibit 1locator.

34. ICE initiated removal proceedings against Petitioner by filing a Notice to Appear (NTA) with the immigration court soon after his entry to the country. Petitioner's Individual Hearing is scheduled for January 6 2026, at 1:0p.m. before Immigration Judge Crofts. *See* Exhibit 4 (EOIR hearing notice). Since Petitioner was arrested in the interior of the United States, more than two (2) years after his entry, and he was previously given an OREC, he should be detained pursuant to 8 U.S.C. § 1226(a) and is therefore eligible to be released back on his own recognizance pursuant to the terms of the OREC he was previously given. However, Respondents have improperly revoked his OREC, detained him under 8 U.S.C. § 1225(b)(2) and classified him as an "arriving alien", rendering him ineligible for bond under their current policy of detaining anyone and everyone who entered without inspection.

35. Petitioner's continued detention, now exceeding two months, 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.

36. 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.

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

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

39. Upon information and belief, as of the time of filing of this Writ of Habeas, Petitioner remains confined the Folkston D Ray ICE Processing Center, in Georgia, 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

40. **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.

41. 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.

42. 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

43. 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)).

44. 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. <u>This Court's Holding in Aguirre Villa v. Normand</u>

45. In a similar case litigated in this Court by undersigned counsel, the court found that while Petitioner was not subject to detention under § 1225(b)(2)(A) but that § 1226(a) applies to aliens arrested in the interior, entitling them to a bond hearing.

46. The court rejected the government's argument that all noncitizens present without admission are subject to mandatory detention under § 1225(b), finding that this interpretation would render § 1226(a) superfluous and contradict the statutory structure and legislative history. The court found jurisdiction to review the legality of Petitioner's detention under 28 U.S.C. § 2241, rejecting Respondents' argument that 8 U.S.C. § 1252(g) barred review, as the challenge was to the legal basis of detention, not removal proceedings. .

47. The court held that § 1226(a) governs detention of noncitizens arrested in the

interior who are not actively seeking admission, entitling them to discretionary bond hearings. The Court found BIA's interpretation in *Yajure Hurtado* unpersuasive and inconsistent with the plain language of the INA, implementing regulations, and fundamental canons of statutory interpretation. The court noted that dozens of district courts have rejected the BIA's expansive reading

48. Petitioner's circumstances are the same or similar to that landmark case, therefore the Writ of Habeas should be granted for Petitioner and the Court should order similar relief. However, since Petitioner was previously released on an OREC, complied with its terms, but ICE detained him anyway and revoked the OREC, the Court should order Respondents to release him back on the same terms and conditions of the previous OREC instead of scheduling him for a new bond hearing.

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

49. Similar court cases known to undersigned counsel that have dealt with the same issue are as follows. Although this is certainly not an exhaustive list, just illustrative of the overwhelming authority around the country that Petitioner's detention under § 1225(b)(2) is unjustified and unlawful: *Savane v. Francis*, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Petitioner arrested pursuant to 1225 which was improper; habeas petition granted and immediate release ordered within one business day); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) (**Petitioner unlawfully detained pursuant to 1225, government ordered to transport Petitioner back to EDNY within 24 hours and immediately upon effectuating his transfer, to release him from custody**); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025), (petitioner entered without

inspection more than 30 years ago, detained pursuant to 1225, **court found 1226(a) applied based on statutory language; PI granted and court ordered release**); *Echevarria v. Bondi*, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025), entered without inspection in 2001, arrested in 2025 under 1225(b); **the 24 year period petitioner resided in the U.S. made the plain language of 1225(b) was inapplicable to him, at the time of arrest an immigration officer was not "examining" him and he was not "seeking" admission; Based on *Jennings* and *Nielsen*, statutory scheme of 1226(a) applies**); *Maldonado Vazquez v. Feeley*, 2025 WL 2676082 (D. Nev. Sept. 17, 2025) (entered without inspection over 20 years ago; detained July 2025; **court help petitioner held pursuant to 1226(a) not as the government contends 1225(b)(2); Yajure Hurtado renders requiring prudential exhaustion futile;** PI granted and release ordered on IJ bond); *Rodriguez Vazquez v. Bostock,* 2025 WL 2782499 (W.D. Wash Sept. 30, 2025) (**court granted summary judgement** on behalf of a class of people without lawful status held in Tacoma who entered without inspection and not apprehended upon arrival, court held plain text of **1226(a) applies rather than 1225(b) and issues a detailed statutory analysis**); *Guzman Alfaro v. Wamsley, 2025 WL 2822113* (W.D. Wash. Oct. 2, 2025) (court granted similar relief as a class member of *Rodriguez Vasquez; Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025) (**Court held 1226(a) and not 1225(b)(2) authorizes detention; procedural due process violated under Mathews, habeas granted**); *Lopez-Campos v. Raycroft*, No. 2:25-cv-12486, 2025 WL 2496379, at *5-6 (E.D. Mich. Aug. 29, 2025) (granting petition for writ of habeas corpus ordering immediate release or bond hearing, where, for 30 years,

courts have applied section 1226(a) to noncitizens like the petitioner who was already in the United States but facing removal, rejecting the government's argument that section 1225 applied so no bond hearing was required; *Mena Torres v. Wamsley*, 2025 WL 2855739 (W.D. Wash. Oct. 8, 2025) (Petitioner arrived without inspection in 2016, DEA encountered him in an unrelated search warrant and detained him under 1225(b)(2), court found that detention governed by 1226(a); *Jimenez v. FCI Berlin*, Warden, 2025 WL 2639390 (D.N.H. Sept. 8, 2025) (detained under § 1226, and continued detention without a bond hearing before an IJ is unlawful); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (granting a TRO for a native Ukraine citizen, who entered the U.S. without being inspected by an immigration officer and applied for asylum, because her due process rights were violated without a bond hearing pursuant to section 1225(a)); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *4-5 (E.D. Mich. Sept. 9, 2025) (granting petition for writ of habeas corpus for petitioner for government's failure to conduct a bond hearing pursuant to section 1226(a), rejecting the government's argument that section 1225 applied because petitioner did not enter lawfully so was still "seeking admission", where the petitioner had been living in the United States since 2005 and the amendment to section 1226 via the Laken Riley Act would have been redundant were section 1225 to apply); *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC), 2025 WL 2716910, at *4 n.5, *8 (E.D. Cal. Sept. 23, 2025) (holding that petitioner was likely to succeed under the merits that he was not subject to section 1225 and was wrongfully denied a bond hearing pursuant to section 1226(a), stating "[t]he Court

is not bound by Matter of Yajure Hurtado's interpretation of sections 1225 and 1226[,]" and may look to the "longstanding practice of government" and "the BIA's interpretations of the INA for guidance, but [it] must not defer to the agency.") (citations omitted); *Hernandez Marcelo v. Trump*, No. 3:25-cv-00094-RGE-WPK, 2025 WL 2741230, at *7-8 (S.D. Iowa Sept. 10, 2025) (refusing to apply BIA's *Yajure Hurtado* decision finding that all applicants for admission are necessarily "seeking admission" for purposes of warranting application of section 1225, because "the legislative history and congressional intent of the Immigration and Nationality Act do not support mandatory detention for all noncitizens present in the United States" as further supported by the "weight of caselaw").

50. ***See* Exhibit 2 attachment containing over 150(!) recent district court cases from around the country and authorities continue to reaffirm that noncitizens apprehended in the interior are subject to discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b)(2) and that Respondents' interpretation is unlawful.**

51. As the *Lopez Benitez* Court poignantly articulated: "This understanding accords with the plain, ordinary meaning of the words "seeking" and "admission." For example, someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as "seeking admission" to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as "seeking admission" (or "seeking" "lawful entry") at that point—one would say that they had entered

unlawfully but now seek a lawful means of remaining there. As § 1225(b)(2)(A) applies only to those noncitizens who are actively "seeking admission" to the United States, it cannot, according to its ordinary meaning, apply to Mr. Lopez Benitez, because he has already been residing in the United States for several years." *Lopez Benitez v. Francis*, —— F.Supp.3d at ——, 2025 WL 2371588, at *7.

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

53. Undersigned counsel has recently won a TRO for a client in similar and nearly identical circumstances to Petitioner's. *See Jose Alejandro v. Forestal*, Case 1:25-cv-02027-JPH-MKK, 2025 WL 2896348 (S.D. In. October 11, 2025). In that decision, Judge Hanlon explains why the statutory scheme and recent immigration

law changes do not support Respondents' interpretation and why would requesting a bond before an immigration judge under these circumstances would be futile:

> "Respondents next argue that this matter is not ripe for judicial review because Mr. Alejandro does not know if or how long he will be detained during the pendency of his removal proceedings. Dkt. 11 at 7. Mr. Alejandro responds that regardless of whether a request for bond has been considered, this case is ripe for decision because he is being unlawfully held under 8 U.S.C. § 1225(b)(2)(A). *See* dkt. 17 at 8. Mr. Alejandro is correct that, regardless of the procedural posture of his removal proceedings, the gravamen of his petition is that he is being held contrary to law under 8 U.S.C. § 1225(b)(2)(A). Respondents all but concede the point in their response by acknowledging that Mr. Alejandro will not be given a bond hearing because § 1225 does not provide for it. Dkt. 11 at 7, 14-17. And Petitioner was in fact denied a bond hearing on October 8. Dkt. 16. So, it is clear from the record that, absent judicially ordered relief, Mr. Alejandro faces ongoing *mandatory* detention pursuant to § 1225."

54. Petitioner is not "seeking admission" or "seeking lawful entry" within the meaning of the Immigration and Nationality Act. She entered the United States in August 2023, after being detained at the southern border and expressing a fear of returning to his home country. As a result, he was placed in proceedings and paroled into the United States on the same day, under Form I-220A OREC. Petitioner has resided continuously in the United States since then and has not violated the terms of the OREC release.

55. Given that immigration judges are now bound by the *Yajure Hurtado* decision, which deprives them of jurisdiction to grant bond to individuals classified as "arriving aliens," it would be futile for Petitioner to seek an immigration bond hearing at this stage. Any such application would certainly be denied 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.

56. 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. LEGAL FRAMEWORK FOR THE RELIEF SOUGHT

A. Habeas Jurisdiction

57. 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).

58. "[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).

59. Even if Petitioner were to be released prior to this Court granting relief, "in custody" would still be satisfied because significant restraints short of jail, which include removal proceedings and the continuous threat of re-detention, satisfy § 2241. See *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).

60. 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.*

61. 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. The Administrative Procedure Act (APA)

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

63. 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).

64. 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.

65. 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.

66. 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

67. 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.").

68. *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).

I. OREC REVOCATION

69. 8 C.F.R. § 236.1(c)(8)-(9) strictly limits the authority to revoke an Order of Release on Recognizance (OREC) to a narrow group of high-level officials:

Section 236.1(c)(8) allows certain officers to release a noncitizen on recognizance, but Section 236.1(c)(9) provides: "When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign), in which event the alien may be taken into physical custody and detained. If detained, unless a breach has occurred, any outstanding bond shall be revoked and canceled."

70. Form I-220A (Order of Release on Recognizance) documents a release under § 1226(a) and 8 C.F.R. § 236.1—not parole under 8 U.S.C. § 1182(d)(5)(A). Multiple courts have recognized that I-220A is a § 1226(a) custody status, not § 212(d)(5) parole. See, e.g., *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115–16 (9th Cir. 2007); *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011); *Lopez Benitez v. Francis*, No. 1:25-cv-05937-DEH (S.D.N.Y. 2025); *Florida v. United States*, No. 3:21-cv-1066, 2023 WL 2399883, at 3–4 (N.D. Fla. Mar. 8, 2023). The Board of Immigration Appeals has likewise confirmed that release on recognizance or bond is an exercise of § 1226 discretion pending proceedings, and that revocation authority is limited to those officials named in the regulation. See *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023); *Matter of Castillo-Padilla*, 25 I. & N. Dec. 257, 260 n.2 (BIA 2010).

71. In sum, the statutory, regulatory, and delegation framework requires that any deprivation of liberty for a noncitizen in Petitioner's position—released on an OREC and in pre-final order proceedings—must be justified by individualized

findings, executed only by officials with proper authority as specified in 8 C.F.R. § 236.1(c)(9) and 8 C.F.R. § 1236.1, and accompanied by the procedural protections required by law. DHS Delegation Order 7030.2 expressly prohibits redelegation of OREC revocation authority beyond those high-level officials named in the regulation, and any attempt to expand this authority by internal order or general delegation is legally ineffective. Actions by unauthorized officials, such as SDDOs, are ultra vires and invalid under the Accardi doctrine, as confirmed by recent OREC-specific case law. Immediate release is the only adequate remedy to restore Petitioner's liberty and prevent further irreparable harm.

Regulatory Procedures for Revocation and Re-Arrest

72. The regulatory framework for revoking an Order of Release on Recognizance (OREC) and re-detaining a noncitizen is explicit and mandatory. Under 8 C.F.R. § 236.1(c)(1), (c)(8), (c)(9), and (d)(1)–(3), if DHS seeks to change a noncitizen's custody status—including revocation of recognizance—it must: (1) issue a new custody determination (typically via Form I-286); (2) provide contemporaneous written notice to the noncitizen; and (3) advise the individual of the right to seek prompt review by an Immigration Judge (IJ). See 8 C.F.R. § 236.1(d)(1)–(3). These requirements are not mere formalities—they are substantive safeguards designed to ensure that any deprivation of liberty is based on accurate, individualized information and is subject to fair and reliable adjudication.

73. A detainee held under § 1226(a) is entitled to seek a prompt IJ custody redetermination; if DHS invokes § 1226(c), the IJ must assess whether mandatory detention applies and, where disputed, provide a hearing on that issue. See *Matter*

of Joseph, 22 I. & N. Dec. 799 (BIA 1999); *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006). The regulations further require that the review be conducted by a neutral and lawfully authorized decisionmaker, and that the noncitizen be given an opportunity to present evidence and arguments regarding the necessity of continued detention.

74. Failure to comply with these procedures—including providing contemporaneous notice, individualized assessment, and an opportunity to be heard before a neutral and lawfully authorized decisionmaker—renders any revocation of OREC by an unauthorized official ultra vires and invalid. Courts have consistently held that such actions violate both the regulatory scheme and due process, and have ordered immediate restoration of release in OREC-specific contexts. See, e.g., *Santamaria Orellana v. Baker*, No. 1:25-cv-02841 (D. Md. Oct. 7, 2025); *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765, at 10 (E.D.N.Y. Sept. 29, 2025); *Pinchi v. Noem*, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at 5 (N.D. Cal. July 24, 2025).

75. Federal courts have repeatedly found that such failures—detaining a noncitizen without notice, individualized assessment, or an opportunity to respond—constitute clear due process violations in the OREC context. See, e.g., *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025) (holding that "Respondent's ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights");* Pinchi v. Noem, *No. 5:25-cv-05632-PCP, 2025 WL 2084921, at* 5 (N.D. Cal. July 24, 2025) (emphasizing the importance of a pre-detention hearing to ensure "that any future detention has a

lawful basis"); *Kelly v. Almodovar*, No. 25 Civ. 6448 (AT), 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025) (finding due process violation where petitioner's re-detention occurred without prior notice, a showing of changed circumstances, or any opportunity to respond. These procedural requirements are not optional; they are essential to prevent arbitrary deprivation of liberty. The government's failure to provide these basic procedural protections before re-detaining Petitioner—who had been lawfully released on OREC and complied with all conditions for over a decade—renders her redetention unlawful under the Due Process Clause and the controlling regulations. Immediate release is the only adequate remedy to restore Petitioner's liberty and prevent further irreparable harm.

X. CAUSES OF ACTION AND CLAIMS FOR RELIEF

COUNT ONE

Declaratory Judgement

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

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

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

COUNT TWO

Statutory Violation of the Immigration and Nationality Act:

No-Bond Detention in Violation of 8 U.S.C. § 1226(a) and Unlawful Detention Under Improper Statutory Classification (INA §§ 1225 vs. 1226)

Summary of Claim of Petitioner's Second Claim for Relief: *Petitioner challenges the no-bond detention as a violation of the INA, specifically 8 U.S.C. § 1226(a), which entitles Petitioner to a bond hearing before an immigration judge. The government's application of § 1225(b) to Petitioner is contrary to the statute and decades of agency and judicial practice.*

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

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

80. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of

inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231 (which is not the case with Petitioner).

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

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

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

COUNT THREE

Violation of the Bond Regulations

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

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

85. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service (now DHS) issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] **who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination**." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

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

87. The application of § 1225(b)(2) to Petitioner unlawfully mandates these agencies to continually detain Petitioner and violates these agencies own regulations at 8

C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT FOUR

Violation of the Fifth Amendment of the U.S. Constitution

Substantive Due Process

Summary of Claim of Petitioner's Fourth Claim for Relief: *Petitioner asserts that the continued detention without a bond hearing violates substantive due process under the Fifth Amendment, as recognized by the Supreme Court in Zadvydas v. Davis and Jennings v. Rodriguez. The government may detain only to prevent flight or danger, and Petitioner's detention serves no such purpose.*

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

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

90. The Due Process Clause of the Fifth Amendment provides that "[n]o person shall be … deprived of life, liberty, or property, without due process of law." U.S. CONT. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). This vital liberty interest is at stake when an individual is subject to detention by the federal government.

91. Under the civil-detention framework set out in *Zadvydas* and its progeny, the Government may deprive a non-citizen of physical liberty only when the

confinement serves a legitimate purpose—such as ensuring appearance or protecting the community—and is reasonably related to, and not excessive in relation to, that purpose. Nonpunitive purpose such as preventing danger or flight and may not be excessive in relation to that purpose. See *Jennings*, 583 U.S. at 300–01; *Demore v. Kim*, 538 U.S. 510, 523 (2003).

92. Immigration detention is civil, not criminal, in nature, and therefore cannot be punitive. There are only two permissible reasons for immigration detention: to avoid flight risk, and to avoid danger to the community. Petitioner's detention therefore does not bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal.

93. After entering the United States unlawfully, Petitioner went on to develop ties to the community over the course of a long period of time. Petitioner is therefore a "person" within the meaning of the Due Process Clause of the Fifth Amendment to the U.S. Constitution and has a fundamental liberty interest in freedom from physical restraint.

94. Respondents' actions in detaining Petitioner without a bond hearing before a neutral and detached magistrate deprives Petitioner of various rights and liberty interest without due process of law.

95. Because Respondents had no legitimate, non-punitive objective in detaining Petitioner without bond, Petitioner's detention violates substantive due process under the Fifth Amendment to the U.S. Constitution. Continued confinement therefore bears no reasonable, non-punitive relationship to any legitimate aim and

is unconstitutionally arbitrary under *Zadvydas*.

COUNT FIVE

Violation of the Fifth Amendment of the U.S. Constitution

Summary of Claim of Petitioner's Fifth Claim for Relief: *Petitioner contends that the detention as an "arriving alien" without individualized process violates procedural due process under the Fifth Amendment. The Supreme Court and Eleventh Circuit have repeatedly held that civil detention must be accompanied by meaningful process and individualized findings. See Mathews v. Eldridge*

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

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

98. In addition to being ultra vires, the novel interpretation of DHS and EOIR of Petitioner's detention under § 1225(b)(2) violates the due process rights of noncitizens like Petitioner by subjecting them to continued mandatory detention solely on the basis of these agencies' wrongful interpretations, without any individualized assessment of flight risk or danger. This automatic and prolonged detention deprives noncitizens of their liberty without adequate procedural

safeguards, contravening the fundamental requirements of due process under the Fifth Amendment.

99. The Supreme Court has repeatedly recognized that civil detention must be accompanied by meaningful process and individualized findings; yet, Respondents are now permitted prolonged detention based on agency *interpretation* rather than judicial determination and legal basis. As a result, noncitizens are forced to remain in custody for an extended period, suffering significant harm and disruption to their lives, without any statutory, regulatory or constitutional justification. This scheme is not only beyond the authority granted by Congress, but also fundamentally unfair and unconstitutional.

100. The Supreme Court states in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976): "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Noncitizens are entitled to due process protections in removal proceedings, including notice and a hearing. *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Due process applies to all persons within the United States, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

101. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, (1976). Pursuant to *Mathews*, courts weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an

erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

102. 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 SIX

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).*

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

104. 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).

105. 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).

106. 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.

107. 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).

108. 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.

109. 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.

110. 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.

111. "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.

112. 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.

113. 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 SEVEN

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

Arbitrary and Capricious

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

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

115. 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).

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

117. 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).

118. 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).

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

COUNT EIGHT

Violation of 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).*

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

121. 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).

122. "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).

123. 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 NINE

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.*

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

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

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

COUNT TEN

Violation of the *Accardi* Doctrine

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

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

128. 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").

129. "[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.

130. 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.

131. 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.

132. 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.

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

COUNT ELEVEN

Violations of The Controlling Due Process Framework: *Mathews v. Eldridge*

Unlawful OREC Revocation

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

135. The relevant provisions for DHS's authority regarding Release on Order of Recognizance, Form I-220A, are 8 C.F.R. § 236.1(c)(8) and (9). A duplicate provision 8 C.F.R. § 1236.1 applies to the U.S. Department of Justice (DOJ) and the Executive Office for Immigration Review (EOIR) which includes all

immigration judges, the Board of Immigration Appeals.

136. Subsection (c) (9) states as follows: "When an alien who, having been **arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge** (except foreign), in which event the alien may be taken into physical custody and detained. If detained, unless a breach has occurred, any outstanding bond shall be revoked and canceled." 8 C.F.R. § 236.1(c)(9).

137. 8 C.F.R. § 236.1(c)(8) references § 236(a)(2), release on conditional parole: "**Any officer authorized to issue a warrant of arrest may, in the officer's discretion, release an alien** not described in section 236(c)(1) of the Act, **under the conditions at section 236(a)(2) and (3) of the Act**; provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding. Such an officer may also, in the exercise of discretion, release an alien in deportation proceedings pursuant to the authority in section 242 of the Act (as designated prior to April 1, 1997), except as otherwise provided by law." 8 C.F.R. § 236.1(c)(8).

138. Analogous case law that support the particular fact pattern that Petitioner's case presents regarding unlawful OREC revocation include:—*Chiliquinga Yumbillo v. Stamper*, 25-cv-00479, 2025 WL 2783642 (D. Me. Sept. 30, 2025); *J.U. v. Maldonado*, 25-CV-04836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *Romero-*

Nolasco v. McDonald, 25-cv-12492, 2025 WL 2778036 (D. Mass. Sept. 29, 2025); *Valencia Zapata v. Kaiser*, No. 25-cv-07492, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Hasan v. Crawford*, 25-cv-1408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025)—present factual circumstances similar (directly analogous) to Petitioner's facts here. As the Court itself found these cases prior to the filing of this brief, Petitioner will not review them again in detail here, but suffice it to say, each case that the Court found through its own research supports award of the relief Petitioner requests.

139. Assuming, arguendo, that Petitioner's revocation was made by an authorized DHS official, the process still failed to comply with the required steps and denied Petitioner procedural due process. In a recent decision, *Bermeo Sicha v. Bernal*, **the district court granted a habeas petition because there was no "change of circumstances" to re-detain the noncitizen after he was initially released on recognizance under 236.1(c)(8).** No. 1:25-CV-00418-SDN, 2025 WL 2494530, at *4 (D. Me. Aug. 29, 2025). This case offers authorities for limiting the government's authority to re-detain a noncitizen, despite the regulation's grant of discretionary authority for them to do so. See also *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2675785, at *14 (E.D. Cal. Sep. 18, 2025). In that case, the noncitizens, except one, were released on their own recognizance when they came across the Southern border without inspection. *Id.* at *11. The noncitizens applied for asylum after encountering ICE, and as they lived their day to day lives on a conditional parole status (i.e., released on own recognizance), they had no criminal records nor did any of them pose a flight risk or danger to the

community. *Id.* The court even found that by ICE releasing the noncitizens on their own recognizance, **there was an "implied promise" that their liberty would not be revoked unless they "failed to live up to the conditions of [their] release.**" *Id.* at *13 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)).

140. This principle is reinforced by Supreme Court precedent, that reliance interests created by government action cannot be disregarded arbitrarily or capriciously, and that any change in policy must be accompanied by a reasoned explanation and consideration of those interests. See Department of Homeland Security v. Regents of the University of California, 591 U.S. 1 (2020), which addressed the issue of reliance interests in the context of the rescission of the Deferred Action for Childhood Arrivals (DACA) program. The Court found that DHS failed to adequately consider the reliance interests of DACA recipients when deciding to rescind the program, rendering the decision arbitrary and capricious under the Administrative Procedure Act (APA). The Court emphasized that when an agency changes its policy, it must consider the reliance interests that have developed under the previous policy. In the case of DACA, recipients had made significant life decisions based on the program, such as enrolling in educational programs, starting careers, and purchasing homes. The Court held that DHS's failure to consider these reliance interests was arbitrary and capricious, violating the APA. The agency was required to provide a reasoned explanation for its decision, which included assessing the impact on those who had relied on the program. **The decision underscored that the rescission of DACA was not merely a matter of agency discretion but was subject to judicial review**. The Court rejected the argument

that DACA was an unreviewable non-enforcement policy, affirming that a rescission of even a discretionary decision by an executive branch agency is subject to judicial review under these circumstances. The rescission of Petitioner's liberty, even if discretionary, is subject to judicial review and must comply with the APA and constitutional due process

141. Numerous recent cases from district courts across the country have reached the same conclusion: noncitizens released on recognizance cannot be arbitrarily re-detained without individualized findings, notice, and a meaningful opportunity to be heard. These courts have granted habeas relief and injunctive orders where the government failed to honor the reliance interests and procedural safeguards inherent in its own release decisions. Arbitrary re-detention, absent evidence of noncompliance, flight risk, or danger, is unlawful and subject to judicial remedy. Note, this may not be an all-encompassing list: *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503 (N.D. Cal. Sep. 12, 2025) (granting a preliminary injunction for a noncitizen, who was released on her own recognizance and applied for asylum, entitling the petitioner to a pre-depravation hearing before a neutral decisionmaker and restraining the government from removing petitioner from the U.S.); *Martinez v. Hyde*, No. 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025) (holding that a petitioner who was in immigration removal proceedings under section 240 and released on their own recognizance is entitled to due process before her detention, and the petitioner was not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A)); *Hinestroza v. Kaiser*, No. 25-cv-07559-JD, 2025 WL 2606983 (N.D. Cal. Sep. 9, 2025) (holding that the Due Process

Clause under the Fifth Amendment applies to "all persons" in the U.S., including noncitizens, which requires the noncitizen petitioners to be entitled to a pre-detention hearing before a neutral decision-maker); *Jimenez v. Bostock*, No. 3:25-cv-00570-MTK, 2025 WL 2430381 (D. Or. Aug. 22, 2025) (granting petitioner's habeas corpus petition requiring that the petitioner cannot be detained unless he is afforded a pre-depravation hearing, and also ordering that he cannot be physically removed from the jurisdiction without a 30-day notice, and if subject to removal under the Aliens Act, then a 30-day notice is required); *Oliveros v. Kaiser*, No. 25-CV-07117-BLF, 2025 WL 2677125 (N.D. Cal. Sept. 18, 2025) (granting asylum seeker's preliminary injunction prohibiting the Government from transferring petitioner out of the court's district where petitioner had been released on Order of Recognizance but was later arrested pursuant to a Warrant of Arrest outside the courtroom for her immigration hearing because petitioner showed she was conferred a protected liberty interest through the Government's actions and faced a substantial risk of erroneous deprivation of her liberty interest from her change in status); *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025) (granting asylum seeker's preliminary injunction on due process grounds for removal of her freedom after her release on her own recognizance without a hearing, prohibiting the Government from re-detaining petitioner without pre-deprivation hearing before a neutral decisionmaker and removing petitioner from the United States while the proceeding was pending where petitioner had been released on Order of Recognizance, complied with the conditions of her release, and filed a timely application for asylum, but was later

arrested outside the courthouse of her scheduled immigration hearing); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (granting asylum seeker's petition for habeas corpus on due process grounds, determining petitioner was subject to discretion under section 1226 and not the mandatory standard under section 1225, where petitioner was released on Order of Recognizance, complied with the conditions of his release, and complied with the application filing dates and scheduled hearings, but was later detained outside the courtroom following his immigration hearing); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (granting asylum seeker's petition for habeas corpus as discretionary release under 1226 applied where petitioner was released on Order of Recognizance, complied with all additional immigration requirements, and timely filed an application for asylum,, but was later detained outside the courtroom in New York following his initial master calendar hearing); *Hasan v. Crawford*, No. 1:25-cv-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025) (citation omitted) (granting in part asylum seeker's petition for habeas corpus and ordering release from custody under section 1226(a), the "default rule for detaining and removing aliens already present in the United States[,]" where petitioner was released on Order of Recognizance, wore an ankle monitor, but was detained during a meeting with the Richmond ICE office); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025) (granting asylum seeker's petition of habeas corpus and ordering the government to either provide a bond hearing or release petitioner because Petitioner meet all three Matthews factors where petitioner applied for asylum, was

released on Order of Recognizance, and was granted work authorization, but was detained at a courthouse in Miami after appearing for an immigration hearing); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass Aug, 19, 2025) (holding that petitioner, who was released on her own recognizance after entering the U.S. illegally and was placed in immigration removal proceedings under section 240, was not subject to mandatory removal under section 1225(b)(2)(A) but was subject to section 1226 and the court's previous order was upheld entitling the petitioner to a bond hearing); *Valdez v. Joyce*, No. 25 Civ. 4627 (GBD), 2025 WL 1707737, at *1, 4 (S.D.N.Y. Jun. 18, 2025) (granting habeas corpus petition for an asylum seeker who entered the U.S. without inspection and was released on his own recognizance because he was entitled to due process for his continued detention).

142. These persuasive authorities, over a dozen cases from various courts, directly demonstrate the limitations on the government's ability to re-detain noncitizens who have been released on recognizance, especially where there is no evidence of noncompliance, flight risk, or danger. Even assuming the revocation was made by an authorized official, the process failed to comply with the required procedural safeguards. Courts have repeatedly held that re-detention of noncitizens released on recognizance is impermissible absent a material change in circumstances, individualized findings, and meaningful notice and opportunity to be heard. The reliance interests created by release must be honored, and any revocation must be accompanied by a reasoned explanation, as required by the APA and constitutional due process. Arbitrary re-detention, without evidence of noncompliance, flight risk, or danger, is unlawful and subject to judicial remedy. See, e.g., *Bermeo Sicha v.*

Bernal, Espinoza v. Kaiser, and numerous other recent district court decisions.

143. In sum, the government must strictly adhere to the procedural requirements set forth in the INA and implementing regulations when re-detaining noncitizens. These include issuance of a notice to appear, a warrant of arrest, a bond hearing, individualized assessment of flight risk and danger, and consular notification. In Petitioner's case, none of these procedures were followed, resulting in arbitrary and unjustified detention in violation of due process, statutory requirements, and the Accardi doctrine. Petitioner continues to suffer a profound deprivation of liberty.

144. In addition to the regulatory violations of the OREC revocation, since Petitioner had acquired a liberty interest in her release, any such revocation or deprivation of the liberty interest requires the due process framework procedures mandated by *Mathews v. Eldridge*.

145. The Supreme Court's decision in *Mathews v. Eldridge*, 424 U.S. 319 (1976), provides the governing standard for evaluating whether the government's procedures satisfy procedural due process when depriving an individual of a protected liberty interest. The *Mathews* test requires weighing: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation through the procedures used, and the probable value of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirements would entail. The application of these factors to Petitioner's case demonstrates that the government's failure to provide notice, individualized assessment, and a meaningful opportunity to be heard before re-detention is

constitutionally deficient and requires immediate judicial remedy.

(a) **Private Interest at Stake**: Petitioner's liberty interest is at its apex. She lived in the United States for over a decade on OREC, complied with all conditions, and built deep family and community ties. The abrupt, unexplained deprivation of this liberty—without notice or hearing—constitutes a profound intrusion. The Supreme Court has repeatedly recognized that "freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); see also *Demore v. Kim*, 538 U.S. 510, 523 (2003).

(b) **Risk of Erroneous Deprivation and Value of Additional Safeguards**: The risk of erroneous deprivation is exceptionally high where, as here, the government provided no advance notice, no individualized assessment, and no opportunity to be heard before re-detaining a noncitizen previously found not to be a flight risk or danger. The regulatory framework—8 C.F.R. § 236.1(d)(1)-(3)—requires, upon any change in custody status, a new custody determination, contemporaneous written notice, and advice of the right to seek prompt review by an Immigration Judge. These safeguards are designed to ensure that any deprivation of liberty is based on accurate, individualized information and is subject to fair and reliable adjudication. The absence of a predeprivation hearing or any meaningful process creates a significant risk of erroneous detention. Courts have repeatedly found that the failure to provide these safeguards in the OREC context constitutes a due process violation. See, e.g., *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765, at 10 (E.D.N.Y. Sept. 29, 2025); *Pinchi v. Noem*, No. 5:25-cv-05632-

PCP, 2025 WL 2084921, at 5 (N.D. Cal. July 24, 2025); *Kelly v. Almodovar*, No. 25 Civ. 6448 (AT), 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025).

(c) Government's Interest: While the government has a legitimate interest in detaining noncitizens who pose a flight risk or danger, that interest does not justify dispensing with basic procedural protections—especially where the government has already determined, by granting OREC, that the individual is not a flight risk or danger. The incremental administrative burden of providing notice and a predeprivation hearing is minimal compared to the risk of erroneous and arbitrary detention. The Supreme Court has recognized only two legitimate objectives of immigration detention: preventing danger to the community and preventing flight prior to removal.

Applying these factors, due process requires, at a minimum, advance notice of the alleged grounds for revocation, an opportunity to respond before a neutral and lawfully authorized decisionmaker, and a contemporaneous individualized assessment of whether continued detention is justified. The government's failure to provide these basic procedural protections before re-detaining Petitioner—who had been lawfully released on OREC and complied with all conditions for over a decade—renders her redetention unlawful under the Due Process Clause and mandates immediate release.

146. In sum, applying the *Mathews v. Eldridge* balancing test, Petitioner's liberty interest is at its highest, given her decade-long compliance with OREC conditions and the absence of any new allegations of flight risk or danger. The risk of erroneous deprivation is substantial where, as here, the government provided no

advance notice, no individualized assessment, and no opportunity to be heard before re-detaining a noncitizen previously found not to be a flight risk or danger. The government's interest in administrative efficiency cannot outweigh the fundamental requirement of due process, especially where it has already determined—by granting OREC—that the individual is not a flight risk or danger. The government's failure to provide these basic procedural protections before re-detaining Petitioner—who had been lawfully released and complied with all conditions for over a decade—renders her redetention unlawful under the Due Process Clause and the controlling regulations.

147. In this case, none of the mandatory procedural steps required by 8 C.F.R. § 236.1(d)(1)-(3) were followed: Petitioner was detained and transferred out of state before any formal revocation of her OREC, received no written notice of the reasons for revocation, no individualized assessment, and no opportunity to contest the government's action before a neutral, lawfully authorized decisionmaker. There is no evidence that ICE conducted a complete review of the circumstances, served a Notice of Revocation prior to detention, or provided any opportunity to be heard. This is not a mere technical defect, but a textbook violation of her liberty and due process rights, as well as a violation of the agency's own regulations and policies governing OREC revocation. Federal courts have repeatedly found that such failures—detaining a noncitizen without notice, individualized assessment, or an opportunity to respond—constitute clear due process violations in the OREC context. Immediate release is the only adequate remedy to restore Petitioner's liberty and prevent further irreparable harm.

XI. REMEDIES

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

148. Even though some cases cited in the Exhibit 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 addition, there are several important reasons that include new developments since those cases were decided that warrant a different relief now in this case.

Bond Hearing Will Require More Detention Time

149. 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 an additional costs to Petitioner, while she 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 Cannot Cure Unlawful Arrest

150. Petitioner's arrest and continued detention are unlawful from the outset because she was not arrested pursuant to a warrant under 8 U.S.C. § 1226, as required for interior apprehensions, but was instead detained as a purported "applicant for admission" under § 1225(b)—a provision that, by its terms and longstanding practice, applies only to individuals encountered at the border or a port of entry, not to long-term residents apprehended in the interior. This is not a mere technicality; it is a fundamental statutory violation.

151. In analogous contexts, such as an unlawful arrest without probable cause or a search conducted without a warrant, courts have consistently held that the only effective remedy is suppression of evidence or outright release from custody. The government cannot retroactively cure an unlawful deprivation of liberty by later manufacturing a post hoc justification or issuing a belated warrant.

152. The same principle applies here: if ICE were to issue a warrant now, or attempt to reclassify the basis for detention after the fact, it would not remedy the original statutory violation. Therefore, the only appropriate remedy for an arrest and detention made under the wrong statutory authority is immediate and unconditional release. Allowing the government to "fix" its error after the fact would undermine statutory and constitutional protections, incentivize unlawful government conduct, and deprive individuals of meaningful remedies for violations of their liberty interests.

If Court Grants Bond Hearing – Ensure Burdens Are Met

153. 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 not a flight risk or 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. CONCLUSION AND PRAYER FOR RELIEF

154. 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.

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) Grant Petitioner a Writ of Habeas Corpus and order Respondents to

immediately release Petitioner from custody without any conditions imposed on Petitioner's liberty and restore his prior OREC conditions unlawfully revoked;

(4) Enjoining Respondents from modifying unconditional release without prior leave of Court (including, but not limited to, electronic monitoring devices);

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

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

(7) 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;

(8) In the alternative, order Respondents to conduct a bond hearing for Petitioner pursuant to 8 U.S.C. § 1226(a) within 3 days, 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;

(9) Enjoin Respondents from re-detaining Petitioner in the future pursuant to 8 U.S.C. § 1225;

(10) Enjoin Respondents from re-detaining Petitioner in the future unless she has committed a new violation of any federal, state or local law, or has

failed to attend any properly noticed immigration or court hearing or is subject to detention pursuant to a final order of removal;

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

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

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

Respectfully Submitted,

This 17th day of November, 2025.

/s/ Helen Vargas-Crebas
Helen Viviane Vargas-Crebas
Local Counsel
The Sonoda Law Firm
1849 Clairmont Road
Decatur, GA 30033
Phone: (404) 957-3001
Fax: (404) 393-8399
Email: helenvcrebas@gmail.com

Karen Weinstock

/s/ Karen Weinstock
Karen Weinstock
Pro Hac Vice Admission To Be Filed
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com

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 17th day of November, 2025.

Karen Weinstock

Karen Weinstock
Pro Hac Vice Admission To Be Filed
Attorney for Petitioner
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com