UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

J.S.L. 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.: 5:25-cv-00156-LGW-BWC

PETITIONER'S RESPONSE TO RESPONDENTS' RETURN OF ORDER TO SHOW CAUSE ON WRIT OF HABEAS CORPUS AND REQUEST FOR IMMEDIATE RELEASE

Petitioner, through undersigned counsel, hereby submits his response to Respondents' Return of the order to show cause (ECF 10).

This Court has jurisdiction to review Petitioner's challenge to his wrongful detention by U.S. Immigration and Customs Enforcement (ICE), which is independent from Petitioner's removal proceedings. As laid out below, the Immigration and Nationality Act (INA) and the relevant caselaw all held that Petitioner is not "seeking admission" into the United States and cannot be detained under 8 U.S.C. § 1225(b)(2)(A). Rather, Petitioner is an interior arrestee whose detention should be governed by the discretionary provisions of 8 U.S.C. § 1226(a), and she was previously released on an Order of Release on Recognizance (OREC).

As this Court has previously found in its landmark decision, *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), argued by undersigned counsel and dozens of similar habeas grants thereafter), the application of 8 U.S.C. § 1225(b) to an individual like Petitioner who entered the U.S. years ago without inspection and has lived in the interior ever since, is wrong. This Court should order his outright release from detention as his Order of Release on Recognizance (OREC) was either not cancelled (therefore he is improperly detained) or in the alternative, if it was cancelled, it was improperly cancelled. Since Respondents have not produced a proper notice of OREC cancellation, they have failed to show legitimate cause for Petitioner's detention and proper release is warranted in his case rather than a bond hearing before the immigration judge since DHS already previously determined he is not a flight risk or danger when granting him the OREC, the only change was their statutory interpretation that now Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

I. FACTUAL BACKGROUND

Petitioner was apprehended at the border when he arrived to the United States and was released on an OREC into the U.S. to seek asylum. Petitioner's OREC permitted him to remain in the U.S. without the requirement of posting bond. He has complied with all reporting requirements and conditions of his OREC since his entry and was recently detained years after his initial entry. He has a pending asylum application with the immigration court and approved Employment Authorization Document (EAD) authorizing him to work for his employer (where he was apprehended during the raid and DHS applied section 1225 to him as an "arriving alien" who is an "applicant for admission").

ICE is unlawfully detaining Petitioner 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). Further, ICE arrested Petitioner based on a deficient and unsupported immigration detainer and without a warrant. Petitioner has no criminal history, no record of violence, and was arrested in the interior solely because of a workplace raid. The egregious unlawfulness of Petitioner's detention warrants outright release in lieu of the standard bond hearing since he was previously released on an OREC, complied with all of its conditions, and DHS themselves determined he was not a flight risk or danger. Since DHS did not revoke the OREC, Petitioner should be released under the terms and conditions of his prior release on OREC.

II. THE COURT HAS JURISDICTION OVER HABEAS PETITIONS UNDER 28 U.S.C. § 2241

A. 8 U.S.C. § 1252(g) does not bar the Court's jurisdiction.

The Government asserts that this Court lacks jurisdiction under 8 U.S.C. § 1252(g), arguing that Petitioner's detention arises from the commencement of removal proceedings. ECF No. 10. This argument relies on an overly broad interpretation of § 1252(g) that has been consistently rejected by the Supreme Court and numerous circuit and district courts, including all decisions known to undersigned counsel from this District in the Southern District of Georgia. See *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).

Section 1252 is "Congress's comprehensive scheme for judicial review of removal orders." *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1256–57 (11th Cir. 2020). Section 1252(g) bars judicial review over "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal

orders against any alien[.]" 28 U.S.C. § 1252(g). The Supreme Court, in *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999) (AADC), clarified that § 1252(g) applies only to "three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'"

8 U.S.C. § 1252(g) "strips the federal courts of jurisdiction only to review the Attorney General's exercise of **lawful *discretion*** to in only three distinct actions: (1) commence removal proceedings, (2) adjudicate those cases, and (3) execute orders of removal." *Abrego Garcia v. Noem*, No. 25-1345, 2025 WL 1021113, at *2 (4th Cir. Apr. 7, 2025) (emphasis added). "1252(g) is not to be construed broadly as a 'zipper' clause applying to the full universe of deportation-related claims, but instead as applying narrowly to only the three 'discrete' governmental actions enumerated in that subsection." *Wallace v. Sec'y, U.S. Dep't of Homeland Sec.*, 616 F. App'x 958, 960 (11th Cir. 2015) (citing *A.A.D.C.*, 525 U.S. at 472–73). "And although many other decisions or actions may be part of the deportation process, only claims that arise from one of the covered actions are excluded from [a court's] review...." *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1272 (11th Cir. 2021) (internal citations and quotations omitted).

The statute's opening phrase—"Except as provided in this section"—is critical. It means that the jurisdictional bar is not absolute; rather, it is subject to the exceptions and carve-outs that are expressly set forth elsewhere in § 1252. The enumeration of 28 U.S.C. § 2241, as well as other habeas and mandamus provisions, is intended to clarify that, except as otherwise provided in § 1252, these statutes do not independently confer jurisdiction over claims that fall within the specific actions listed: the Attorney General's decisions to commence proceedings, adjudicate cases, or execute removal orders.

Petitioner's habeas claims do not challenge the decisions to commence removal proceedings, adjudicate his case, or execute a removal order. She is separately seeking relief from removal before the immigration court in form of asylum. Instead, she challenges the legality and constitutionality of his detention without a bond hearing; a matter distinct from the enumerated actions in § 1252(g). Such claim is reviewable. *See Canal A Media Holding*, LLC, 964 F.3d at 1257–58 (claim was not barred by § 1252(g) where action did not fall into one of three categories as "[w]hen asking if a claim is barred by § 1252(g), courts must focus on the action being challenged."); *Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411, at *6 (D. Minn. Aug. 15, 2025) (petitioner's due process challenge was not barred by § 1252(g) as it did not "challenge the actions of commencing proceedings, adjudicating cases, or executing removal orders."); *Vazquez v. Feeley*, No. 25-cv-01542, 2025 WL 2676082, at *8 (D. Nev. Sept. 17, 2025) (challenges to the lawfulness of detention during the pendency of removal proceedings is not a challenge to one of the 'three discrete events along the road to deportation' to which § 1252(g) applies); *Leal-Hernandez v. Noem*, No. 25-cv-02428, 2025 WL 2430025, at *5 (D. Md. Aug. 24, 2025) (same); *Sanchez v. LaRose*, No. 25-cv-2396, 2025 WL 2770629, at *2 (S.D. Cal. Sept. 26, 2025) ("Petitioner seeks only review of the legality of her detention, which does not require judicial intervention into the Attorney General's decisions to commence proceedings, adjudicate cases, and execute removal orders.... Adopting [the government's] interpretation of 8 U.S.C. § 1252(g)...would eliminate judicial review of immigration detainee's claims of unlawful detention[.]").

Several Circuit courts have reiterated the same. *See e.g., Karki v. Jones*, 2025 U.S. App. LEXIS 20660, at 8–9 (6th Cir. Aug. 13, 2025) (Section 1252(g) does not clearly state a jurisdictional bar on review of detention claims, and thus, does not preclude district court

jurisdiction over habeas petitions that challenge the legality or constitutionality of immigration detention, as such claims are independent of, or collateral to, the removal process); *Kong v. United States*, 62 F.4th 608, 612 (1st Cir. 2023) ("construing § 1252(g) to bar all detention-related claims would raise serious constitutional concerns under the Suspension Clause"); *Mahdawi v. Trump*, 136 F.4th 443, 450 (2nd Cir. 2025) (§ 1252(g) does not strip district courts of jurisdiction over habeas petitions challenging immigration detention); *Ozturk v. Hyde*, 136 F.4th 382, 397 (2nd Cir. 2025) (§ 1252(g) is "directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion," and does not reach claims that are independent of, or collateral to, the removal process). Conversely, the Government's reliance on *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016)[1] and *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013)[2] is misplaced because those cases involved direct challenges to the underlying removal proceedings or decisions, not to the legality of detention itself.

Moreover, the legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and subsequent case law confirm that, while Congress sought to streamline and limit judicial review of removal orders, it did not intend to eliminate habeas review for claims that fall outside the three discrete actions listed in § 1252(g). Courts across the country have recognized that habeas review remains available for challenges to the legality of detention that does not directly arise from the commencement, adjudication, or execution of removal orders.

---

[1] Section 1252(g) bars jurisdiction over claims arising from the decision to commence removal proceedings or detain an alien pending removal, but does not bar jurisdiction over claims that challenge the legality of continued detention after the statutory removal period, where removal is not reasonably foreseeable and the claim is not directly tied to the execution of a removal order.

[2] Gupta alleged that ICE agents violated his Fourth and Fifth Amendment rights by wrongfully procuring an arrest warrant, arresting and detaining him, and searching and seizing his property. Bivens and other claims alleging wrongful arrest, detention, and search and seizure are barred, but habeas claim regarding the legality and constitutionality of the detention are not barred.

Section 1252(g) does not bar habeas review of constitutional challenges to the procedures used to determine detention, or the duration of detention itself.

Petitioner's claims are not merely about the fact of Petitioner's detention during removal proceedings, but about the unlawful nature of that detention. The government's classification of Petitioner who has resided in the U.S. for over two years as an "applicant for admission" and "seeking admission" subject to § 1225(b)'s mandatory detention based on the BIA's erroneous reasoning in *Yajure Hurtado* also raises serious due process concerns that are squarely within this Court's habeas jurisdiction. To hold otherwise would effectively insulate all immigration detention decisions from judicial review, a result inconsistent with the fundamental role of habeas corpus in safeguarding individual liberty. In summary, Supreme Court and lower courts have consistently interpreted § 1252(g) narrowly, ensuring that habeas relief remains available for claims like those presented here, which challenge the lawfulness of ongoing detention. Accordingly, section 1252(g) does not prevent this Court from exercising jurisdiction over the Petition.

B. <u>Suspension Clause supersedes jurisdiction-stripping statutes.</u>

A broad interpretation of these jurisdiction-stripping provisions would raise grave constitutional concerns under the Suspension Clause of the U.S. Constitution, which protects the writ of habeas corpus (U.S. Const. art. I, § 9, cl. 2). Courts are obligated to construe statutes to avoid constitutional questions where possible. *Ozturk*, at 394; *Kong*, 62 F.4th at 612 ("construing § 1252(g) to bar all detention-related claims would raise serious constitutional concerns under the Suspension Clause"). The writ of habeas corpus is a constitutional minimum that cannot be abrogated by statute, even if Congress were to attempt to do so expressly. The Supreme Court has repeatedly affirmed that habeas review must remain available to challenge unlawful detention, regardless of statutory limitations. See *Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008) ("the

Suspension Clause remains applicable and the writ must be available to test the legality of executive detention"); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) ("the writ of habeas corpus is available to all persons detained within the United States who claim to be held in custody in violation of the Constitution, laws, or treaties of the United States"). Thus, even if the government's jurisdictional arguments under 8 U.S.C. § 1252 were accepted, they could not constitutionally foreclose habeas review of Petitioner's core liberty interest in freedom from unlawful detention. For these reasons, the Court has jurisdiction to consider the Petition.

III. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION UNDER 8 U.S.C. § 1225(b)(2)(A) BECAUSE HE IS NOT "SEEKING ADMISSION"

At the outset, an individual who enters the United States without inspection like Petitioner and is subsequently released on an OREC after being apprehended at the border should not be classified as an "arriving alien" under immigration law, **based on Respondents' own binding precedent**. The term "arriving alien" is specifically defined to include those who are seeking admission at a port of entry or are interdicted in international waters and brought to the U.S. In contrast, individuals who enter without inspection are already present in the United States without having been admitted or paroled and thus do not fit the definition of an "arriving alien".

The Board of Immigration Appeals (BIA) in precedential decisions has confirmed that release on recognizance or bond is an exercise of § 1226 discretion pending proceedings. See *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023) (This decision reiterates that individuals released on their own recognizance under section 236 of the INA are not considered to be paroled under section 212(d)(5)); *Matter of Castillo-Padilla*, 25 I. & N. Dec. 257, 260 n.2 (BIA 2010) (This case clarifies that release on conditional parole under section 236(a)(2)(B) of the INA is legally distinct from release on humanitarian parole under

section 212(d)(5)(A) of the INA). These are Respondents' own binding decisions that they are not following as to Petitioner.

The statutory framework governing immigration detention draws a clear and deliberate distinction between the authority to detain "applicants for admission" at the border or port of entry under 8 U.S.C. § 1225(b), and the discretionary detention of noncitizens already present in the United States under 8 U.S.C. § 1226(a). Section 1225(b) mandates detention for those "seeking admission" who are not "clearly and beyond a doubt entitled to be admitted," while § 1226(a) authorizes the Attorney General to arrest and detain, on a warrant, any noncitizen pending a decision on removability, with the possibility of release on bond except as provided in § 1226(c) (mandatory detention for certain criminal aliens). Nothing in the plain language of § 1226(a) prevents it from applying to noncitizens who unlawfully entered the country, like Petitioner. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018) (§ 1225 governs "arriving aliens" and those "seeking admission," while § 1226 applies to "an alien present in the country" and that it "generally governs the process of arresting and detaining that group of aliens pending their removal."). The government's recent policy—set forth in the July 2025 ICE memorandum and the Board of Immigration Appeals' *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025)—purports to reclassify all noncitizens who entered without inspection, regardless of their years-long residence in the U.S., as "applicants for admission" subject to mandatory detention under § 1225(b)(2). This interpretation is a significant and abrupt departure from decades of agency practice, regulatory guidance, and legal precedent that have consistently recognized that interior arrestees are subject to § 1226(a) and entitled to individualized custody determinations and bond hearings (assuming they are arrested pursuant to a warrant, which was not the case for Petitioner). The government's

attempt to collapse this distinction by reclassifying all noncitizens present without admission as "applicants for admission" ignores both the statutory structure and decades of agency practice.

Further, the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), abrogated *Chevron* deference and requires courts to interpret statutes de novo, giving due respect to agency views but not deferring to them—especially where, as here, the agency's position is inconsistent with statutory text, legislative history, and the overwhelming consensus of federal courts. This Court must therefore independently construe §§ 1225 and 1226, and the record and authorities demonstrate that Petitioner's detention is governed by § 1226(a), not § 1225(b).

The overwhelming consensus among federal district courts—including numerous decisions from this district—has rejected the government's reclassification policy, instead holding that § 1226(a) governs the detention of noncitizens apprehended in the interior, including those who entered without inspection years ago and have established significant ties to the United States. *See e.g.*, *Antonio Aguirre Villa v. Warden Tony Normand*, 2025 WL 3095969 (S.D. Ga. Nov. 4, 2025); *J.A.M. v. Streeval*, No. 4:25-cv-342, 2025 WL 3050094 at *5 (M.D. Ga. Nov. 1, 2025) ("[U]nder no reasonable interpretation is 'alien seeking admission' synonymous with 'any alien present in the United States who has not been admitted.'").

But as Respondents continue to assert the same argument, Petitioner reiterates why Respondents' government's reliance on the phrase "seeking admission" in 8 U.S.C. § 1225(b) is misplaced as applied to Petitioner's circumstances. Respondents' interpretation ignores the plain meaning of the phrase "seeking admission." *Antonio Aguirre Villa v. Warden Tony Normand*, 2025 WL 3095969 (S.D. Ga. Nov. 4, 2025) (The interpretation of the applicable statutes by respondents and the BIA in *Yajure Hurtado* overlooks part of the language in § 1225(b)(2)(A), it gives little consideration to the overall statutory scheme, and it ignores § 1226).

The INA defines "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer" (8 U.S.C. § 1101(a)(13)(A)). "And 'entry' has long been understood to mean 'a crossing into the territorial limits of the United States.'" *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *5 (E.D. Cal. Sept. 23, 2025).

The phrase 'seeking admission' is undefined in the statute but necessarily implies some sort of present-tense action or effort to obtain something——in this context, to gain lawful entry into the United States. *Martinez v. Hyde*, No. 25-11613-BEM, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025). "Seek" is an active verb, not a type of status. *J.A.M.*, 2025 WL 3050094, at *3. "Seeking" means "asking for" or "trying to acquire or gain" and implies some kind of affirmative action on the part of the actor. *Lepe*, 2025 WL 2716910, at *5 (citing Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/seeking). "To piece this together, the phrase 'seeking admission' means that one must be actively 'seeking' 'lawful entry.'" *Id.* (quoting *Lopez Benitez*, 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025)). Again, the phrase "implies action – something that is currently occurring, and in this instance, would most logically occur at the border upon inspection." *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025).

Respondents' interpretation also violates several canons of statutory construction including the cannon against surplusage. *J.A.M.*, 2025 WL 3050094, at *3 ("[i]f possible, every word and every provision is to be given effect."). It makes no sense that Congress would use two different phrases in the same statutory sentence to mean the exact same thing. *See id.* ("The second phrase, 'seeking admission,' modifies and narrows the first, "an alien present in the United States who has not been admitted." It does not simply restate it."). It further violates the canon of noscitur a sociis,

which requires courts to consider statutory language in reference to "the specific context in which that language is used, and the broader context of the statute as a whole." *Dawson*, 64 F.4th at 1237.

Considering the statutory framework of the INA, it is clear that § 1225 applies to noncitizens who are encountered attempting to enter the country or shortly thereafter. The regulatory definition of "arriving alien" under 8 C.F.R. § 1.2 further supports this distinction, limiting the term to those "coming or attempting to come into the United States at a port-of-entry" or interdicted at sea—not to individuals apprehended in the interior long after entry. The present-progressive language—"arriving," "coming," "attempting"—confirms that § 1225(b) applies only to those in the process of seeking admission, not to long-term residents like Petitioner.

Section 1225 repeatedly refers to noncitizens actively entering the country's border and does not refer to noncitizens already living here. *See, e.g.*, 8 U.S.C. § 1225(b)(l)(A)(i) (screenings for aliens "arriving in the United States"); *id.* § 1225(b)(2)(C) (noting that aliens "arriving on land ... from a foreign territory contiguous to the United States" may be returned to that territory pending removal proceedings). Section 1226, in contrast, applies to "aliens already in the country." *Jennings*, 138 S. Ct. at 838.

Thus, based on a plain reading of the language and aided by these standard canons of statutory construction, § 1225(b)(2)(A) applies to aliens in the U.S. who have not been admitted ("applicants for admission" definition) **AND** who are "seeking" or "attempting to obtain" lawful admission to the United States.

In the instant case, clearly Petitioner is not currently "seeking admission" and thus does not fall with an "applicant for admission" subject to mandatory detention under § 1225(b)(2) in the statutory sense. Petitioner was not taking affirmative action to be admitted into the country; she was apprehended within the interior of the United States, years after his initial entry. Thus, any

detention of Petitioner necessitates an individualized process and bond eligibility under § 1226(a). To interpret "seeking admission" to encompass long-term residents apprehended in the interior would not only disregard the statutory definition of "admission," but also collapse the deliberate distinction Congress drew between border and interior cases, rendering § 1226(a) superfluous and contrary to decades of agency and judicial practice.

IV. THE UNLAWFULNESS OF PETITIONER'S DETENTION REQUIRES HIS IMMEDIATE RELEASE

Despite the government's previous finding that he is neither a danger nor a flight risk and ordering his release on an Order of Recognizance (OREC) (ECF 1), Petitioner is now unlawfully detained in violation of statute, regulation, policy, and the 5th Amendment's due process clause.

A. Respondents' failure to provide proof of an immigration detainer or arrest warrant render Petitioner's continued detention unlawful.

Petitioner's arrest and continued detention are unlawful because they were executed in the interior of the United States years after his entry, without a valid warrant supported by probable cause, and without any individualized finding of dangerousness, flight risk, or national security concern. The record is clear: Petitioner has no criminal history, no record of violence, and was arrested solely due to a workplace raid that had nothing to do with him. Petitioner was detained without notice or the opportunity to be heard, in violation of agency rules. His detention was conducted under violation of both procedural and substantive due process rights, as no findings were made regarding his compliance with the OREC or any danger he posed. Furthermore, the agency has not provided any evidence regarding the OREC revocation in their return (ECF 10). The only thing they provided was a generic statement from an officer saying that if Petitioner will

incur a final removal order (which is years down the road) they will be able to remove him and that he is detained because he arrived without inspection.

In their response to the OSC, Respondents have failed to provide a copy of any documents relating to Petitioner's OREC or its revocation. No other exhibits were attached to the as-filed declaration or otherwise provided to Petitioner or the Court. This legal deficiency and omission of the OREC or its cancellation or any evidence or individualized assessment of Petitioner's danger or flight risk underscores the unlawfulness of his arrest and detention.

Moreover, federal law and DHS policy require that immigration detainers and interior arrests be supported by probable cause and, where public safety or national security is invoked, by specific, articulable facts. The absence of any such facts here renders the alleged detainer facially deficient and unlawful. As numerous courts have recognized, the use of a detainer to hold a noncitizen in the interior based on a boilerplate assertion of risk—without any criminal predicate or individualized finding—violates both statutory and constitutional requirements. *See, e.g.*, *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099, at 10 (D. Ariz. Aug. 11, 2025) (granting immediate release where detention was based on an unlawful arrest and unsupported detainer); *Savane v. Francis*, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (immediate release ordered for unlawful detention under § 1225(b)); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) (immediate release as the only effective remedy for egregious constitutional violations).

Next, under 8 U.S.C. § 1357(a)(2), ICE officers may only arrest without a warrant if they have probable cause to believe the individual is unlawfully present *and* is likely to escape before a warrant can be obtained. This is not a mere formality; it requires a particularized, individualized inquiry into flight risk, considering factors such as family, employment, and community ties. The

"reason to believe" language is interpreted as equivalent to the constitutional probable cause standard. Arrests based solely on unlawful presence, without individualized flight risk assessment, do not meet this standard. Furthermore, the Fourth Amendment requires a prompt judicial determination of probable cause following a warrantless arrest. Extended detention without such a determination is unconstitutional (*Gerstein v. Pugh*, 420 U.S. 103 (1975); *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991).

Where a person is arrested without a warrant and without probable cause, and no prompt judicial review is provided, the remedy is immediate release. Issuing a post hoc warrant after the arrest does not cure the initial violation. ICE's practice of issuing administrative warrants after the fact does not retroactively legitimize an unlawful arrest. The statutory requirement is for probable cause of flight risk *before* arrest. *Id.*

Related, 8 U.S.C. § 1357(a)(2) authorizes ICE to arrest and detain noncitizens believed to be in violation of immigration laws but expressly limits such detention to "not more than 48 hours" (excluding weekends and holidays), unless a warrant is issued or removal proceedings are commenced. Notably, Respondents have not even alleged the existence of a warrant or suggested any emergency or extraordinary circumstance to justify continued detention beyond the statutory limit. Respondents' brief utterly fails to address Petitioner's unlawful and prolonged deprivation of liberty. *See generally*, ECF 10.

Other courts held that ICE and other law enforcement agencies may not use the execution of a search warrant as a pretext for mass detentions and interrogations without individualized reasonable suspicion. Regulatory and constitutional violations in such contexts can require suppression of evidence and termination of removal proceedings. In *Perez Cruz v. Barr*, 926 F.3d 1128 (9th Cir. 2019), petitioner was detained during a large-scale workplace raid by ICE agents.

ICE obtained a search warrant for employment records but used the opportunity to detain over 100 workers suspected of being undocumented, detained, frisked and questioned about immigration status, leading to his arrest and removal proceedings. The Ninth Circuit found that ICE's operation was not a legitimate execution of a documents warrant, but rather a preplanned mass detention and interrogation aimed at arresting undocumented workers. The agents lacked individualized reasonable suspicion to detain noncitizens. The court held that the Summers exception did not apply because the central purpose of the operation was not to conduct a safe and efficient search, but to detain and interrogate workers and agents' actions violated 8 C.F.R. § 287.8(b)(2). Because the regulatory violation was prejudicial and compliance with the regulation is constitutionally mandated, suppression of the evidence was warranted. Evidence of alienage (as opposed to mere identity) is subject to suppression if it is the fruit of an unlawful detention. The Court granted the petition for review and held that evidence may be suppressed if obtained in violation of a regulation benefitting the alien or through egregious Fourth Amendment violations.

Therefore, this Court should order Petitioner's immediate release or other appropriate relief. The Supreme Court and lower courts have repeatedly held that, where the government's actions have already frustrated judicial review and threaten to permanently deprive a petitioner of liberty, immediate release is the only adequate remedy. E.g., *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099, at 10 (D. Ariz. Aug. 11, 2025). Immediate and unconditional release is the only adequate remedy where detention is unlawful and constitutional violations are ongoing, as recognized in *Ex parte Endo*, 323 U.S. 283 (1944) (ordering immediate release for unlawful detention).

The U.S. District Court for the District of Colorado just issued a decision on a class action for noncitizens detained by ICE in the District of Colorado. *See* ECF 49 in Case No. 1:25-cv-

03183-RBJ and arguments listed therein. There, the plaintiffs, noncitizens with deep community ties, were arrested by ICE in Colorado, without a warrant and without individualized flight-risk determinations, as required by 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii). Similarly, other courts also granted immediate release in similar circumstances to Petitioner's. The U.S. District Court for the District of Idaho recently granted 15 habeas cases ordering immediate release. *See* Case No. 1:25-cv-00593-BLW. The other dozen or so cases are practically similar.[3] *See also* Exhibit 4 habeas grant decision for case 3:25-cv-00898-DRL-SJF in the Northen District of Indiana granted to a client of undersigned counsel's ordering his immediate release. Judge Leichty goes into the 1225-1226 analysis, statutory interpretation and other arguments in detail, rejecting similar arguments Respondents are making here. **Therefore, immediate release is warranted for any noncitizen arrested in the interior such as Petitioner without a warrant and without individualized probable cause of flight risk**.

B. <u>Respondents' failure to revoke Petitioner's OREC render his initial and continued detention unlawful.</u>

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. 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.

[3] Additional case numbers are: 1:25-cv-00594-BLW; 1:25-cv-00596-BLW; 1:25-cv-00597-BLW; 1:25-cv-00599-BLW; 1:25-cv-00600-BLW; 1:25-cv-00601-BLW; 1:25-cv-00602-BLW; 1:25-cv-00603-BLW; 1:25-cv-00604-BLW; 1:25-cv-00605-BLW; 1:25-cv-00607-BLW; 1:25-cv-00609-BLW; 1:25-cv-00610-BLW; 1:25-cv-00621-BLW

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." Similarly, 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.

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. 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) (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. 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.

Here, the government has not followed the proper procedures and has not presented any proof that Petitioner's OREC has been revoked under the proper procedures. Respondent's declaration contains no evidence nor any other proof of OREC revocation. The government's failure to provide the basic procedural protections before re-detaining Petitioner—who had been lawfully released on OREC and complied with all conditions—renders hos re-detention 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.

Furthermore, Petitioner maintains that even if Respondents provided documents in support of OREC revocation, an after-the-fact revocation is unlawful. The controlling regulations pertaining to OREC revocation require notice to the noncitizen **upon** an OREC revocation AND upon revocation, a hearing and a meaningful opportunity to respond to the revocation by the appropriate official outlined in the regulations, the District Director or Assistant District Director. None of this was done in this case in contravention of DHS's own regulations and therefore the OREC revocation is unlawful and this court should order full restoration of the OREC to Petitioner and order his full and immediate release under the original OREC conditions.

V. CONCLUSION

Respondents' arguments fail to overcome the fundamental defect in this case: Petitioner's arrest and detention were unlawful from the outset because they were executed in the interior of the United States years after his entry, without a valid detainer or warrant supported by probable cause, and without any individualized finding of dangerousness, flight risk, or national security concern. Petitioner's established residence, deep family and community ties, and lack of criminal history further underscore the absence of any lawful basis for his initial or continued detention. The government has not demonstrated that Petitioner is a flight risk or danger to the community, and his continued detention based on a deficient arrest warrant is unsupported by any legitimate purpose.

The government's assertion that a bond hearing is the only appropriate remedy is unavailing in this context, where further administrative process would be futile and continued detention would perpetuate ongoing statutory and constitutional violations. Courts have repeatedly recognized that when a petitioner's detention is based on an unlawful arrest, a facially deficient detainer, or where agency policy categorically forecloses meaningful review—as is the case under the current ICE and BIA policy classifying interior arrestees as "arriving aliens"—the only adequate remedy is immediate and unconditional release, not a bond hearing or further process. For example, in *Rosado v. Figueroa*, the court granted habeas relief and ordered immediate release where detention was based on an unlawful arrest and unsupported detainer, finding that a bond hearing would not cure the underlying violation or provide effective relief. Under these circumstances, and given the agency's current policy foreclosing meaningful review, only immediate and unconditional release can remedy the ongoing statutory and constitutional violations and prevent further irreparable harm. Similar to Aguirre Villa's case where the petitioner was previously granted a bond and this

Court ordered his immediate release or release subject to the immigration judge's bond, in this case a similar remedy is warranted. Since Petitioner J.S.L. was previously granted release on an OREC which was de-facto improperly revoked by his arrest, his immediate release should be ordered and the OREC should be reinstated to its original conditions.

Wherefore, Petitioner in this case must be granted full and unconditional release subject to the terms of his OREC.

Based on all the above, this Court should therefore enter the following judgement:

1. ORDER Petitioner's unconditional and immediate release under the original terms of his Order of Release on Recognizance;
2. ENJOIN Respondents from re-detaining Petitioner under 8 U.S.C. § 1225(b) or any other statute absent a valid, individualized finding of flight risk or danger to the community, supported by clear and convincing evidence and a lawfully issued warrant;
3. ORDER Respondents to fully restore Petitioner's OREC unlawfully revoked and release him pursuant to the OREC conditions; and
4. Grant such other and further relief as the Court deems just and proper, including attorneys' fees and costs.

Respectfully Submitted,

This 3rd day of December, 2025.

/s/ Helen Vargas-Crebas
Helen Viviane Vargas-Crebas
Local Counsel
Managing Attorney – Atlanta
Kids in Need of Defense (KIND)
50 Hurt Plaza, SE, Suite 700
Atlanta, GA 30303
Direct: (470) 654-5626

/s/ Karen Weinstock
Karen Weinstock
Attorney for Petitioner (pro hac vice)
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com

CERTIFICATE OF SERVICE

I certify that on December 3, 2025, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

/s/ Helen Vargas-Crebas
Helen Viviane Vargas-Crebas
Local Counsel
Managing Attorney – Atlanta
Kids in Need of Defense (KIND)
50 Hurt Plaza, SE, Suite 700
Atlanta, GA 30303
Direct: (470) 654-5626