

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

URSULO MAURICIO LAINEZ BRICENO,

Petitioner,

v.

E. K. CARLTON, in official capacity, Warden,  
Federal Detention Center, Miami;  
GARRETT J. RIPA, in official capacity, Field  
Office Director of Enforcement and Removal  
Operations, ICE's Miami Field Office;  
KRISTI NOEM, in official capacity, Secretary,  
U.S. Department of Homeland Security;  
TODD M. LYONS, in official capacity, Acting  
Director of ICE;  
PAMELA BONDI, in official capacity, U.S.  
Attorney General;

Respondents.

Case No.

**PETITION FOR WRIT OF  
HABEAS CORPUS**

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## I. INTRODUCTION

1. Petitioner is a 37-year-old man with no criminal history. He is a husband, father of two young children, and father figure to his wife's younger brother. He has a close-knit family, a strong work ethic, and a strong claim for immigration relief. On December 23, 2019 he was vested with a powerful liberty interest in his freedom, when he was released by the Immigration Judge ("IJ") at a bond hearing after 5 months in custody. On August 14, 2025, that liberty interest was abruptly taken away from him by Respondents in a pretextual immigration-and-traffic stop in Georgia. He has been incarcerated in immigration detention ever since.

2. In violation of Due Process and the Immigration and Nationality Act (INA), Ursulo Mauricio Lainez Briceno (Petitioner) is being detained by Respondents at the Miami, Florida Federal Detention Center. Ex. A. I.<sup>1</sup> Petitioner respectfully requests this Court order his immediate release and to bar his re-detention unless and until Respondents prove by clear and convincing evidence that he is either a danger or flight risk. In the alternative, Petitioner requests that this Court order Petitioner's release unless he receives a bond hearing pursuant to 8 U.S.C. § 1226(a), before a neutral arbiter within seven days of the Court's order.

3. Petitioner fled his home country, Honduras, and came to the United States in August of 2019. He surrendered to the authorities here. His wife, who was pregnant, was released and went to live with family in the United States. Petitioner was detained. He remained in custody for 4 months. On December 23, 2019, Petitioner was afforded a bond hearing. The

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<sup>1</sup> This is a verified habeas petition, but citations are provided for clarity. Citations are made to the Declaration of Counsel ("Abrams Decl.") and its component exhibits. In subsequent citations, counsel cites directly to the exhibits themselves.

Immigration Judge ("IJ") ordered Petitioner released on \$5,000 bond. Ex. D. After his release, Petitioner was free to go and joined his wife and other family members in Georgia. Ex. A, B.

4. Petitioner's freedom lasted from December 23, 2019, when Petitioner was released from custody up until August 14, 2025, when he was detained in an immigration enforcement action on the interstate in Georgia. Ex. A, B, C. For these nearly 6 years, Petitioner has peacefully lived, worked and raised his family in the United States. During these almost six years, he and his wife Maria experienced the joy of the birth of their two sons, now ages 5 and 2. Ex. A, B. Petitioner also helped raise Maria's younger brother Leivin Alvarez Varela as his own son. Ex. A, B, C. Leivin's mother had died and his father had abandoned him. They took Leivin into their home when he was 8 years old. He is now 18 years old. Ex. A, B. Petitioner is close to Leivin and proudly attended his graduation from high school in February of this year. Ex. A, E1.

5. At home, Petitioner participated in all aspects of his children's care, he diapered them, cooked for them, read to them, and played with them. He took his wife and children to the park and out to dinner. His young children relied on their father, especially his five-year-old son who has a speech impediment. Petitioner took his son to school every day and advocates for his special needs. Ex. A, B. Petitioner is the main source of the family's income and worked hard as a skilled construction worker to support them. Ex. A, B. He and his family attend church regularly and spend time with extended family and friends. Ex.. A, B. Petitioner, his wife, and children are a close, supportive family who rely on one another. Photos of Petitioner and his family are attached as Ex. E.

6. The freedom Petitioner was afforded by the government back in 2019 allowed him to provide love and sustenance to his family, extended family, friends, and to contribute to

society. In all these years, Petitioner lived an exemplary life. He has never been arrested, charged with, or convicted of a crime. Ex. A.

7. Following his release from detention in 2019, Petitioner worked diligently to resolve his immigration case. Petitioner timely filed his asylum application and secured counsel to assist him in the process. He worked with counsel to gather the necessary information to support his claim. Ex. A. As his asylum hearing approached in October of 2023, Petitioner was informed that the government, in its discretion, would not pursue the removal proceedings against him. Instead, they would ask the court to dismiss his case. Ex. A. The government filed a motion to dismiss removal proceedings against Petitioner. Ex. L. The Immigration Court granted the government's request to dismiss the proceedings on October 5, 2023. Ex. F. Petitioner was told by his counsel, and believed, that the government no longer sought to arrest him, prosecute him, detain him, or deport him. Ex. A. By declining any action against him, the government reinforced that belief. Petitioner went home to his family and went about his life. Ex. A.

8. Despite his almost six years of liberty without incident following his release from custody in 2019, Petitioner's life and freedom abruptly changed on August 14, 2025. That is the date Respondents arbitrarily and unlawfully took that freedom away from him without any hearing or other method to afford due process. Petitioner and Leivin were heading to a job site with two other relatives. Ex. A, C. Petitioner was a passenger in the vehicle. Ex. A, C. As the vehicle was driving along on the interstate, an officer paced alongside it and observed the occupants. The officer then dropped behind the moving vehicle, and pulled it over. Ex. A, C. The officer stated he stopped the vehicle because it had tinted windows.<sup>2</sup> Ex. A, C. The officer

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<sup>2</sup> Petitioner disputes that the windows were tinted and points out that this was a standard, manufacturer's vehicle. Ex. C.

demanded identification from the occupants and stated that they were all immigrants and would be deported. Ex. A, C. The officer summoned ICE, and ICE detained Petitioner, Leivin, and his two other relatives. Ex. A, C. ICE detained Petitioner even though he explained to the officer that the case against him had been dismissed and there were no current proceedings against him. Ex. A.

9. Petitioner was subsequently shuttled to a series of detention facilities: Jacksonville, Florida; Orlando, Florida, Alligator Alcatraz; and finally Federal Detention Center in Miami. Nearly three months after he was arrested Petitioner still has not been told why he is being detained. Ex. A. DHS issued Petitioner a Notice to Appear (“NTA”) in immigration court for September 23, 2025. Ex. F. The charges in the NTA were identical to the charges alleged against him six years earlier in the NTA of August, 2019, after which the Immigration Court afforded him a bond hearing and granted his release on bond. Ex. G (2019 NTA); Ex. F (2025 NTA). However, now, in 2025, Petitioner has been informed that he is not entitled to request a bond hearing. Ex. A. This is in keeping with a new ICE policy denying bond to those having arrived in the United States without inspection, regardless of when they arrived or how long they have been here. Ex. I.

10. Petitioner has already been detained for over three months. Petitioner’s detention has been calamitous and inhumane. After being detained by law enforcement on August 14, 2025, officials transported Petitioner to Jacksonville, Florida where conditions were dire. They placed him into a 12-foot by 20-foot cell with no beds and with around 30 other men. He and the others slept on a concrete floor. Ex. A. They next transferred him to Orlando Florida for 3 days where he received little food or water. Ex. A. Petitioner was next sent to “Alligator Alcatraz” in Florida and kept under inhumane conditions in a 30-foot by 30-foot wire cage also with around

30 other men. He had no privacy, was given insufficient food, and was forced to walk at all times bent at the waist with his hands behind his back. Ex. A. After 23 days Petitioner was sent to the Federal Detention Center in Miami Florida ("FDC Miami") where he remains today. Ex. A. At FDC Miami, Petitioner is subjected to collective punishment. Ex. A. For example, he was recently confined to his cell for three days because other inmates on his cell block were involved in an altercation. Petitioner was not even present when it happened. Ex. A. Petitioner's detention has been dire for his wife, their two young sons, and Leivin, who was detained at the same time as Petitioner. The family has lost its main breadwinner. Ex. A. B. His wife does not have the resources without his income to pay the rent and is in the process of selling their belongings to raise money. They are on the verge of homelessness. Ex. B. Petitioner's young son has a speech impediment and Petitioner acted as his advocate with his school and support system at home. Ex. B. His children do not understand why their father has not come home, and have become sad and distressed because of his absence. Ex. B. Maria is struggling to keep the house running and her children supported physically and emotionally, while her mental health is failing. Ex. B.

11. Petitioner's detention violates the Due Process Clause, the Immigration and Nationality Act, and the Administrative Procedure Act.

12. Due process is violated, quite simply, because Respondents provided Petitioner with a liberty interest that he enjoyed for almost 6 years. Then, without any process, much less due process, Respondents took that liberty away. From the time he was released from custody in 2019 to the time he was detained by ICE on August 14, 2025, Petitioner accrued a significant interest in being free. This cannot be taken away without process.

13. Respondents have violated the Immigration and Nationality Act by deeming Petitioner to be ineligible for a bond hearing. All across the country federal habeas courts have decried an unlawful, new policy of denying bond hearings to anyone accused of entering the country without inspections. Back on July 8, 2025, the Department of Homeland Security (“DHS”) and the Executive Office of Immigration Review (“EOIR”) embraced a radical, new policy that treats anyone alleged to be inadmissible under 8 U.S.C. Sec. 1182(a)(6)(A)(i) – those who entered the United States without inspection – as an “applicant for admission” under 8 U.S.C. Sec. 1225(b)(2)(A) and, thus, subject to mandatory detention. Ex. H. This policy transgresses basic tenets of statutory interpretation and has been roundly rejected by every the federal courts, including this one. *See, infra* at paragraph 78 of this Petition (collecting cases). But because of this illegal policy, Petitioner – who is accused of entering without inspection – cannot even get a bond hearing.

14. The government already determined in 2019 when it released Petitioner on bond that Petitioner is neither a danger or a flight risk. The government allowed him to live at liberty for almost 6 years. His sudden re-detention, without a hearing or evidence of changed circumstances, violates Due Process, and his continued detention without even the possibility of a bond hearing violates the Immigration and Nationality Act. Only this Court can intervene to correct this unlawful detention.

15. Petitioner’s detention also violates the Administrative Procedures Act.

16. Petitioner seeks a writ of habeas corpus ordering Petitioner’s immediate release and enjoining the government from re-detaining him unless and until it can be shown by clear and convincing evidence that he is a danger or flight risk. *See, Garcia Domingo v. Castro*, No. 1:25-CV-00979-DHU-GJF, 2025 WL 2941217, at \*1 (D.N.M. Oct. 15, 2025); *Lepe v. Andrews*,

No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at \*10 (E.D. Cal. Sept 23, 2025) (“The purpose of a preliminary injunction is to return the parties to the status quo ante, which is ‘not simply[] any situation before the filing of a lawsuit, but instead [] the last uncontested status which preceded the pending controversy.’”) (quoting *GoTo.com, Inc. v Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)). In this case, the status quo ante would be Petitioner’s freedom, which was granted to him by the government almost six years ago. “The status quo ante is defined ‘as the last peaceable uncontested status existing between the parties before the dispute developed.’” *Garcia Domingo*, 2025 WL 2941217, at \*3 (quoting *Free the Nipple-Fort Collins v. City of Fort Collins, Colo.*, 916 F.3d 792, 798 n. 3 (10<sup>th</sup> Cir. 2019)) See, also *Northeastern Fla. Chapter of Ass’n of Gen. Contractors v. City of Jacksonville*, 896 F. 2d 1283, 1284 (11th Cir. 1990) (“The chief function of a preliminary injunction is to preserve the status quo until the merits of the controversy can be fully and fairly adjudicated”); *Courthouse News Service v. Brenda D. Forman et al*, 606 F. Supp. 3d 1200 (N.D. Fla. 2022) quoting *Powers v. Secy, Fla. Dep’t Corr.*, 691 F. App’x 581 (11<sup>th</sup> Cir. 2017) (quoting *Ne. Fla. Chapter of Ass’n of Gen Contractors, supra.*)

17. In the alternative, Petitioner requests an order granting his release, unless he is afforded a bond hearing before a neutral arbiter within seven days.

## **II. JURISDICTION**

18. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Federal Detention Center in Miami, Florida which lies in the Southern District of Florida.

19. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

20. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

### **III. VENUE**

21. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Southern District of Florida, the judicial district in which Petitioner currently is detained. He is detained in Miami at the Federal Detention Center.

22. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of Florida.

### **IV. REQUIREMENTS OF 28 U.S.C. § 2243**

23. 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.*

24. 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) (citation omitted).

**V. PARTIES**

25. Petitioner Lainez Briceno Ursulo is a citizen of Honduras has continually resided in the United States since 2019. He arrived in 2019 and was placed in detention, then released on bond pursuant to an immigration court order. On August 14, 2025 he was arrested in a pretextual traffic-and-immigration stop on the interstate in Georgia, where he was a passenger. Ex. A, C. He has been detained ever since.

26. Respondent E. K. Carlton is the Warden at the Federal Detention Center in Miami, Florida where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

27. Respondent Garrett J. Ripa is the Director of the Miami Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Ripa is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his or her official capacity.

28. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

29. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

30. Respondent Todd M. Lyons is the Acting Director of ICE. He is sued in his official capacity.

31. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review

and the immigration court system it operates is a component agency. She is sued in her official capacity.

32. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA removal proceedings, including for custody redeterminations in bond hearings.

## VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES

33. No exhaustion is statutorily required for the petitioner's habeas claims because "Section 2241 itself does not impose an exhaustion requirement," *Santiago-Lugo v. Warden*, 785 F.3d 467, 474 (CA11 2015).

34. Regardless, "[w]here Congress does not say there is a jurisdictional bar, there is none." *Santiago-Lugo v. Warden*, 785 F.3d 467, 473 (11th Cir. 2015). The fact that it did not limit courts' subject matter jurisdiction to decide unexhausted § 2241 claims compels the conclusion that any failure of [the respondent] to exhaust administrative remedies is not a jurisdictional defect." *Id.* at 474.

35. In the absence of a statutorily mandated exhaustion requirement, whether to apply a common law exhaustion requirement is a decision that rests soundly within the broad discretion of district courts. *See J.N.C.G. v. Warden, Stewart Detention Ctr.*, No. 4:20-CV-62-MSH, 2020 WL 5046870, at \*3 (M.D. Ga. Aug. 26, 2020) (citing *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992)); *see also Richardson v. Reno*, 162 F.3d 1338, 1374 (11th Cir. 1998); *Yahweh v. U.S. Parole Comm'n*, 158 F. Supp. 2d 1332, 1341 (S.D. Fla. 2001).

Here, there is no reason to require exhaustion of administrative remedies, as Petitioner has no meaningful alternative to habeas relief, and has already requested bond from the immigration court. *Boz v. United States*, 248 F.3d 1299, 1300 (11th Cir. 2001) ("[A] petitioner need not exhaust their administrative remedies where the administrative remedy will not provide relief

commensurate with the claim.”); *Linfors v. United States*, 673 F.2d 332, 334 (11th Cir. 1982) (“[E]xhaustion is not required where no genuine opportunity for adequate relief exists . . . or an administrative appeal would be futile[.]”). In light of the BIA’s recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), exhaustion would be futile because the outcome of the administrative process can be reasonably anticipated and would not constitute an adequate remedy. *Alvarez Puga v. Assistant Field Office Director, Krome North Service Processing Center et al.*, No. 25-24535-cv-ALTONAGA (S.D. Fla. Oct. 15, 2025)

36. Accordingly, Petitioner urgently seeks and is entitled to habeas relief because he has no meaningful opportunity to challenge the constitutionality of his detention through any available administrative process. *See Boumediene v. Bush*, 553 U.S. 723, 783 (2008).

## VII. LEGAL FRAMEWORK

37. Respondent’s actions in detaining Petitioner and denying him a bond hearing violate Due Process, the Immigration and Nationality Act, and the Administrative Procedure Act.

### I. Due Process Right to a Custody Redetermination Hearing Prior to Re-Detention

38. The Due Process Clause of the Constitution makes it unlawful for Respondents to arrest Petitioner, years after they released him, without first providing a pre-deprivation hearing in which an immigration judge determines whether circumstances have so materially changed since his release that a re-detention hearing is necessary.

39. By statute and regulation, ICE has the ability to revoke a noncitizen’s immigration bond and re-arrest the noncitizen. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). However, in *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981), the BIA has recognized an implicit limitation on ICE’s authority to re-arrest noncitizens. There, the BIA held that “where a previous

bond determination has been made by an immigration judge, no change should be made by [the DHS] absent a change of circumstance.” *Id.* In practice, DHS “requires a showing of changed circumstances both where the prior bond determination was made by an immigration judge and where the previous release decision was made by a DHS officer.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). The Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021) (“Thus, absent changed circumstances ... ICE cannot redetain Panosyan.”).

40. ICE has further limited its authority as described in *Sugay*, and “generally only re-arrests [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances.” *Saravia*, 280 F. Supp. 3d at 1197 (quoting Defs.’ Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus, under BIA case law and stated ICE practice, ICE may re-arrest a noncitizen who had been previously released on bond only after a material change in circumstances. *See id.* at 1176; *Matter of Sugay*, 17 I. & N. Dec. at 640.

41. This rule applies in a case like Petitioner’s, where the government previously released Petitioner on bond in 2019 and he continued in his state of freedom, for almost six years, including for two years following the government’s October 5, 2023 dismissal of proceedings against him. To release him on bond in 2019, the government had to first determine that he was neither a flight risk or a danger to the community. 8 C.F.R. Sec. 1003.19(h)(3), 1236.1(c)(3),(c)(8); *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976); *Matter of Guerra*, 24 I&N Dec. 37 (2006).

42. Thus, the government has already made a determination about flight risk and risk of danger in Petitioner's case and found that there was no risk warranting his continued detention. As a result, re-detention is not permitted here without demonstrating to a neutral arbiter that there has been a material change in circumstances.

43. Yet, here, Petitioner, was re-detained without any pre-deprivation hearing being held in his case. Nor were there changed circumstances that would justify a change in custody, as Petitioner has never been arrested or convicted of a crime. Abrams Decl. ¶8, Ex. A.

44. ICE's power to re-arrest a noncitizen who is at liberty is constrained, not only by regulation and statute, but also by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (“[T]he government’s discretion to incarcerate non-citizens is always constrained by the requirements of due process). In this case, due process prohibits Respondents’ from taking away Petitioner’s weighty interest in his freedom in the peremptory manner that occurred.

45. Federal district courts have repeatedly recognized that noncitizens released from immigration custody retain a strong liberty interest in their release, and that DHS’s authority to revoke a noncitizen’s bond or parole is subject to the constraints of due process. *See, e.g., Garcia Domingo*, 2025 WL 2941217, at \*4 (“[T]he Court finds that there is a substantial likelihood that Petitioner, under the three *Mathews* factors, can show that he was entitled to a pre-deprivation hearing prior to being re-detained”). These courts have repeatedly granted temporary restraining orders requiring a pre-deprivation hearing for a noncitizen released from custody, like Petitioner, *before* ICE re-detains him.<sup>3</sup> As the court in *Guillermo M.R.* recently

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<sup>3</sup> *See, e.g., Alvarez Varela v. Dedos*, No. 1:25-CV-01085-DHU-KK ; *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at \*3 (N.D. Cal. Aug. 23, 2020);

noted, the court could not identify any other context in which government agents could permissibly take someone who has been released by a judge, lock up that person, and have no hearing either beforehand or promptly thereafter.” *Guillermo M. R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677, at \*7 (N.D. Cal. July 17, 2025). The courts have made clear that DHS does not get a free pass from the requirements of due process. *See e.g. Pinchi*, 2025 WL 2084921, at \*3 (“[T]he liberty [of a person released from government custody] is valuable and must be seen as within the protection of the [Due Process Clause].”) *Morrissey v. Brewer*, 408 U.S. 471 (1972).)

46. As for the process due to a noncitizen following their re-detention by ICE, the recent district court decision in *Domingo v. Kaiser*, No. 25-CV-05893 (RFL), 2025 WL 1940179 (N.D. Cal. July 14, 2025), is illustrative. In this case, Mr. Domingo, a noncitizen from Guatemala, had been re-detained by ICE twelve years after his release on a bond. *Id.* at \*1. In *Domingo*, the noncitizen had been convicted of a crime in 2019 following his release on bond, but ICE required no supervision, no check-ins, and no additional monitoring since his conviction. *Id.* at \*3. Domingo challenged his mandatory detention, arguing that his re-detention without review by a neutral adjudicator violated his due process rights. *Id.* at \*1. In granting a preliminary

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*Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at \*2 (N.D. Cal. Mar. 1, 2021); *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at \*4 (N.D. Cal. June 14, 2025); *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at \*4 (N.D. Cal. June 14, 2025); *Guillermo M.R. v. Polly Kaiser*, No. 3:25-cv-05436-RFL, 2025 WL 1983677, at \*7 (N.D. Cal. June 30, 2025); *Phan v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1808702, at \*3 (E.D. Cal. June 30, 2025); *Domingo v. Kaiser*, No. 25-CV-05893 (RFL), 2025 WL 1940179, at \*10 (N.D. Cal. July 14, 2025); *Quoc Chi Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at 3 (E.D. Cal. July 16, 2025); *Soto Garcia v. Andrews*, No. 2: 25-CV-01884-TLN-SCR, 2025 WL 1927596, at \* 5 (E.D. Cal. July 14, 2025); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at \*3 (N.D. Cal. July 24, 2025); *Zakzouk v. Becerra*, No. 3: 25-CV-06254 (RFL), 2025 WL 2097470, at \*4 (N.D. Cal. July 26, 2025); *Salam v. Maklad*, No. 1:25-CV-00946, 2025 WL 2299376, at \*9 (E.D. Cal. 24 August 8, 2025).

injunction, the Court held that even with the new facts, Domingo had established a strong likelihood of success in showing that he had an interest in his continued liberty and that mandatory detention, in that case, under 8 U.S.C. 1225(b)(1)(B)(ii), would violate this due process rights unless he was afforded adequate process. *Id.* at \*4. The Court further held that, after applying the three-factor test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), Domingo was entitled to a hearing before a neutral decision maker to determine whether his detention was warranted. *Id.* At that hearing, the government bore the burden of establishing, by clear and convincing evidence, whether Domingo posed a danger or a flight risk. Petitioner has an even stronger likelihood of success, having no intervening changed circumstances or criminal history either before, or since his release in 2019.

**A. Petitioner Has a Protected Liberty Interest in His Conditional Release**

47. Petitioner's liberty from immigration custody is protected by the Due Process Clause: "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).

48. For nearly 6 years preceding his re-detention on August 14, 2025, Petitioner enjoyed the liberty interest that the government created when it released him from custody in 2019. Ex. A. Because he was released and not subject to government monitoring or detention, Petitioner possessed a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey*, 408 U.S. at 482-483.

49. In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and

friends and to form the other enduring attachments of normal life.” *Id.* at 482. The Court further noted that “the parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions.” *Id.* The Court explained that “the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever name, the liberty is valuable and must be seen as within the protection of the [Fifth] Amendment.” *Morrissey*, 408 U.S. at 482.

50. This basic principle—that individuals have a liberty interest in their conditional release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See, e.g., Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process).

51. As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted); *see also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

52. Even where the individual obtains liberty through a mistake of law or fact, courts have clearly held that this is a protectable liberty interest. *See id.*; *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations support the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would be inconsistent with fundamental principles of liberty and justice” to return him to prison) (internal quotation marks and citation omitted).

53. Here, when this Court ““compar[es] the specific . . . release . . . in [Petitioner’s case], with the liberty interest in parole as characterized by *Morrissey*,”” they are strikingly similar. *See Gonzalez Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Petitioner’s release “enable[d] him to do a wide range of things open to persons”” who have never been in custody or convicted of any crime, including to live at home, work, and “be with family and friends and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. Noncitizens released on a bond have a similar liberty interest, which “grows over time.” *Guillermo M. R.*, 2025 WL 1983677, at \*5; *see also Diaz*, 2025 WL 1676854, at \*2 (“Courts have previously found that individuals released from immigration custody on bond have a protectable liberty interest in remaining out of custody on bond.”); *Jorge M.F.*, 2021 WL 783561, at \*3 (holding that a Mexican citizen with pending removal proceedings who had been released on bond had “a substantial private interest in remaining on bond”); *Doe*, 2025 WL 691664, at \*5 (“Petitioner, having been released at a bond hearing over five years ago, has a similar liberty interest.”); *Ortega*, 415 F. Supp. at 970 (finding “a substantial private interest in remaining on bond, and that interest has only grown in the 18 months since[.]”). And this private interest in remaining free is

even stronger in a case, like Petitioner's, where the government released him from custody almost six years ago, dismissed proceedings against him two years ago, and he has gone about his life, in freedom, with no intervening change in circumstances..

54. Since his release in December 2019, Petitioner has spent 6 years living in Georgia, and North Carolina, with his family. Ex. A, B. He worked in construction and was the main family breadwinner. He helped raise his two young sons, ages 5 and 2, doing all the chores and activities of a proud father – diapering his babies, cooking meals, taking his family to the park, out to dinner, and to church. Ex. A, B. Petitioner formed close connections with extended family and in his community.

55. In short, Petitioner participated in the “attachments of normal life,” *Morrissey*, 408 U.S. at 482, in the years since his release from detention in 2019. As such, he has a protected liberty interest and his continued detention without adequate process violates his due process rights.

**B. Petitioner's Liberty Interest Mandated a Hearing Before any Re-Detention**

56. Due process mandates that Petitioner receive notice and a hearing before a neutral adjudicator prior to any re-arrest or re-detention.

57. “Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (*en banc*) (citing *Morrissey*, 408 U.S. at 481- 82). This Court must “balance [Petitioner's] liberty interest against the [government's] interest in the efficient administration of” immigration laws to determine what process he is owed to ensure ICE does

not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews*, this Court must consider three factors in conducting its balancing test:

[f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Mathews*, 424 U.S. at 335, 96 S. Ct. at 903.

*Grayden v. Rhodes*, 345 F.3d 1228, 1233 (11th Cir. 2003)(citing *Mathews*); *See, also, Haygood*, 769 F.2d at 1357.

58. The Supreme Court "usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide" can post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the variables in the *Mathews* equation—the value of pre-deprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing pre-deprivation process," can the government avoid providing pre-deprivation process. *Id.*

59. In this case, as a pre-deprivation hearing was possible *and* valuable in preventing an erroneous deprivation of liberty, ICE was required to provide Petitioner with notice and a hearing *prior* to any re-detention. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984). Under *Mathews*, "the balance weighs

heavily in favor of [Petitioner's] liberty" and required a pre-deprivation hearing before a neutral adjudicator.

### **C. Petitioner's Private Interest in His Liberty Is Profound**

60. Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like Petitioner, who have been released pending civil removal proceedings, rather than parolees or probationers who are subject to criminal sanctions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001) (noting diminishing liberty interest of parolees/probationers); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Even in the criminal context, the courts have held that the parolee cannot be re-detained without a due process hearing in which they can raise any claims they may have regarding why their re-detention would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Petitioner retains a truly weighty liberty interest.

61. At stake in this case is one of the most profound individual interests recognized by our legal system: May ICE unilaterally nullify a prior decision of the government to release Petitioner and whether it can take away his physical freedom, i.e., his "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause

protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996); *see also Doe*, 2025 WL 691664, at \*5 (“It cannot be gainsaid that Petitioner has a substantial private interest in maintaining his out-of-custody status.”).

62. There is a profound private interest in this case, which must be weighed heavily when determining what process Petitioner is owed under the Constitution. *See Mathews*, 424 U.S. at 334-35.

**D. The Government’s Interest in Keeping Petition in Detention Without a Hearing is Low, and the Burden is Minimal on the Government to Release Him from Custody Unless and Until He is Provided a Hearing.**

63. The government’s interest in keeping Petitioner in detention without a hearing is low; when weighed against Petitioner’s significant private interest in his liberty, the scale tips sharply in favor of releasing him from custody unless and until the government demonstrates by clear and convincing evidence that he is a flight risk or danger to the community. It becomes abundantly clear that the *Mathews* test favors Petitioner when the Court considers that the process he seeks—release from custody pending notice and a hearing regarding whether he should be re-detained or a bond amount should be set—is a standard course of action for the government. In the alternative, providing Petitioner with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that he is a flight risk or danger to the community would impose only a *de minimis* burden on the government: the government routinely provides this sort of hearing to detained individuals like Petitioner.

64. As immigration detention is civil, it can have no punitive purpose. The government’s only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen’s appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. ICE cannot show either interest in Petitioner’s case. Moreover,

Petitioner's detention, forcing him to walk bent over, affording him little or no privacy, depriving him of adequate food, and subjecting him to collective punishment, has been impermissibly punitive. Ex. A.

65. To date, it is unclear why Petitioner was detained on August 14, 2025. Ex. A. He has requested but has not been given his Form I-213 that would explain his arrest on August 14, 2025. Ex. A. Petitioner has no criminal history. Ex. A. The basis for his detention was a pretextual window-tinting violation on an interstate highway – where Petitioner was not the driver. Ex. A. Furthermore, Petitioner disputes that the windows were improperly tinted, in that the vehicle is “factory-made stock.” Ex. A, C. Nothing about Petitioner suggests that he is a danger to the community or a flight risk. He is an integral part of a loving family, a loving father and husband. He has two U.S. citizen children. He was gainfully employed. He was the family's main breadwinner and the family depended on him for his earnings. Ex. A, B, C. In past years he attended required immigration hearings, and there is no reason to believe he will not do so in the future. There is no reason now to believe that he is a flight risk.

66. The government cannot plausibly assert that it had a sudden interest in detaining Petitioner in August 2025. As noted above, Petitioner has never been convicted of a crime. Ex. A. His immigration arrest did not result from any criminal allegation. Instead, ICE located him after an officer made a traffic stop and found him to be a passenger in a vehicle with an alleged window-tinting violation. Exhs. A, C. This does not suggest any basis to revoke his release. The government has known for almost six years that Petitioner is not a citizen, and yet the government released him in 2019 to live freely. Ex. D. There could be no sudden interest in reversing this release decision, especially without a hearing.

67. If DHS believed that there were some grounds for detention based on danger to the community, such as an arrest or conviction, ICE would have moved to re-detain him before the Immigration Court and explain what those grounds could be. Instead, ICE chose to re-detain him without any explanation or process.

68. At the very least, Petitioner had the right to a hearing prior to his detention where he could hear the government's evidence underlying this determination and present his argument as to why revocation of his release is not justified. To hold otherwise is to allow one arm of the government to unilaterally decide when it is appropriate to override the decision of another part of the federal government. Not only are notice and an opportunity to respond basic due process safeguards, but *Doe* has previously held the following for a noncitizen facing similar circumstances of mandatory detention following a release on bond:

Given that Petitioner was previously found to not be a danger or risk of flight and the unresolved questions about the timing and reliability of the new information, the risk of erroneous deprivation remains high. Moreover, the value in granting Petitioner procedural safeguard is readily apparent. At a hearing, a neutral decisionmaker can consider all of the facts and evidence before him to determine whether Petitioner in fact presents a risk of flight or dangerousness.

*Doe*, 2025 WL 691664, at \*5. *See also Arzate v. Andrews*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2230521, at \*6 (E.D. Cal. Aug. 4, 2025) (granting TRO motion and ordering immediate release of detained noncitizen); *Soto Garcia*, 2025 WL 1927596, at \* 5 (same, granting PI).

69. The government's present interest in detaining Petitioner at this time is therefore low. The "fiscal and administrative burdens" that release from custody, unless and until a pre-deprivation bond hearing is provided, would impose are nonexistent in this case. *See Mathews*,

424 U.S. at 334-35. Petitioner does not seek a unique or expensive form of process, but rather his release from custody until a routine hearing takes place regarding whether his bond should be revoked and whether he should be re-incarcerated.

70. In the alternative, providing Petitioner with an immediate hearing before this Court (or a neutral decisionmaker) regarding bond is a similarly routine procedure that the government provides to those in immigration detention. *See Doe*, 2025 WL 691664, at \*6 (“The effort and cost required to provide Petitioner with procedural safeguards is minimal and indeed was previously provided in his case.”). At that hearing, the Court would have the opportunity to determine whether there have been material changes since Petitioner was released in 2019—or if this release should be revoked. As the Supreme Court noted in *Morrissey*, even where the State has an “overwhelming interest in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole . . . [it] has no interest in revoking parole without some informal procedural guarantees.” 408 U.S. at 483.

71. The remedy—release from custody until Respondents (1) move for a bond re-determination before an Immigration Judge and (2) demonstrate by clear and convincing evidence that Petitioner is a flight risk or danger to the community—is far *less* costly and burdensome for the government than keeping him detained. As the Ninth Circuit noted in 2017, which remains true today, “[t]he costs to the public of immigration detention are ‘staggering’” *Hernandez*, 872 F.3d at 996. If, in the alternative, the Court chooses to order a hearing for Petitioner at which the government bears the burden of justifying his continued detention, the government would bear no additional cost if the hearing is scheduled within seven days, rather

than allowing Petitioner to sit in detention for weeks or months awaiting a hearing and decision on his applications for relief.

**E. Without Release from Custody until the Government Provides a hearing, Risk of Erroneous Deprivation of Liberty is High; Process in the Form of a Constitutionally Compliant Hearing Where ICE Carries the Burden Would Decrease Risk**

72. Releasing Petitioner from custody until he is provided a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before Petitioner can be lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the government is held to show that there has been sufficiently changed circumstances such that the 2019 release determination should be altered or revoked because clear and convincing evidence exists to establish that Petitioner is a danger to the community or a flight risk. *See e.g. Diaz*, 2025 WL 1676854, at \*3 (finding that “the three factors relevant to the due process inquiry set out in *Mathews*...support requiring a pre-detention hearing” for a petitioner released on an IJ bond).

73. Petitioner has already been erroneously deprived of his liberty, and the risk that he will continue to be deprived is high if ICE is permitted to keep him in detention after making a unilateral decision to re-detain him. Petitioner was previously granted release, however DHS’s recent (and unlawful) interpretation of 8 U.S.C. § 1225(b) means that DHS will treat him as subject to mandatory detention, thus depriving him of even post-deprivation process. There is no longer any statutory mechanism that would provide Petitioner any process before a neutral adjudicator following his re-detention. As a result, under current procedures, the validity or necessity of Petitioner’s re-detention and continued imprisonment by ICE would evade any review by an immigration judge or any other neutral arbiter.

74. By contrast, the procedure Petitioner seeks -- release from custody and reinstatement of his prior release order until he is provided a hearing in front of a neutral

adjudicator at which the government proves by clear and convincing evidence that circumstances have changed to justify his re-detention, *see, Garcia Domingo*, 2025 WL 2941217, at \*5 -- is much more likely to produce accurate determinations regarding factual disputes, such as whether a certain circumstance constitutes a “materially changed circumstance.” *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when “delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement” are at issue, the “risk of error is considerable when just determinations are made after hearing only one side”); *see also Doe*, 2025 WL 691664, at \*1 (“A neutral judge is one of the most basic due process protections); *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011). The Supreme Court has emphasized the importance of *pre-deprivation* hearings where available, as such an option is here. *See Zinermon*, 494 U.S. at 985 (only in a “special case” where post-deprivation remedies are “the only remedies the State could be expected to provide” can post-deprivation process satisfy the requirements of due process).

75. Due process also requires consideration of alternatives to detention and the ability to pay at any custody redetermination hearing that may occur. *Hernandez*, 872 F.3d at 997; *Walter A.T. v. Facility Administrator*, No. 1:24-CV-01513-EPG-HC, 2025 WL 1744133, at \*10 (E.D. Cal. June 24, 2025). The primary purpose of immigration detention is to ensure a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if alternatives to detention could mitigate risk of flight. *See*

*Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention and ability to pay must be considered in determining whether Petitioner's re-incarceration is warranted.

## II. ALTERNATIVE GROUNDS FOR RELIEF: STATUTORY DETENTION AUTHORITY

76. Petitioner's detention without even the possibility of a bond hearing violates the Immigration and Nationality Act (INA), thus providing an additional basis for habeas relief.

77. Petitioner's case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). Section 1226(a) governs the arrests and detention of noncitizens already present in the United States pending removal proceedings, while § 1225(b)(2) governs the detention of noncitizens arriving at the border or ports of entry. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104--208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were considered detained under § 1226(a), not under § 1225. *See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

78. In the decades that followed the creation of this statutory and regulatory language, people who entered without inspection were placed in standard removal proceedings and received bond hearings, unless their criminal history triggered the requirements outlined in 8 U.S.C. § 1226(c). *See also* 8 C. F. R. 236.1(c)(8). That practice was consistent with many decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also*

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

79. On July 8, 2025, ICE announced a new policy “in coordination with” DOJ. Ex. K. This new policy rejected the well-established understanding of the statutory framework and reversed decades of practice. The new policy, entitled “*Interim Guidance Regarding Detention Authority for Applicants for Admission*,”<sup>4</sup> asserts that all persons who entered the United States without inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225(a)(1), and therefore subject to mandatory detention provisions under Section 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and it affects those who have resided in the United States for months, years, and even decades.

80. On September 5, 2025, roughly two weeks into Petitioner’s detention, the Board of Immigration Appeals (BIA) adopted this interpretation of the detention statutes, thus denying bond hearings to anyone, including Petitioner, accused of entering without inspection. *Matter of Yajure Hurtado* 29 I&N Dec. 216, 220 (BIA 2025). The BIA decision holds that “aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Id.*

81. Respondents have adopted this position even though a growing number of federal courts, including this court, have roundly rejected it. These courts have consistently held that § 1226(a), not § 1225(b)(2), governs the detention authority applicable in these cases. Specifically, United States District Judge David S. Liebowitz recently issued a decision in

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<sup>4</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

*Ocampo Fernandez v. Ripa*, No. 1:25-cv-24981-DSL (S.D.Fla. Nov. 25, 2025) rejecting the Respondent's reliance of *Matter of Yajure Hurtado*. In that decision the Court explained:

[U]nder federal law, certain aliens retain certain rights and privileges, such as a meaningful opportunity to seek release on bond during the pendency of their removal process. Respondent [Miami ICE Field Office Director] attempts to dispense with that entitlement through an abrupt policy change, claiming detention is mandatory under Section 1225. But we are a nation of laws, so this Court rejects the attempt because the law that applies here (Section 1226) gives Petitioner an opportunity to be heard at a bond hearing." *Id.* at 1.

*See, also., Aguilar v. Ripa*, 2025 WL 2941609 (S.D. Fla., Oct 15, 2025) (“... § 1226(a), not § 1225(b)(2), governs Petitioner’s detention”); *Puga v. Assistant Field Office Director*, 20205 WL 2938369 (S.D. Fla., October 15, 2025) (“[T]he court finds that section 1226(a) and its implementing regulations govern Petitioner’s detention, not section 1225(b)(2)(A)”); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB) (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH) (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21, 2025); *Palma Perez v. Berg*, No. 8:25CV494 (D. Neb. Sept. 3, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept 3, 2025); *Lopez-Campos v. Raycraft*, --- F. Supp. 3d ----, 2025 WL 2496379 at \*1 (E.D. Mich. Aug 29, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug 24, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug 15, 2025).

82. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

83. Indeed, according to DHS's own factual allegations contained in Petitioner's 2019 and 2025 Notices to Appear, the DHS determined that Petitioner was charged under § 1226(a), not § 1225(b). Ex. G., H.

84. The joint DHS-DOJ interpretation of Section 1225(b)(2) defies the INA's text, the INA's logic, and the well-established case law and practice interpreting this provision. Indeed, there are five separate grounds on which the DHS-DOJ interpretation of this law fails basic methods of statutory construction.

85. First, the DHS-DOJ reading of Section 1225(b)(2)(A) is wrong because it requires courts to ignore numerous words in the text of that very subsection. Petitioner was apprehended by ICE on August 14, 2025 in Georgia, not at the border. And he was apprehended almost 6 years after entering. The text of the mandatory-detention statute just does not cover a person detained like this. As Justice Antonin Scalia and his co-author, Bryan A. Garner, explain: "If possible, every word and every provision is to be given effect." SCALIA AND GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* AT 174 (2012). A good interpretation of a statute will not result in "extra" words. Yet that is exactly what occurs if one tries to apply Section 1225(b)(2)(A) to Petitioner's case. Here is the full text of Section 1225(b)(2)(A), the mandatory-detention provision:

[I]n the case of an alien who is an applicant for admission, if the [1] *examining immigration officer* determines that an alien [2] *seeking admission* is [3] *not clearly and beyond a doubt entitled to be admitted*, the alien shall be detained for a proceeding under section 240.

8 U.S.C. § 1225(b)(2)(A) (emphasis and bracketed numbers added). On August 14, 2025, when Petitioner was apprehended in Georgia, he was never seen by an “examining immigration officer.” There was never a “determin[ation] that . . .” he was “not clearly and beyond a doubt entitled to be admitted.” Nor was Petitioner “seeking” anything at the time of his apprehension. He was carpooling to work, in Georgia, far from the border, not entering the country. Respondents’ efforts to apply mandatory detention would make sense at the border where people are “seeking” admission and are “examin[ed]” by immigration officers. But § 1225(b)(2)(A) has no purpose in the context where they encountered Petitioner, as explained by numerous district courts.<sup>5</sup>

86. Second, the DHS-DOJ reading of Section 1225(b)(2)(A) violates the INA because it renders a neighboring subsection superfluous. In Section 1226(c), the INA describes people who would otherwise be eligible for bond under Section 1226(a), but are rendered ineligible for bond because of their criminal histories. *See* 8 U.S.C. § 1226(c). Subsections 1226(c)(1)(E)(i)-(ii) provide people who entered without inspection, like Petitioner, are ineligible for bond *only* if he “is charged with, is arrested for, is convicted of” certain enumerated crimes. *See* 8 U.S.C. § 1226(c)(1)(E)(i)-(ii). If Respondents’ reading were correct, then all people who entered without inspection would be mandatorily detained, regardless of whether they had criminal histories. That reading would make subsections 1226(c)(1)(E)(i) and (ii) wholly superfluous. Obviously that cannot be right, given that these subsections of 1226(c)(1) were added by Congress just this year. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. \_\_\_\_\_ (2025). As numerous federal courts have observed, it makes no sense to claim that Congress added wholly superfluous sections, yet

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<sup>5</sup> *Martinez v. Hyde*, — F.Supp.3d —, 2025 WL 2084238, at \*2 (D. Mass. July 24, 2025); *see also Lopez Benitez*, — F.Supp.3d at —, 2025 WL 2371588, at \*5; *Lepe v. Andrews*, 2025 WL 2716910, at \*4 (E.D. Cal. Sept. 23, 2025); *Lopez-Campos v. Raycraft*, — F.Supp.3d —, 2025 WL 2496379, at \*6 (E.D. Mich. Aug. 29, 2025).

that's what Respondents are reduced to arguing.<sup>6</sup> That is another sign that the government's reading of Section 1225(b)(2)(A) is wrong.<sup>7</sup>

87. Third, the DHS-DOJ reading of the statute is wrong because it is incompatible with the title of Section 1225, "Inspection by Immigration Officers; *Expedited Removal of Inadmissible Arriving Aliens*; Referral for Hearing." 8 U.S.C. § 1225 (emphasis added). As the Supreme Court has explained, "the title of a statute and the heading of a section are tools available for the resolution of a doubt" about the meaning of a statute. *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998). Section 1225's title refers to "arriving" noncitizens who are put in "expedited removal proceedings." *Id.* The government gravely errs by applying the definition of "applicant for admission" to people who are not "arriving" and not in "expedited removal proceedings." In this case, Petitioner was not "arriving" or "seeking admission" when he was detained in Georgia, almost six years after he crossed the border.

88. Fourth, and relatedly, the DHS-DOJ reading violates the INA because it ignores the subject-matter of Section 1225. Section 1225 describes the procedures for the inspection and expedited removal of people detained at the border who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). The Supreme Court itself noted that the mandatory detention scheme in Section 1225(b)(2)(A) applies "at the Nation's borders and ports of entry, where the

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<sup>6</sup> See *Gomes*, 2025 WL 1869299, at \*5; *Lopez Benitez*, — F.Supp.3d at —, 2025 WL 2371588, at \*7; *Romero v. Hyde*, — F.Supp.3d at —, —, 2025 WL 2403827, at \*11 (D. Mass. Aug. 19, 2025); *Maldonado v. Olson*, — F.Supp.3d —, —, 2025 WL 2374411, at \*12 (D. Minn. Aug. 15, 2025); *Lepe v. Andrews*, 2025 WL 2716910, at \*6 (E.D. Cal. Sept. 23, 2025).

<sup>7</sup> As the Supreme Court has explained, "It is our duty to give effect, if possible, to every clause and word of a statute." *Duncan v. Walker*, 533 U.S. 167, 174 (2001); see *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1259 (W.D. Wash. 2025); see also SCALIA AND GARNER, *READING LAW*, AT 174 ("If possible, every word and every provision is to be given effect. . . . None should needlessly be given an interpretation that cause it to . . . have no consequence.").

Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Throughout, Section 1225’s text makes clear that it concerns apprehensions and “expedited” procedures carried out at the border—not actions taken far from the border, as in Petitioner’s case. The context of Section 1225 demonstrates that subsections 1225(b)(2)(A) apply to those apprehended at or near the border upon arrival or shortly thereafter. They do not apply to those who are arrested in the interior of the United States months or years or decades later. That the Respondents’ reading of the statute ignores this context is a sure sign that it is wrong. *Davis v. Michigan Dep’t of Treasury*, 489 U.S. 803, 809 (1989) (“It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.”). Quite simply, the DHS- DOJ reading of the statute is an act of cherry-picking a definitional phrase from one context and applying it to another context where it does not belong.

89. Nor is this Court bound by the BIA’s recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which endorsed this unlawful interpretation of sections 1225 and 1226. As the Supreme Court has recently held, “[C]ourts must exercise independent judgment in determining the meaning of statutory provisions.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). After *Loper Bright*, a federal court “may look to [the BIA’s] interpretations [of the INA] for guidance, but [must not] defer to the agency.” *Lopez v. Garland*, 116 F.4th 1032, 1036 (9th Cir. 2024).

90. Petitioner, who has lived in the United States for nearly 6 years and was apprehended well inside the country, is therefore not properly classified as an “arriving alien.” His detention under § 1225 is unlawful. Because § 1226 governs his custody, Petitioner is entitled to a custody redetermination and to consideration for bond based on individualized

factors. The government's continued reliance on § 1225(b)(2) to deny bond violates both the statute and Petitioner's constitutional right to due process.

91. For the distinct reasons outlined above, the mandatory detention provision of Section 1225(b)(2)(A) does not apply to people like Petitioner.

### **VIII. FACTS**

92. Petitioner came to the United States in August of 2019, with his wife Maria Alvarez Varela. Petitioner surrendered at the border, was detained and put into removal proceedings. Ex. A, G. He was issued a Notice to Appear and afforded a bond hearing. Petitioner was released on bond on December 23, 2019. Ex. D. He was not subjected to monitoring restrictions such as ankle monitoring or regular ICE check-ins. Ex. A, D. Petitioner timely filed and pursued his asylum claim. Ex. A. He attended required hearings. Ex. A. He obtained counsel to assist him. Ex. A. Prior to his October, 2023 scheduled asylum hearing on the merits, the government moved to dismiss removal proceedings against him, pursuant to prosecutorial discretion. On October 5, 2023, the Immigration Court granted the request and dismissed removal proceedings against him. Ex. F. Petitioner was informed and understood that as a result, he was no longer subject to the threat of arrest, detention or deportation. Ex. A.

93. From the time the government released Petitioner on December 23, 2019, to the time he was apprehended in Georgia in August of 2025, Petitioner was never re-detained by ICE. He was not given any notice by the government after proceedings against him were dismissed on October 5, 2023, that the government ever intended to re-detain him or initiate new removal proceedings against him. Ex. A. In this state of freedom, Petitioner continued to enjoy his life of freedom with his wife, two U.S. citizen children, and wife's younger brother Leivin. He continued to work hard at his construction job to earn income to support his family and to experience the joys and struggles of life that are afforded to free members of society Ex. A, B.

He continued in this state of freedom both before and after October 5, 2023 when the Immigration Court dismissed deportation proceedings against him. He has never been convicted of any crime. Ex. A.

94. On August 14, 2025, Respondents detained Petitioner while he was riding in a vehicle on his way to work with Leivin and two other family members. Ex. A, B The asserted basis for the stop was a window-tinting violation – a violation that is notorious as a pretextual excuse for a car stop. Eric Citron, Police Pretext as a Democracy Problem, 116 Yale L.J. POCKET PART 364 (2007), <http://yalelawjournal.org/forum/police-pretext-as-a-democracy-problem>.

95. Respondents then subjected Petitioner to detention – a detention that has now run to more than 14 weeks. Petitioner was subjected to this detention, even though he never failed to appear for any prior immigration matter, and had no pending immigration matters requiring his appearance. Ex. A. Despite these circumstances, Respondents have kept him detained. They are employing the new DHS-DOJ policy denying bond hearings to those who entered without inspection. Ex. A, I. This means that Petitioner will not be eligible to even ask for bond unless this Court intervenes.

96. Petitioner is now accused of being inadmissible for entering the United States without inspection and for lacking a valid travel document at the time of admission. 8 U.S.C. § 1182(a)(6)(A)(i), (a)(7)(i)(I). Petitioner remains in detention without the possibility of getting bond. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his wife, his children, his close family, and his community. Petitioner's wife and children are suffering from his absence. His family faces ongoing depression, stress, economic deprivation and looming homelessness from not having their

husband and father. Ex. A, B. Petitioner is suffering as well, physically and emotionally. Ex. A. Each day of absence marks an additional harm to Petitioner and his family.

97. Any appeal to the BIA is futile. DHS's new policy was issued "in coordination with DOJ," which oversees the immigration courts. Further, on September 5, the BIA issued a published decision adopting this interpretation of the detention statutes. *Matter Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025). That decision holds that "aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Id.* Further, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner are applicants for admission and subject to detention under Section 1225(b)(2)(A). *See Mot. to Dismiss, Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash June 6, 2025), Dkt. 49 at 27–31.

## **IX. CLAIMS FOR RELIEF**

### **COUNT I: VIOLATION OF DUE PROCESS**

98. Petitioner incorporates by reference the factual allegations and legal arguments set forth in the preceding paragraphs.

99. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

100. Petitioner has a fundamental interest in liberty and being free from official restraint.

101. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger violates his right to due process.

**COUNT II: VIOLATIONS OF THE INA**

102. Petitioner incorporates by reference the factual allegations and legal arguments set forth in the preceding paragraphs.

103. For the reasons described above, the mandatory detention provision of 8 U.S.C. § 1225(b)(2) cannot not apply to all noncitizens in the United States who are subject to the specified grounds of inadmissibility, entry without inspection. As relevant here, this mandatory detention statute cannot be read to apply to those who are accused of residing in the United States for years prior to apprehension and removal proceedings. A person with long-term residence in the United States who is alleged to be removable should be deemed detained under Section 1226(a), unless they are subject to Section 1226(c) or Section 1231. Indeed, for the reasons described in all the paragraphs above, the mandatory detention statute cannot be read to apply to someone in Petitioner's circumstances.

104. The application of § 1225(b)(2)(A) to Petitioner unlawfully mandates his continued detention and violates the INA.

**COUNT III: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**

105. Petitioner incorporates by reference the factual allegations and legal arguments set forth in the preceding paragraphs.

106. Under the Administrative Procedure Act, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

107. Respondents' detention of Petitioner pursuant to Section 1225(b)(2) is arbitrary and capricious. Respondents' detention of Petitioner violates the INA and the Fifth Amendment. Respondents do not have statutory authority under Section 1225(b)(2) to detain Petitioner.

108. Petitioner's detention is arbitrary, capricious, an abuse of discretion, violative of the Constitution, and without statutory authority in violation of 5 U.S.C. § 706(2).

### **Judicial Estoppel**

109. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

110. The Government is judicially estopped from asserting that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). In prior litigation, including *Jennings v. Rodriguez*, the Government successfully argued that individuals who entered without inspection and were not apprehended near the border or within 14 days were subject to discretionary detention under § 1226(a), not mandatory detention under § 1225(b)(2)(A). See *Jennings v. Rodriguez*, No. 15-1204, Tr. of Oral Arg. at 7–8 (Nov. 30, 2016). Courts accepted that position. Now, the Government reverses course and asserts the opposite interpretation to deny bond hearings. Under *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial estoppel applies where a party assumes a position, prevails, and then adopts a contrary position to gain an unfair advantage. The Government's reversal undermines the integrity of the judicial process and prejudices Petitioners who relied on the prior interpretation.

111. The Government must be judicially estopped from asserting that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). The Government took a contrary position in 2019 when it took the position that Petitioner was subject to discretionary detention under § 1226(a), not mandatory detention under § 1225(b)(2)(A). Now, in 2025, the Government asserts a contrary position, and must be estopped from doing so.

**X. PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Issue a writ of habeas corpus requiring Petitioner's immediate release and prohibiting his re-detention unless the government provides seven days' notice and a hearing before a neutral arbiter in which it proves by clear and convincing evidence that Petitioner is a danger or flight risk, and
- c. Order that Respondents may not subject Petitioner to any post-release monitoring or supervision, nor prohibit Petitioner from returning to Georgia;
- d. In the alternative, order that Respondents release Petitioner immediately or provide Petitioner with a bond hearing before a neutral arbiter pursuant to 8 U.S.C. § 1226(a) within 7 days, at which the government bears the burden of proving by clear and convincing evidence that continued detention is justified;
- e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law;
- f. Order that Respondents not transfer Petitioner outside the jurisdiction of the District Court for the Southern District of Florida pending final resolution of this litigation;
- g. Directing that any hearing the Court may set on be conducted remotely by videoconference or telephone; and
- h. Grant any other and further relief that this Court deems just and proper.

DATED this 27<sup>th</sup> day of November, 2025.

/S/ Denise Abrams

Denise Abrams, Esq.  
*Pro Bono* Attorney for Petitioner  
California State Bar No. 124139  
KAZAN MCCLAIN SATTERLEY &  
GREENWOOD  
55 Harrison Street, Suite 400  
Oakland, CA 94607  
(510) 302-1000  
[dabrams@kazanlaw.com](mailto:dabrams@kazanlaw.com)

*Forthcoming Pro Hac Vice Motion for  
Southern District of Florida*

/S/ Seth P. Chazin

Seth P. Chazin, Esq.  
*Pro Bono* Attorney for Petitioner  
California State Bar No. 13377  
LAW OFFICES OF SETH P. CHAZIN  
1164 Solano Avenue  
Albany, CA 94706  
(510) 507-8100  
[sethpchazin@gmail.com](mailto:sethpchazin@gmail.com)

*Forthcoming Pro Hac Vice Motion for  
Southern District of Florida*

/S/ Felix A. Montanez

Felix A. Montanez, Esq.  
*Pro Bono* Attorney for Petitioner  
Florida State Bar No. 102763  
Preferential Option Law Office, LLC  
P.O. Box 60208  
Savannah, GA 31420  
(912) 604-5801  
[felix.montanez@preferentialoption.com](mailto:felix.montanez@preferentialoption.com)

*Local Counsel*

**VERIFICATION PURSUANT TO 28 U.S.C. §2242**

I, Denise Abrams, am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys and Petitioner is in custody with limited ability to sign documents. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on November 26<sup>th</sup> 2025, San Francisco, California.

/S/ Denise Abrams

Denise Abrams, Esq.

*Pro Bono* Attorney for Petitioner

California State Bar No. 124139

KAZAN MCCLAIN SATTERLEY & GREENWOOD

55 Harrison Street, Suite 400

Oakland, CA 94607

(510) 302-1000

[dabrams@kazanlaw.com](mailto:dabrams@kazanlaw.com)