UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

SALVADOR SANCHEZ GUERRERO AKA ADGUSTO MOZO NAVAS, [redacted], Petitioner, v. **JASON STREEVAL**, Warden of Stewart Detention Center, **LADEON FRANCIS**, Field Office Director of Enforcement and Removal Operations, Atlanta Field Office; **TODD LYONS**, in his official capacity as Acting director of Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary, U.S. Department of Homeland Security; and **PAMELA BONDI**, U.S. Attorney General. Respondents.	Civile Action No.:

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
AND COMPLAINT FOR DECLARATIVE AND INJUNCTIVE RELIEF

INTRODUCTION

1. Petitioner SALVADOR SANCHEZ GUERRERO AKA ADGUSTO MOZO NAVAS, [redacted], is a 44-year old native and citizen of El Salvador who has resided in the United States since 2005. He has an approved Form I-130, an approved Form I-601A, and awaiting a consular interview at the U.S. Embassy in El Salvador. He is married to a U.S. Citizen and has a four-year old U.S. Citizen daughter.
2. Petitioner is current currently detained by U.S. Immigration and Customs Enforcement ("ICE") at the Stewart Detention Center in Lumpkin, Georgia ("SDC").
3. On or about November 17, 2025, ICE took Petitioner into ICE custody following Petitioner's arrest for Driving Without License ("DWL") in Dekalb County, GA. *See Exhibit A, Printout from ICE Online Detainee Locator System dated 12/1/2025.*
4. On or about November 21, 2025, Petitioner was served with a Notice to Appear and removal proceedings were initiated against him. *See Exhibit B, Notice to Appear.*
5. To date, Petitioner is held in ICE custody without a bond and his detention is classified as detention under 8 U.S.C. § 1225(b)(2).
6. Petitioner's continued detention by ICE is unlawful and unconstitutional.

7. Petitioner seeks from this Court a writ of habeas corpus and a declaratory judgment affirming that Respondent's detention should be under 8 U.S.C. § 1226(a). The Petitioner requests an order for his release within 48 hours unless the government can demonstrate, by clear and convincing evidence, that he poses a danger to the community or is a flight risk. Alternatively, the Petitioner seeks an order for a discretionary bond hearing under § 1226(a) before an Immigration Judge within seven (7) days, where the government must prove by clear and convincing evidence that he is a danger to the community or a flight risk. Additionally, the Petitioner requests that Respondents be prohibited from re-detaining him unless they can meet the same requisite evidentiary standard.

JURISDICTION

8. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).
9. 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.
10. Additionally, this Court has authority to issue a declaratory judgement and to grant temporary, preliminary and permanent injunctive relief pursuant to

Rules 57 and 65 of the Federal Rules of Civil Procedure (FRCP), as well as 28 U.S.C. §§ 2201-2202.

11. Habeas relief is available to challenge the fact, duration, and conditions of immigration detention, as well as the constitutionality of the procedures by which DHS seeks to effectuate removal, where a petitioner does not seek review of a final order of removal itself. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678 (2001).

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

13. Section 1252(f)(1) does not bar the individualized injunctive relief sought here. That provision limits lower courts' authority to "enjoin or restrain the operation" of the INA's detention and removal provisions on a class-wide or programmatic basis but expressly preserves injunctive relief "with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated." 8 U.S.C. § 1252(f)(1); Garland v. Aleman Gonzalez, 596 U.S. 543, 548–50 (2022). Petitioner seeks only as-applied relief tailored to Petitioner —e.g., directing Petitioner's release under § 1226(a) or precluding DHS from enforcing the "arriving alien" definition of § 1225 toward Petitioner. That relief neither halts the general operation of any INA provision nor provides class-wide relief and thus falls squarely within § 1252(f)(1)'s carve-out.

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

See id. at 482–83; *cf. Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (§ 1252(b)(9) does not channel detention claims).

VENUE

15. Habeas petitions generally are filed in the district court with jurisdiction over the filer's place of custody, also known as the district of confinement, pursuant to 28 U.S.C. § 2241.

16. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Stewart Detention Center in Stewart, Georgia. 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 Middle District of Georgia, the judicial district in which Petitioner currently is detained.

17. Additionally, with respect to Petitioner's non-habeas claims seeking prospective declaratory and injunctive relief against federal officials (agencies and officers of the United States) sued in their official capacities, venue is proper under 28 U.S.C. § 1391(e)(1)(B) because a substantial part of the events or omissions giving rise to these claims, including the initial arrest and continued detention of Petitioner and the enforcement of the mandatory detention agency interpretation, occurred in the Southern District of Georgia. Furthermore, the Respondents are officers of United States

agencies, the Petitioner resides within this District, and there is no real property involved in this action.

REQUIREMENTS OF 28 U.S.C. § 2243

16 . 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.*

17 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).

PARTIES

18. Petitioner SALVADOR SANCHEZ GUERRERO AKA ADGUSTO MOZO NAVAS is a 44-year-old citizen and national of El Salvador who has resided in the United States since 2005, after entering the United States undetected. He is currently detained at the Stewart Detention Center.

19. Respondent Jason Streeval is employed by The GEO Group, Inc. as Warden of the Stewart Detention Center, where Petitioner is detained. This Respondent is responsible for the operation of the Detention Center where Petitioner is detained and is the immediate custodian who is currently holding Petitioner in physical custody. Because ICE contracts with private and county-operated detention facilities to house immigration detainees, Respondent Warden of the Stewart Detention Center has immediate physical custody of the Petitioner and is sued in his or her official capacity.

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

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

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

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

24. Petitioner acknowledges that under *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), the proper respondent to the habeas claim is the immediate custodian, and Petitioner does not rely on these officials as "habeas respondents." Petitioner names federal officials in their official capacities solely to ensure the Court can issue effective relief on non-habeas claims, consistent with *Rumsfeld v. Padilla*. To the extent the Court deems them improper Respondents on the habeas count, Petitioner respectfully requests that any dismissal be limited to that claim and without prejudice to their continued status as Respondents on the non-core claims, such as declaratory

judgement and injunctive relief, so that effective, agency-directed relief can issue to the officials with authority to implement it.

EXHAUSTION OF REMEDIES

25. Neither the Immigration and Nationality Act (INA) nor the applicable federal habeas corpus statute requires administrative exhaustion for immigration detention-based claims. Compare 8 U.S.C. § 1252(d)(1) (requiring exhaustion of administrative remedies only prior to challenging a removal order in circuit court), with 28 U.S.C. § 2241 (including no requirement for administrative exhaustion); *see also Santiago-Lugo v. Warden*, 785 F.3d 467, 474–75 (11th Cir. 2015) ("It is no longer the law of this circuit that exhaustion of administrative remedies is a jurisdictional requirement in a § 2241 proceeding.").

26. Petitioner is not required to exhaust his administrative remedies. Even if he were required to exhaust administrative remedies, because all Respondents continue to treat Petitioner as detained under § 1225(b), any request for bond redetermination before an Immigration Judge would be futile, as the Immigration Court has already disclaimed jurisdiction over such requests. Accordingly, habeas relief is the only available and effective remedy to secure Petitioner's release or a lawful custody hearing.

27. Even if Petitioner were to file for a bond redetermination with the immigration judge, such request would be denied pursuant to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216.

28. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). Accordingly, it would be futile for Petitioner to request a bond for release from an Immigration Judge. Habeas corpus is the only effective remedy in Respondent's situation.

LEGAL FRAMEWORK

A. Civil Detention Statutes at Issue

29. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

30. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

31. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

32. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

33. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

34. 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).

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

36. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of

prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

37. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

38. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

39. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

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

41. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

B. Federal District Courts' Interpretations of Applicable Detention Statutes

42. Court after court, including the Middle District of Georgia, has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, Arizmendi Mora v. Streeval et al.*, Civ. No. 4:25-cv-00342-CDL-AGH, (M.D.G.A. Nov. 3, 2025); *See also, Antonio*

Aguirre Villa v. Normand, No. 5:25-cv-89, 2025 LX 442534 (S.D. Ga. Nov. 4, 2025). *See also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-

EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.*, *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

43. 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.

44. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

45. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

46. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

C. This Court's Holding in J.A.M.

47. In a similar case litigated in this Court, the court found that while Petitioner was not subject to detention under § 1225(b)(2)(A) but that § 1226(a) applies to aliens arrested in the interior, entitling them to a bond hearing. *See, Arizmendi Mora v. Streeval et al.*, Civ. No. 4:25-cv-00342-CDL-AGH, (M.D.G.A. Nov. 3, 2025).

48. The court rejected the government's argument that all noncitizens present without admission are subject to mandatory detention under § 1225(b),

finding that this interpretation would render § 1226(a) superfluous and contradict the statutory structure and legislative history. The court found jurisdiction to review the legality of Petitioner's detention under 28 U.S.C. § 2241, rejecting Respondents' argument that 8 U.S.C. § 1252(g) barred review, as the challenge was to the legal basis of detention, not removal proceedings.

49. The court held that § 1226(a) governs detention of noncitizens arrested in the interior who are not actively seeking admission, entitling them to discretionary bond hearings. The Court found BIA's interpretation in *Yajure Hurtado* unpersuasive and inconsistent with the plain language of the INA, implementing regulations, and fundamental canons of statutory interpretation.

50. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

51. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

52. Petitioner's circumstances are the same or similar to the landmark *J.A.M.* case, therefore the Writ of Habeas should be granted for Petitioner and the Court should order similar relief.

D. **Class Certification under *Maldonado Bautista v. Santacruz***

53. On November 25, 2025, the U.S. District Court for Central District of California issued an order certifying a nationwide class consisting of noncitizens who have entered the United States without inspection and who were not apprehended upon arrival and who are not otherwise subject to detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (Nov. 25, 2025 C.D. Cal.) (Order Granting Plaintiff-Petitioners' Motion for Class Certification). In other words, the declaratory judgment held that the eligible members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11. *See Exhibit D - Maldonado Bautista v. Santacruz – Class Certification.*

54. On November 20, 2025, the Court issued an order granting declaratory relief concluding that the detention of class members is governed by INA § 236(a) and that class members are not subject to mandatory detention pursuant to INA § 235(b)(2). *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (Nov. 20, 2025 C.D. Cal.) (Order Granting Petitioners' Motion for Partial Summary Judgement). *Maldonado Bautista* rejected the Board of Immigration Appeal (BIA)'s decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See Exhibit E - Maldonado Bautista v. Santacruz Partial Summary Judgment.*

55. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject class members, such as Petitioner, to unlawful detention despite Petitioner's clear entitlement to consideration for release on bond as a Bond Eligible Class member.

56. Immigration judges have informed class members in bond hearings that they have been instructed by "leadership" that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

E. I-601A Legal Framework

57. The I-601A process allows certain immigrant visa applicants who are only inadmissible for prior unlawful presence to request a "provisional" waiver from USCIS before they leave the United States for consular processing.

58. T he applicant must first have an approved immigrant visa petition (for example, Form I-130) and an open case with the National Visa Center indicating intent to pursue an immigrant visa abroad.

59. While physically present in the United States, the applicant files Form I-601A with USCIS, paying the filing and biometrics fees and submitting evidence that refusal of admission would cause "extreme hardship" to a qualifying U.S. citizen or lawful permanent resident spouse or parent.

60. After an I 601A approval, the applicant completes consular processing by submitting the immigrant visa application and attending a visa interview at a U.S. consulate abroad; if the consular officer finds no additional, unwaived grounds of inadmissibility, the immigrant visa is issued.

STATEMENT OF FACTS

61. Petitioner entered the United States undetected at an unknown place along the U.S. -Mexico border in 2005 and has continuously resided in the United States.

62. Petitioner is married to a U.S. Citizen, has an approved Form I-130, an approved Form I-601A, and is awaiting the scheduling of his consular interview at the U.S. Embassy in El Salvador. Once the consular interview is scheduled, Petitioner plans to travel to El Salvador to attend the consular interview and return to the United States with an immigrant visa. *See Exhibit C, I-130 Approval, I-601A Approval, and National Visa Center Consular Status*

63. While awaiting the scheduling of his consular interview, Petitioner was apprehended by ICE on or about November 17, 2025 following his arrest in Dekalb County, GA for Driving Without License. Petitioner was then placed into removal proceedings and charged as "an alien present in the United States who has not been admitted or paroled". *See Exhibit B, Notice to Appear.*

64. Petitioner was not apprehended at the border and is a *Maldonado-Bautista* class member.

65. Pursuant to 8 U.S.C. § 1357(a)(2), immigration officers may arrest and briefly detain noncitizens believed to be in violation of immigration laws, but such detention may last no more than forty-eight (48) hours—excluding weekends and holidays—unless a warrant is issued and removal proceedings are formally initiated.

66. Petitioner is neither a flight risk nor a danger to the community.

67. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to assume jurisdiction over Petitioner's bond request.

68. Pursuant to instructions from EOIR "leadership", immigration judges have informed *Maldonado-Bautista* class members that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

69. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

CLAIMS FOR RELIEF

COUNT I
Declaratory Judgment

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

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

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

COUNT II

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

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

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

73. Since Petitioner is not an applicant for admission "seeking admission" or an "arriving alien" subject to 8 U.S.C. §§ 1225(b)(1) or (b)(2) and has no

disqualifying criminal arrests or convictions subject to 8 U.S.C. § 1226(c), Petitioner is entitled to a bond redetermination hearing by an immigration judge pursuant to 8 U.S.C. § 1226(a).

74. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231 (which is not the case with Petitioner).

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

COUNT III
Violation of the Bond Regulations

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

76. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

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

78. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individual like Petitioner.

79. The application of § 1225(b)(2) to Petitioner unlawfully mandates Petitioner's continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT IV

Violation of the Administrative Procedure Act with Arbitrary and Capricious Agency Policy Contrary to Law

1. The allegations in the above paragraphs are realleged and incorporated herein.

2. Under the APA, a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

3. As discussed throughout, mandatory detention under § 1226(b)(2) does not apply to all noncitizens residing in the United States for years and not apprehended at the border. Such noncitizens are detained under § 1226(a) and are therefore eligible for release on bond so long as they are not subject to other grounds of detention.

4. Respondents have implemented a new precedent applying mandatory detention to all noncitizens in contradiction of the INA. Such action is arbitrary, capricious, and not in accordance with law, in violation of the APA. 5 U.S.C. § 706(2).

COUNT IV
Violation of the Administrative Procedure Act
Failure to Observe Required Procedures

5. The allegations in the above paragraphs are realleged and incorporated herein.

6. Under the Fifth Amendment of the Constitution, no one shall be "deprived of life, liberty, or property, without due process of law."
7. "Freedom from imprisonment - from government custody, detention, or other forms of physical restraint - lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001). "The Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis* at 693.
8. Respondents' mandatory detention of the Petitioner without the possibility of release on bond violates his due process rights.

PRAYER FOR RELIEF

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

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

b. Enjoin and prevent the Respondents from relocating the Petitioner to a different detention center during these proceedings.

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three (3) days;

d. Declare that Petitioner is not an "applicant for admission "1225(b),

seeking admission" or an "arriving alien" and that Petitioner's detention is unlawful;

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

f. Declare that Respondents' actions, as set forth herein, and Petitioner's continued detention violate the Due Process Clause of the Fifth Amendment, the INA and its implementing regulations, and the Administrative Procedure Act.

g. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner immediately or, in the alternative, within three (3) days provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a), where the government bears the burden to prove, by clear and convincing evidence, that Petitioner is a flight risk or a danger to the community;

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

i. 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; and

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

Respectfully submitted this 2nd day of December, 2025.

____//Eszter Bardi//_____
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28 U.S.C. § 2242 VERIFICATION STATEMENT

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

Respectfully submitted this 2nd day of December, 2025.

____//Eszter Bardi//_____
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