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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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| JESUS PEREZ-REGALADO,<br>Petitioner,<br><br>v.<br><br>THOMAS E. FEELEY, Director of Enforcement and Removal Operations, Salt Lake City Field Office, Immigration and Customs Enforcement; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; PAMELABONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; JOHN MATTOS, Warden of NEVADA SOUTHERN DETENTION CENTER, in their official capacities<br><br>Respondents. | Case No.<br><br>**PETITION FOR WRIT OF HABEAS CORPUS** |

## INTRODUCTION

1. Petitioner, JESUS PEREZ-REGALADO, respectfully brings this petition for a writ of habeas corpus under 28 U.S.C. § 2241 to challenge his unlawful detention by Respondents. Petitioner is currently detained at the Nevada Southern Detention Center in Pahrump, Nevada. Petitioner asserts that his detention is unlawful under the Immigration and Nationality Act (INA) and violates his procedural and substantive due process rights under the Fifth Amendment to the United States Constitution and seeks immediate release or, alternatively, a constitutionally compliant bond hearing under 8 U.S.C. § 1226(a).

2. Petitioner is a 48-year-old noncitizen who has resided continuously in the United States for nearly twenty years, having entered without inspection in 2006.He is married and has three U.S. citizen children, [redacted], age 21, L[redacted], age [redacted], and C[redacted] age [redacted] His eldest daughter, [redacted] suffers from [redacted] has undergone four major surgeries since the age of 14, including a [redacted] involving [redacted] She remains under strict physical restrictions until at least January 2026 and requires continuous follow-up care until 2029. Because of her condition, she cannot work or support herself. She depends entirely on her father for transportation, financial stability, emotional support, and continued medical treatment.

3. The Petitioner was arrested on November 4, 2024, for battery/domestic violence and, after posting bond, was transferred to immigration authorities on November 6, 2025, and has remained detained since that date.

4. Petitioner is charged with, inter alia, having entered the United States without inspection. 8 U.S.C. § 1182(a)(6(A)(i).

5. Immigration Customs Enforcement ("ICE") refused to issue bond to Petitioner based on a new ICE policy interpreting detention statute that is unsupported by the law, its history and precedent as discussed below.

6. Petitioner sought a bond redetermination hearing by the Immigration Judge ("IJ")-Executive Office for Immigration Review ("EOIR").

7. Petitioner was never notified that his bond hearing had been rescheduled (moved up for convenience of counsel and the court apparently) and was therefore deprived of the opportunity to appear. He did not knowingly or voluntarily waive his appearance, nor authorize prior counsel to do so. The hearing proceeded without him, preventing him from contesting DHS's classification, presenting evidence, or addressing the Court. This lack of notice and absence of a valid waiver constitutes an independent violation of his Fifth Amendment due process rights. (He only learned this after the hearing).

8. Respondents improperly classified Petitioner as an "applicant for admission" who is "seeking admission" and subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A) – a provision that applies only to arriving aliens. Based on this misclassification, the IJ concluded that *Matter of Yajure-Hurtado,* 29 I. & N. Dec. 216 (BIA 2025), stripped the court of bond jurisdiction and therefore denied Petitioner's request for bond.

9. The Petitioner's detention on this basis violates the plain language of the INA and due process. 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals like the petitioner who previously entered years ago, has been residing in the United States for many years, legally supporting himself and his family with his landscaping business, and was only recently detained by ICE.

10. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), *which* allows for release on conditional parole or bond. That statute expressly applies to people who, like the petitioners, are charged as inadmissible for having entered the United States without inspection.

11. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

12. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

13. The declaratory judgment held that the Bond Denial Class 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.

14. Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) *has* blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.

15. Petitioner JESUS PEREZ-REGALADO is a member of the Bond Eligible Class, as he:

    a. does not have lawful status in the United States and is currently detained at the NEVADA SOUTHERN DETENTION CENTER. He was apprehended by immigration authorities on November 6, 2025;

    b. entered the United States without inspection over nineteen years ago and was not apprehended upon arrival, *cf. id.*; and

    c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

16. After posting bond for a domestic violence arrest, on November 6, 2025, the DHS placed him in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) , as someone who entered the United States without inspection.

**JURISDICTION**

17. Petitioner is in the physical custody of Respondents. He is detained at the NEVADA SOUTHERN DETENTION CENTER in Pahrump, Nevada.

18. This Court has jurisdiction under 28 U.S.C. 2241(c)(3) (habeas corpus), 28 U.S.C. 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

19. 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.

**VENUE**

20. 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 District of Nevada, the judicial district in which Petitioner currently is detained.

21. 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 District of Nevada.

**REQUIREMENTS OF 28 U.S.C. § 2243**

22. The Court should grant the petition for writ of habeas corpus "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* Given that the legal issues presented here have already been resolved for similarly situated class members in *Maldonado Bautista*, there is no good cause for delay, and expedited resolution is warranted.

23. 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**

24. Petitioner JESUS PEREZ-REGALADO is a citizen of Mexico who has been in immigration detention since November 6, 2025. After Petitioner was arrested in Las Vegas, Nevada, ICE did not set bond, and Petitioner requested review of his custody status by an IJ. On November 17, 2025, Immigration Judge denied his bond pursuant to *Matter of Yajuri v Hurtado*.

25. Respondent THOMAS E. FEELEY, is the Director of the Salt Lake City Field Office of ICE's Enforcement and Removal Operations division. As such, THOMAS E. FEELEY is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

26. 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.

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

28. 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.

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

30. Respondent JOHN MATTOS is employed by Core Civic, as Warden of the NEVADA SOUTHERN DETENTION CENTER, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

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## LEGAL FRAMEWORK

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

32. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge (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).

33. 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).

34. 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).

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

36. 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 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

37. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without admission or parole 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).

38. Thus, in the decades that followed, most people who entered without admission or parole and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. 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)).

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

40. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without admission or parole shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention 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.

41. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are considered applicants for admission who are seeking admission and are ineligible for IJ bond hearings.

42. Dozens of federal courts have rejected Respondents' new interpretation of the INA's detention authorities.

43. Notably, long before ICE or the BIA changed its position nationwide, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without admission or parole and who have since resided here. This Court held 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).

44. Since the *Rodriguez Vazquez* preliminary injunction decision, court after court has adopted the same reading of the INA's detention authorities and rejected ICE's new policy and EOIR's new interpretation. *See, e.g.*, *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).

45. 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.

46. Subsection 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]."

47. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without admission or parole. 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)).

48. 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.

49. 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).

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

51. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-

Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

52. The declaratory judgment held that the Bond Denial Class 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.

53. Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) *has* blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.

54. Petitioner JESUS PEREZ-REGALADO is a member of the Bond Eligible Class, as he:

    a. does not have lawful status in the United States and is currently detained at the NEVADA SOUTHERN DETENTION CENTER. He was apprehended by immigration authorities on November 6, 2025;

    b. entered the United States without inspection over nineteen years ago and was not apprehended upon arrival, *cf. id.*; and

    c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

55. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection.

56. The Court should expeditiously grant this petition.

57. 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 Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member.

58. 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). This is both unlawful and constitutionally impermissible.

59. Because Respondents are detaining Petitioner contrary to a binding federal judgment, issued in *Maldonado Bautista,* the Court should accordingly order that within one day, Respondent DHS must release Petitioner.

60. Alternatively, the Court should order Petitioner's release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.

## FACTS

61. Petitioner entered the United States without inspection in 2006 and has resided in the country for nearly twenty years. He is the father of three U.S. citizen children, [redacted] age 21, L[redacted], age [redacted], and C[redacted] age [redacted] His eldest daughter, [redacted] suffers from [redacted] remains under strict physical restrictions until at least January 2026 and requires continuous follow-up care until 2029. Because of her condition, she cannot work or

support herself. She depends entirely on her father for transportation, financial stability, emotional support, and continued medical treatment. His wife, Rocio suffers from strokes and is in need of constant care and has significant ties to the Las Vegas community.

62. Petitioner, after posting bail for a domestic violence accusation, was apprehended on November 6, 2025, in Las Vegas and placed in removal proceedings under 8 U.S.C. § 1229a. Respondents have improperly classified Petitioner under 8 U.S.C. 1225(b)(2)(A), a statute reserved for arriving aliens and denied him bond jurisdiction pursuant to *Matter of Yajure-Hurtado,* 29 I. & N. Dec. 216 (BIA 2025). He has never been before a judge, his former attorney without the knowledge or consent of Petitioner, moved up his hearing and waived his presence and right to be heard.

63. Petitioner is detained under 8 U.S.C. § 1226(a), which permits release on bond. The governments new interpretation of § 1225(b)(2) contradicts statutory text, legislative history, and longstanding agency practice. This classification is legally erroneous and contrary to the reasoning of the District of Nevada in Case No. 2:25-cv-01819-RFB-BNW, which granted habeas relief to a similarly situated long-term interior resident.

64. Section 1225(b)(2)(A) applies only to arriving aliens, not long-term interior residents like Petitioner.

65. Petitioner's continued detention violates statutory and constitutional limits governing immigration detention, as confirmed by Supreme Court, Ninth Circuit, and district court precedent. Thus, Respondents' reliance on that statute is unlawful.

66. Petitioner's continued detention without a bond hearing violates both statutory constraints and constitutional requirements required by the Supreme Court, Ninth Circuit and relevant district courts

67. Petitioner has received no individualized custody review, and the automatic stay provision under 8 C.F.R. § 1003.19(i)(2) deprives Petitioner of meaningful procedural safeguards, resulting in arbitrary and unreasonably prolonged detention.

68. Petitioner's continued detention would result in exceptional and extremely unusual hardship to his U.S. Citizen children especial to [redacted] who is suffering from [redacted] [redacted] If not treated properly, it could significantly affect cardiopulmonary function, physical endurance and overall health. This disease requires continuous medical monitoring, diagnostic imaging and surgical intervention. This level of coordinated care is often unavailable or extremely limited, in many countries abroad. Relocation to a country with limited medical resources and instability may worsen these emotional challenges, especially during adolescence, critical developmental period. *Figueroa v. Mukasey*, 543 F.3d 487 (9th Cir. 2008), significant medical needs of qualifying children are central to hardship analysis.

69. In addition to his daughter, [redacted]'s serious medical challenges posed, her hardship is significantly worsened by the fact that her father, the Petitioner is the primary and, in many respects, the only source of financial support, emotional stability and logistical coordination for her medical treatment. If her father continues to be detained, [redacted] will face immediate and severe disruptions to her medical treatment, which goes well beyond ordinary hardship. The loss of financial support directly exacerbates the medical hardship recognized by court such as *Figueroa v. Mukasey*, where inability to afford ongoing care was a major hardship factor.

70. Petitioner's continued detention is not merely a family separation. It directly threatens the daughter's ability to receive life altering medical care. This factor alone, combined with other hardship elements meets the "exceptional and extremely unusual hardship" standard.

**DUE PROCESS VIOLATIONS**

71. The Constitution guarantees every person in the United States due process of law, including persons who are not United States citizens. E.g., Lopez v. Heinauer, 332 F.3d 507, 512 (8th Cir. 2003) ("The Supreme Court has long recognized that deportable aliens are entitled to constitutional protections of due process." (citing *Yamataya v. Fisher*, 189 U.S. 86, 100-01, 23 S.Ct. 611, 47 L.Ed. 721 (1903))); see also, e.g., *Trump v. J.G.G.*, 604 U. S. ——, ——, 145 S. Ct. 1003, 1006, — L.Ed.2d —— (2025) (per curiam) ("It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993))); *Zadvydas v. Davis*, 533 U.S. 678, 695, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001) ("[T]he Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.").

72. To determine whether a civil detention violates a detainee's due process rights, courts apply a three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (collecting cases and noting that, "when considering due process challenges to [discretionary noncitizen detention] other circuits ... have applied the Mathews test").

73. Under *Mathews,* courts weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335, 96 S.Ct. 893.

74. The private interest in this case is significant; being free from physical detention. The Supreme Court has found this to be "the most elemental of liberty interests." *Hamdi v. Runsfeld,* 542 U.S. 507 at 529, 531, 124 S.Ct. 2633 (directing courts, when assessing the first Mathews factor, to consider only the Petitioner's interests at stake in ongoing detention without consideration of the respondents' justifications for the detention (quotation omitted)); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (advising that an individual's interest in being free from detention "lies at the heart of the liberty that [the Due Process] Clause protects"),

75. The Petitioner is being held at the Nevada Southern Detention Center and experiencing the loss of contact with family and friends, loss of income and inability to provide for his family, lack of privacy and lack of freedom. Pahrump is a far drive for his family members to visit him regularly. He is particularly affected due to his inability to provide daily care to his eldest daughter that has a severe genetic condition that affects her heart and lungs. She suffers from pectus excavatum and has undergone four major surgeries since the age of 14, including a complex modified procedure this past July involving titanium bars and stabilizers. She remains under strict physical restrictions until at least January 2026 and requires continuous follow-up care until 2029. Because of her

condition, she cannot work or support herself. She depends entirely on her father for transportation, financial stability, emotional support, and continued medical treatment.

76. The second *Mathews* factor is whether the challenged procedure creates a risk of erroneous deprivation of individual rights and whether there are alternative procedures that could ameliorate these risks. In this case, the risk of deprivation is very high because the Petitioner was not afforded the right to be present at his bond hearing. His attorney waived his right when he never gave his attorney permission to do so. The challenged regulation permits an agency official who is involved in the adversarial process and the non-prevailing party to unilaterally override the immigration judge's decision. This represents a conflict of interest disapproved by courts in other contexts. See, e.g., 5 U.S.C. § 554(d)(2) (prohibiting agency employees engaged in prosecuting functions from participating in the adjudicatory decision); *Marcello v. Bonds*, 349 U.S. 302, 305-06 (1955) (holding that the special inquiry officer adjudicating over an immigration case cannot also undertake the functions of prosecutor in the same matter).

77. When considering a bond redetermination request and immigration judge must consider whether the applicant is a danger to society, a threat to national security or poses a flight risk. 8 U.S.C. § 1226(a) (2018); *Matter of Guerra*, 24 1&N Dec. 37, 38 (BIA 2006); see also Matter of D-J-, 23 1&N Dec. 572, 576 (A.G. 2003); *Matter of Adeniji*, 22 1&N Dec. 1102, 1112 (BIA 1999); 8 C.F.R. § 1236.1(c)(8). The immigration judge in each of these cases considered these factors carefully, reviewed all of the evidence and, in all three cases, found that a low bond was appropriate. the IJ concluded that *Matter of Yajure-Hurtado,* 29 I. & N. Dec. 216 (BIA 2025), stripped the court of bond jurisdiction and therefore denied Petitioner's request for bond.

78. In the third step of the *Mathews* test, the court must weigh the private interests at stake and the risk of erroneous deprivation against the government's interest in persisting with the regulation, including the fiscal and administrative burdens of a substitute procedural requirement. Given that the petitioner satisfies all the requirements for release on bond, it is difficult to see any legitimate purpose for continued detention. The process by which an immigration judge issues a bond redetermination account for the government's safety and flight concerns.

79. If the purpose of the detention is not to facilitate deportation, protect against the risk of flight or danger to the community, then it must be solely for the purpose of incarceration and in this administration, motivated largely by politics.

80. Any government interest can be addressed by the regulation which provides a process to request a stay from the BIA pending appeal of the immigration judge's bond decision. 8 C.F.R. § 1003.19(i)(1). The government can do this in any case in which it believes that the IJ's decision was erroneous.

81. In this case, the Petitioner availed himself of the procedural safeguards by requesting a bond redetermination with evidence that he was not a flight risk, not a danger to the community and should be granted bond. The bond hearing was resolved entirely without the presence or notice of the Petitioner. Petitioner was never notified that his bond hearing had been rescheduled (moved up for convenience of counsel and the court apparently) and was therefore deprived of the opportunity to appear. He did not knowingly or voluntarily waive his appearance, nor authorize prior counsel to do so. The hearing proceeded without him, preventing him from contesting DHS's classification, presenting evidence, or addressing the Court. This lack of notice and absence of a valid

waiver constitutes an independent violation of his Fifth Amendment due process rights. (He only learned this after the hearing).

82. The regulation on its face and its application to these cases that contain no risk factors of release violates due process.

83. The Fifth Amendment guarantees notice, an opportunity to be heard, and review by a neutral decision-maker. Petitioner has been denied these protections.

84. Petitioner received no individualized bond hearing and no opportunity to challenge DHSs misclassification, which was imposed solely on the basis of *Matter of Yajure-Hurtado,* 29 I. & N. Dec. 216 (BIA 2025) a decision expressly rejected in an analogous circumstance by the District of Nevada. See. 2:25-cv-01819-RFB-BNW. Under *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013), *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942 (9th Cir. 2008) 2008), and *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011) (Diouf II), 634 F.3d 1081 (9th Cir. 2011) federal courts retain the authority to review the constitutionality of detention even when the statute appears to limit bond hearings.

85. Petitioner should have been detained, if at all, under § 236(a), which affords him an opportunity to seek release on bond. Yet, relying on *Matter of Yajure-Hurtado*, 28 I&N Dec. 757 (BIA 2024), the Immigration Judge declined jurisdiction to consider bond, leaving Petitioner with no administrative forum in which to challenge his custody. While *Yajure-Hurtado* treats certain EWI respondents as "applicants for admission" for purposes of detention, this District has already rejected that interpretation when applied to long-term interior residents in *Maldonado Bautista*, and federal courts are not bound by BIA decisions that conflict with statute or the Constitution.

86. Nor does *Demore v. Kim*, 538 U.S. 510 (2003), authorize Petitioner's detention. *Demore* approved narrow, time-limited mandatory detention under 8 U.S.C. § 1226(c) for certain criminal noncitizens during the "brief" period of removal proceedings, but Petitioner is not detained under § 1226(c), has no criminal convictions, and his custody is neither brief nor tied to the narrow class of individuals Congress identified as mandatorily detainable. Finally, *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), confirms that although some detention statutes may not be re-written by constitutional avoidance, noncitizens remain free to bring constitutional challenges to the fact and length of their detention through habeas corpus. Taken together, *Zadvydas*, *Casas*, *Diouf II*, *Rodriguez*, *Demore*, *Jennings*, *Yajure-Hurtado*, and, most pointedly, *Maldonado Bautista* (2:25-cv-01819-RFB-BNW) establish that Petitioner's detention under § 235(b)(2)(A) is unauthorized by statute, devoid of meaningful process, and arbitrary in duration. His continued confinement therefore violates both the INA and the Fifth Amendment, and this Court should grant the writ and order his immediate release, or at minimum, a prompt bond hearing under § 236(a) with the government bearing the burden of justifying continued custody.

87. While *Maldonado Bautista v. ICE*, Case No. 2:25-cv-01819-RFB-BNW, remains pending, the statutory challenge in that action is directly relevant. The reasoning advanced there makes clear that DHS's practice of classifying long-term interior EWIs as § 235(b)(2)(A) detainees find no support in the INA. Individuals apprehended years after entering and residing in the interior fall under 8 U.S.C. § 1226(a) and must be afforded bond eligibility. Applying that statutory framework here, DHS had—and has—no lawful basis to classify Petitioner as a § 235(b) detainee. His detention under § 235(b) is therefore unlawful and constitutionally suspect from the outset.

88. Petitioner has strong family ties, has resided in the U.S. for over 19 years, is only "charged" with Domestic Violence, and he has no convictions. He is the sole provider for his family, performs skilled yard-maintenance work, and is highly regarded by his clients—as demonstrated by the attached loyal patrons.

89. Critically, the unknowing and involuntary waiver of his appearance deprived him of the opportunity to present this substantial evidence of community ties, good character, and eligibility for release. This procedural failure constitutes a clear violation of Due Process and has directly prevented him from meaningfully contesting his detention.

**Unlawful Detention Under the INA**

90. By statutory text, § 1225(b)(2)(A) applies only to individuals seeking admission, arriving at a port of entry, or encountered at the border. Petitioner was apprehended in the interior of the United States after nearly two decades of residence and is not an arriving alien.

91. Petitioner's detention must therefore proceed under 8 U.S.C. § 1225(b)(2) which provides for bond consideration.

92. Respondents' new interpretation of § 1225(b)(2)(A) is ultra vires, contrary to statutory text, legislative intent, and longstanding agency practice.

93. Thus, when the statutory, constitutional, and precedential framework is properly applied, Petitioner's detention is unlawful under the INA, violates procedural due process because he was denied any opportunity to contest custody, and violates substantive due process because the detention is unauthorized, prolonged, and arbitrary. Accordingly, this Court must grant the writ and order Petitioner's immediate release or, at minimum, a constitutionally compliant bond hearing under § 1226(a).

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**Violation of the INA:**

**Request for Relief Pursuant to *Maldonado Bautista***

94. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

95. The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.

96. The order granting class certification in *Maldonado Bautista* further orders that "[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole."

97. Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).

98. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista*.

**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 that within one day, Respondents release Petitioner;

c. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;

d. 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

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

Dated this 3rd day of December 2025.

Kevin Francis Boyle

*/s/ Kevin F. Boyle, Esq.*

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