

Patience Milrod (CA 77466)
Law Office of Patience Milrod
985 North Van Ness Avenue
Fresno, California 93728
Telephone: (559) 246-7239
Email: pm@patiencemilrod.com

Ambar S. Tovar (CA 319560)
UFW Foundation
917 H St, Suite 200
Bakersfield, California 93304
Telephone: (661) 324-2500
Email: atovar@ufwfoundation.org

Attorneys for Petitioner

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

Milton John Selis Tinoco
Petitioner,

vs.

Kristi NOEM, Secretary, U.S. Dept. of
Homeland Security; Pamela BONDI, U.S.
Attorney General; Todd LYONS, Acting
Director, Imm. and Customs Enforcement;
Sergio ALBARRAN, Acting Director, ICE
San Francisco Field Office, Enforcement and
Removal Operations; Christopher
CHESTNUT, Warden, California City ICE
Corrections Center; EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW;
IMMIGRATION AND CUSTOMS
ENFORCEMENT; U.S. DEPARTMENT OF
HOMELAND SECURITY; and DOES 1-15,
Respondents.

Case No.:

**VERIFIED PETITION FOR
DECLARATORY RELIEF AND FOR
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

and

PROPOSED ORDER

**FILED WITH: APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION;
SUPPORTING MEMORANDUM OF
POINTS AND AUTHORITIES AND
DECLARATION OF COUNSEL**

INTRODUCTION

1. Petitioner MILTON JOHN SELIS TINOCO is in the physical custody of Respondents at the ICE California City Corrections Center.
2. Petitioner is unlawfully detained. In December of 2021, DHS released him on his own recognizance—implicitly recognizing that he was neither a danger nor a flight risk. Since then, he has continuously been physically present within the interior of and residing in the United States, specifically in Bakersfield, California. In 2021, his Order of Release on Recognizance and Notice of Custody Determination explicitly identified him as a noncitizen falling within the ambit of Section 236 of the Immigration and Naturalization Act (INA), or 8 U.S.C. § 1226.
3. Nevertheless, the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have now improperly concluded—without the required hearing to prove a material change in circumstances justifying detention—that Petitioner, when arrested in Bakersfield on November 5, 2025, should be deemed to be seeking admission to the United States and is therefore subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). Petitioner is therefore being unlawfully held in custody in violation of his due process rights to a pre-deprivation hearing, which Respondents have failed to provide.
4. Petitioner also seeks enforcement of his rights as a member of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.)
5. DHS has placed Petitioner in removal proceedings pursuant to 8 U.S.C. § 1229a and has charged Petitioner with being present in the United States without admission and therefore removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i).

- 1 6. Solely based on this allegation in Petitioner's removal proceedings, DHS has denied
2 Petitioner release from immigration custody, consistent with a new DHS policy¹
3 issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE)
4 employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who
5 entered the United States without admission or inspection—to be subject to detention
6 under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond during
7 the removal hearing process.
- 8 7. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board),
9 a component of EOIR, issued a precedent decision, binding on all immigration
10 judges, holding that an immigration judge (IJ) has no authority to consider bond
11 requests for any person who entered the United States without admission. See *Matter*
12 *of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) (*Hurtado*). The Board
13 determined that such individuals are subject to mandatory detention under 8 U.S.C. §
14 1225(b)(2)(A) and therefore ineligible to be released on bond.
- 15 8. Petitioner's detention on this basis violates the plain language of the Immigration and
16 Nationality Act (INA), 8 U.S.C. § 1101 *et seq.* Section 1225(b)(2)(A) does not apply
17 to individuals like Petitioner who previously entered and are now present and residing
18 in the United States. Instead, such individuals are subject to a different statute, §
19 1226(a), that allows for release on conditional parole or bond. That statute expressly
20 applies to people who, like Petitioner, are charged as removable for having entered
21 the United States without inspection and being present without admission.
- 22 9. Respondents' new legal interpretation of the INA is plainly contrary to the statutory
23
24

25 ¹ "Interim Guidance Regarding Detention Authority for Applicants for Admission," ICE, July 8, 2025.
Available at: <https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents.2>.

framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner who are present within the United States.

10. Respondents' new legal interpretation of the INA also violates Petitioner's right to due process. All individuals within the United States have constitutional rights: "[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." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Even were the Court to find Petitioner detainable within the meaning of § 1225(b)(2)(A), it must find that Respondents violated his due process rights by arresting and detaining him without a pre-deprivation hearing to determine whether changed circumstances exist that might justify his loss of liberty.

11. Petitioner continues to face unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have refused to abide by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025) and 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025).

12. Petitioner is a member of the Bond Eligible Class, as he:

- a. does not have lawful status in the United States and continues to be detained at the California City Correctional Facility.
- b. entered the United States without inspection over four years ago and was not apprehended upon arrival; and
- c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

13. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be

1 immediately released from unlawful custody, and that Respondents be required to
2 provide either a pre-deprivation hearing, or a bond hearing under § 1226(a), if they
3 contend he is subject to lawful detention.

4 JURISDICTION

- 5 14. Jurisdiction is proper and relief is available pursuant to 28 U.S.C. § 1331 (federal
6 question), 28 U.S.C. § 1346 (original jurisdiction), 5 U.S.C. § 702 (waiver of
7 sovereign immunity), 28 U.S.C. § 2241 (habeas corpus jurisdiction), and Article I,
8 Section 9, clause 2 of the United States Constitution (the Suspension Clause).
- 9 15. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment
10 Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

11 VENUE

- 12 16. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
13 500 (1973), venue lies in the United States District Court for the Eastern District of
14 California, the judicial district in which Petitioner is currently detained.
- 15 17. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
16 Respondents are employees, officers, and agencies of the United States, and because
17 a substantial part of the events or omissions giving rise to the claims occurred in the
18 Eastern District of California.

19 REQUIREMENTS OF 28 U.S.C. § 2243

- 20 18. The Court must grant a petition for writ of habeas corpus or order Respondents to
21 show cause “forthwith,” unless a petitioner is not entitled to relief. 28 U.S.C. § 2243.
22 If an order to show cause is issued, Respondents must file a return “within three days
23 unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
- 24 19. Habeas corpus is “perhaps the most important writ known to the constitutional law ...
25

affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Nola*, 372 U.S. 391, 400 (1963). “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

Petitioner

20. Petitioner MILTON JOHN SELIS TINOCO was arrested by ICE agents on November 5, 2025 in Bakersfield, California while at an ISAP check-in. He has been in immigration detention since that date. After arresting Petitioner, ICE did not set bond. In light of the BIA's September 5, 2025 decision in *Hurtado*, Petitioner is unable to obtain a bond hearing before an IJ pursuant to 8 U.S.C. § 1226(a).

Respondents

21. 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 and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner. She is sued in her official capacity.

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

23. Todd Lyons is the Acting Director of Immigration and Customs Enforcement, a federal law enforcement agency within the Department of Homeland Security. ICE's

responsibilities include operating the immigration detention system. In his capacity as ICE Acting Director, Respondent Lyons exercises control over and is a custodian of persons held at ICE facilities nationally. He is Petitioners' immediate custodian and is responsible for Petitioners' detention. He is sued in his official capacity.

24. Respondent Sergio Albarran is the Acting Director of the San Francisco Field Office of ICE's Enforcement and Removal Operations division. As such, he is the custodian of all persons held at the ICE facilities within the San Francisco Field Office Area of Responsibility. He is Petitioner's immediate custodian and is responsible for Petitioners' detention. He is sued in his official capacity.

25. Respondent Christopher Chestnut is the Facility Administrator of California City Corrections Center, a private for-profit detention facility owned and operated by CoreCivic, Inc., that contracts with ICE to detain individuals suspected of civil immigration violations. Respondent Chestnut is Petitioner's immediate physical custodian. Respondent Chestnut is sued in his official capacity.

26. Respondent Executive Office for Immigration Review (EOIR) is the federal agency within the Department of Justice responsible for implementing the INA in removal proceedings, including for custody redeterminations or bond hearings.

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 Immigration and Customs Enforcement (ICE) is the agency within DHS responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

LEGAL FRAMEWORK

1 29. The INA prescribes three basic forms of detention for the vast majority of noncitizens
2 in removal proceedings conducted pursuant to 8 U.S.C. § 1229a.

3 30. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in § 1229a removal
4 proceedings before an IJ. Individuals covered by § 1226(a) detention are generally
5 entitled to a bond hearing at the outset of their detention (see 8 C.F.R. §§ 1003.19(a),
6 1236.1(d)), while certain noncitizens who have been arrested, charged with, or
7 convicted of certain crimes are subject to mandatory detention. See 8 U.S.C. §
8 1226(c).

9 31. Second, the INA provides for mandatory detention of noncitizens subjected to an
10 Expedited Removal order imposed pursuant to 8 U.S.C. § 1225(b)(1) and for certain
11 other noncitizen applicants for admission to the U.S. who are deemed not clearly
12 entitled to be admitted. See 8 U.S.C. § 1225(b)(2).

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

15 33. This case concerns the detention provisions at 8 U.S.C. §§ 1226(a) and 1225(b)(2).

16 34. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
17 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996,
18 Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–
19 583, 3009–585. Section 1226 was most recently amended in early 2025 by the Laken
20 Riley Act, Pub. L. No. 119–1, 139 Stat. 3 (2025).

21 35. Following the enactment of the IIRIRA in 1996, EOIR drafted new Regulations
22 applicable to proceedings before immigration judges explaining that, in general,
23 people who entered the country without inspection – also referred to as being “present
24 without admission” – were not considered detained under § 1225 and that they were
25

1 instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens;
2 Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum
3 Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

4 36. Thus, in the decades that followed, most noncitizens who entered without inspection
5 and were placed in standard § 1229a removal proceedings received bond hearings
6 before IJs, unless their criminal history rendered them ineligible pursuant to §
7 1226(c). That practice was consistent with many more decades of practice prior to
8 IIRIRA, in which noncitizens who were not deemed “arriving” were entitled to a
9 custody hearing before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994);
10 see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
11 “restates” the detention authority previously found at § 1252(a)).

12 37. This practice both pre- and post-enactment of IIRIRA in 1996 is consistent with the
13 fact that noncitizens present within the United States – as opposed to noncitizens
14 present at the border and seeking admission – have constitutional rights. “[T]he Due
15 Process Clause applies to all ‘persons’ within the United States, including aliens,
16 whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*
17 *v. Davis*, 533 U.S. 678, 693 (2001).

18 38. On July 8, 2025, ICE, “in coordination with” the Department of Justice, announced a
19 new policy that rejected the well-established understanding of the statutory
20 framework and reversed decades of practice.

21 39. The new policy, entitled “Interim Guidance Regarding Detention Authority for
22 Applicants for Admission,”² claims that all noncitizens who entered the United States
23

24
25 ² <https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents>.

without inspection shall now be deemed “applicants for admission” and subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). The policy purports to apply regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

40. In July 2025, the BIA issued a decision holding that “an applicant for admission who is arrested and detained without a warrant while arriving in the United States” is subject to mandatory detention under 8 U.S.C. § 1225(b)(1), regardless of whether the noncitizen was arrested at the border or shortly after crossing into the United States. *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025). This decision expanded the reach of the Supreme Court’s 2018 reading of § 1225 as applying to noncitizens “seeking entry into the United States” and arrested “without a warrant at the border.” *Id.* at 70 (quoting *Jennings*, 583 U.S. at 303). Conversely, the BIA in *Q. Li* acknowledged that § 1226 “applies to [noncitizens] already present in the United States and arrested on a warrant.” *Id.* (quoting *Jennings*, 585 U.S. at 302-03).

41. On September 5, 2025, the BIA extended *Q. Li* still further in a published decision, *Hurtado*, in which the Board held that all noncitizens who entered the United States without admission or parole are subject to mandatory detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings; this interpretation essentially nullified the § 1226(a) protections for noncitizens already present in the United States³.

42. Since Respondents adopted their new policies, over two hundred federal court decisions (issued by over one hundred judges) have rejected the BIA’s new

³ See, e.g., *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022) [observing that § 1226(a) and its implementing regulations “provide extensive procedural protections that are unavailable under other detention provisions”].

1 interpretation of the INA's detention authorities. Courts have likewise declined to
2 adopt the reasoning of *Hurtado*, which adopts the same reading of the statute as ICE.

3 43. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma,
4 Washington immigration court had stopped providing bond hearings for persons who
5 entered the United States without inspection and who have since resided here. On
6 September 30, 2025, the U.S. District Court for the Western District of Washington
7 issued a corrective to the Tacoma IJs, holding in a partial summary judgment order
8 that such persons are subject to detention, if at all, only under 8 U.S.C. § 1226(a), and
9 are not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *Rodriguez*
10 *Vazquez v. Bostock*, --- F.Supp.3d ---, 2025 WL 2782499 (W.D.Wash., Sept. 30,
11 2025, 3:25-cv-05240-TMC) (Partial Summary Judgment Order) (*Rodriguez Vasquez*).
12

13 44. Court after court has adopted the same reading of the INA's detention authorities and
14 rejected ICE and EOIR's new interpretation. A list of over two hundred cases whose
15 rulings accord with the *Rodriguez Vazquez* ruling is contained in the Notice of
16 Supplemental Authority in Support of Plaintiffs-Petitioners' Motions for Partial
17 Summary Judgment and Class Certification filed in *Maldonado Bautista v. Noem*,
18 Case No. 5:25-cv-01873-SSSBFM (C.D.Cal.), Dkt. 76 (filed Nov. 10, 2025).

19 45. These numerous federal court rulings have rejected DHS's and EOIR's new
20 interpretation because it conflicts with the governing statute, the INA. As the
21 *Rodriguez Vazquez* court and others have explained, the plain text of the statutory
22 provisions demonstrates that § 1226(a), not § 1225(b), applies to people like
23 Petitioner.

24 46. Section 1226(a) applies by default to all persons "pending a decision on whether the
25 [noncitizen] is to be removed from the United States." Removal hearings are held

1 pursuant to § 1229a, to “decid[e] the inadmissibility or deportability of a[]
2 [noncitizen].”

3 47. The text of § 1226(a) also explicitly applies to individuals charged with being
4 inadmissible, including those who entered without inspection. *See* 8 U.S.C. §
5 1226(c)(1)(E). Subparagraph (E)’s reference to inadmissible individuals makes clear
6 that, by default, such individuals are afforded a bond hearing under subsection (a).
7 As the *Rodriguez Vazquez* court explained in its order granting the preliminary
8 injunction, “[w]hen Congress creates “specific exceptions” to a statute’s applicability,
9 it “proves” that absent those exceptions, the statute generally applies. *Rodriguez*
10 *Vazquez, supra*, 779 F.Supp.3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A.*
11 *v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); see also *Gomes v. Hyde* (D.Mass., July
12 7, 2025, No. 1:25-CV-11571-JEK), --- F.Supp.3d ---, 2025 WL 1869299, at *7.

13 48. Section 1226 therefore leaves no doubt that it applies to noncitizens present in the
14 United States who face charges of being inadmissible to the United States, including
15 those who are present without admission or parole.

16 49. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
17 recently entered the United States and are encountered at or near the border. The
18 statute’s entire framework is premised on inspections at the border of people who are
19 “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the
20 Supreme Court has explained that this mandatory detention scheme applies “at the
21 Nation’s borders and ports of entry, where the Government must determine whether
22 a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*,
23 583 U.S. 281, 287 (2018).

24 50. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to
25

1 people like Petitioner, who have already entered and were residing in the United
2 States at the time they were apprehended.

3 **FACTS**

4 51. Petitioner resides in California. Neither his past contact with immigration authorities
5 nor his criminal record triggers mandatory detention pursuant to 8 U.S.C. § 1226(c)
6 or on any other basis.

7 52. In 2021, Petitioner fled Nicaragua based on [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 [REDACTED] Petitioner entered the United States without inspection on
11 or about November 23, 2021. Inside the United States, he was arrested and taken into
12 custody, where he made a statement about his fear of return. He was released a few
13 days later on his own recognizance; no bond was required. Over the succeeding four
14 years, he has substantially complied with all ICE directives and attended all
15 immigration court hearings.

16 53. On November 5, 2025, ICE arrested Petitioner in Bakersfield, California. At that
17 time, he was scheduled for a merits hearing on his asylum petition to be held on
18 November 21, 2025. Upon his arrest, that hearing date was vacated; he has now been
19 rescheduled for a hearing on January 13, 2026. Since November 5, Petitioner has
20 been detained at the ICE California City Corrections Center in California City,
21 California.

22 54. ICE placed Petitioner in continued removal proceedings before the Adelanto
23 Immigration Court pursuant to 8 U.S.C. § 1229a, charging Petitioner with being
24 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who is present without
25 admission in the United States.

1 55. Upon information and belief, following Petitioner's arrest and transfer to the
2 California City Detention Facility, ICE issued a custody determination to continue
3 Petitioner's detention without an opportunity to post bond or be released on other
4 conditions.

5 56. In light of the BIA's September 5, 2025 decision in *Hurtado*, Petitioner is unable to
6 obtain a bond hearing before an IJ pursuant to 8 U.S.C. § 1226(a).

7 **FIRST CLAIM FOR RELIEF**

8 **Petitioner's Detention is in Violation of 8 U.S.C. § 1226(a).**

9 57. Petitioner incorporates by reference the allegations of fact set forth in the preceding
10 paragraphs.

11 58. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to
12 noncitizens who have entered and were residing in the United States prior to being
13 arrested, have been placed under § 1229a removal proceedings, and been charged
14 with a ground of inadmissibility, including 8 U.S.C. § 1182(a)(6)(A)(i), by
15 Respondents. Such noncitizens may only be detained pursuant to § 1226(a), unless
16 subject to § 1225(b)(1), § 1226(c), or § 1231.

17 59. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued
18 detention without a bond hearing and violates 8 U.S.C. § 1226(a).

19 60. Moreover, as a member of the *Maldonado-Bautista* Bond Eligible Class, Petitioner is
20 entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

21 61. The order granting partial summary judgment in *Maldonado Bautista* holds that
22 Respondents violate the INA in applying the mandatory detention statute at
23 § 1225(b)(2) to class members.

24 62. The order granting class certification in *Maldonado Bautista* further orders that
25 "[w]hen considering this determination with the MSJ Order, the Court extends the

1 same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.”
2 63. Respondents are parties to *Maldonado Bautista* and are bound by the Court’s
3 declaratory judgment, which has the full “force and effect of a final judgment.” 28
4 U.S.C. § 2201(a).

5 64. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject
6 to mandatory detention under § 1225(b)(2), Respondents violate Petitioner’s statutory
7 rights under the Immigration and Naturalization Act and the Court’s judgment in
8 *Maldonado Bautista*.
9

10 **SECOND CLAIM FOR RELIEF**
11 **Petitioner’s Detention is in Violation of DHS and EOIR Bond Regulations**

12 65. Petitioner incorporates by reference the allegations of fact set forth in the preceding
13 paragraphs.

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

24 67. Nonetheless, pursuant to *Hurtado*, EOIR now has a policy and practice of unlawfully
25 applying § 1225(b)(2) to individuals like Petitioner and, pursuant to the July 8, 2025
“Interim Guidance Regarding Detention Authority for Applicants for Admission,”

DHS also has a policy and practice of unlawfully applying § 1225(b)(2) to individuals like Petitioner.

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

THIRD CLAIM FOR RELIEF

Petitioner's Detention Violates the Administrative Procedure Act, 5 U.S.C. § 706(2)

69. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
70. 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).
71. Respondents’ detention of Petitioner pursuant to § 1225(b)(2) is arbitrary and capricious, violates the INA and the Fifth Amendment, is not authorized under § 1225(b)(2) or § 1226(a), and therefore is in violation of 5 U.S.C. § 706(2).

FOURTH CLAIM FOR RELIEF

Petitioner's Detention Violates His Fifth Amendment Right to Both Substantive and Procedural Due Process

72. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
73. The Respondents’ detention of Petitioner without providing him a bond hearing to determine whether he is a flight risk or a danger to others violates his right to Due Process.
74. 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).

75. Substantive due process requires that all forms of civil detention—including immigration detention—bear a “reasonable relation” to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen’s appearance at immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003). Neither of these justifications applies to Petitioner, who has complied faithfully and appeared regularly at all ICE appointments, and has never been advised of any concerns in this respect. Nor has he received any notice of supposed “dangerousness.”

76. The procedural component of the Due Process Clause prohibits the government from imposing even permissible physical restraints without adequate procedural safeguards. Generally, “the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is so even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov’t*, 864 F.3d at 683 (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context). In this case, not only has the Petitioner not been afforded a pre-deprivation hearing, but he has not even been apprised in writing of the reasons for his re-detention.

1 77. Petitioner thus has a fundamental interest in liberty and being free from official
2 restraint. Petitioner's continued unlawful detention in and of itself constitutes
3 irreparable harm. In addition, he suffers separation from his family, economic harms
4 from loss of income, and medical and physical neglect due to conditions of his
5 confinement at the hands of Respondents at the California City facility. "It is well
6 established that the deprivation of constitutional rights 'unquestionably constitutes
7 irreparable injury.' " *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
8 (quoting *Elrod v. Burns*, 427 U.S. 247, 272 (1976)). Moreover, "[t]he Ninth Circuit
9 has recognized 'irreparable harms imposed on anyone subject to immigration
10 detention' including 'the economic burdens imposed on detainees and their families
11 as a result of detention.' " *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

12 **PRAYER FOR RELIEF**

13
14 WHEREFORE, Petitioners respectfully ask that this Court take jurisdiction over
15 this matter and grant the following relief:

- 16 a. Order that Petitioner shall not be transferred outside of the Eastern District of California
17 while this petition is pending;
- 18 b. Declare that Petitioner's detention is governed by 8 U.S.C. § 1226(a) and that his
19 detention under 8 U.S.C. § 1225(b)(2) is unlawful;
- 20 c. Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner immediately,
21 and enjoin Respondents from re-detaining Petitioner unless and until they have provided
22 him with a pre-deprivation hearing at which the Respondents will bear the burden of
23 demonstrating to a neutral decisionmaker by clear and convincing evidence that re-
24 detention is necessary to prevent danger to the community or flight.
- 25

- 1 d. Issue an Order to Respondents requiring that they Show Cause within three days why this
2 Petition should not be granted;
- 3 e. Retain jurisdiction of this matter to facilitate prompt enforcement of the Court's order(s);
- 4 f. Award Petitioners attorney's fees and costs under the Equal Access to Justice Act
5 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
6 g. Grant any other and further relief that this Court deems just and proper.

7 DATED: December 5, 2025

8 /s/ Patience Milrod
9 Patience Milrod
10 Attorney for Petitioner
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

VERIFICATION

1
2 I, Patience Milrod, declare as follows:

3 I am an attorney admitted to practice law before this Court and in the State of California.

4 Because many of the allegations of this Petition require a legal knowledge not possessed
5 by Petitioners, I am making this verification on their behalf.

6 I have read the foregoing Petition for Writ of Habeas Corpus and know the contents
7 thereof to be true to my knowledge, information, or belief.

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct and that this declaration was executed on December 5, 2025.
10

11
12 /s/ Patience Milrod
13 Patience Milrod
14
15
16
17
18
19
20
21
22
23
24
25