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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

MANUEL J. AGUAIZA-PUNIN, Petitioner, vs. **TODD LYONS**, Acting Director, Immigration and Customs Enforcement, **KRISTI NOEM**, Secretary of United States Department of Homeland Security, **LADEON FRANCIS**, Immigration and Customs Enforcement, Atlanta Field Office Director, **TONY NORMAND,** Warden, Folkston ICE Processing Center, **PAMELA BONDI**, United States Attorney General, Respondents.	)	**CASE NO.** **PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **IN REMOVAL PROCEEDINGS**

I. INTRODUCTION

1. Petitioner Manuel Jesus Aguaiza Punin ("Mr. Aguaiza") or ("Petitioner") is in the physical custody of Respondents at the Folkston ICE Processing Center. He now faces unlawful detention because the Department of Homeland Security ("DHS") and the Executive Office of Immigration Review ("EOIR") have wrongfully concluded Petitioner is subject to mandatory detention merely because he entered without inspection.

2. Petitioner entered the United States in September 2013 and has not departed. He has three, minor, U.S. citizen children: 6-years-old, 3-years-old; and 1-year-old. On or about October 26, 2025, Respondents commenced removal proceedings against Petitioner in immigration court, entitling Petitioner to statutory rights under 8 U.S.C. § 1229a and Due Process rights.

3. Based on these allegations in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) — i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

4. Similarly, on September 5, 2025, the Board of Immigration Appeals ("BIA or Board") issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. &

1 N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to
2 detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on
3 bond.
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5 5. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.
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12 6. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying 8 U.S.C. § 1226(a) to people like Petitioner.
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15 7. Petitioner asks this Court to find that Respondents' detention without a hearing and individualized consideration Petitioner is arbitrary and capricious and in violation of the law.
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18 8. Accordingly, Petitioner seeks a writ of habeas corpus ordering his release from custody because bond hearings in Immigration Court have become a sham that do not comply with Due Process or, in the alternative, ordering a bond hearing before an immigration judge with the burden of proof on the Respondents to prove by clear and convincing evidence that he is a risk of flight or danger to the community in order to continue detention.
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II. JURISDICTION AND VENUE

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9. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), because the Respondents are U.S. government agencies, and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

10. 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.

11. Venue is proper in the Southern District of Georgia because Petitioner is currently detained at the Folkston ICE Processing Center in Folkston, Georgia under color of the authority of the United States, in violation of the Constitution, laws or treaties thereof. 28 U.S.C. §§ 1391, 2241.

12. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).

III. <u>REQUIREMENTS OF 28 U.S.C. § 2243</u>

13. 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.*

14. 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).

15. District courts have the power to grant writs of habeas corpus. 28 U.S.C. § 2241(a). A district court's authority includes jurisdiction to hear habeas challenges to immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). The burden is on petitioner to show that she is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

16. This case presents one of "a growing number of challenges in this District and across the country" to respondents' new policy of mandatory detention for all noncitizens charged with entering the United States without inspection, which potentially "subjects millions of noncitizens to mandatory prolonged detention without the opportunity for release on bond, no matter how long they have resided within the country." *Maldonado Vazquez v. Feeley*, 2025 WL 2676082, at *1 (D. Nev. Sept. 17, 2025).

17. Habeas does not provide meaningful relief with respect to some of the indignities petitioners have endured. *See Muhammad v. Close*, 540 U.S. 749, 750 (2004) (explaining that habeas is not an appropriate vehicle to challenge the circumstances of confinement). But due to its flexible nature, the Court may fashion a remedy that returns petitioner to her position prior to her unlawful detention.

IV. PARTIES

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18. Petitioner Manuel Jesus Aguaiza Punin was detained by ICE on or about October 26, 2025. He remains in immigration custody at the Folkston ICE Processing Center in Folkston, Georgia.

19. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement. He is named in his official capacity.

20. Respondent Kristi Noem is the Secretary of Homeland Security and is Petitioner's ultimate legal custodian. She is sued in her official capacity.

21. Respondent Ladeon Francis is the Atlanta Field Office Director of Immigration and Customs Enforcement. She is one of Petitioner's legal custodians and is sued in her official capacity.

22. Respondent Tony Normand is warden of the Folkston ICE Processing Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

23. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the Department of Justice. She is one of Petitioner's legal custodians.

V. LEGAL FRAMEWORK

24. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

25. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

26. The Immigration and Nationality Act ("INA") establishes various procedures through which individuals may be detained pending a decision on whether the noncitizen is to be removed. 8 U.S.C. § 1226(a).
27. Removal proceedings described in section 240 of the INA are used to determine whether individuals, such as Petitioner, should be removed from the United States. *See* 8 U.S.C. § 1229a.
28. Immigration detention is a form of civil confinement that "constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 4253 (1979).
29. Custody determinations for individuals in 1229a removal proceedings are governed by 8 U.S.C. § 1226. Under § 1226(a), an individual may be released if he does not present a danger to persons or property and is not a flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).
30. Custody determinations under § 1226(a) are individualized and based on the facts presented in those cases. Unlike § 1226(c), which can provide for categorical determinations for detention regardless of flight risk or safety risks, § 1226(a) requires a case-by-case review of the facts and circumstances.
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 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

1 convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. §
2 1226(c).

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

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7 34. Last, the INA also provides for detention of noncitizens who have been ordered
8 removed, including individuals in withholding-only proceedings, see 8 U.S.C. §
9 1231(a)-(b).

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

11 36. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
12 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996,
13 Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–
14 583, 3009–585. Section 1226(a) was most recently amended earlier this year by the
15 Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

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17 37. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining
18 that, in general, people who entered the country without inspection were not
19 considered detained under § 1225 and that they were instead detained under §
20 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of
21 Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312,
22 10323 (Mar. 6, 1997).

23 38. Thus, in the decades that followed, most people who entered without inspection and
24 were placed in standard removal proceedings received bond hearings, unless their
25 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)).

39. 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.

40. 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). *See* Exhibit C. 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 Board 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 subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

42. Since Respondents adopted their new policies, as of November 18, 2025, 288 U.S. District Courts have evaluated these new policies with 282 of those decisions finding the new polices to be unlawful. *See* Exhibit A: List of cases.

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

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43. 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]."

44. 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.

45. 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.

46. 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).

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47. Until the immigration reforms of 1996, the Board of Immigration Appeals, which is a part of the Department of Justice, interpreted the statute's discretionary authority as involving a presumption against detention and the Government shouldered the burden of proving that the noncitizen's detention was warranted. *Lopez v. Decker*, 978 F.3d 842, 848 (2nd Cir. 2020) (describing the history of § 1226(a)); *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976) ("An alien generally is not and should not be detained or required to post bond except on a finding that he is a threat to national security or that he is a poor bail risk."); Alina Das, *Immigration Detention: Information Gaps and Institutional Barriers to Reform*, 80 U. Chi. L. Rev. 137, 157-58 (2013).

48. After passage of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 3009 (1996), the former Immigration and Naturalization Service (INS) amended the regulations that changed the standard for the initial post-arrest custody determination made by immigration officers. *Lopez v. Decker*, 978 F.3d at 849. The noncitizen is now required "to demonstrate to the satisfaction of the [immigration] officer" that the noncitizen is neither a flight risk nor a danger to property or persons, and that he is likely to appear at future hearings. 8 C.F.R. § 236.1(c)(8).

49. In enacting § 236.1(c)(8), the INS acknowledged the sharp departure from long established procedures. Alina Das, *Immigration Detention: Information Gaps and Institutional Barriers to Reform*, 80 U. Chi. L. Rev. at 156 (citing to Final Rule: Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg.

1 10312, 10323 (1997)).

2 50. Later, the BIA began applying the standard in § 236.1(c)(8) to reviews by
3 immigration judges of an arresting officer's decision to detain a noncitizen. *Lopez v.*
4 *Decker*, 978 F.3d at 849 (citing to *Matter of Adeniji*, 22 I&N Dec. 1102, 1112 (1999)
5 and *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006)). Since *Adeniji*, the BIA has
6 repeatedly reaffirmed that the burden should be on non-citizens. *See Matter of Fatahi*,
7 26 I&N Dec. 791, 793 (BIA 2016); *In re Guerra*, 24 I&N Dec. 37, 40 (BIA 2006)
8 ("[t]he burden is on the alien to show to the satisfaction of the [immigration judge]
9 that he or she merits release on bond.").

10 51. To be released under § 1226(a), a noncitizen "must establish to the satisfaction
11 of the Immigration Judge, or the Board, that he or she does not present a danger to
12 persons or property, is not a threat to the national security, and does not pose a
13 risk of flight." *Matter of Guerra*, 24 I&N Dec. at 38 (citing *Matter of Adeniji*,
14 *supra.*). This regulatory rule, however, runs counter to the constitutional
15 imperative that liberty is the norm. The Supreme Court has made plain that
16 "commitment for any purpose constitutes a significant deprivation of liberty that
17 requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979).

18 52. The Due Process Clause requires a constitutionally adequate bond hearing. "Freedom
19 from imprisonment – from government custody, detention, or other forms of physical
20 restraint – lies at the heart of the liberty" that the Due Process Clause protects.
21 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention must "bear [a] reasonable
22 relation to the purpose for which the individual [was] committed." *Id.* at 690 (quoting
23 *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).
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53. The Supreme Court has held that 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*, 533 U.S. at 693. Throughout the Court's civil detention jurisprudence, it has always required the government to bear the burden of proof. *Addington v. Texas*, 441 U.S. 418 (1979). Thus, the Court has required that civil detention be the "exception", not the norm. *See United States v. Salerno*, 481 U.S. 739, 755 (1987) (allowing for pretrial detention in "carefully limited" circumstances).

54. In *Addington v. Texas*, 441 U.S. 418 (1979), the Court held that in civil commitment proceedings, the government's burden of proof must be "equal to or greater that the 'clear and convincing' standard" to meet due process guarantees. *Addington v. Texas*, 441 U.S. at 433. The appellant in *Addington*, a mental patient who had been committed indefinitely to a state mental hospital, sought review of the decision from the Texas Supreme Court which held that a preponderance of the evidence standard satisfied the due process requirement. *Addington v. Texas*, 441 U.S. at 421-22.

55. At a minimum, due process requires "adequate procedural protections" to ensure that the Government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas v. Davis,* 533 U.S. at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)).

56. In civil detention cases, the Supreme Court "repeatedly has recognized that civil commitment for *any* purpose constitutes a significant deprivation of liberty." *Singh*, 638

1 F.3d 1196, 1204–05 (9th Cir. 2011) (quoting *Addington v. Texas*, 441 U.S. 418, 425
2 (1979)) (emphasis in original).
3 57. In particular, civil detention is impermissible without an individualized hearing
4 before a neutral decision maker that tests the Government's justification for
5 imprisonment. *See United States v. Salerno*, 481 U.S. 739, 750-751 (1987)(upholding
6 civil pretrial detention of individuals charged with crimes only upon individualized
7 findings of dangerousness or flight risk at custody hearings); *Foucha v. Louisiana*,
8 504 U.S. 71, 81-83 (1992)(requiring individualized finding of mental illness and
9 dangerousness for civil commitment); *Kansas v. Hendricks*, 521 U.S. at 357
10 (upholding civil commitment of sex offenders after jury trial on loack of volitional
11 control and dangerousness).
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13 58. The Ninth Circuit and other district courts have held that immigration detainees are
14 entitled to bond hearings at with *the Federal Government* bears the burden to prove
15 by clear and convincing evidence that detainees would be a flight risk or danger to the
16 community. *See e.g., Singh*, 638 F.3d at 1204-1205; *Pensamiento v. McDonald* 315
17 F.Supp. 3d 684, 692 (D.Mass 2018)(holding that due process requires the burden of
18 proof be placed on the government in custody redetermination hearings for non-
19 criminal aliens); *Alvarez Figueroa v. McDonald*, Civil Action No. 18-100097-PBS,
20 2018 U.S. Dist. LEXIS 80781, at *15-16 (D.Mass May 14, 2018)("The *Zadvydas*
21 Court then cited to criminal pretrial detention and civil commitment cases, making it
22 clear that one important procedural protection for preventive detention is the
23 placement of the burden of proof on the government."; *Doe v. Tompkins*, Case No.
24 18-cv-12266-PBS, 2019 U.S. Dist. LEXIS 22616, at *4 (D. Mass. Feb. 12,
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1 2019)(holding that due process requires that the burden of proving that the respondent
2 is dangerous and is a flight risk be placed on the government in §1226(a) custody
3 redetermination hearings); *Diaz-Ortiz v. Tompkins*, Case No. 18-cv-12600-PBS, 2019
4 U.S. Dist. LEXIS 14155, at *3-4 (D. Mass Jan. 29, 2019); *Martinez v. Decker*, No.
5 18-cv-6527-JMF, 2018 U.S. Dist. LEXIS 178577, at *13 (S.D.N.Y. Oct. 17,
6 2018)(concluded that "due process requires the Government to bear the burden of
7 proving that detention is justified at a bond hearing under Section 1226(a)."); *Darko*
8 *v. Sessions*, 342 F.Supp.3d 429, 436 (S.D.N.Y 2018)(same; further, "the Court
9 concludes that the government must bear the burden by clear and convincing
10 evidence."); *Haughton v. Crawford*, 221 F.Supp. 3d 712, 713-17 (E.D.Va. 2016)("the
11 significant deprivation of liberty warrants the robust procedural protections afforded
12 by requiring the government to demonstrate by clear and convincing evidence that
13 petitioner's ongoing detention is appropriate to protect the community and ensure
14 petitioner's appearance at future proceedings."); *Portillo v. Hott*, 322 F.Supp.3d 698,
15 2018 WL 3237898, at *8 *n.9 (E.D.Va 2018)(reaffirming *Haughton* as"good
16 authority").
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19 59. Petitioner contends, that in the present environment, in which the Executive Branch,
20 the Department of Justice as a whole, especially the Immigration Courts, have
21 eschewed their duty to do justice and stated publicly their disregard of any intention
22 to be impartial or neutral through a series of published decisions by the Board of
23 Immigration Appeals all limiting rights and relief in removal proceedings, through
24 revocation of protections afforded to non-citizens from countries, such as Haiti and
25 Sudan that are plainly unsafe, through advertisements for "Deportation Judges" rather

than "Immigration Judges," through firing dozens or hundreds of experienced immigration judges and replacing them with military lawyers who have no experience in immigration law whatsoever, it is impossible to obtain a fair and impartial hearing in the immigration court and this Court must directly address custody.

60. Petitioner further contends that any detention at this time, after having previously been released on his own recognizance and never violated the terms of his release, is unlawful.

61. Once a determination to release an individual from custody is made, the release order may be revisited when the facts or circumstances warrant revocation or reconsideration. 8 U.S.C. § 1226(b). For an individual who was once in custody, the Attorney General may take that individual back into custody by revoking the individual's release when the facts and circumstances warrant it.

62. Revocation and return to custody is authorized only based on the individualized facts and circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation decisions are limited in nature and may only be made by certain authorized officials. 8 C.F.R. § 1236.1(c)(9).

VI. FACTS

63. Petitioner entered the United States in September 2013 and has not departed. He has three, minor, U.S. citizen children: 6-years-old, 3-years-old; and 1-year-old.

64. ICE detained Mr. Aguaiza on or about October 26, 2025, and issued him a Notice to Appear in removal proceedings before the Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, inter alia, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

65. As a result, Petitioner remains in detention contrary to law.

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VII. CLAIMS FOR RELIEF

COUNT I
Violation of the INA

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

67. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who entered without inspection. It does not apply to Mr. Lopez Hernandez, who had been residing in the United States for 25 years prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1226(c) or § 1231.

68. The application of § 1225(b)(2) to Petitioner is incorrect and unlawful in violation of the INA.

COUNT II
Violation of Due Process

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

70. 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).

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

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72. The government's detention of Petitioner without a bond redetermination hearing to determine whether she is a flight risk or danger to others violates her right to due process.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court to:

a. Assume jurisdiction over this matter;
b. Order that Petitioner shall not be transferred to another jurisdiction while this habeas petition is pending;
c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
d. Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
e. Declare that Petitioner's detention without an individualized determination violates the Immigration and Nationality Act.
f. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner without conditions, such as GPS monitoring, that would constitute de facto custody, or,
g. In the alternative, Order Respondents to provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) with the burden of proof on the Respondents to prove by clear and convincing evidence that Respondent is a flight risk or danger to the community;

h. 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

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

Respectfully submitted,

Date: December 5, 2025

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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.

Date: December 5, 2025

By: /s/ Eric M. Mark
Eric M. Mark
Law Office of Eric M. Mark
96 Summer Ave., Fl. 1
Newark, NJ 07104
Tel: (973) 306-4246
Email: EricM@ericmarklaw.com

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PROOF OF SERVICE

2 I, the undersigned, declare that my office is in Newark, New Jersey. I am over the age of
3 eighteen (18) years and not a party to the action within. My business address is 96 Summer
4 Ave., Fl. 1, Newark, NJ 07104. On December 5, 2025, I served the following documents:
5 **PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND**
6 **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** by placing a true and
7 correct copy in a sealed envelope, each addressed as follows:
8
Kristi Noem
9 U.S. Department of Homeland Security
9707 Martin Luther King Jr Ave SE
10 Washington, D.C. 20528
11
Todd Lyons
12 U.S. Immigration and Customs Enforcement is:
500 12th Street SW
13 Washington, DC 20536

14 Ladeon Francis
Acting Field Office Director
15 Enforcement and Removal Operations
Atlanta Field Office
16 180 Ted Turner Dr. SW
Suite 522
17 Atlanta, GA 30303
18
Tony Normand, Warden
19 Folkston ICE Processing Center
3026 Hwy 252/ PO Box 98
20 E Folkston, GA 31537

21 Pamela Bondi
950 Pennsylvania Avenue, NW
22 Washington, DC 20530-0001
23
U.S. Attorney's Office
24 ATTN: Civil Process Clerk
22 Barnard Street
25 Suite 300
Savannah, GA 31401

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2 **By mail.** I am readily familiar with the business for collection and processing of
3 correspondence for mailing in the United States Postal Service and that this document, with
4 postage fully prepaid, will be deposited with the United States Postal Service this date in the
5 ordinary course of business.
6 I declare under the penalty of perjury that the foregoing is true and correct. Executed on
7 December 5, 2025, at Newark, New Jersey.
8 /s/ Eric M. Mark
9 Eric M. Mark
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