UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CASE NO.:

LOURIVAL DO SANTOS LOPES, )
(A[redacted] )
)
Petitioner, )
)
vs. )
)
SCOTTY RHODEN, as Sheriff of Baker )
County and custodian of the Baker County )
Detention Center; KRISTI NOEM, as )
United States Secretary of Homeland )
Security; GARRETT J. RIPA, as Field )
Office Director, U.S. Immigration and )
Customs Enforcement; and PAM BONDI, )
as United States Attorney General. )
)
Respondents. )
_____)

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

Petitioner, **LOURIVAL DOS SANTOS LOPES** ("**Lopes**" or "**Petitioner**"), by and through undersigned counsel, hereby petitions this Honorable Court for a writ of habeas corpus under 28 U.S.C. § 2241 to remedy his unlawful detention by Respondents. Petitioner seeks immediate release, or alternatively, an order requiring Respondents to provide the custody review and bond procedures mandated by 8 U.S.C. § 1226(a). In support of this Petition, Petitioner alleges:

## PRELIMINARY STATEMENT

This habeas petition presents two related and fundamental questions of immigration detention law. First:

> **May ICE refuse to provide a bond hearing to a long-term interior resident charged under INA § 212(a)(6)(A)(i) by retroactively invoking the mandatory-detention authority of INA § 235(b), even though the statutory scheme requires his detention—if any—to proceed under INA § 236(a)?**

Second, and now independently dispositive in light of the recent declaratory judgment in *Maldonado Bautista v. Santacruz*,[1] the question arises:

> **May the Executive Branch—whether acting through ICE or through EOIR adjudicators—lawfully deny a bond hearing to a member of the certified bond-eligible class, notwithstanding that the district court has already declared that such individuals are entitled to § 236(a) custody hearings as a matter of statutory law?**

The answer to both questions is, "no."

Petitioner Lourival Dos Santos Lopes was arrested in the interior of the United States after more than two decades of continuous residence. He was taken into ICE custody at the Pinellas County Jail on a detainer following an arrest for a misdemeanor traffic offense under § 316.061, Fla. Stat. In the ensuing removal proceedings, DHS classified him as an "arriving alien" and placed him in § 235(b)(2) mandatory

[1] Maldonado Bautista v. Santacruz, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.), Declaratory Judgment, (DE-81, Nov. 20, 2025), 2025 WL 3289861, at *11; Class Certification Order, (DE-82, Nov. 25, 2025), 2025 WL 3288403, at *9.

detention—a statutory provision that applies only to applicants for admission and certain recent entrants encountered at or near a port of entry.

Petitioner, however, is not an arriving alien. He was charged under INA § 212(a)(6)(A)(i) and placed in § 240 removal proceedings, which means that his custody is governed exclusively by INA § 236(a). Under § 236(a), detention is discretionary and reviewable by an Immigration Judge. ICE has nonetheless categorically denied him access to a bond hearing by reclassifying him under a statute that Congress did not authorize for noncitizens arrested inside the United States.

This retroactive reclassification is neither incidental nor isolated. Since the issuance of DHS's July 8, 2025 memorandum, "Interim Guidance Regarding Detention Authority for Applicants for Admission" (the "**ICE Memo**"), ICE officers nationwide have been directed to treat all noncitizens present without admission—even long-term interior residents—as "applicants for admission" subject to § 235(b)(2) mandatory detention. Federal courts across the country have repeatedly condemned this patterned attempt to treat an individual as a non-arriving alien for removability but as an arriving alien for detention, correctly recognizing that the practice erases the statutory distinction between § 235(b) and § 236(a) and unlawfully converts discretionary detention into mandatory detention. Through the consistent reasoning of these district court rulings, the ICE Memo has been exposed as a nationwide attempt to circumvent Congress's limits on detention authority by rebranding ordinary interior arrests as border encounters. ICE's treatment of Petitioner fits squarely within that prohibited pattern.

Separately, the recently issued declaratory judgment in *Maldonado Bautista* squarely forecloses both ICE's refusal to provide a bond hearing and any Immigration Judge's refusal to conduct one. In *Maldonado Bautista*, the district court certified a nationwide class of noncitizens detained under § 236(a) and declared that class members are entitled to individualized bond hearings. The partial summary judgment concluded that detention without such hearings violates the INA. Nevertheless, upon information and belief, initial practitioner reports indicate that Immigration Judges have been instructed by the Department of Justice to disregard the *Maldonado Bautista* decision unless and until the BIA directs otherwise.[2] This creates a direct conflict between a federal declaratory judgment and instructions issued to agency adjudicators within the Executive Branch. That conflict is now concretely presented here.

Make no mistake: Petitioner is a member of the *Maldonado Bautista* class, and neither ICE nor an Immigration Judge may lawfully deny him the hearing that the federal court has already declared to be required by the plain language of the INA.

Petitioner brings this action under 28 U.S.C. § 2241, the traditional vehicle for challenging the legality of federal custody. *See* Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 117 (2020). Because ICE lacks statutory authority to detain Petitioner under § 235(b), because DHS and EOIR have refused to comply with

[2] *See e.g.* NWIRP Practice Advisory, Dec. 3, 2025, *Seeking Bond Hearings for Maldonado Bautista Class Members – Those Who Entered Without Inspection and Are Subject to Yajure-Hurtado*, at pp. 1, 4. https://www.nwirp.org/uploads/2025/Maldonado%20Bautista%20Practice%20Advisory_12%203%202025.pdf

*Maldonado Bautista*'s declaratory judgment guaranteeing him a § 236(a) bond hearing, and because ICE's misclassification contradicts the statutory and regulatory scheme governing custody and bond authority under §§ 235(b) and 236(a), his continued detention is unlawful. Petitioner respectfully requests that this Court order his immediate release or, at a minimum, direct ICE to provide him with a lawful custody determination under § 236(a) before an Immigration Judge.

## JURISDICTION

1. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 1570.

2. The Court has *habeas corpus* jurisdiction pursuant to 28 U.S.C. § 2241 and Art. I, § 9, cl. 2 of the United States Constitution (the "Suspension Clause"), because Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. *See, e.g.*, Zadvydas v. Davis, 533 U.S. 678, 687 (2001).

3. This Court is not deprived of jurisdiction by 8 U.S.C. § 1252(a)(2)(B) (INA § 242(a)(2)(B)), because Petitioner is not challenging the denial of any discretionary relief. *See* Zadvydas, 533 U.S. at 688 ("INA § 242 does not bar a claim challenging agency authority that does not implicate discretion."). Nor is Petitioner asserting any claim arising from the decision or action of the Attorney General to commence proceedings, adjudicate cases, or execute a removal order; accordingly, the

jurisdiction-stripping provision at 8 U.S.C. § 1252(g) is not triggered. Courts construe jurisdiction-stripping provisions narrowly, given the "presumption favoring judicial review of administrative action." Kucana v. Holder, 558 U.S. 233, 251 (2010).

4. This Court may also exercise federal question jurisdiction under 28 U.S.C. § 1331, because Petitioner's claims arise under the Constitution and laws of the United States, including the Immigration and Nationality Act ("**INA**"), the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act ("**APA**"), 5 U.S.C. § 701 *et seq.*

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

**VENUE**

6. Venue properly lies in the United States District Court, Middle District of Florida, pursuant to 28 U.S.C. § 1391(b)(2). Petitioner was apprehended in Pinellas County, Florida, the locality where he resides, within the Middle District of Florida. Petitioner is being detained by ICE under the authority of Sheriff Scotty Rhoden, in the federal wing of the Baker County Detention Center, which is located within the Middle District of Florida.

7. Venue also lies in this judicial district pursuant to 28 U.S.C. § 1391(e)(1) because Respondents are officers, employees, or agencies of the United States acting in their official capacities, and (i) Respondent Rhoden maintains his office at 1 Sheriff's Office Drive, Macclenny, FL 32063, (ii) Petitioner is detained in this judicial district;

and (iii) Petitioner resides in this judicial district, and no real property is involved in this action.

## APPLICATION FOR AN ORDER TO SHOW CAUSE (28 U.S.C. § 2243)

8. The writ of habeas corpus has long occupied a celebrated role in Anglo-American jurisprudence, "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) (citation omitted) (emphasis added).

9. Under 28 U.S.C. § 2243, a Court must "forthwith" either grant the petition or issue an Order to Show Cause ("**OSC**"), unless the petition plainly demonstrates that the petitioner is not entitled to relief. If an OSC is issued, respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." Id.

10. Petitioner therefore respectfully requests that the Court issue an OSC directing Respondents to show cause why the Petition for Writ of Habeas Corpus should not be granted and why Petitioner should not be released from unlawful detention.

## APPLICATION FOR AN ANTI-TRANSFER ORDER (28 U.S.C. § 1651(a))

11. Petitioner moves this Court, pursuant to 28 U.S.C. § 2241 and the All Writs Act, 28 U.S.C. § 1651(a), for an emergency order prohibiting ICE from transferring him outside this Court's territorial jurisdiction or removing him from the

United States while this habeas petition is pending. Such relief is necessary to preserve the Court's jurisdiction and prevent irreparable injury.

12. The All Writs Act authorizes federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions." 28 U.S.C. § 1651(a). This authority includes interim orders preserving the court's existing or potential jurisdiction over a habeas action and preventing the government from defeating jurisdiction through strategic transfers or removal.

13. A temporary non-transfer order is warranted here. In recent months, ICE has repeatedly and abruptly relocated detained noncitizens across state lines—often without notice. These transfers directly threaten this Court's ability to adjudicate the petition, risk mooting the case before the Court can rule, and significantly impede a petitioner's access to counsel in violation of his constitutional rights to access the courts. Without an anti-transfer order, ICE could unilaterally defeat this Court's jurisdiction before the petition is heard.

14. Accordingly, Petitioner respectfully requests that this Court enter an order:

a. Prohibiting ICE and DHS from transferring Petitioner outside the territorial jurisdiction of the Middle District of Florida absent further order of this Court;

b. Prohibiting ICE and DHS from removing Petitioner from the United States while this habeas petition is pending;

c. Granting such other and further relief as the Court deems just and proper to preserve its jurisdiction and ensure meaningful review of Petitioner's claims.

**PARTIES**

15. Petitioner **LOURIVAL DOS SANTOS LOPES** is a native and citizen of Brazil. He is presently detained by U.S. Immigration and Customs Enforcement ("**ICE**") at the Baker County Detention Center ("Baker") in Macclenny, Florida, within the jurisdiction of the Middle District of Florida.

16. Respondent **SCOTTY RHODEN** ("**Rhoden**") is sued in his official capacity as the Sheriff of Baker County, Florida, and the custodian of the Baker County Detention Center, the facility in which Petitioner is currently detained. Rhoden is Petitioner's immediate physical custodian. 28 U.S.C. § 2243. Rhoden's office is located at 1 Sheriff's Office Drive, Macclenny, Florida 32063.

17. Respondent **KRISTI NOEM** ("**Noem**") is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security ("**DHS**"). Under the Homeland Security Act of 2002, Pub. L. 107-296, Noem is responsible for the administration of the DHS; the implementation and enforcement of the immigration laws of the United States pursuant to 8 U.S.C. § 1103; the oversight of ICE, the agency responsible for Petitioner's detention, including the nationwide policies governing ICE's detention authority and the interpretation of 8 U.S.C. § 1225(b)(2); and the supervision of Respondent Ripa. Because Petitioner's continued detention arises from DHS-level statutory and policy determinations, Noem is a proper respondent in this

action. Noem's address is U.S. Department of Homeland Security, Washington, District of Columbia, 20528.

18. Respondent **GARRETT J. RIPA** ("**Ripa**") is sued in his official capacity as Field Office Director, Miami Field Office, Immigration and Customs Enforcement. In this capacity, Ripa manages ICE Enforcement and Removal Operations ("ERO") for the entire State of Florida, Puerto Rico, and the U.S. Virgin Islands as well as the Migrant Operations Center in Guantanamo Bay, Cuba. Ripa is the senior ICE detention official in this judicial district and, in that role, is a legal custodian of Petitioner. Ripa exercises direct supervisory authority over Petitioner's continued detention and has the delegated power to release him. Ripa's office is located at 2805 SW 145th Avenue, Miramar, Florida 33027.

19. Respondent **PAM BONDI** ("**Bondi**") is sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice ("**DOJ**"). The Executive Office for Immigration Review ("EOIR")—including the Immigration Courts and the Board of Immigration Appeals ("BIA")—is housed within DOJ and operates under the supervision and control of the Attorney General pursuant to 8 C.F.R. §§ 1003.0–1003.1. Because Petitioner seeks a constitutionally adequate custody hearing before an Immigration Judge, Bondi is the official responsible for the adjudicatory framework that Petitioner invokes. In addition, 8 U.S.C. § 1226 authorizes the arrest and detention of noncitizens "on a warrant issued by the Attorney General." Although many enforcement functions were transferred to DHS under the Homeland Security Act, the statutory detention scheme applicable to

Petitioner remains textually lodged in the Attorney General. Petitioner's arrest, continued detention, and the denial of any custody hearing therefore arise under a statutory structure for which Bondi bears ultimate legal responsibility. Bondi's office is located at the United States Department of Justice, Washington, D.C. 20530.

## EXHAUSTION OF ADMINISTRATIVE REMEDIES

20. The exhaustion requirement of 8 U.S.C. § 1252(d)(1) is not jurisdictional, but prudential. Kemokai v. U.S. Att'y Gen., 83 F.4th 886, 891 (11th Cir. 2023) (acknowledging the abrogation of prior Eleventh Circuit precedent interpreting § 1252(d)(1) as a jurisdictional bar by Santos-Zacaria v. Garland, 598 U.S. 411, 413 (2023)). This Court may hear Petitioner's habeas petition because statutory exhaustion does not apply to detention challenges under 28 U.S.C. § 2241, and prudential exhaustion is unavailable or futile.

### A. Statutory exhaustion does not apply to detention challenges.

21. The general habeas statute, 8 U.S.C. § 2241, contains no statutory requirement for Petitioner to exhaust administrative remedies. The INA mandates exhaustion only for review of final orders of removal, 8 U.S.C. § 1252(d)(1), but that provision has no application to custody or bond determinations, which are separate and apart from removal or deportation proceedings. Gornicka v. INS, 681 F.2d 501, 505 (7th Cir. 1982); *see also* Ulysee v. Dep't of Homeland Sec., 291 F. Supp. 2d 1318, 1324 (M.D. Fla. 2003) (§ 1252(d)(1) applies to removal orders, not detention).

### B. Prudential exhaustion is excused where no administrative remedy exists.

22. After the issuance of the *Maldonado Bautista* decision, Petitioner requested a custody redetermination under 8 U.S.C. § 1226(a). On December 5, 2025, the Immigration Judge ("**IJ**") denied the request and ruled that immigration judges lack authority to hear bond requests to aliens present in the United States without admission and in removal proceedings, based on the language of 8 U.S.C. § 1225(b). Accordingly, Respondents may argue that Petitioner should seek administrative review of his detention under 8 U.S.C. § 1225(b). But no such remedy exists, because EOIR has no jurisdiction to redetermine custody for a § 1225(b)(2) detainee.

23. Prudential exhaustion cannot be required where no genuine opportunity for adequate relief exists or where an administrative appeal would be futile. Linfors v. United States, 673 F.2d 332, 334 (11th Cir. 1982).

24. In a recent binding published decision, Matter of Yajure Hurtado, 29 I&N Dec. 216, 221 (B.I.A. 2025), the BIA held that a noncitizen who has not been admitted or paroled is subject to mandatory detention without bond under INA § 235(b)(2), even if that noncitizen has resided in the United States for many years. In light of Hurtado, any attempt to seek a custody redetermination or BIA review would be futile, because the BIA has expressly concluded that immigration judges lack jurisdiction to set bond for § 235(b)(2) detainees. *See* 8 C.F.R. § 1003.1(g)(2) (BIA precedents are binding).

25. Because the BIA has definitely ruled that it cannot grant custody relief to individuals detained under § 235(b)(2), any attempt by Petitioner to pursue an administrative bond redetermination or BIA review would be futile, and prudential

exhaustion is therefore excused. *See* McCarthy v. Madigan, 503 U.S. 140, 146–49 (1992) (exhaustion is not required where the administrative remedy is inadequate or unavailable). *See also* Puga v. Ass't Field Office Director, Krome North Service Processing Center, No. 25-24535-CIV-Altonaga, 2025 WL 2938369, at *2 (S.D.Fla. Oct. 15, 2025) (because the outcome of a bond appeal to the BIA is a foregone conclusion under Hurtado, "any prudential exhaustion requirements are excused for futility.").

## FACTUAL AND PROCEDURAL BACKGROUND

26. Lopes is a native and citizen of Brazil, born [redacted] in Itanhomi, Minas Gerais, Brazil. *See* Brazilian Passport, attached as **Exhibit 1**; *see also* Form I-213, *Record of Deportable/Inadmissible Alien*, **Exhibit 2**; Marriage Certificate, **Exhibit 3**.

27. Upon information and belief, Lopes entered the United States in approximately 2004 without inspection, having crossed from Mexico into Phoenix, Arizona.

28. Lopes was not apprehended upon his arrival in the United States.

29. Lopes has resided continuously in Pinellas County, Florida for approximately 20 years with his wife Rosimeire Elisa De Souza, whom he married in Brazil on July 31, 2001. *See* Ex. 3.

30. During their residence in the United States, Lopes and his wife have had two United States citizen children, G.D.S.L. (age 14), and V.D.S.L. (age 7). *See*

Redacted Birth Certificates and U.S. passports of G.D.S.L. and V.D.S.L., **Composite Exhibit 4**.

31. Lopes has established substantial ties to the Tampa Bay area. He and his family have resided at [redacted] since at least 2012. *See* Lease, **Exhibit 5**. Lopes is a small-business owner and 100% shareholder of [redacted] a Florida limited-liability company formed in 2011. Business records and tax returns show his consistent work history, economic contribution and ability to support his U.S. citizen children. *See* Sunbiz listing, **Exhibit 6**; *see also* Form 1120-S 2023 and 2024 tax returns, **Composite Exhibit 7**.

32. Lopes has no criminal history (Ex. 2) in the United States or anywhere else in the world.

33. On September 30, 2025, Lopes was arrested and detained in Pinellas County jail following a traffic incident pursuant to which Lopes was charged with leaving the scene of an accident. *See* Pinellas County Court Record, **Exhibit 8**. The minor impact occurred while he was driving a truck towing a heavy trailer; due to the combined weight, he did not immediately realize a collision had occurred. Upon being alerted by another motorist, Lopes immediately turned around to return to the scene. The traffic citation contains no narrative describing any culpable conduct. *See* Florida Uniform Traffic Citation, **Exhibit 9**.

34. Lopes was also cited for failure to transfer his driver's license to Florida within 30 days, despite possessing a valid license. §§ 322.031, 322.033, Fla. Stat. He

has retained criminal defense counsel to address and resolve the matter, which currently remains pending.

35. Upon information and belief, ICE issued a Form I-200, Warrant for Arrest of Alien, to the Pinellas County Sheriff's Office, under authority of INA § 236(a).

36. Within forty-eight hours, ICE took Lopes into custody, processed him through its Tampa Field Office, and transported him to Baker County Detention Center, where he remains detained.

37. On or about October 2, 2025, DHS initiated removal proceedings against Lopes. Form I-213 indicates that DHS charged Lopes under (i) INA § 212(a)(6)(A)(i) as present in the United States without admission or parole; and (ii) INA § 212(a)(7)(A)(i)(I) as lacking valid entry documents. *See* Ex. 2.

38. By charging Lopes under § 212(a)(6)(A)(i), DHS placed him squarely within INA §240 removal proceedings—not as an "arriving alien" subject to detention under INA § 235(b).

39. The "Custody Determination" section on Form I-213 states: "The subject will be held in ICE custody pending removal proceedings." ICE's unilateral imposition of mandatory detention is contrary to INA § 236(a), as more fully explained below.

40. On or about October 23, 2025, Lopes filed an Application for Cancellation of Removal under INA §240A(b)(1). He is *prima facie* eligible, meeting the ten-year continuous physical presence, good moral character, and exceptional-and-

extremely-unusual hardship requirements. *See* Form EOIR-42B, **Exhibit 10**; *see also* October 4, 2025 Cypress Wellness Center assessment and associated Johns Hopkins All Children's Hospital medical records, **Composite Exhibit 11**.

41. Specifically, Lopes' son, G.D.S.L., has multiple neurodevelopmental and psychological conditions requiring continuous therapeutic support and render him profoundly dependent on Lopes for emotional stability and basic daily functioning. *See* Composite Ex. 11.

42. Medical records confirm that Lopes himself suffers from several health comorbidities, including insulin-dependent Type 2 diabetes mellitus, mixed hyperlipidemia, chronic venous insufficiency, hereditary hemochromatosis, and mild liver abnormalities. Ongoing specialist care is required. Providers at Florida Cancer Specialists have warned that without continued therapeutic reduction of excess iron, Lopes faces elevated risks of serious hematologic disease, including leukemia. *See* Medical records, **Composite Exhibit 12**.

43. On November 12, 2025, the Orlando Immigration Court held a hearing on Lopes' Motion for Bond. The Immigration Judge denied jurisdiction to consider the bond based solely on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Order of the Immigration Judge dated 11/12/2025, **Exhibit 13**.

44. Because of that threshold ruling, the IJ expressly declined to consider Lopes' equities, humanitarian factors, medical evidence, family ties, or eligibility for Cancellation of Removal. The denial was not based on dangerousness or flight risk.

45. On November 20 and 25, 2025, the Central District of California in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, entered two orders, respectively, first granting partial summary judgment to named plaintiffs, and then certifying a nationwide **Bond Eligible Class** of individuals, such as Lopes, who entered without inspection and were not apprehended at entry, and are not otherwise subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231. The *Maldonado Bautista* court entered a **binding declaration** under 28 U.S.C. § 2201 that the Bond Eligible Class members are detained under § 1226(a) as a matter of law. *See* 2025 WL 3289861, at *11; 2025 WL 3288403, at *9.

46. After the issuance of the *Maldonado Bautista* decision, Lopes filed a renewed bond motion. On December 5, 2025, the Immigration Judge again denied bond, refusing to follow the *Maldonado Bautista* mandate and instead relying on BIA *Yajure Hurtado* decision, despite the fact that *Yajure Hurtado* has been rejected as unlawful by multiple district courts nationwide. *See* Order of the Immigration Judge dated 12/5/2025, **Exhibit 14**.

## LEGAL FRAMEWORK

### A. 8 U.S.C. § 1226(a), and not 8 U.S.C. § 1225(b)(2), applies to Lopes

47. INA § 235 establishes procedures for inspecting *arriving* noncitizens seeking admission at ports of entry or their functional equivalents. INA § 235(b)(2)(A) mandates detention for an applicant for admission "if the examining immigration officer determines that the alien seeking admission is not clearly and beyond a doubt

entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). As the Supreme Court has explained, § 235(b) governs the detention of individuals "seeking entry" to the United States. Jennings v. Rodriguez, 583 U.S. 281, 285, 288, 297 (2018).

48. In contradistinction to 8 U.S.C. § 1225(b)(2), 8 U.S.C. § 1226(a) provides that an alien "**may** be arrested and detained pending a decision on whether the alien is to be removed from the United States. (Emphasis added). Under 8 U.S.C. § 1226(a)(2), the Attorney General has the discretion to release a detained alien on bond or to release the alien on conditional parole.

49. Under this paradigm, noncitizens, like Lopes, who were arrested inside the United States, served with an NTA, and charged under INA § 212(a)(6)(A)(i) (which necessarily places them into INA § 240 removal proceedings), fall squarely within the custody framework of INA § 236(a). The fact that DHS issued an NTA alleging removability under § 212(a)(6)(A)(i) (as reflected in Ex. 2) confirms that Lopes is being processed as a regular respondent in full removal proceedings, and not as an arriving alien.

50. Under INA § 236(a) and the corresponding regulation, 8 C.F.R. § 236.1(d)(1), DHS must advise such individuals of their bond eligibility and their right to seek custody redetermination before an IJ. Because DHS did not encounter Petitioner at a port of entry, did not place him in expedited removal, and did not rely on § 235(b) at the time of arrest, the border-encounter cases are irrelevant, and DHS cannot retroactively reclassify him to avoid its obligations under § 236(a).

51. DHS, ICE and the Attorney General have admitted that prior to July 8, 2025, § 1226(a) was the predominant form of detention authority for noncitizens arrested in the interior of the United States. Zumba v. Bondi, No. 25-14626, 2025 WL 2753496, at *4 (D.N.J. Sept. 26, 2025) ("Respondents readily admit that if petitioner had been arrested on the basis of his inadmissibility prior to July 8, 2025, he would have been discretionarily detained under 8 U.S.C. § 1226(a) and eligible for a bond hearing.").

52. On July 8, 2025, however, an internal memorandum from DHS to all ICE employees declared that, effective immediately, individuals present in the United States without admission or parole are to be treated as "applicants for admission" subject to mandatory detention under § 1225(b)(2), rather than discretionary detention under § 1226(a). *See* ICE Memo*: Interim Guidance Regarding Detention Authority for Applicants for Admission*, AILA Doc. No. 25071607 (July 8, 2025), https://perma.cc/5GKM-JYGX. The ICE Memo represents a drastic change from decades of preexisting law and practice.

53. The ICE Memo further provides that "[t]hese aliens are also ineligible for a custody redetermination hearing (bond hearing) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that 'arriving aliens' have historically been treated." Id. Thus, ICE has effectively declared ***ipse dixit*** that its own officers' § 236(a) custody determinations—including Lopes's 2013 Order of Release—are nullified retroactively.

54. The ICE Memo is not merely a restatement of existing law; it is a substantive redefinition of statutory terms. Such an overreaching change to the scope of detention authority under § 1225(b)(2) constitutes a legislative rule requiring notice-and-comment procedures under 5 U.S.C. § 553. Because DHS issued the ICE Memo without engaging in any APA-compliant rulemaking, it lacks legal force and cannot override the statutory limits Congress established in § 236(a).

55. The July 8 policy also reflects a deliberate attempt to transform discretionary detention into mandatory detention by administrative fiat. By directing officers to default to § 1225(b)(2), the ICE Memo eliminates access to bond hearings for individuals whom Congress intended to be eligible for such hearings. Courts have repeatedly condemned such manipulation of classification authority to avoid judicial review and expand detention power beyond statutory limits.

56. In Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA Sept. 5, 2025), the BIA reinforced the policy change effectuated by the ICE Memo, holding that all noncitizens who are present in the United States without admission must be deemed "applicants for admission" as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and therefore must be detained for the duration of their removal proceedings.

57. A federal district court owes no deference to an agency interpretation which conflicts with a statute's unambiguous text. Loper Bright Enters. v. Raimondo, 603 U.S. 369, 400-401 (2024) (observing that while "agencies have no special competence in resolving statutory ambiguities," "[c]ourts do"). *See also*, Zumba, *supra*,

at *9 ("[T]his Court need not defer to ... Hurtado, and its newly-minted interpretation of § 1225(b)(2)(A)"); Chang Barrios v. Hepley, No. 25-406, 2025 WL 2772579, at *9 (D. Me. Sept. 29, 2025); Salcedo Aceros v. Kaiser, No. 25-06924, 2025 WL 2637503, at *9 (N.D. Cal. Sept. 12, 2025).

58. In fact, innumerable federal district courts nationwide—including multiple decisions in the Middle and Southern Districts of Florida—have clarified that, despite the ICE Memo and the Hurtado decision, long-term EWIs arrested inside the United States are detained under INA § 236(a), not § 235(b). Uniformly declining to defer to Hurtado in light of Loper Bright and stressing that district courts must exercise independent judgment and cannot simply accept agency expansion of § 1225(b)(2), these courts hold that individuals already living in the United States are "already in the United States" for Jennings purposes and are therefore entitled to custody review under § 236(a), and not subject to mandatory detention as "arriving aliens." *See, e.g.*, Vasquez Carcamo v. Noem, No. 2:25-cv-00922-SPC-NPM, 2025 WL 3119263 (M.D.Fla. Nov. 7, 2025) (collecting cases); Hinojosa Garcia v. Noem, No. 2:25-cv-00879-SPC-NPM, 2025 WL 3041895 (M.D.Fla. Oct. 31, 2025); Puga v. Ass't Field Office Director, Krome North Service Processing Center, No. 25-24535-CIV-Altonaga, 2025 WL 2938369 (S.D.Fla. Oct. 15, 2025); Duvallon Boffill v. Field Office Director, Miami Field Office, U.S. Immigration and Customs Enforcement, 2025 WL 3246868 (S.D.Fla. Nov. 20, 2025); Merino v. Ripa, No. 1:25-cv-24535-CIV-Altonaga (S.D.Fla. Oct. 15, 2025); Lopez v. Hardin, No. 25-cv-830, 2025 WL 2732717 (M.D.Fla. Sept. 25, 2025) ("every court to address the question presented here has

found that an alien who is not presently seeking admission and has been in the United States for an extend time is appropriately classified under § 1226(a) and not § 1225(b)(2)."). These courts consistently found that the ICE Memo and *Yajure Hurtado* contradict the statutory structure Congress enacted.

59. A reading of § 1225(b)(2) which treats all EWIs as § 1225(b)(2) "applicants for admission" is patently unlawful to the extent that it would render 8 U.S.C. § 1226(c), *Detention of Criminal Aliens*, superfluous and rewrite Congress's detention scheme. Oliveira Gomes v. Hyde, No. 1:25-cv-121571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025).

60. Similarly, in January 2025, the Laken Riley Act, Pub. L. No. 119-1, sec. 2, 139 Stat. 3 (2025), added section 1226(c)(1)(E) to 8 U.S.C. § 1226. That section mandates detention for noncitizens who (i) are inadmissible, *inter alia* under 1182(a)(6)(A) (noncitizens present in the United States without being admitted or paroled, like Lopes), and (ii) have been charged with, arrested for, or convicted of acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer, or any crime that results in death or serious bodily injury to another. Congress would have no reason to enact § 1226(c)(1)(E) if indeed the mandatory detention provisions of § 1225(b)(2) were intended to apply to all noncitizens present in the United States who have not been admitted. Puga, *supra,* at *5.

**B. The *Maldonado Bautista* decision mandates a bond hearing for Lopes.**

61. As noted above, Petitioner is a member of the Bond Eligible Class certified in Maldonado Bautista v. Santacruz, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.). On November 20 and 25, 2025, the district court issued a binding declaratory judgment holding that individuals who, like Petitioner, entered without inspection and were not apprehended upon arrival are detained under § 1226(a) as a matter of law. The judgment—extended expressly to the entire nationwide class—carries the full force and effect of a final judgment under 28 U.S.C. § 2201(a). The immigration court's refusal to comply with this judgment is itself an independent constitutional violation necessitating habeas relief.

## CLAIMS FOR RELIEF

### COUNT I
### Violation of 8 U.S.C. § 1226

62. Petitioner realleges paragraphs 1 through 61 as if fully set forth herein.

63. Petitioner's continued detention without a bond hearing violates 8 U.S.C. § 1226 (INA § 236), because Petitioner was residing in the United States for more than twenty years prior to his being placed in removal proceedings. As such, Respondents have unlawfully applied the mandatory detention provision of 8 U.S.C. 1225(b)(2) to Petitioner.

64. At all times material, Respondents have proceeded under 8 U.S.C. § 1226 in their encounters with Petitioner. This is clearly reflected in the Form I-213, *Record of Deportable/Inadmissible Alien*. *See* Ex. 2. It is indisputable that on the face of the I-213, Petitioner has been charged as an individual "present in the United States without

being admitted or paroled." Ex. 2. This classification places Petitioner squarely within section 1226. Pizarro Reyes v. Raycraft, No. 25-cv-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025) (ICE's selection of "present" rather than "arriving" on the NTA is evidence that § 1226 applied); Hyppolite v. Noem, No.25-4304, 2025 WL 2829511, at *8 (same); Perez v. Berg, No. 25-cv-494, 2025 WL 2531566, at *2 (D. Neb. July 24, 2025) (same).

65. By charging Petitioner under § 212(a)(6)(A)(i), DHS placed him squarely within regular removal proceedings under INA § 240—not as an "arriving alien" subject to detention under § 235(b).

66. Respondents' decision to classify Petitioner under § 235(b)(2) is not the product of any statutory requirement but instead results from the ICE Memo's direction of officers to treat all individuals present without admission as "applicants for admission" subject to mandatory detention. The ICE Memo unlawfully collapses the statutory distinction between §§ 235 and 236, retroactively nullifies prior § 236(a) custody classifications, and has been rejected by virtually every district court to address it in the context of long-term interior residents. ICE may not expand Congress's mandatory-detention scheme by administrative fiat.

67. Form I-286, Notice of Custody Determination, is the form DHS uses to notify a detained noncitizen of how DHS is classifying the detention and whether DHS is setting bond, denying bond, or asserting mandatory detention. It is the mechanism by which the immigration officer complies with 8 C.F.R. § 1236.1(d)(1), which requires that the detainee be informed of the custody determination and the right to

review by an IJ. That requirement was triggered the moment DHS charged Petitioner under § 212(a)(6)(A)(i) and not as an "arriving alien" subject to § 235(b). Yet instead of issuing the mandatory Form I-286 and notifying Petitioner of his right to seek custody redetermination before an Immigration Judge, the Form I-213 states only that "[t]he subject will be held in ICE custody pending removal proceedings," thereby substituting a unilateral detention directive for the very notice and process that the statutory and regulatory scheme require.

68. Respondents' refusal or failure to provide Petitioner with a Form I-286 deprives Petitioner of the procedural protections guaranteed by the regulations and renders DHS's continued detention arbitrary, unreviewable, and unlawful. *See* United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 268 (1954) (the agency must abide by its own regulations).

69. In view of the foregoing, by subjecting Petitioner to the mandatory detention provision of § 1225(b), Respondents are violating 8 U.S.C. § 1226. Petitioner's detention is rightfully governed by the discretionary detention provisions of § 1226, and, as such, Petitioner is entitled to an individualized bond hearing before an Immigration Judge. Respondents cannot retroactively reclassify Petitioner to avoid their obligations under § 236(a).

## COUNT II
## Unlawful Detention in Willful Disregard of Binding Effect of *Maldonado Bautista* Class-Wide Declaratory Relief

70. Petitioner realleges paragraphs 1 through 61 as if fully set forth herein.

71. On November 20 and November 25, 2025, in Maldonado Bautista v. Santacruz, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.), the United States District Court for the Central District of California granted partial summary judgment and nationwide class certification as to individuals who (1) entered the United States without inspection ("**EWI**"), (2) were not apprehended at the border, and (3) were not subject to §§ 1226(c), 1225(b)(1), or 1231 at the time DHS made an initial custody determination.

72. In granting partial summary judgment, the *Maldonado Bautista* court held that DHS's nationwide policy—derived from the ICE Memo and *Matter of Yajure Hurtado*—unlawfully subjected all EWIs to mandatory detention under INA § 235(b)(2)(A). The court declared that such individuals are detained under INA § 236(a) and therefore are entitled to a bond hearing before an Immigration Judge.

73. Petitioner is a member of the nationwide Bond Eligible Class certified in *Maldonado Bautista*, as he satisfies all three of the stated criteria.

74. In a separate order, the *Maldonado Bautista* court certified the nationwide Bond Eligible Class under Rule 23(b)(2). In that order, the court expressly stated: "When 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." *See Maldonado Bautista*, Case No. 5:25-cv-01873-SSS-BFM (C.D. Cal.), Class Certification Order, (DE-82 at 14).

75. DHS's issuance of a Notice to Appear charging Petitioner under INA § 212(a)(6)(A)(i) places him squarely within § 236(a) custody—the statutory category addressed in the *Maldonado Bautista* declaratory judgment.

76. In a certified Rule 23(b)(2) class action, declaratory relief issued by the court is binding on the government with respect to the entire class. *See* California v. Yamasaki, 442 U.S. 682, 702 (1979). Accordingly, the declaratory relief granted in *Maldonado Bautista* applies nationwide to all members of the certified Bond Eligible Class, including Petitioner.

77. DHS and its components—including ICE and EOIR—are thus legally obligated to treat all class members, including Petitioner, as detained under INA § 236(a) and to provide the statutory right to an individualized bond hearing.

78. Despite this binding declaratory judgment, the IJ in Petitioner's case refused to apply *Maldonado Bautista*, asserting that the decision is not "final" or "binding" absent entry of a separate Rule 54(b) judgment. This interpretation is legally erroneous. *See* 28 U.S.C. § 2201(a) ("Any such declaration shall have the force and effect of a final judgment").

79. Rule 54(b) governs appealability, not binding effect. The IJ's refusal to apply a binding declaratory judgment issued by a federal district court violates fundamental principles of administrative law: agency adjudicators may not decline to follow controlling federal court judgments. *See* NLRB v. Ashkenazy Prop. Mgmt., 817 F.2d 74, 75–76 (9th Cir. 1987).

80. Because the declaratory judgment in *Maldonado Bautista* establishes that class members are detained under INA § 236(a), Respondents' continued detention of Petitioner under INA § 235(b)(2)(A) is contrary to law, in excess of their statutory authority and undertaken in willful defiance of a binding, nationwide declaratory judgment. *See* Zadvydas v. Davis, 533 U.S. 678, 699 (2001) (habeas relief warranted where agency detention exceeds statutory authorization).

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner, LOURIVAL DOS SANTOS LOPES, respectfully prays that this Honorable Court:

1. Assume jurisdiction over the matter;

2. Issue an Order to Show Cause ordering Respondents to show cause within 3 days stating why this Petition should not be granted;

3. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately; or in the alternative, directing Respondents to provide a bond hearing under INA § 236(a) within 48 hours; and

4. Issue a declaration pursuant to 28 U.S.C. § 2201 *et seq.*, confirming that Petitioner, as a certified class member, is entitled to all protections and benefits of the *Maldonado Bautista* declaratory judgment.

5. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law; and

6. Grant any further relief this Court deems just and proper.

## EQUAL ACCESS TO JUSTICE ACT

Lopes has retained the undersigned counsel to represent him in this matter and has agreed to pay counsel a reasonable attorney's fee, plus costs and expenses. Lopes therefore seeks an award of his attorney's fees and costs incurred in this lawsuit under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412.

Dated: December 11, 2025

Respectfully submitted,

*/s/ Howard Jerome Levine*
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**COUNSEL'S VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner as his attorney. I have discussed extensively the events described in this Petition with the Petitioner's nephew Richard Torres and I have reviewed all documentation made available to me. On the basis of those discussions and my review of the supporting documentation,

**I DECLARE UNDER PENALTY OF PERJURY** pursuant to 28 U.S.C. §1746, that the statements made and facts set forth in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

*/s/ Howard J. Levine* December 11, 2025
Howard J. Levine, Esq.