CARLOS A. GARCIA. (CA SBN314732 EOIR ID PP615207)
LAW OFFICE OF MARISOL ROGEL
2424 W. 1ST ST. #330
SANTA ANA, CA 92703
TEL: (714) 805-5676

Attorney for Petitioner

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MARCO IVAN MADRID-LEIVA Petitioner, v. **FRED FIGUEROA**, in his official capacity as Warden of Eloy Detention Center Detention Center; **JOHN CANTU**, in his official capacity as Phoenix Field Office Director, ICE Enforcement Removal Operations; **TODD LYONS**, in his official capacity as Acting Director of Immigration and Customs Enforcement; **KRISTI NOEM**, in her official capacity as Secretary of Homeland Security; and **PAMELA BONDI**, in her official capacity as Attorney General of the United States, Respondents.	Case No. _____ **PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. This is a Petition for a Writ of Habeas Corpus file on behalf of Petitioner Marco Ivan Madrid Leiva to remedy his unlawful detention. Petitioner has been residing in Los Angeles, California since 2007. On September 29, 2025, Respondent was working at

a car wash in Torrance, California when he was apprehended by immigration authorities in a widescale immigration enforcement action.

2. Petitioner is currently detained in Eloy Detention Center by U.S. Customs and Immigration Enforcement ("ICE") and is subject of a pending removal hearing.
3. Petitioner is charged with having entered the United States without inspection and being present without valid immigration documents. 8 USC § 1182(a)(6)(A)(i) §1182(a)(7)(A)(i).
4. On November 10, 2025, the Immigration Judge in Eloy, Arizona denied Petitioner's bond for lack of jurisdiction because Petitioner has entered the United States without inspection.
5. DHS filed Form I-213, Record of Deportable/Inadmissible Alien charging Petitioner as an alien present without admission or Parole under 212(a)(6)(A)(i).
6. Since July 2025, DHS has adopted a nationwide policy of applying § 1225(b)(2) to all individuals who have not been admitted into the United States, including Plaintiffs, thus rendering them ineligible for bond.
7. On November 10, 2025, the Immigration Judge found that Petitioner was not a danger to the community because he has no criminal history. The Immigration Judge also stated that Petitioner was not a flight risk and had provided evidence of an eligible sponsor. Petitioner has a ten (10) year-old U.S. citizen son, and Petitioner has no criminal history.
8. The Immigration Judge stated in his decision that if it were not for the lack of jurisdiction issue, he would have granted Petitioner's bond in the amount of $4,500.00. **Exh. A.**

9. Petitioner's denial of bond for lack of jurisdiction forces him to defend against removal while detained under punitive conditions and separated from his family.
10. Petitioner's detention on this basis violates the plain language of the INA and its implementing regulations.
11. Subparagraph 1225(b)(2)(A) applies to individuals who are apprehended on arrival in the United States. It states that an "applicant for admission" who is "seeking admission" shall be detained for a removal proceeding. *Id.* It does not apply to individuals like Petitioners who are arrested and detained by ICE after having entered and begun residing in the United States. Instead, such individuals are subject to a different statute, 8 USC § 1226(a), that allows for release on conditional parole or bond. The statute expressly applies to individuals who, like Petitioners, are charged as inadmissible for having entered the United States without inspection.
12. Consistent with the statutory framework, noncitizens who entered the United States without inspection, were not immediately apprehended pursuant to § 1225(b)(or subjected to expedited removal under § 1225(b)(1)), and are not subject to a final order of removal, are generally detained under § 1226.
13. As a result, unless Petitioner has an enumerated criminal offense subjecting him to § 1226(c), he is entitled to bond hearings under § 1226(a) before an IJ to determine whether their detention is justified by danger or flight risk.
14. The Immigration Judge at Petitioner's bond hearing already found that Petitioner has no criminal history and is not a danger or flight risk.

15. Petitioner is entitled to an individualized custody determination following apprehension by DHS and, if not released, a bond determination by the Immigration Court.

16. Petitioner respectfully requests that this Court grant him a Writ of Habeas Corpus, and order Respondents to immediately release him from custody

PARTIES

17. Petitioner, Marco Ivan Madrid Leiva, is a native and citizen of Honduras who is currently in the custody of the DHS in Eloy, Arizona.

18. Respondent Pamela Bondi is the Attorney General of the United States and is the most senior official in the United States Department of Justice ("DOJ"). She has the authority to interpret the immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the Board of Immigration Appeals ("BIA"). She is named as a party in her official capacity.

19. Respondent, Kristi Noem, is the Secretary of the DHS and she has authority over the detention and departure of noncitizens, like Petitioner, because she administers and enforces immigration laws pursuant to section 402 of the Homeland Security Act of 2002. In this role, Respondent Noem has "control direction, and supervision" of all employees of DHS, including Respondent Cantu. See U.S.C. § 1003(a)(2). Ms. Noem, is named as a party in her official capacity.

20. Respondent John E. Cantu, is the Phoenix Filed Office Director for ICE/ERO, which

has administrative jurisdiction over Petitioner's case. As such, Respondent Cantu is the federal official most directly responsible for overseeing the Eloy Detention Center. He is a legal custodian of Petitioner and is named in his official capacity.

21. Respondent Fred Figueroa is the Warden of the Eloy Detention Center, which is operated by CoreCivic and contracted by DHS. As such, he is the immediate physical custodian of Petitioner and he is named in his official capacity.

FACTUAL ALLEGATIONS

22. Petitioner is a fifty-one (51) year-old male and citizen of Honduras. He has resided continuously in the United States since 2007. Petitioner has ten (10) year-old U.S. Citizen son, Jacob Kaleb Madrid Erazo. **Exh. B.** Petitioner's U.S. citizen son is suffering from anxiety and depression as a result of Petitioner's detention. **Exh. C.**
23. Petitioner has no criminal history or arrests in the United States or abroad.
24. Petitioner entered the United States in 2007 without inspection and has remained in the United States for eighteen years. Petitioner has no previous contact with immigration authorities.
25. Petitioner has deep ties to the Los Angeles, California areas, as he has worked at the same car wash company, Madrona Car Wash, Inc since 2012. As support letters from his submission in support of bond attest, he is a ward worker who is loving, respectful, and missed dearly by his family.
26. On September 29, 2025, Respondent was working at Madrona Car Wash, Inc. in Torrance, California when ICE agents took him into custody.

27. Petitioner is now detained at the Eloy Detention Center, over 400 miles away from his family who are unable to visit him while in custody.

28. DHS placed Petitioner in removal proceedings before the Eloy Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged him with, *inter alia*, being inadmissible under 8 USC § 1182(a)(6)(A)(i) as someone who allegedly entered the United States without inspection.

29. On November 10, 2025, an Eloy Immigration Judge issued a decision that the immigration court lacked jurisdiction to conduct a bond redetermination hearing because Petitioner is subject to mandatory detention under 8 USC § 1125(b)(2)(A).

30. As a result, Petitioner remains in detention where he will be applying for cancellation of removal for non-permanent residents (42B). Without relief from this Court, Petitioner faces the prospect of months, or even years, in immigration custody, separated from his family and community.

JURISDICTION

31. Petitioner is in the physical custody of Respondents and Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security (DHS). He is detained at the Eloy Detention Center in Eloy, Arizona and is under the direct control of Respondents and their agents.

32. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

33. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

34. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writes Act, 28 U.S.C. § 1651.

35. Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§ 1252(b)(9), (f)(1), or 1226(e). Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v Rodriguez*, 138 S. Ct. 830, 839-41 (2018) (holding that 8 U.S.C. §§ 1252(b)(9) and 1226(e) do not bar review of challenges to prolonged immigration detention).

VENUE

36. Venue is properly with the U.S. District Court for the District of Arizona pursuant to 28 USC § 1391(e) because Petitioner is detained at Eloy Detention Center in Eloy, Arizona, which is within the geographical jurisdiction of the U.S. District Court for the District of Arizona, and because the events or omissions giving rise to this claim occurred in this District. Further, this is a civil action in which the Respondents are employees or officers of the United States or, as in the case of Respondent Figueroa, contracted by the United States.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

37. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." Id. (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)).

38. Here, Petitioner argues that he has exhausted his administrative remedies, and any further requests for parole or reconsideration would be futile. Moreover, an immigration judge denied Petitioner bond on November 10, 2025, for lack of jurisdiction. Therefore, Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.

LEGAL FRAMEWORK

39. A writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art. I, § 9, cl. 2). "The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). "Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions." 28 U.S.C. §

2241(a). The petitioner bears the burden of demonstrating that "[h]e is in custody in violation of the Constitution or laws or treaties of the United States." *Id.* § 2241(c)(3).

Due Process Clause

40. The Due Process Clause of the Fifth Amendment provides Petitioner with important The Due Process Clause of the Fifth Amendment provides Petitioner with important protections regarding his detention. As the Supreme Court has explained, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint— lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

41. The INA envisions three basic forms of detention for noncitizens in removal proceedings. First is detention for noncitizens in regular, non-expedited removal proceedings. *See* 8 U.S.C. § 1226(a), (c). Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, while noncitizens who have committed certain crimes are subject to mandatory detention. *See id.* § 1226(c).

42. The INA also provides for mandatory detention for noncitizens in expedited removal proceedings, 8 U.S.C. § 1225(b)(1), and detention for noncitizens whose immigration cases are completed, id. § 1231(a)(6). *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111-13 (W.D. Wash. 2019) (providing overview of INA's detention authorities).

43. Since the Supreme Court's *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) decision, the Ninth Circuit has expressed "grave doubt" that "any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of

liberty would have thought so." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

44. To guarantee against such arbitrary detention and to guarantee the right to liberty, due process requires "adequate procedural protections" that ensure the government's asserted justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

45. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id.; Demore*, 538 U.S. 510, 522, 528 (2003). The government may not detain a noncitizen based on any other justification.

46. As a result, where the government detains a noncitizen for a prolonged period or where the noncitizen pursues a substantial defense to removal or claim to relief, due process requires an individualized hearing before a neutral decisionmaker to determine whether detention remains reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (stating that an "individualized determination as to [a noncitizen's] risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); cf. *Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249- 50 (1972) (noting that "lesser safeguards may be appropriate" for "short-term confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment context, that

"the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards").

47. Courts have found that automatic detention pending appeal "after a judicial officer has determined that release [] is appropriate," where the government has made no "showing of dangerousness or flight risk," "renders the continued detention arbitrary" and "raises a substantial Fifth Amendment claim." *Mohammed H. v. Trump*, 781 F. Supp. 3d 886, 895 (D. Minn. 2025). Whilst this case is in the context of the automated stay of bond on appeal, the same reasoning applies here: "... no special justification exists that outweighs the individual's constitutionally protected interest in avoiding physical restraint . . ." *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1077 (N.D. Cal. 2004).

48. Courts that apply a reasonableness test have considered three main factors in determining whether prolonged detention is reasonable. First, courts have evaluated whether the noncitizen has raised a "good faith" challenge to removal—that is, the challenge is "legitimately raised" and presents "real issues." *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015). Second, reasonableness is a "function of the length of the detention," with detention presumptively unreasonable if it lasts six months to a year. *Id.* at 477-78; *accord Sopo*, 825 F.3d at 1217-18. Third, courts consider the likelihood that detention will continue pending future proceedings. *Chavez-Alvarez*, 783 F.3d at 478 (finding detention unreasonable after ninth months of detention, when the parties could "have reasonably predicted that Chavez-Alvarez's appeal would take a substantial amount of time, making his

already lengthy detention considerably longer"); *Sopo*, 825 F.3d at 128; *Reid*, 819 F.3d at 500.

49. Due process also requires certain minimal procedures at bond hearings. First, the To justify immigration detention, the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). The same is true for other contexts in which the Supreme Court has permitted civil detention; in those cases, the Court has relied on the fact that the government bore the burden of proof at least by clear and convincing evidence. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention where the detainee was afforded a "full-blown adversary hearing," requiring "clear and convincing evidence" before a "neutral decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody government must bear the burden of proof by clear and convincing evidence to justify continued detention. Second, the decisionmaker must consider available alternatives to detention. Finally, if the government cannot meet its burden, a decisionmaker must assess a noncitizen's ability to pay a bond when determining the appropriate conditions of release.

50. To justify immigration detention, the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). The same is true for other contexts in which the Supreme Court has permitted civil detention; in those cases, the Court has relied on the fact that the government bore the burden of proof at least by clear and

convincing evidence. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention where the detainee was afforded a "full-blown adversary hearing," requiring "clear and convincing evidence" before a "neutral decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody review procedures deficient because, *inter alia*, they placed burden on detainee); see also *Padilla v. Immigration & Customs Enf't*, 379 F. Supp. 3d 1170 (W.D. Wash. 2019) (requiring the government to bear the burden of proof for class members who receive bond hearings after being found to have a credible fear of persecution or torture); *Banda v. McAleenan*, 385 F. Supp. 3d 1120-21 (in case of arriving asylum seeker, government must bear burden of proof to justify continued detention after noncitizen had been detained for more than 18 months).

51. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

52. First, incarceration deprives noncitizens of a "profound" liberty interest—one that always requires some form of procedural protections. *Diouf*, 634 F.3d at 1091- 92; *see also Foucha*, 504 U.S. at 80 ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)).

53. Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and frequently lack

English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 762-63 (1982) (requiring clear and convincing evidence at parental termination proceedings because "numerous factors combine to magnify the risk of erroneous factfinding" including that "parents subject to termination proceedings are often poor, uneducated, or members of minority groups" and "[t]he State's attorney usually will be expert on the issues contested"). Moreover, Respondents detain noncitizens in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing. *See infra* ¶ 66.

54. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen's immigration records and other information that it can use to make its case for continued detention.

55. In light of these considerations, "[t]he overwhelming majority of courts to consider the question . . . have concluded that imposing a clear and convincing standard would be most consistent with due process." *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted).

56. Under the three-part test of *Mathews*, 424 U.S., the balance overwhelmingly favors Petitioner. Her interest in liberty and family unity is paramount; the Government's blanket detention policy under *Yajure Hurtado* creates an extreme risk of erroneous deprivation by denying her any opportunity to demonstrate eligibility for release; and the Government's interest in ensuring appearance can be served by far less restrictive means. Accordingly, due process requires an individualized bond hearing under § 1226(a).

57. Due process also requires that a neutral decisionmaker consider available alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE's alternatives to detention program—the Intensive Supervision Appearance Program (ISAP)—has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings"). It follows that alternatives to detention must be considered in determining whether prolonged incarceration is warranted.

58. Due process likewise requires consideration of a noncitizen's ability to pay a bond. "Detention of an indigent 'for inability to post money bail' is impermissible if the individual's 'appearance at trial could reasonably be assured by one of the alternate forms of release.'" *Id.* at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)). As a result, in determining the appropriate conditions of release for immigration detainees, due process requires "consideration of financial circumstances and alternative conditions of release" to prevent against detention based on poverty. *Id.*

59. Evidence about immigration detention and the adjudication of removal cases provide further support for the due process right to a bond hearing in cases of prolonged detention.

60. Immigration detainees face severe hardships while incarcerated. Immigration detainees are held in lock-down facilities, with limited freedom of movement and access to their families: "the circumstances of their detention are similar, so far as we can tell, to those in many prisons and jails." *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); *accord Chavez-Alvarez*, 783 F.3d at 478; *Ngo v. INS*, 192 F.3d 390, 397-98 (3d Cir. 1999); *Sopo*, 825 F.3d at 1218, 1221. "And in some cases[,] the conditions of their confinement are inappropriately poor." *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting) (citing Dept. of Homeland Security (DHS), Office of Inspector General (OIG), DHS OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE Detention Facilities (2017) (reporting instances of invasive procedures, substandard care, and mistreatment, e.g., indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case of one detainee, a multiday lock down for sharing a cup of coffee with another detainee)).

61. These conditions and obstacles only further underscore the serious due process concerns that prolonged immigration detention pose for noncitizens like the Petitioner and reflect the need for a decision before a neutral decisionmaker regarding continued detention.

62. Here, the Respondents can neither show that the continued detention of petitioner following her detention is reasonably related to the original purpose and the *Mathews* tests are satisfied. Similarly, no procedural safeguards are offered to those who remain in custody pending an appeal of a decision on termination of removal proceedings.

8 USC 1225 v 1226

63. Full removal proceedings under 8 U.S.C. § 1229a are "the standard mechanism for removing inadmissible noncitizens." *Make the Rd. N.Y. v. Noem*, No. 25-cv-190 (JMC), 2025 WL 2494908, at *2 (D.D.C. Aug. 29, 2025); *see also Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 108 (2020)* ("The usual removal process involves an evidentiary hearing before an immigration judge, and at that hearing an alien may attempt to show that he or she should not be removed."). These proceedings are initiated by serving the noncitizen with a Form I-862 "notice to appear" in immigration court. 8 U.S.C. § 1229(a)(1).

64. Full removal proceedings "take place before an [immigration judge ("IJ")], an employee of the Department of Justice (DOJ) who must be a licensed attorney and has a duty to develop the record in cases before them." *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-cv-872 (JMC), —— F.Supp.3d —— ,——, 2025 WL 2192986, at *3 (D.D.C. Aug. 1, 2025) (citing 8 U.S.C. § 1229a(a)(1), (b)(1)).

65. In full removal proceedings, noncitizens have rights to hire counsel, to a reasonable opportunity to examine evidence against them, to present evidence on their own behalf, and to cross-examine any government witnesses. 8 U.S.C. § 1229a(b)(4)(A)–(B). "[D]ue to the built in procedures," full removal proceedings "typically take[ ] place over the course of multiple hearings," which "allows time for noncitizens to both gather evidence in support of petitions for relief available in immigration court ... and seek collateral relief from other components of [the Department of Homeland Security ("DHS")]." *Coal. for Humane Immigrant Rts.*, —— F.Supp.3d at ——, 2025 WL 2192986, at *3.

66. Accordingly, "[w]hen a person is apprehended under § 1226(a), an ICE officer makes the initial custody determination." *Rodriguez Diaz v. Garland,* 53 F.4th 1189, 1196 (9th Cir. 2022) (citing 8 C.F.R. § 236.1(c)(8)). If the detainee disagrees with the officer's determination, they "may request a bond hearing before an IJ at any time before a removal order becomes final." *Id.* at 1197 (citing 8 C.F.R. §§ 236.1(d)(1), 1003.19). The procedural posture progresses and the detainee must then "establish to the satisfaction of the Immigration Judge . . . that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight." *Hernandez v. Sessions*, 872 F.3d 976, 982 (9th Cir. 2017) (quoting *In re Guerra*, 24 I. & N. Dec. 37, 38 (B.I.A. 2006)). Appeal on an adverse decision is available with the BIA. *Id.* at 983 (citing § 236.1(d)(3)).

67. By contrast, expedited removal proceedings are a "more streamlined ... form of proceeding applicable only to certain noncitizens," whereby removal orders are "usually issued within a few days, if not hours." *Id.* (citation omitted). In expedited removal proceedings, the initial fact finder is an immigration officer, not an IJ. 8 C.F.R. § 235.3(b)(2)(i). The immigration officer asks the noncitizen a series of questions regarding (1) their "identity, alienage, and inadmissibility," and (2) their "intention to apply for asylum" or potential fear of persecution, torture, or return to their country. *Id.* at § 235.3(b)(2)(i), (b)(4). During this questioning, noncitizens do not have a right to counsel. *Id.* at § 235.3(b)(2)(i). If the immigration officer determines that the noncitizen is inadmissible under §1182(a)(6)(C) or 1182(a)(7), "the officer shall order the alien removed from the United States without further

hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 ... or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i).

68. 8 U.S.C. § 1225 enumerates the procedures allowing the government to detain (mandatory detention) certain "applicants for admission." Under § 1225, an "applicant for admission" is a noncitizen "present in the United States who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(1).

69. INA § 1225(b)(1) authorizes expedited removal for certain "applicants for admission" in two categories. First, noncitizens "arriving in the United States" that are determined by an immigration officer to be inadmissible due to misrepresentation or failure to meet documents requirements. *Id.* at § 1225(b)(1)(A)(i); *see also id.* at § 1182(a)(6)(C), (a)(7).

70. Second, noncitizens that (a) are inadmissible because of misrepresentation or failure to meet documents requirements; (b) have not "been admitted or paroled into the United States"; (c) have not "affirmatively shown, to the satisfaction of an immigration officer, that [they have] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility"; and (d) have been designated by the Attorney General for expedited removal. *Id.* at § 1225(b)(1)(A)(iii).

71. 8 U.S.C. § 1226 "provides the general process for arresting and detaining aliens who are present in the United States and eligible for removal." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022). The provision "distinguishes between two different categories" of noncitizens. *Jennings*, 583 U.S..

72. These two categories of noncitizens subject to § 1225(b)(1) are subject to mandatory detention "until certain proceedings have concluded." *Jennings*, 583 U.S. at 297. Individuals that fall into § 1225(b)(1) are "normally ordered removed 'without further hearing or review' pursuant to an expedited removal process" unless claiming asylum or a fear of persecution. *Jennings,* 53 U.S. at 287 (first quoting § 1225(b)(1)(A)(i); then citing § 1225(b)(1)(A)(ii)).

73. Noncitizens who are "seeking admission" and not covered by the expedited removal provisions in § 1225(b)(1) are subject to § 1225(b)(2). *See id.* At 287. This category would include, for example, noncitizens who are arriving in the United States, seek admission, and are inadmissible for some reason other than misrepresentation or failure to meet documents requirements. *See* 8 U.S.C. § 1182(a)(2)–(3). Subject to limited exceptions, the § provides that such noncitizens "shall be detained" for full removal proceedings under § 1229a "if the examining immigration officer determines" that the noncitizen "is not clearly and beyond a doubt entitled to be admitted." *Id.* at § 1225(b)(2)(A).

74. Under § 1226(a), the "default rule," *id.*, a noncitizen "may be arrested and detained" "[o]n a warrant issued by the Attorney General" if their removal proceedings are pending, 8 U.S.C. § 1226(a). Detention pursuant to § 1226(a) is not mandatory. If the noncitizen was not charged with, arrested for, or convicted of certain criminal offenses enumerated in § 1226(c), the government has discretion to release them on "bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or ... conditional parole." *Id.* at § 1226(a)(2)(A)–(B).

75. Until this year, DHS has applied § 1226(a) and its discretionary release and review of detention "to the vast majority of noncitizens allegedly in this country without valid documentation"—a practice codified by regulation. *Salcedo Aceros,* 2025 WL 2737503, at *3.

76. The Government now contends that mandatory detention under § 1225 is the appropriate detention authority for noncitizens, such as petitioner, who have not been admitted or paroled. *See Rodriguez Vasquez v. Bostock, et al.* 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025) (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)).

77. In recent weeks, several district courts have held that the Government's new, and more expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect on the basis that this reading of the statute would render 1226(c) inoperable or moot. *See*, e.g., *Rodriguez Vasquez v. Bostock, et al.* 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025).

CLAIM FOR RELIEF

COUNT I

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

78. Petitioner repeats and realleges the foregoing paragraphs as if fully set forth and incorporated herein by reference.

79. Petitioner is in custody "under or by color of the authority of the United States" and

in custody "in violation of the Constitution or laws . . . of the United States." 28 U.S.C. § 2241.

80. The Fifth Amendment's Due Process Clause provides that "[n]o person shall be ... deprived of life, liberty, or property, without due process of law." It specifically "entitles aliens to due process of law in deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993). The Supreme Court held more than a century ago that civil detention of a removable noncitizen violates the Constitution if it is punitive. *Wong Wing v. United States*, 163 U.S. 228, 237-38, 16 S. Ct. 977, 41 L. Ed. 140 (1896).

81. Noncitizens subject to civil immigration detention "cannot be subjected to conditions that 'amount to punishment.'" See *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004) (quoting *Bell v. Wolfish*, 441 U.S. 520, 535, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979)). At some point, civil detention can become punitive, resulting in a due process violation. *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021).

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

83. Nonetheless, the Eloy Immigration Court Immigration Judge has a policy and practice of applying §1225(b)(2) to the Petitioner and did so during his bond hearing.

84. The application of § 1225(b)(2) to Petitioner violates the Immigration and Nationality Act.

COUNT II

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT UNLAWFUL DENIAL OF BOND

85. Petitioner herein incorporates all allegations and facts set forth in the paragraphs above.

86. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they originally entered the United States without inspection. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

87. Nonetheless, the Eloy Immigration Court IJs have a policy and practice of applying § 1225(b)(2) to Petitioner.

88. The application of § 1225(b)(2) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT III

VIOLATION OF THE BOND REGULATIONS, 8 CFR § 236.1, 1236.1 AND 1003.19 UNLAWFUL DENIAL OF RELEASE OF BOND

89. Petitioner herein incorporates all allegations and facts set forth in the paragraphs above.

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

91. Nonetheless, DHS and the Eloy Immigration Court have adopted a policy and practice of applying § 1225(b)(2) to Petitioner.

92. 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.

COUNT IV

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT CONTRARY TO LAW AND ARBITRARY AND CAPRICIOUS AGENCY POLICY

93. Petitioners incorporate by reference the allegations of fact set forth in paragraphs 1-37 as if fully set forth herein.

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

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

96. Nonetheless, DHS and the Eloy Immigration Court Immigration Judge have adopted a policy and practice of applying § 1225(b)(2) to Petitioner.

97. Defendants have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies' policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

98. The application of § 1225(b)(2) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

99. Assume jurisdiction over this matter;

100. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.

101. Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;

102. Issue a Writ of Habeas Corpus ordering the Respondents to release Petitioner from custody; hold a hearing if warranted; determine that Mr. Madrid Leiva's detention is not justified because the government has not established by clear and convincing evidence that he presents a risk of flight or a danger to the community in light of the available alternatives;

103. Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;

104. Declare that Mr. Madrid Leiva's continued detention is unconstitutional and unlawful, as it is not reasonably related to any valid purpose of immigration detention and violates the Fifth Amendment guarantee of due process;

105. Declare that Respondents' conduct violates the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706, as arbitrary, capricious, and not in accordance with law;

106. In the alternative, should the Court determine that immediate release is not warranted, order Respondents to provide Mr. Madrid Leiva's an individualized bond hearing before an impartial immigration judge within 14 days, at which the

government bears the burden to justify continued detention by clear and convincing evidence;

107. Award reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act,28 U.S.C. § 2412, and any other applicable authority; and

108. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Carlos A. Garcia, Esq. (CA SBN 314732)
Law Office of Marisol Rogel, P.C.
2424 W. 1st St. #330
Santa Ana, CA 92703
Telephone: (714) 805-6075
E-mail: Marisol@Rogellawoffice.com

Counsel for Petitioner

Dated: December 10, 2025