**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF GEORGIA**
**VALDOSTA DIVISION**

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| DONALD ESTUARDO BRAVO CABRERA, A# [redacted]<br><br>Petitioner,<br><br>vs.<br><br>SHERIFF CODY YOUGHN, *in his official capacity as Warden of the Irwin County Detention Center*; and LADEON FRANCIS, *Field Office Director for ICE Atlanta Field Office*, and TODD LYONS, in his official capacity as *Acting Director of Immigration and Customs Enforcement*; and KRISTI NOEM, *Secretary of Homeland Security*; and PAMELA BONDI, *U.S. Attorney General.*<br><br>Respondents. | ) | CASE NO.: 7:25-cv-198 |

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

**AND COMPLAINT FOR DECLARATIVE AND INJUNCTIVE RELIEF**

## I. INTRODUCTION

1. This Petition challenges the ongoing and unlawful detention of Petitioner, Donald Estuardo Bravo Cabrera, (Petitioner), A# [redacted] by U.S. Immigration and Customs Enforcement (ICE) at the Irwin Detention Center, Georgia. Petitioner is neither a flight risk nor a danger to the community. *See* Exhibit 1 (ICE Locator).
2. Petitioner's initial and continued detention by ICE is unlawful and unconstitutional. The government's recent policy shift—reclassifying noncitizens who entered without inspection as "arriving aliens" subject to mandatory detention under 8

U.S.C. § 1225(b)—contradicts the statute, decades of established statutory interpretation, agency regulations and practice, and binding precedent. Petitioner, apprehended in the interior years after entry, is entitled to discretionary bond hearings under 8 U.S.C. § 1226(a), not mandatory detention without judicial review. *See* Exhibit 2 current list of over 240 district courts from around the country agreeing with Petitioner, all rejecting Respondent's position. See also the landmark case from this Court rejecting the government's position and agreeing with Petitioner's that he is entitled to a bond hearing, *J.A.M. v. Streeval*, No. 4:25-cv-342 (CDL), 2025 WL 3050094 (MDGA, Nov. 1, 2025). Since habeas relief is individualized and cannot be brought as a class action, each case has to be litigated separately.

3. On December 8th, 2025, Petitioner was stopped by local law enforcement while driving to work without any observed traffic violation or articulable suspicion of criminal activity. Officers reportedly justified the stop solely based on Petitioner "looking Hispanic." There was no warrant for their arrest no probable cause. Such conduct constitutes an unconstitutional seizure under the Fourth Amendment, as race or ethnicity cannot serve as a lawful basis for a traffic stop or investigatory detention (*Whren v. United States*, 517 U.S. 806 (1996)). Any subsequent transfer to ICE custody is tainted by this initial illegality, rendering Petitioner's current detention unlawful and the only appropriate remedy is immediate release.
4. Despite being apprehended within the interior of the United States long after arrival rather than at the border, Petitioner is now deemed ineligible for bond due to his entry without inspection. This stems from a controversial policy shift by ICE in

July 2025, which aligns with a recent Board of Immigration Appeals (BIA) decision. This decision disrupts decades of established legal precedent by introducing a novel interpretation of the Immigration and Nationality Act (INA). This interpretation, which contradicts both the statute's clear language and constitutional principles, reclassifies all noncitizens who entered without inspection, including the Petitioner, as "arriving aliens" or "applicants for admission." Consequently, they are subject to mandatory detention under 8 U.S.C. § 1225(b), rendering them ineligible for bond hearings by immigration judges.

5. While § 1225 mandates detention without bond for noncitizens apprehended at the border as "seeking admission," it does not apply to those like the Petitioner, who were detained within the United States long after arrival here. Therefore, the Petitioner seeks a declaratory judgment from this Court affirming that his detention should be under 8 U.S.C. § 1226(a). Additionally, the Petitioner requests that Respondents be prohibited from re-detaining him or put any restraints on his liberty unless they can meet the same evidentiary standard.

6. Respondent's actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution by depriving Petitioner of liberty without individualized assessment or a meaningful opportunity to be heard before a neutral decisionmaker. The agencies' interpretation also contravenes the INA and its implementing regulations, the Administrative Procedure Act (APA), and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions. Numerous federal courts have rejected the government's novel reading of the detention statutes, reaffirming that interior apprehensions are

governed by § 1226(a) and entitled to bond review.

7. Petitioner seeks immediate habeas, declaratory, and injunctive relief, ordering Respondents to be directed to immediately release Petitioner from custody. A detailed statement of facts and procedural history follows, supporting Petitioner's claims for relief.

## II. JURISDICTION

8. This Court has jurisdiction under several legal provisions, including 28 U.S.C. § 2241, which grants federal courts the authority to issue writs of habeas corpus, and 28 U.S.C. § 1331, which provides for federal question jurisdiction. Jurisdiction over habeas claims is conferred by 28 U.S.C. § 2241, while non-habeas claims for declaratory and injunctive relief arise under 28 U.S.C. § 1331, the APA, and the Declaratory Judgment Act.

9. Additionally, jurisdiction is supported by Article I, § 9, cl. 2 of the Constitution, known as the Suspension Clause, and Article III, Section 2, which addresses the Court's authority to hear constitutional issues raised by the Petitioner. The Petitioner seeks immediate judicial intervention to address ongoing violations of constitutional rights by the Respondents. This action is grounded in the United States Constitution, the Immigration & Nationality Act of 1952, as amended (INA), 8 U.S.C. § 1101 *et seq*., and the APA, 5 U.S.C. § 551 *et seq*. Furthermore, the Court may also exercise jurisdiction under 28 U.S.C. § 1331, as the action arises under federal law, and 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.

10. The Court has authority to issue a declaratory judgement and to grant temporary,

preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure (FRCP), as well as 28 U.S.C. §§ 2201-2202. Additionally, the Court can utilize the All Writs Act and its inherent equitable powers to provide such relief. Furthermore, the Court has the authority to issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

11. This Court possesses federal question jurisdiction under the APA to "hold unlawful and set aside agency action" deemed "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," as outlined in 5 U.S.C. § 706(2)(A). In the absence of a specific statutory review process, APA review of final agency actions can proceed through "any applicable form of legal action," which includes actions for declaratory judgments, writs of prohibitory or mandatory injunction, or habeas corpus, in a court of competent jurisdiction, as specified in 5 U.S.C. § 703.

12. In *I.N.S. v. St. Cyr*, the Supreme Court held that federal courts retain *habeas corpus* jurisdiction under 28 USC § 2241, despite restrictions on judicial review enacted under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). 533 U.S. 289 (2001). Consequently, section 2241 habeas review remains available to Petitioner.

13. The U.S. Supreme Court has recognized district courts' jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law. Even though the government may detain individuals during removal proceedings, *Denmore v. Kim*, 538 U.S. 510, (2003), (although that

case involved detention under §1226(c) of certain criminal aliens) there are limitations to this power of the executive branch. Limitations like the Due Process Clause restrict the Government's power to detain noncitizens. It is well settled that individuals in deportation proceedings are entitled to due process of law under the Fifth Amendment. *Reno v. Flores*, 507 U.S. 292, 306, (1993). Courts must review immigration procedures and ensure that they comport with the Constitution.

14. Federal courts have retained the statutory authority to grant writs of habeas corpus since enactment of the Judiciary Act of 1789. In *Felker v. Turpin*, 518 U.S. 651 (1996), the Supreme Court declined to find a repeal of § 2241 by implication as to its original habeas corpus jurisdiction. See also *Boumediene v. Bush,* 553 U.S. 723 (2008). In addition to the Supreme Court in many cases, all Circuit Courts of Appeals have recognized district courts' jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law.

15. In this case, Petitioner asserts substantial constitutional violations—including deprivation of liberty without due process, arbitrary and capricious agency action, violations of the *Accardi* doctrine, and other injuries without notice or opportunity to be heard. These claims fall squarely within the scope of habeas review preserved by statute and recognized by controlling precedent. Accordingly, this Court has both the authority and the obligation to adjudicate the constitutional and statutory claims presented in this Petition and to grant appropriate relief to remedy ongoing violations of Petitioner's rights.

16. Petitioner's claims challenge only his civil immigration detention and the procedures used to prolong it—not the merits of removability or any final order of removal—and therefore fall outside 8 U.S.C. § 1252(b)(9)'s channeling provision. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (detention challenges are not "questions of law or fact arising from" removal proceedings). Consistent with that framing, any injunctive relief sought here is strictly as-applied to Petitioner—for example, directing Petitioner's release under § 1226(a) or barring application of § 1225 as to Petitioner —and does not "enjoin or restrain the operation" of any statute within § 1252(f)(1)'s bar. In any event, § 1252(f)(1) permits individualized, as-applied relief for a single noncitizen, even while prohibiting class-wide injunctions. *See Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–49 (2022).

17. Section 1252(f)(1) does not bar the individualized injunctive relief sought here. That provision limits lower courts' authority to "enjoin or restrain the operation" of the INA's detention and removal provisions on a class-wide or programmatic basis but expressly preserves injunctive relief "with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated." 8 U.S.C. § 1252(f)(1); *Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–50 (2022). Petitioner seeks only as applied relief tailored to Petitioner —e.g., directing Petitioner's release under § 1226(a) or precluding DHS from enforcing the "arriving alien" definition of § 1225 toward Petitioner. That relief neither halts the general operation of any INA provision nor provides class-wide relief and thus falls squarely within § 1252(f)(1)'s carveout.

18. Section 1252(g) is likewise inapplicable. It is a "narrow" jurisdictional bar that

applies only to three discrete decisions or actions: "to commence proceedings, adjudicate cases, or execute removal orders." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Petitioner does not challenge any such decision. Petitioner challenges ongoing civil detention and DHS's use of an unlawful interpretation to nullify the plain language of the INA and its regulations as applicable to these agencies. Such detention related claims and challenges to custody procedures fall outside § 1252(g). *See id.* at 482–83; cf. *Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (§ 1252(b)(9) does not channel detention claims).

19. Section 1252(e)(3) is likewise inapplicable as it is narrowly tailored to channel systemic or facial challenges to the validity of the expedited removal "system" or its implementing regulations and written policies to the U.S. District Court for the District of Columbia, and only within 60 days of implementation. It does not bar as-applied, individualized habeas challenges to the legality or constitutionality of a particular noncitizen's detention under § 1225(b)(2) or whether § 1225 governs Petitioner's detention or § 1226. The text of § 1252(e)(3) is explicit: it covers "[c]hallenges on the validity of the system" and review of "whether such a regulation, or a written policy directive, written policy guideline, or written procedure ... is not consistent with applicable provisions of this title or is otherwise in violation of law." It does not preclude review of the legality of detention as applied to a specific individual, nor does it bar habeas review of constitutional claims or claims that the government is misapplying the statute in a particular case.
20. To prevent ouster of this Court's habeas jurisdiction, the Court should, pursuant to

28 U.S.C. § 1651(a) (All Writs Act) and 28 U.S.C. § 2241, issue an immediate limited order prohibiting Respondents from transferring Petitioner outside the court's District or otherwise changing Petitioner's immediate custodian without prior leave of Court while this action is pending. Such relief is necessary in aid of jurisdiction because habeas is governed by the district-of-confinement/immediate-custodian rule, and transfer can frustrate effective review. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441–42 (2004); *Ex parte Endo*, 323 U.S. 283, 307 (1944); *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966).

## III. VENUE

21. Venue is proper in the United States District Court for the Middle District of Georgia because Petitioner is currently detained at the Irwin Detention Center, Georgia, under the custody of the Department of Homeland Security (DHS). Respondent Sherriff Cody Youghn, as the Warden of Irwin Detention Center, is the Petitioner's immediate custodian and Respondents exercise authority over Petitioner's custody in this jurisdiction, as supported by *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). Habeas petitions generally are filed in the district court with jurisdiction over the filer's place of custody, also known as the district of confinement, pursuant to 28 U.S.C. § 2241. Additionally, with respect to Petitioner's non-habeas claims seeking prospective declaratory and injunctive relief against federal officials (agencies and officers of the United States) sued in their official capacities, venue is proper under 28 U.S.C. § 1391(e)(1)(B) because a substantial part of the events or omissions giving rise to these claims, including the initial arrest and continued detention of Petitioner and the enforcement of the

mandatory detention agency interpretation, occurred in this District. Furthermore, the Respondents are officers of United States agencies, the Petitioner resides within this District, and there is no real property involved in this action.

## IV. PARTIES

22. Petitioner Donald Estuardo Bravo Cabrera is a noncitizen who arrived in the United States a few years ago at an unknown date. He entered the country without inspection and has never been the subject of a prior removal order nor any immigration petition. He resides in Georgia and works in landscaping.

23. Respondent Sherriff Cody Youghn is the Warden of Irwin Detention Center, Georgia. As such, Respondent Sherriff Cody Youghn is responsible for the operation of the Detention Center where Petitioner is detained and is the immediate custodian who is currently holding Petitioner in physical custody. Because ICE contracts with private and county-operated detention facilities to house immigration detainees, Respondent Sherriff Cody Youghn has immediate physical custody of the Petitioner and is sued in his official capacity.

24. Respondent Ladeon Francis is the Field Office Director for the ICE Atlanta Field Office. As such, Respondent Francis is responsible for the oversight of ICE operations at the Stewart Detention Center. Respondent Francis is being sued in his official capacity. He is the head of the ICE office that unlawfully arrested Petitioner, and such arrest took place under his direction and supervision. He is the immediate *legal* custodian of Petitioner.

25. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE). As such, Respondent Lyons is responsible for the oversight of

ICE operations and the head of the federal agency responsible for all immigration enforcement in the United States. Respondent Lyons is being sued in his official capacity.

26. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS). As Secretary of DHS, Secretary Noem is the cabinet-level official responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Secretary Noem is being sued in her official capacity.

27. Respondent Pamela Bondi is the Attorney General of the United States and is sued in her official capacity since U.S. government agencies are Respondents in this complaint. Furthermore, the Immigration Judges who decide removal cases and applications for bond and relief from removal do so as her designees at the Executive Office for Immigration Review (EOIR).

28. Petitioner names certain federal officials in their official capacities solely to preserve alternative, non-habeas avenues for prospective relief—such as as-applied declaratory and injunctive orders under 28 U.S.C. § 1331, the APA's waiver of sovereign immunity, 5 U.S.C. § 702, the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, and the All Writs Act, 28 U.S.C. § 1651—necessary to enjoin enforcement of DHS regulations and their interpretation as applied to Petitioner, ensure compliance with DHS/EOIR custody regulations, prevent transfer or removal of Petitioner, and effectuate any release the Court orders at the agency level where policy and implementation authority reside. See, e.g., *Larson v.*

*Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949); *Dugan v. Rank*, 372 U.S. 609 (1963).

29. Petitioner acknowledges, consistent with *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that the proper respondent to the habeas claim is the immediate custodian, and does not rely on the federal officials as "habeas respondents." Rather, Petitioner names these federal officials in their official capacities solely to ensure that the Court can issue effective relief on non-habeas claims, such as declaratory and injunctive relief, and to direct agency action to those with actual authority to implement it. Should the Court find these officials improper as respondents to the habeas count, Petitioner respectfully requests that any dismissal be limited to that claim and without prejudice to their continued status as respondents for the non-habeas claims. Maintaining these officials as parties is necessary to ensure that, if relief is granted, the responsible agency officials cannot simply re-arrest Petitioner or otherwise frustrate the Court's order by invoking their erroneous interpretation of the INA. This approach is consistent with Padilla and ensures that the Court's orders are both effective and enforceable.

## V. STATEMENT OF FACTS AND PROCEDURAL HISTORY

30. Petitioner Donald Estuardo Bravo Cabrera arrived to the United States a few years ago at an unknown date. He entered the country without inspection and has never been the subject of a prior removal order nor any immigration petition. He resides in Georgia and works in landscaping. He has no criminal history.

31. Petitioner pose no danger to the community.

32. Petitioner is currently in active removal proceedings and has a scheduled Master Calendar Hearing on December 23, 2025, at 1:00 p.m. before Immigration Judge Steven B. Fuller at 146 CCA Road, P.O. Box 248, Lumpkin, Georgia 31815. This scheduled hearing confirms that Petitioner remains under the jurisdiction of the immigration court and that his case is moving forward procedurally while he remains detained in ICE custody. *See Exhibit 3 (EOIR).*

33. Petitioner was arrested in the interior of the United States several years after entry. He was IMPROPERLY detained under 8 U.S.C. § 1226(a), because their arrest was done without a warrant or probable cause. While the government may detain noncitizens it encounters in the interior of the Country under 8 U.S.C. § 1226(a), such arrest must be accompanied by a warrant. 8 U.S.C. § 1357(a)(2). Even after someone's arrest, they are eligible for a bond hearing before an Immigration Judge (IJ) or release on recognizance. Nevertheless, Respondents have classified him as an "arriving alien" and detained him under 8 U.S.C. § 1225(b)(2)—rendering him ineligible for bond under their new, unlawful policy.

34. Petitioner's arrest was executed without a warrant, probable cause, or exigent circumstances, in direct contravention of 8 U.S.C. § 1357(a)(2), which authorizes warrantless arrests for civil immigration violations **only** when there is probable cause of unlawful presence and a likelihood of escape before a warrant can be obtained. The facts alleged demonstrate that ICE officers lacked any specific, articulable suspicion linking Petitioners to criminal activity or flight risk, relying instead on generalized assumptions and impermissible factors such as ethnicity or mere presence in a surveilled location. Such conduct violates well-established

Fourth Amendment jurisprudence, which prohibits law enforcement from stopping or arresting individuals based solely on ethnicity, appearance, or location, and requires individualized suspicion for any seizure of liberty.

35. This unlawful arrest is not a mere procedural defect; it is a substantive violation that taints all subsequent detention and proceedings. The exclusionary rule and the "fruit of the poisonous tree" doctrine mandate suppression of all evidence and proceedings derived from an unconstitutional arrest, and courts have repeatedly held that subsequent issuance of a Notice to Appear or initiation of removal proceedings does not cure the original violation. The ongoing detention of Petitioner, predicated on this unlawful arrest, thus presents a new and unresolved question of law and fact that demands judicial review.

36. Petitioners' continued detention is based solely on ICE's erroneous classification of similar noncitizens as an "arriving alien" or "applicant for admission", subject to mandatory detention under 8 U.S.C. § 1225(b). Petitioners were apprehended in the interior of the United States almost years after entry, and therefore their detention should be governed by 8 U.S.C. § 1226(a), which allows for discretionary release on bond or recognizance.

37. Because all Respondent continue to treat Petitioner as detained under § 1225(b), any request for bond redetermination before an Immigration Judge would be futile, as the Immigration Court has already disclaimed jurisdiction over such requests. Accordingly, habeas relief is the only available and effective remedy to secure Petitioner's release or a lawful custody hearing.

38. Petitioner is neither a danger nor a flight risk. He has lived in the same community

for several years. Less-restrictive alternatives remain available and adequate such as release on recognizance or posting a low bond.

39. Prolonged detention under these circumstances imposes unnecessary hardship on Petitioner and his family, and violating Petitioner's right to due process and freedom from arbitrary detention.

40. As of the time of filing of this Writ of Habeas, Petitioner remains confined to the Irwing Detention Center, Georgia, solely because of ICE's invocation of its new interpretation that Petitioner is an "arriving alien" or "applicant for admission" and is therefore subject to mandatory detention. Even Petitioner were to file for a bond redetermination with the immigration judge, they would deny it pursuant to *Matter of Yajure Hurtado,* 29 I. & N. Dec. 216. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). Accordingly, it would be futile for Petitioner to request a bond for release from an Immigration Judge. Due to the binding nature of *Matter of Yajure Hurtado*, all immigration courts known to counsel are denying bond requests for similarly situated noncitizens, making habeas the only effective remedy. Similarly, even in cases an Immigration Judge would grant bond, ICE would appeal it which would leave Petitioner incarcerated through the appeal, which would take months and end up dismissed based on *Yajure Hurtado.*

## VI. EXHAUSTION OF REMEDIES

41. **No statutory exhaustion requirement applies to habeas cases,** and the recent interpretations by DHS and EOIR have effectively closed all administrative

avenues for securing release for noncitizens, like Petitioner, who entered the U.S. without inspection. ICE's internal policy from July 2025, coupled with the EOIR's Board of Immigration Appeals (BIA) precedent, mandates that immigration judges deny bond to the Petitioner and similarly situated noncitizens, rendering any further administrative steps futile. An administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it as noted in *Gibson v. Berryhill*, 411 U. S. 564, 575, n. 14 (1973). Requiring Petitioner to seek reconsideration with ICE or a bond hearing with an immigration judge "would be to demand a futile act" as no relief would be granted while Petitioner languishes in detention, as highlighted in *Houghton v. Shafer*, 392 U.S. 639, 640 (1968). Moreover, even if any remedies were available, the habeas statute does not require Petitioner to exhaust them.

42. Furthermore, even if applied, the doctrine of exhaustion of administrative remedies would have been futile on claim attacking constitutionality of ICE's actions and ICE's and EOIR's current interpretations of the mandatory detention provisions. Administrative hearings cannot address the constitutional claims at issue, rendering further proceedings ineffective. Moreover, where ICE seeks to quickly remove noncitizens like Petitioner even to third countries, without due process, particularly under the current administration's policies, underscores the inadequacy of administrative remedies. *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992) (futility exception to exhaustion applies where administrative remedies are inadequate or unavailable). Thus, pursuing such remedies would be an exercise in futility, as they fail to provide any meaningful opportunity to address the

constitutional violations at hand.

43. Petitioner has exhausted his administrative remedies to the extent required by law, and Petitioner's only remedy is by way of this judicial action.

## VII. LEGAL AND STATUTORY BACKGROUND

### A. Noncitizens Are Entitled to Due Process

44. The principle that noncitizens present in the United States must be afforded due process is deeply rooted in our legal history for hundreds of years. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (Fourteenth Amendment applies to all persons within the territorial jurisdiction of the United States, regardless of race, color, or nationality); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) ("Fifth Amendment . . . protects every person within the jurisdiction of the United States from deprivation of life, liberty, or property without due process of law . . . [i]ncluding those whose presence in this country is unlawful, involuntary, or transitory[.]") (citation omitted)).

45. These landmark Supreme Court cases affirm that due process protections apply to all persons within the U.S., regardless of their immigration status. These foundational principles are not merely historical artifacts but are vital, living tenets that must guide current immigration practices. The Court has consistently recognized that noncitizens facing deportation are entitled to due process under the Fifth Amendment, as seen in *Landon v. Plasencia*, 459 U.S. 21 (1982) (noncitizens facing deportation are entitled to due process under the Fifth Amendment, which includes a full and fair hearing and notice of that hearing); *Zadvydas v. Davis*, 533

U.S. 678 (2001) (Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent).

**B. <u>This Court's Holding in J.A.M. v. Streeval</u>**

46. In a similar case litigated in this Court by undersigned counsel, the court found that while Petitioner technically qualified as an "applicant for admission," § 1225(b)(2)(A) applies only to those "seeking admission," not all applicants for admission as the government contends to support its mandatory detention of Petitioner without bond pursuant to that section. Harmonizing §§ 1225 and 1226, the court held that § 1226(a) applies to aliens arrested in the interior who are not actively seeking admission, entitling them to a bond hearing. *J.A.M. v. Streeval*, No. 4:25-cv-342 (CDL), 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025).

47. The Court further found that the phrase "seeking admission" is not synonymous with "present in the United States who has not been admitted." It requires an active attempt to gain lawful entry, not mere presence. Judge Land held that the statutory scheme and headings of § 1225 focus on inspection and admission at the border or upon arrival, not on long-term residents apprehended in the interior. The court rejected the BIA's interpretation in *Yajure Hurtado* as inconsistent with statutory text and canons of construction, noting that many district courts have similarly rejected this reading.

48. The court granted the petition for writ of habeas corpus, holding that Petitioner is not subject to mandatory detention under § 1225(b)(2) and is entitled to a bond hearing under § 1226(a). The court ordered Respondents to provide Petitioner with

a bond hearing to determine if he may be released on bond, in accordance with applicable regulations. The court found it unnecessary to reach Petitioner's constitutional due process arguments in light of the statutory ruling.

49. Petitioner's circumstances are the same or similar to that landmark case, therefore the Writ of Habeas should be granted for Petitioner and the Court should order similar relief, a bond hearing.

**C. Recent Federal Court Cases Rejecting DHS' and EOIR's New Interpretation**

50. Similar court cases known to undersigned counsel that have dealt with the same issue from other courts, although this is certainly not an exhaustive list, just illustrative of the overwhelming authority around the country that Petitioner's detention under § 1225(b)(2) is unjustified and unlawful: *Savane v. Francis*, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Petitioner arrested pursuant to 1225 which was improper; habeas petition granted and immediate release ordered within one business day); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) (**Petitioner unlawfully detained pursuant to 1225, government ordered to transport Petitioner back to EDNY within 24 hours and immediately upon effectuating his transfer, to release him from custody**); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025), (petitioner entered without inspection more than 30 years ago, detained pursuant to 1225, **court found 1226(a) applied based on statutory language; PI granted and court ordered release.** *Echevarria v. Bondi*, entered without inspection in 2001, arrested in 2025 under 1225(b); **the 24 year period petitioner resided in the U.S. made the plain**

**language of 1225(b) was inapplicable to him, at the time of arrest an immigration officer was not "examining" him and he was not "seeking" admission; Based on *Jennings* and *Nielsen*, statutory scheme of 1226(a) applies**); *Maldonado Vazquez v. Feeley*, 2025 WL 2676082 (D. Nev. Sept. 17, 2025) (entered without inspection over 20 years ago; detained July 2025; **court help petitioner held pursuant to 1226(a) not as the government contends 1225(b)(2); Yajure Hurtado renders requiring prudential exhaustion futile;** PI granted and release ordered on IJ bond); *Rodriguez Vazquez v. Bostock,* 2025 WL 2782499 (W.D. Wash Sept. 30, 2025) (**court granted summary judgement** on behalf of a class of people without lawful status held in Tacoma who entered without inspection and not apprehended upon arrival, court held plain text of **1226(a) applies rather than 1225(b) and issues a detailed statutory analysis**); *Guzman Alfaro v. Wamsley, 2025 WL 2822113* (W.D. Wash. Oct. 2, 2025) (court granted similar relief as a class member of *Rodriguez Vasquez; Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025) (**Court held 1226(a) and not 1225(b)(2) authorizes detention; procedural due process violated under Mathews, habeas granted**); *Lopez-Campos v. Raycroft*, No. 2:25-cv-12486, 2025 WL 2496379, at *5-6 (E.D. Mich. Aug. 29, 2025) (granting petition for writ of habeas corpus ordering immediate release or bond hearing, where, for 30 years, **courts have applied section 1226(a) to noncitizens like the petitioner who was already in the United States but facing removal, rejecting the government's argument that section 1225 applied so no bond hearing was required**. *Mena Torres v. Wamsley* (Petitioner arrived without inspection in 2016, DEA

encountered him in an unrelated search warrant and detained him under 1225(b)(2), court found that detention governed by 1226(a); *Jimenez v. FCI Berlin*, Warden, 2025 WL 2639390 (D.N.H. Sept. 8, 2025) (detained under § 1226, and continued detention without a bond hearing before an IJ is unlawful); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (granting a TRO for a native Ukraine citizen, who entered the U.S. without being inspected by an immigration officer and applied for asylum, because her due process rights were violated without a bond hearing pursuant to section 1225(a)); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *4-5 (E.D. Mich. Sept. 9, 2025) (granting petition for writ of habeas corpus for petitioner for government's failure to conduct a bond hearing pursuant to section 1226(a), rejecting the government's argument that section 1225 applied because petitioner did not enter lawfully so was still "seeking admission", where the petitioner had been living in the United States since 2005 and the amendment to section 1226 via the Laken Riley Act would have been redundant were section 1225 to apply); *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC), 2025 WL 2716910, at *4 n.5, *8 (E.D. Cal. Sept. 23, 2025) (holding that petitioner was likely to succeed under the merits that he was not subject to section 1225 and was wrongfully denied a bond hearing pursuant to section 1226(a), stating "[t]he Court is not bound by Matter of Yajure Hurtado's interpretation of sections 1225 and 1226[,]" and may look to the "longstanding practice of government" and "the BIA's interpretations of the INA for guidance, but [it] must not defer to the agency.") (citations omitted); *Hernandez Marcelo v. Trump*, No. 3:25-cv-00094-RGE-WPK, 2025 WL 2741230, at *7-8 (S.D. Iowa

Sept. 10, 2025) (refusing to apply BIA's *Yajure Hurtado* decision finding that all applicants for admission are necessarily "seeking admission" for purposes of warranting application of section 1225, because "the legislative history and congressional intent of the Immigration and Nationality Act do not support mandatory detention for all noncitizens present in the United States" as further supported by the "weight of caselaw");

51. ***See* Exhibit 2 attachment containing over 240(!) recent district court cases from around the country and authorities continue to reaffirm that noncitizens apprehended in the interior are subject to discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b)(2) and that Respondents' interpretation is unlawful.**

52. As the *Lopez Benitez* Court poignantly articulated: "This understanding accords with the plain, ordinary meaning of the words "seeking" and "admission." For example, someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as "seeking admission" to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as "seeking admission" (or "seeking" "lawful entry") at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there. As § 1225(b)(2)(A) applies only to those noncitizens who are actively "seeking admission" to the United States, it cannot, according to its ordinary meaning, apply to Mr. Lopez

Benitez, because he has already been residing in the United States for several years." *Lopez Benitez v. Francis*, —— F.Supp.3d at ——, 2025 WL 2371588, at *7.

53. "Moreover, Respondents' novel position would expand § 1225(b) far beyond how it has been enforced historically, potentially subjecting millions more undocumented immigrants to mandatory detention, while simultaneously narrowing § 1226(a) such that it would have extremely limited (if any) application. If, as Respondents contend, anyone who has entered the country unlawfully, regardless of how long they have resided here, is subject to mandatory detention under § 1225(b)(2)(A), see Conf. Tr. 19:9-20:4, then it is not clear under what circumstances § 1226(a)'s authorization of detention on a discretionary basis would ever apply. Perhaps it might still apply to a subset of noncitizens who are lawfully admitted (e.g., on a visa of some sort), and who then remain present unlawfully. But there is no indication that Congress intended § 1226 to be limited only to visa overstays. And there is nothing in the history or application of § 1226 to even remotely suggest that it was intended to have such a narrow reach." *Id.* at *8.

54. Courts all over the country have consistently rejected the new interpretation by DHS and EOIR, as it contradicts the INA. These courts have clarified that the plain language of the statutory provisions indicates that § 1226(a), rather than § 1225(b), governs the detention of individuals like the Petitioner who entered without inspection. The challenge lies in the fact that habeas relief is granted on an individual basis, not on a class-wide scale, necessitating that courts tailor their findings to the specific circumstances of each person applying for a writ of habeas corpus.

## VIII. LEGAL FRAMEWORK FOR THE RELIEF SOUGHT

### A. Habeas Jurisdiction

55. Habeas corpus relief extends to a person "in custody under or by color of the authority of the United States" if the person can show she is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241 (c)(1), (c)(3); *I.N.S. v. St. Cyr*, 533 U.S. 289, 314 (2001). *See* also *Antonelli v. Warden, U.S.P. Atlanta*, 542 F.3d 1348, 1352 (11th Cir. 2008) (holding a petitioner's claims are proper under 28 U.S.C. section 2241 if they concern the continuation or execution of confinement). The U.S. Constitution guarantees that the 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). This includes immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (addressing post final-removal order detention under § 1231). *Jennings v. Rodriguez*, 583 U.S. 281, 285–86 (2018) (addressing § 1226 detention, which is more applicable to this instant case as Petitioner does not have a final order of removal).

56. "[H]abeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513 U.S. 298, 319 (1995), that "[t]he court shall … dispose of [] as law and justice require," 28 U.S.C. § 2243. "[T]he court's role was most extensive in cases of pretrial and noncriminal detention." *Boumediene v. Bush*, 553 U.S. 723, 779– 80 (2008) (citations omitted). "[W]hen the judicial power to issue habeas corpus properly is invoked the judicial officer must have adequate authority to make a determination in light of the relevant law and facts and to formulate and issue appropriate orders

for relief, including, if necessary, an order directing the prisoner's release." Id. at 787. The Petitioner seeking habeas relief must demonstrate he 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).

57. Even if Petitioner were to be released prior to this Court granting relief, "in custody" would still be satisfied because significant restraints short of jail, which include removal proceedings and the continuous threat of re-detention, satisfy § 2241. See *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).

58. 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.*

59. 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).

**B. <u>The Administrative Procedure Act (APA)</u>**

60. The APA authorizes judicial review of final agency action. 5 U.S.C. § 704. The APA sets minimum standards for final agency action.

61. Final agency actions are those (1) that "mark the consummation of the agency's decisionmaking process" and (2) "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).

62. ICE's "Interim Guidance Regarding Detention Authority for Applications for Admission" constitutes a final agency action, making it subject to this Court's review in the Petitioner's case. Under this new interpretation, the agency asserts that the Petitioner is subject to mandatory detention without bond. This guidance represents the culmination of ICE's decision-making process concerning the Petitioner's custody and is an unlawful interpretation of the INA, contrary to its plain language.

63. Likewise, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is a final agency action subject to this Court's review in Petitioner's case.

64. Both the ICE memo referenced herein and *Matter of Yajure Hurtado* led ICE to detain Petitioner in violation of due process rights under the Constitution, statutes, and regulations.

**C. The *Accardi* Doctrine Requires Agencies to Follow Internal Rules**

65. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); see also *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon

agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

66. *Accardi* is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. See *Morton v. Ruiz*, 415 U.S. 199, 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

## IX. *MALDONADO BAUTISTA* CLASS ACTION

67. Petitioner is a member of the nationwide class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). Based on similar cases where Respondents filed a Motion to Dismiss and alternatively to Stay in similar cases based on class membership of other similarly-situated clients, undersigned counsel is including this section in the Complaint directly to counteract the government's arguments in anticipation thereof. The next few pages will demonstrate that the certification of a class action under Federal Rule of Civil Procedure 23(b)(2), which seeks and obtains only **declaratory** relief, does not extinguish an individual's fundamental right to petition for a writ of habeas corpus and seek immediate release from unlawful detention.

68. The writ of habeas corpus is the "fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." *Boumediene v.*

*Bush*, 553 U.S. 723, 783 (2008). Its constitutional protection, enshrined in the Suspension Clause, ensures a swift, focused, and individual judicial inquiry into the lawfulness of confinement, with the ultimate remedy being release. In contrast, the class action under Federal Rule of Civil Procedure 23 is a procedural device for the efficient resolution of claims with common questions of law or fact. A Rule 23(b)(2) class, as certified in Maldonado Bautista, is appropriate where declaratory or injunctive relief is warranted for the class as a whole. However, this procedural framework is constrained by 8 U.S.C. § 1252(f)(1), which bars lower federal courts from granting class-wide injunctive relief restraining the operation of certain immigration laws.

69. As the Supreme Court clarified in *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022), this statutory scheme deliberately separates broad, class-wide declaratory relief from coercive individual remedies. Consequently, the *Maldonado Bautista* court could only declare the government's detention policy unlawful; it could not order the release of any class member. This creates a right without a remedy at the class level. The Suspension Clause protects the writ of habeas corpus, not requests for injunctive relief, see *Jennings v. Rodriguez*, 583 U.S. 281, 309 (2018), and individual habeas petitions remain the necessary and distinct vehicle to enforce the rights established by a class-wide declaratory judgment. See *Hamama v. Adducci*, 912 F.3d 869, 879 (6th Cir. 2018).

70. Petitioner's membership in the *Maldonado Bautista* class does not preclude this individual habeas action because this petition does not seek the "same" relief as the class action. The *Maldonado Bautista* class sought and obtained a declaration

of rights—that class members are eligible for bond hearings under 8 U.S.C. § 1226(a). This petition seeks **release from unlawful detention**, a coercive, individual remedy that the class action could not provide due to the remedial limitations of 8 U.S.C. § 1252(f)(1), as affirmed in *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022).

71. The declaratory judgment in *Maldonado Bautista*, while having the "force and effect of a final judgment" under 28 U.S.C. § 2201(a), is not self-executing. It declares Petitioner's detention under the government's policy to be unlawful but does not, by itself, compel his release. The government's own actions confirm this distinction. By instructing immigration judges nationwide to disregard the *Maldonado Bautista* ruling because it is "only declaratory," Respondents concede that the class action has not provided an effective remedy. This creates a legal paradox where the very ruling that proved Petitioner's detention is unlawful is being used to deny him the only means of enforcing that right.

72. Neither claim preclusion nor the exhaustion doctrine bars this Court from granting habeas relief. The doctrine of claim preclusion is inapplicable because Petitioner was unable to seek the core habeas remedy of immediate release in the prior class action. As courts have recognized, preclusion is meant to prevent a second bite at the apple, not deny the first. Because the Maldonado Bautista court was statutorily barred from awarding class-wide coercive relief, that action cannot preclude a subsequent, individual petition that specifically seeks that remedy. The declaratory judgment serves as a predicate for further relief, not a bar to it.

## X. CAUSES OF ACTION AND CLAIMS FOR RELIEF

### COUNT ONE

### Declaratory Judgement

***Summary of Claim of Petitioner's First Claim for Relief:*** *Petitioner seeks a declaratory judgment that Petitioner is not an "applicant for admission" or "arriving alien" subject to mandatory detention under 8 U.S.C. § 1225(b), and that Petitioner's detention is governed solely by 8 U.S.C. § 1226(a), which provides for discretionary bond hearings. This claim is grounded in the statutory text, longstanding agency practice, and recent federal court decisions rejecting the government's contrary interpretation.*

73. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

74. Petitioner requests a declaration from this Court that Petitioner is not an applicant for admission "seeking admission" or "an arriving alien" subject to mandatory detention under 8 U.S.C. §§ 1225(b)(1) or (b)(2). Petitioner further requests a declaration that Petitioner's current detention by Respondents, if justified at all, is governed solely by 8 U.S.C. § 1226(a).

### COUNT TWO

### Statutory Violation of the Immigration and Nationality Act: No-Bond Detention in Violation of 8 U.S.C. § 1226(a) and Unlawful Detention Under Improper Statutory Classification (INA §§ 1225 vs. 1226)

*Summary of Claim of Petitioner's Second Claim for Relief: Petitioner challenges the no-bond detention as a violation of the INA, specifically 8 U.S.C. § 1226(a), which entitles Petitioner to a bond hearing before an immigration judge. The government's application of § 1225(b) to Petitioner is contrary to the statute and decades of agency and judicial practice.*

75. Petitioner realleges and incorporates by reference all paragraphs above as if fully

set forth here.

76. Since Petitioner is not an applicant for admission "seeking admission" or an "arriving alien" subject to 8 U.S.C. §§ 1225(b)(1) or (b)(2) and has no disqualifying criminal arrests or convictions subject to 8 U.S.C. § 1226(c), Petitioner is entitled to a bond redetermination hearing by an immigration judge pursuant to 8 U.S.C. § 1226(a).

77. 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), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231 (which is not the case with Petitioner).

78. Respondents' actions, as detailed herein, infringe upon the Petitioner's statutory right to a bond redetermination hearing before an immigration judge. Additionally, the Respondents' application of § 1225(b)(2) to the Petitioner unlawfully enforces continued detention, contravening both the Immigration and Nationality Act (INA) and the Petitioner's constitutional rights, which will be further addressed below.

79. Petitioner's continued detention under § 1225(b)(2) is therefore unauthorized by statute, contrary to longstanding agency practice, and in violation of the INA and APA.

80. Even if the Petitioner were to have a bond hearing before an immigration judge, the judge would likely deny bond based on the same unlawful and novel statutory

interpretation outlined in the *Matter of Yajure Hurtado*, as previously discussed. Consequently, even if such a hearing were granted, Respondents would still infringe upon Petitioner's constitutional rights to a full and fair hearing (as immigration judges are no longer neutral arbitrators), thereby violating his lawful right to bond consideration.

## COUNT THREE

### Violation of the Bond Regulations

***Summary of Claim of Petitioner's Third Claim for Relief:*** *Petitioner alleges that Respondents' refusal to provide a bond hearing violates binding agency regulations, including 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, which require that noncitizens apprehended* ***in the interior*** *be eligible for bond and custody review under § 1226(a).*

81. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

82. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service (now DHS) 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.

83. Nonetheless, pursuant to the afore-mentioned ICE memo from July 2025 upending DHS' policy and similarly *Matter of Yajure Hurtado* upending EOIR policy to apply § 1225(b)(2) to individual like Petitioner instead of § 1226 and deny bond.

84. The application of § 1225(b)(2) to Petitioner unlawfully mandates these agencies to continually detain Petitioner and violates these agencies own regulations at 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

## COUNT FOUR

### Violation of the Fifth Amendment of the U.S. Constitution

### Substantive Due Process

***Summary of Claim of Petitioner's Fourth Claim for Relief:*** *Petitioner asserts that the continued detention without a bond hearing violates substantive due process under the Fifth Amendment, as recognized by the Supreme Court in Zadvydas v. Davis and Jennings v. Rodriguez. The government may detain only to prevent flight or danger, and Petitioner's detention serves no such purpose.*

85. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

86. All persons residing in the United States are protected by the Due Process Clause of the Fifth Amendment.

87. The Due Process Clause of the Fifth Amendment provides that "[n]o person shall be ... deprived of life, liberty, or property, without due process of law." U.S. CONT. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that

Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). This vital liberty interest is at stake when an individual is subject to detention by the federal government.

88. Under the civil-detention framework set out in *Zadvydas* and its progeny, the Government may deprive a non-citizen of physical liberty only when the confinement serves a legitimate purpose—such as ensuring appearance or protecting the community—and is reasonably related to, and not excessive in relation to, that purpose. Nonpunitive purpose such as preventing danger or flight and may not be excessive in relation to that purpose. See *Jennings*, 583 U.S. at 300–01; *Demore v. Kim*, 538 U.S. 510, 523 (2003).

89. Immigration detention is civil, not criminal, in nature, and therefore cannot be punitive. There are only two permissible reasons for immigration detention: to avoid flight risk, and to avoid danger to the community. Petitioner's detention therefore does not bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal.

90. After entering the United States unlawfully, Petitioner went on to develop ties to the community over the course of a long period of time. Petitioner is therefore a "person" within the meaning of the Due Process Clause of the Fifth Amendment to the U.S. Constitution and has a fundamental liberty interest in freedom from physical restraint.

91. Respondents' actions in detaining Petitioner without a bond hearing before a neutral and detached magistrate deprives Petitioner of various rights and liberty

interest without due process of law.

92. Because Respondents had no legitimate, non-punitive objective in detaining Petitioner without bond, Petitioner's detention violates substantive due process under the Fifth Amendment to the U.S. Constitution. Continued confinement therefore bears no reasonable, non-punitive relationship to any legitimate aim and is unconstitutionally arbitrary under *Zadvydas*.

## COUNT FIVE

### Violation of the Fifth Amendment of the U.S. Constitution

***Summary of Claim of Petitioner's Fifth Claim for Relief***: *Petitioner contends that the detention as an "arriving alien" without individualized process violates procedural due process under the Fifth Amendment. The Supreme Court and Eleventh Circuit have repeatedly held that civil detention must be accompanied by meaningful process and individualized findings. See Mathews v. Eldridge*

93. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

94. The Fifth Amendment forbids deprivation of liberty without notice and a meaningful opportunity to be heard before a **neutral** decision-maker. The Supreme Court and several circuit courts of appeal have repeatedly affirmed that procedural due process applies to all persons within the United States, including noncitizens, and that civil detention must be accompanied by robust procedural safeguards.

95. In addition to being ultra vires, the novel interpretation of DHS and EOIR of Petitioner's detention under § 1225(b)(2) violates the due process rights of noncitizens like Petitioner by subjecting them to continued mandatory detention solely on the basis of these agencies' wrongful interpretations, without any

individualized assessment of flight risk or danger. This automatic and prolonged detention deprives noncitizens of their liberty without adequate procedural safeguards, contravening the fundamental requirements of due process under the Fifth Amendment.

96. The Supreme Court has repeatedly recognized that civil detention must be accompanied by meaningful process and individualized findings; yet, Respondents are now permitted prolonged detention based on agency *interpretation* rather than judicial determination and legal basis. As a result, noncitizens are forced to remain in custody for an extended period, suffering significant harm and disruption to their lives, without any statutory, regulatory or constitutional justification. This scheme is not only beyond the authority granted by Congress, but also fundamentally unfair and unconstitutional.

97. The Supreme Court states in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976): "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Noncitizens are entitled to due process protections in removal proceedings, including notice and a hearing. *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Due process applies to all persons within the United States, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

98. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319,

(1976). Pursuant to *Mathews*, courts weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

99. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976), test to Petitioner's case:

    a. Petitioner's liberty interest is paramount; the risk of erroneous deprivation is extreme considering that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c), is not a flight risk, and does not pose a danger to the community. Being free from physical detention by one's own government "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The right to be free of detention of indefinite duration pending a bail determination, is "without question, a weighty one." *Landon v. Plasencia*, 459 U.S. at 34, 103 S.Ct. 321. Petitioner is being held at a county jail in the same conditions as criminal inmates, unable to work and is far from his family. At minimum, the government must come forward with concrete, case-specific reasons that outweigh Petitioner's substantial liberty interest in continued release.

    b. The risk of erroneous deprivation of liberty is significant due to the absence of an independent adjudicator, as highlighted in *Marcello v. Bonds*, 349 U.S. 302, 305-306 (1955). This risk is exacerbated by the coordinated actions of both

DHS and EOIR, which operate under a unified approach that effectively denies bond to noncitizens in Petitioner's situation, thereby unilaterally depriving them of their liberty.

ICE is acting as both the prosecutor as well as the adjudicator. ICE can effectuate long detention periods for Petitioner and others in his situation just because they now interpret Petitioner as being subject to mandatory detention as an "arriving alien" and immigration judges at EOIR are prevented from considering bonds under the same circumstances.

c. Lastly, the interest of the government in being able to invoke the challenged ICE memorandum and novel interpretation and EOIR's *Matter of Yajure Hurtado* is minimal. This is primarily because the interpretation is not supported by the plain reading of the INA, which clearly delineates the circumstances under which noncitizens are subject to mandatory detention. The interpretation also conflicts with existing DHS and EOIR regulations that have historically distinguished between arriving aliens and those apprehended in the interior, providing the latter with the opportunity for bond hearings under 8 U.S.C. § 1226(a). When the government ignores law (and agency breaks its own regulations, policies and procedures), it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law, requiring Respondents to instead follow the

law and their regulations reduces fiscal and administrative burdens on the government. Furthermore, the government's interest is further diminished by the potential constitutional violations that arise from denying noncitizens their due process rights, as the interpretation effectively eliminates the procedural safeguards intended to prevent erroneous deprivation of liberty.

In conclusion, all three *Mathews* factors favor Petitioner's position. The novel DHS and EOIR interpretations violate Petitioner's procedural due process rights under the Fifth Amendment. Collateral harms from detention—including separation from Petitioner's family and friends and Petitioner's ability to maintain employment—further underscore the weight of the private interest and the risk of erroneous deprivation. These are collateral consequences of continued confinement that amplify the ongoing liberty deprivation, are not compensable by money damages, and therefore weigh heavily in the *Mathews* balance and the equitable analysis, without expanding the scope of relief requested.

## COUNT SIX

### Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B) Contrary to Law and Constitutional Rights

***Summary of Claim of Petitioner's Sixth Claim for Relief:*** *Petitioner alleges that the July 2025 ICE memorandum and the BIA's decision in Yajure Hurtado constitute final agency actions that are not in accordance with law and are contrary to constitutional rights, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B).*

100. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

101. Under the APA, a court shall "hold unlawful and set aside agency action . . . found

to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B).

102. The APA's reference to "law" in the phrase "not in accordance with law," "means, of course, any law, and not merely those laws that the agency itself is charged with administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

103. The July 2025 ICE memorandum and the EOIR's decision in *Yajure Hurtado* represent a significant and unauthorized expansion of § 1225(b)(2), categorizing individuals who entered the United States without inspection years ago as perpetual "applicants for admission." This expansion constitutes a violation of the APA. The ICE memorandum was issued in stealth, without public notice or opportunity for comment, in direct contravention of the APA's requirements for transparency and public participation in rulemaking.

104. Furthermore, while *Yajure Hurtado* was a published decision by the EOIR, it conflicts with the plain language of the INA and existing EOIR regulations. The decision appears to have been strategically published by the BIA to constrain immigration judges nationwide, effectively preventing them from granting bond to affected individuals, thereby undermining the procedural fairness guaranteed by the INA and the APA. Up until its publication, immigration judges were granting bonds to individuals who entered without inspection. *See*, e.g., *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

105. These actions were contrary to the agencies' constitutional power under the Fifth Amendment's Due Process Clause, as explained above. These recent changes were

not in accordance with the plain language of the INA and implementing regulations governing who is an "applicant for admission" or an "arriving alien", as cited and discussed in the Statutory Framework section above.

106. DHS acted contrary to law. *See also Accardi* v. Shaughnessy, 347 U.S. 260, 268 (1954) (agency must follow its own regulations) (a separate claim to relief under *Accardi* is forthcoming below). These novel interpretations should be held unlawful and set aside because it was contrary to the agency's constitutional power and not in accordance with the INA and implementing regulations.

107. By issuing this ICE memo and publishing *Yajure Hurtado*, this regulation, the agencies have exceeded the authority delegated to them by Congress, effectively rewriting the statutory scheme to permit DHS to prolong detention without judicial determination or individualized findings for almost anyone present in the U.S. without an immigration judge review. This regulatory overreach undermines the statutory guarantee of prompt review and release and is inconsistent with the principles of separation of powers and the nondelegation doctrine.

108. "Agency actions beyond delegated authority, are 'ultra vires,' and courts must invalidate them." *U.S. ex rel. O'Keefe v. McDonnell Douglas Corp.*, 132 F.3d 1252, 1257 (8th Cir. 1998); *see also Romero v. INS*, 39 F.3d 977, 980 (9th Cir. 1994) (holding that an immigration regulation that is inconsistent with the statutory scheme is invalid). Similarly, agency regulations that conflict with statutory text or structure must be invalidated.

109. Because these agencies' interpretations effectively transform a discretionary detention for people who are flight risks or a danger to mandatory detention to all

without the possibility for release on bond, and as they directly contravene the plain language of the INA and its regulations, these decisions must be invalidated by this Court.

110. Petitioner's detention, premised solely on this ultra vires interpretation is "not in accordance with law," "in excess of statutory jurisdiction," and "arbitrary [and] capricious" under 5 U.S.C. § 706(2), entitling Petitioner to immediate release.

**COUNT SEVEN**

**Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)**

**Arbitrary and Capricious**

***Summary of Claim of Petitioner's Seventh Claim for Relief:*** *Petitioner asserts that Respondents' actions are arbitrary and capricious under the APA, 5 U.S.C. § 706(2)(A), because they depart from established law and practice without reasoned explanation, fail to consider reliance interests, and ignore less-restrictive alternatives.*

111. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

112. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

113. Respondents' revocation of Petitioner's order of supervision was arbitrary and capricious because it violated statute, regulation, and the Constitution, as described above.

114. An agency decision that "runs counter to the evidence before the agency" is also arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983).

115. Petitioner's detention, beyond being unlawful and ultra vires, also "failed to

consider important aspects of the problem". Petitioner's detention is arbitrary and capricious and in excess of statutory authority because DHS: (1) failed to consider Petitioner's reliance interests; (2) failed to consider less-restrictive alternatives to detention; (3) failed to explain a reasoned basis for departing from its prior re determination; and (4) failed to comply with various regulations. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020) (reliance interests). *See* also *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983) (requirement of reasoned decisionmaking).

116. For these and other reasons, Respondent's actions leading to Petitioner's detention and his continued detention was arbitrary and capricious and should be held unlawful and set aside.

## COUNT EIGHT

### Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C)

### In Excess of Statutory Authority

***Summary of Claim of Petitioner's Eighth Claim for Relief***: *Petitioner claims that Respondents acted in excess of statutory authority by detaining Petitioner under § 1225(b) when only § 1226(a) applies, in violation of 5 U.S.C. § 706(2)(C).*

117. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

118. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

119. "An agency . . . literally has no power to act—including under its regulations—

unless and until Congress authorizes it to do so by statute." *FEC v. Cruz*, 596 U.S. 289, 301 (2022) (internal quotation marks and citation omitted).

120. Respondents' actions in publishing the ICE memo and *Yajure Hurtado* were in excess of statutory authority and should be held unlawful and set aside. Petitioner's mandatory detention pursuant to these actions violated the APA.

## COUNT NINE

### Ultra Vires Action

***Summary of Claim of Petitioner's Ninth Claim for Relief:*** *Petitioner seeks to set aside Respondents' actions as ultra vires, as there is no statutory or constitutional authority for Petitioner's continued detention under the circumstances presented.*

121. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

122. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Petitioner under these circumstances.

123. Petitioner has a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires actions.

## COUNT TEN

### Violation of the *Accardi* Doctrine

***Summary of Claim of Petitioner's Tenth Claim for Relief:*** *Petitioner alleges that Respondents violated the Accardi doctrine by failing to follow their own regulations and procedures, as required by Accardi and its progeny.*

124. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

125. The *Accardi* doctrine mandates that federal agencies must adhere to their own

established regulations and policies. This principle ensures that agency actions are consistent, fair, and predictable, thereby safeguarding individual rights. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated agency procedures, rules, or instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 ("If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").

126. "[The ambit of the Accardi doctrine] is not limited to rules attaining the status of formal regulations." *Montilla v. Immigr. & Naturalization Serv.*, 926 F. 2d 162, 167 (2d Cir. 1991). Agency rules, whether codified or issued through internal guidance, are binding where they implicate important substantive and procedural rights. *See*, e.g., *Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 521, 538 (1970) (*Accardi* applies most forcefully where agency rules are "intended primarily to confer important procedural benefits upon individuals in the face of otherwise unfettered discretion"); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 336 (D.D.C. 2018) (ICE bound by internal directive intended to protect noncitizens' procedural rights). Where these criteria are satisfied, the reviewing court must invalidate agency action or policy violating the agency's own rules.

127. The recent policy shifts by ICE and EOIR, as outlined in ICE's July 2025 memorandum and EOIR's *Yajure Hurtado* decision, violate the *Accardi* doctrine by failing to adhere to established agency regulations and procedures. The *Accardi* doctrine mandates that federal agencies must follow their own rules and regulations, particularly when these rules are designed to protect individual rights.

128. By reclassifying individuals who entered without inspection apprehended in the

interior of the United States as "applicants for admission" or as "arriving aliens" subject to mandatory detention under § 1225(b)(2), ICE and EOIR have disregarded the procedural safeguards and discretionary bond provisions outlined in § 1226(a). ICE's and EOIR's reclassification policy effectively nullifies § 1226(a)'s statutory provision by subjecting all noncitizens to mandatory detention, regardless of their actual circumstances. This interpretation is contrary to the plain language of the INA and disrupts decades of settled law, which recognized the distinct legal status and rights of noncitizens apprehended in the interior. This departure from established regulations and legal standards not only contravenes the statutory framework of the INA but also undermines the procedural rights and protections intended to ensure fair and consistent treatment of noncitizens, warranting immediate judicial intervention.

129. The issuance of the ICE memorandum without public notice or comment further exemplifies a breach of procedural norms, as it was implemented in a manner that bypassed the transparency and accountability required by the APA. Consequently, these actions represent an arbitrary and capricious exercise of agency power, infringing upon the rights of noncitizens and violating the principles enshrined in the *Accardi* doctrine.

130. The policy's blanket application denies noncitizens the due process rights afforded under the Fifth Amendment, which guarantees fair procedures before depriving individuals of their liberty. By eliminating bond eligibility, ICE's policy strips noncitizens of the opportunity to meaningfully contest their detention. This issue is further exacerbated by EOIR's decision in *Yajure Hurtado*, which entrenches this

denial of due process by reclassifying noncitizens who entered without inspection as "arriving aliens," thereby subjecting them to mandatory detention without the possibility of bond from immigration judges. Together, these agency actions undermine the statutory and constitutional protections afforded to noncitizens, and therefore, this Court should declare these actions unlawful and set them aside.

## COUNT ELEVEN

### Violation of the Declaratory Judgment in *Maldonado Bautista* and Continued Unlawful Detention

131. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

132. As a class member, Petitioner is entitled to the benefit of the declaratory judgment that Petitioner's detention is governed by 8 U.S.C. § 1226(a) (discretionary detention with bond eligibility), not 8 U.S.C. § 1225(b) (mandatory detention).

133. The *Maldonado Bautista* declaratory judgment, which held that class members are detained under 8 U.S.C. § 1226(a), has the full force and effect of a final judgment until it is stayed or reversed. Despite this, the government has instructed immigration judges not to apply the decision to class members, and immigration judges all over the country are continuing to deny bond to class members.

134. As declared in *Maldonado Bautista*, Petitioner's detention was unlawful ab initio. As numerous courts have held, a subsequent administrative bond hearing is "wholly inadequate to remedy that unlawful detention" and cannot cure the initial constitutional violation of depriving Petitioner of his liberty without due process of

law. Therefore, the precise reasoning of *Armando De Macedo Mendes v. Hyde*, C.A. No. 25-cv-627-JJM-AEM, 2025 WL 3274606 (D.R.I. Dec. 5, 2025) should apply to Petitioner, where the government has initiated an unlawful detention and, as in that case, has "put forth no evidence to suggest that [the petitioner] poses a flight risk or is a danger to the community," the only just and appropriate remedy is immediate release.

## XI. REMEDIES

### THE APPROPRIATE REMEDY FOR PETITIONER'S UNLAWFUL DETENTION IS IMMEDIATE RELEASE

Even though some cases cited in the Exhibit 2 of the favorable Federal Court cases granted bond hearings to noncitizens who won TROs, PIs and habeas relief, some of those case granted straight release relief to petitioners in similar circumstances. In addition, there are several important reasons that include new developments since those cases were decided that warrant a different relief now in this case.

**Bond Hearing Will Require More Detention Time**

If the Court orders a bond hearing before an immigration judge, it will take several more days or weeks to schedule a bond hearing, at additional costs to Petitioner, while he remains detained, in a situation where Respondents have not even alleged, yet alone proven, that he is a danger or flight risk. Respondents have not produced a single shred of evidence why he should not be released.

**Bond Hearing Cannot Cure Unlawful Arrest**

Petitioner's arrest and continued detention are unlawful from the outset because he was not arrested pursuant to a warrant under 8 U.S.C. § 1226, as required for interior

apprehensions, but was instead detained as a purported "applicant for admission" under § 1225(b)—a provision that, by its terms and longstanding practice, applies only to individuals encountered at the border or a port of entry, not to long-term residents apprehended in the interior. This is not a mere technicality; it is a fundamental statutory violation.

In analogous contexts, such as an unlawful arrest without probable cause or a search conducted without a warrant, courts have consistently held that the only effective remedy is suppression of evidence or outright release from custody. The government cannot retroactively cure an unlawful deprivation of liberty by later manufacturing a post hoc justification or issuing a belated warrant.

The same principle applies here: if ICE were to issue a warrant now, or attempt to reclassify the basis for detention after the fact, it would not remedy the original statutory violation as they arrested petitioner under 8 U.S.C. § 1225(b)(2). Therefore, the only appropriate remedy for an arrest and detention made under the wrong statutory authority is immediate and unconditional release. Allowing the government to "fix" its error after the fact would undermine statutory and constitutional protections, incentivize unlawful government conduct, and deprive individuals of meaningful remedies for violations of their liberty interests.

**If Court Grants Bond Hearing – Ensure Burdens Are Met**

Should the Court grant a bond hearing, since there is no 11th Circuit caselaw on who carries the burden of proof, the Court should follow the 3 circuit courts who have decided the issue and determine that the government must prove, by clear and convincing evidence, that Petitioner is not a flight risk or danger and order so with very

detailed instructions for Respondents to follow. *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022); *Velasco Lopez v. Decker*, 978 F.3d 842, 853–56 (2d Cir. 2020); *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021). The reason for that is the Congress's assumption was that for non-criminal noncitizens who are detained pursuant to § 1226(a) the default is release, not detention (in contrast to § 1226(c) that deals with mandatory detention for criminal aliens).

## XII. CONCLUSION AND PRAYER FOR RELIEF

The continued detention of Petitioner violates due process rights. But for intervention by this Court, Petitioner has no means of release from ICE custody. Petitioner faces ongoing and irreparable harm as a result of unlawful detention, including deprivation of liberty, loss of employment, and separation from family. These injuries cannot be remedied by monetary damages and will continue absent immediate judicial intervention. The balance of equities and the public interest strongly favor expedited consideration and equitable relief, including immediate release or a prompt bond hearing. Without such relief, Petitioner will continue to suffer irreparable harm, and the constitutional and statutory violations at issue will persist.

WHEREFORE, Petitioner prays that this Court grant the following relief. Petitioner respectfully requests expedited consideration of this Petition due to the ongoing deprivation of liberty and irreparable harm:

(1) **Assume** jurisdiction over this matter under 28 U.S.C. §§ 2241 and 1331 and the Suspension Clause;

(2) **Issue** an Order to Show Cause, ordering Respondents to justify why this writ should not be granted to Petitioner and the basis of Petitioner's detention in fact and law, **within the 3 days authorized by the statute**;

(3) Grant the Petition for a Writ of Habeas Corpus and order Respondents to immediately release Petitioner from custody;

(4) **Declare** that Respondents' detention of Petitioner under 8 U.S.C. § 1225(b) is contrary to law and violates the Fifth Amendment to the United States Constitution, as Petitioner's detention is governed by 8 U.S.C. § 1226(a), consistent with the declaratory judgment entered in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025);

(5) Issue an order requiring Respondents to immediately and unconditionally release Petitioner from custody. This remedy is required because:

(a) Petitioner's detention was unlawful ab initio. As numerous courts have held, a subsequent administrative bond hearing is "wholly inadequate to remedy that unlawful detention" and cannot cure the initial constitutional violation of depriving Petitioner of his liberty without due process of law; and

(b) Adopting the precise reasoning of the U.S. District Court for the District of Rhode Island in *Armando De Macedo Mendes v. Hyde*, C.A. No. 25-cv-627-JJM-AEM, 2025 WL 3274606 (D.R.I. Dec. 5, 2025), where the government has initiated an unlawful detention and, as in that case, has "put forth no evidence to suggest that [the petitioner] poses a flight risk or

is a danger to the community," the only just and appropriate remedy is immediate release.

(6) Enjoin Respondents from re-detaining Petitioner in the future pursuant to 8 U.S.C. § 1225;

(7) Award Petitioner reasonable attorney's fees and costs;

(8) Grant such other and further relief as this Court deems just, proper or equitable under the circumstances.

Respectfully Submitted,

This 17th Day of December, 2025.

/s/ Karen Weinstock
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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.

This 17th day of December, 2025.

Karen Weinstock

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