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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 Carlos Martin Lorenzana-Flores,

11 Petitioner,

12 vs.

13 Pamela Bondi, Attorney General of the
14 United States;

15 John Cantu, U.S. Immigration and
16 Customs Enforcement Phoenix Field
17 Office Director;

18 Kristi Noem, Secretary of the U.S.
19 Department of Homeland Security;

20 Luis Rocha, Jr., Warden, Florence
21 Correctional Center;

22 Todd M. Lyons, Acting Director,
23 Immigration and Customs Enforcement,
24 U.S. Department of Homeland Security;

25
26 Respondents.
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Case No.:

File No: A 

**VERIFIED PETITION FOR WRIT
OF HABEAS CORPUS AND
COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

Challenge to Unlawful Incarceration
Under Color of Immigration Detention
Statutes; Request for Declaratory and
Injunctive Relief

**ORAL ARGUMENT
REQUESTED**

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4 **INTRODUCTION**

5 **Comes now**, Petitioner, Carlos Martin Lorenzana-Flores, brings this
6 Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and
7 Injunctive Relief pursuant to 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. §
8 1651; the Immigration and Nationality Act (“INA”) and regulations thereunder; the
9 Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*; Article I, Section
10 9, Clause 2 of the United States Constitution (“Suspension Clause”). The efforts to
11 continually detain petitioner constitute a “severe restraint” on her individual liberty
12 such that Petitioner is “in custody” of the Respondents in violation of the ... laws
13 of the United States. *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28
14 U.S.C. § 2241. DHS asserts that Petitioner is subject to mandatory detention under
15 8 U.S.C. § 1225(b)(2), however, that provision does not apply to him. Instead,
16 Petitioner’s custody is governed by 8 U.S.C. § 1226(a), which authorizes release
17 on bond or conditional parole. By denying Petitioner an individualized bond
18 hearing, Respondents violate the Immigration and Nationality Act (“INA”), the
19 Administrative Procedure Act (“APA”), and the United States Constitution.
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26 Petitioner, who entered the United States in 2009 and has resided here ever
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1 since, is not an applicant for admission. His custody is properly governed by 8
2 U.S.C. § 1226(a), which authorizes release on bond or conditional parole.
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4 The Board of Immigration Appeals recently issued *Matter of Yajure*
5 *Hurtado*, 29 I&N Dec. 216 (BIA 2025), interpreting INA § 235(b)(2)(A) to require
6 mandatory detention of all individuals who entered without inspection. That
7 decision represents the agency’s most recent view of the detention statute, but it
8 illustrates DHS’s unlawful expansion of § 235(b)(2)(A). That decision does not
9 control this Court. Petitioner entered the United States on 2009 and lived in the
10 U.S ever since before ICE arrested him. He is not an “arriving alien” at the
11 threshold seeking admission, but rather a long-term resident who falls under §
12 236(a).
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16 Pursuant to this Court’s inherent powers in habeas corpus proceedings,
17 Carlos Martin Lorenzana-Flores respectfully requests this Court order Respondents
18 to release him from detention.
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21 **I. PARTIES**

22 A. Petitioner Carlos Martin Lorenzana-Flores is a native of Mexico. He is
23 currently detained at the Florence Correctional Center, 1100 N. Bowling
24 Road, Florence, AZ 85132.
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1 B. Respondent Pamela Bondi is named in her official capacity as the Attorney
2 General of the United States. In this capacity, she is responsible for the
3 administration of the immigration laws as exercised by the Executive Office
4 for Immigration Review, pursuant to section 103(g) of the INA, 8 U.S.C. §
5 1103(g). She routinely transacts business in the District of Arizona, is legally
6 responsible for administering Petitioner's removal proceedings and the
7 standards used in those proceedings, and as such, is the legal custodian of
8 Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950
9 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.
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13 C. Respondent, John Cantu, is the Phoenix Field Office Director for
14 Enforcement and Removal Operations, U.S. Immigration and Customs
15 Enforcement. He is the local ICE official who has immediate authority over
16 the Petitioner. Respondent Cantu's address is Field Office Director,
17 Enforcement and Removal Operations, U.S. Immigration and Customs
18 Enforcement, Phoenix Field Office, 2035 N. Central Avenue, Phoenix, AZ,
19 85004.
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23 D. Respondent, Kristi Noem, is the Acting Secretary of the U.S. Department of
24 Homeland Security ("DHS"), the federal agency responsible for enforcing
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1 Petitioner's arrest, detention and removal. DHS's address is U.S.

2 Department of Homeland Security, Washington, DC 20528.

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4 E. Respondent, Luis Rocha, Jr., is the warden of the Florence Correctional
5 Center, where Petitioner is being held. He is the custodian of Petitioner and
6 is named in his official capacity.

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8 F. Todd M. Lyons is the Acting Director, Immigration and Customs
9 Enforcement, U.S. Department of Homeland Security, the federal agency
10 responsible for enforcing Petitioner's arrest, detention and removal. DHS's
11 address is U.S. Department of Homeland Security, Washington, DC 20528.
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14 **II. JURISDICTION AND VENUE**

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16 The Court has jurisdiction under the Suspension Clause. The Suspension
17 Clause provides, "The privilege of the Writ of Habeas Corpus shall not be
18 suspended, unless when in Cases of Rebellion or Invasion the public Safety may
19 require it." U.S. Const. Art. I § 9, cl. 2.
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21 This case arises under the United States Constitution; the INA, 8 U.S.C. §§
22 1101 et seq.; the APA, 5 U.S.C §§ 701 et seq.; the Due Process Clause of the Fifth
23 Amendment and the Fourteenth Amendment. Petitioner's current detention
24 pending her removal order as enforced by Respondents constitutes a "severe
25 restraint [] on [Petitioner's] individual liberty," such that Petitioner is "in custody
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1 in violation of the . . . laws . . . of the United States.” *See Hensley*, 411 U.S. at 351
2 (1973); 28 U.S.C. § 2241(c)(3).
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4 No Supreme Court or Ninth Circuit precedent applicable to immigration
5 detainees, nor the habeas statute, indicate that venue is not proper in the District of
6 Arizona. See 28 U.S.C. § 2241. Venue is proper in the District of Arizona because
7 a substantial part of the events and omissions which gave rise to this action
8 occurred in the district. 28 U.S.C. § 1391(b)(2). Petitioner is currently being held at
9 the Florence Correctional Center in Florence, Arizona. He is in removal
10 proceedings before the Immigration Court in Eloy, Arizona, and on December 9,
11 2025, his request for a custody redetermination was denied on the grounds that
12 Petitioner had been classified as subject to mandatory detention under 8 U.S.C. §
13 1225(b)(2).
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18 **III. FACTS GIVING RISE TO THE HABEAS PETITION**

19 Petitioner, Carlos Martin Lorenzana Flores, is a native and citizen of
20 Mexico. He entered the United States without inspection in 2009 and has resided
21 continuously in in the U.S since that date.
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23 Officers of U.S. Immigration and Customs Enforcement (“ICE”) arrested
24 Petitioner in Arizona and placed him in removal proceedings under § 240 of the
25 Immigration and Nationality Act (“INA”). He was taken into custody and
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1 transported to the Florence Correctional Center in Florence, Arizona, where he
2 remains detained today.
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4 Following his arrest, ICE determined that Petitioner was subject to
5 mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). On December 9, 2025,
6 Petitioner requested a custody redetermination before an Immigration Judge, but
7 his request was denied on the grounds that the Immigration Court lacked
8 jurisdiction because DHS had classified her as subject to § 1225(b)(2) on
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11 December 9, 2025.

12 On September 5, 2025, the Board of Immigration Appeals issued *Matter of*
13 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that individuals who
14 entered without inspection are “applicants for admission” subject to mandatory
15 detention under INA § 235(b)(2)(A). That decision does not bind this Court.
16
17 Petitioner, who entered the United States in 2006 and has lived here ever since is
18 not an arriving alien at the border but a long-term resident whose custody falls
19 under § 236(a). For decades, Immigration Judges conducted bond hearings for
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21 individuals in Petitioner’s position, a practice the Board itself acknowledged before
22 abruptly reversing course. DHS’s reliance on § 1225(b)(2) to justify Petitioner’s
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24 detention is contrary to the statute’s plain text, longstanding administrative
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26 practice, and decades of settled interpretation. Because DHS has improperly
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1 categorized him under § 1225(b)(2), Petitioner has been deprived of the
2 opportunity for an individualized bond hearing, leaving him in prolonged and
3 unlawful detention in violation of the INA, the APA, and the U.S. Constitution.
4

5 Petitioner has no disqualifying criminal convictions that would render him
6 subject to mandatory detention under 8 U.S.C. § 1226(c). Nor is he an applicant for
7 admission apprehended at a port of entry. Instead, he has lived in the interior of the
8 United States for more than a decade, working, raising his family, and establishing
9 significant ties to the community in the U.S.
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12 DHS's reliance on § 1225(b)(2) to justify Petitioner's detention is contrary
13 to the statute's plain text, longstanding administrative practice, and decades of
14 settled interpretation.
15

16 Because Petitioner has improperly been categorized under § 1225(b)(2),
17 Petitioner has been deprived of the opportunity for an individualized bond hearing,
18 leaving him in prolonged and unlawful detention in violation of the INA, the APA,
19 and the U.S. Constitution.
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22 **IV. APPLICABLE LAW**

23 Respondents' power to detain and deport someone is not limitless, nor is it
24 shielded from judicial review. *See Calderon v. Sessions*, 330 F. Supp. 3d 944, 950
25 (S.D.N.Y. 2018) (appeal withdrawn sub nom.).
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1 “Habeas corpus is at its core, an equitable remedy.” *Schlup v. Delo*, 513 U.S.
2 298, 319 (1995). Judges have “broad discretion” to fashion an appropriate remedy.
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4 *Carafas v. La Vallee*, 391 U.S. 234 (1968). It may extend beyond simply ordering
5 the release of a petitioner and is to “be administered with the initiative and
6 flexibility essential to ensure that miscarriages of justices within its reach are
7 surfaced and corrected.” *Harris v. Nelson*, 394 U.S. 286, 291 (1969). Habeas
8 corpus “never has been a static, narrow, formalistic remedy; its scope has been to
9 achieve its grand purpose - the protection of individuals against erosion of their
10 right to be free from wrongful restraints upon their liberty.” *Jones v. Cunningham*,
11 371 U.S. 236, 243 (1963). At its historical core, habeas corpus “has served as a
12 means of reviewing the legality of Executive detention, and it is in that context that
13 its protections have been strongest.” *Rasul v. Bush*, 542 U.S. 466, 474 (2004)
14 (citations omitted). These protections extend fully to noncitizens subject to an
15 order of removal. *See Martinez v. McAleenan*, 385 F.Supp.3d 349, 355 (“Due to its
16 talismanic significance in protecting individual liberty from unlawful detention,
17 habeas corpus is fundamentally governed by equity. The Supreme Court has
18 granted the writ when justice has so required.”) (citing *Munaf v. Grren*, 128 S.Ct.
19 2207 (2008) and *Carafas v. LaVallee*, 392 U.S. 234 (1968)). The Supreme Court
20 has noted the writ’s “scope and flexibility--its capacity to reach all manner of
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1 illegal detention--its ability to cut through barriers of form and procedural mazes.”
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3 *Harris*, 394 U.S. at 291.

4 **V. REQUEST FOR RELIEF**

5 Pending the adjudication of this Petition, Petitioner respectfully requests that
6 the Court use its authority under 28 U.S.C. § 2243 to order the Respondents to file
7 a return within three days, unless they can show good cause for additional time.
8 See 28 U.S.C. §2243. (Order to show cause why a petition for a writ of habeas
9 corpus should not be granted should be “returned within three days unless for good
10 cause additional time, not exceeding twenty days, is allowed”).
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13 Petitioner requests that this Court issue an order that Respondents must
14 notify the Court and Petitioner’s counsel five days prior to any removal of
15 Petitioner.
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18 Petitioner further asks this Court to declare that he is not subject to
19 mandatory detention under 8 U.S.C. § 1225(b)(2). Petitioner also requests that the
20 Court grant such other and further relief as it deems just and proper.
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22 Furthermore, Petitioner requests to be released from detention.
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24 **VI. EXHAUSTION OF REMEDIES**

25 Exhaustion of remedies is not required for this habeas petition because
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27 Petitioner challenges the government’s unlawful classification of his detention as
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1 mandatory under 8 U.S.C. § 1225(b)(2). The Immigration Court has taken the
2 position that it lacks jurisdiction to review custody where DHS asserts mandatory
3 detention. Any further attempt to pursue administrative remedies would therefore
4 be futile.
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7 Even if exhaustion were required, Petitioner has already sought custody
8 redetermination before an Immigration Judge. On December 9, 2025, his request
9 for bond was denied on the grounds that Petitioner falls under § 1225(b)(2).
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11 Having raised the issue and been denied relief, Petitioner has satisfied or, in the
12 alternative, is excused from any exhaustion requirement.
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14 Because the BIA has ruled in *Yajure Hurtado* that § 235(b)(2)(A) mandates
15 detention, further pursuit of administrative remedies would be futile. Only this
16 Court has the authority to determine whether that interpretation is lawful and
17 constitutional.
18

19 PRELIMINARY INJUNCTION

20 **1. Legal Standard**

21
22 The legal standard for granting preliminary injunction relief is well
23 established. *See Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir.1983). This Court
24 may issue injunctive relief maintaining the status quo when the movant
25 demonstrates: (1) a likelihood of irreparable harm in the absence of the injunction;
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1 and (2) either a likelihood of success on the merits or sufficiently serious questions
2 going to the merits to make them a fair ground for litigation, with a balance of
3 hardships tipping decidedly in the movant's favor. *Id.* While a petitioner seeking a
4 preliminary injunction has the burden of demonstrating likelihood of success on the
5 merits, they are not required to prove their case in full at the preliminary injunction
6 stage, but only such portions that enable them to obtain the injunctive relief that they
7 seek. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981).
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11 **2. Petitioner is Entitled to Injunctive Relief**

12 Petitioner is unlawfully detained under the government's assertion that he is
13 subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). This position is
14 contrary to the plain text of the statute, longstanding agency practice, and recent
15 federal district court rulings. As a noncitizen who entered the United States on 2009
16 and was arrested many years later inside the country, Petitioner is not "seeking
17 admission" at a port of entry and therefore cannot be held under § 1225(b)(2). His
18 custody is properly governed by 8 U.S.C. § 1226(a), which authorizes an
19 individualized custody determination and potential release on bond. The denial of a
20 bond hearing deprives Petitioner of liberty without due process of law.
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25 Under the Due Process Clause of the Fifth Amendment, no person shall be
26 deprived of life, liberty, or property, without due process of law. U.S. Const. Amend.
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1 V. Non-citizens on U.S. soil have constitutional rights, including the right to due
2 process of law. *Yick Wo v. Hopkins*, 118 U.S. 356, 368-69 (1886); *Matthew v. Diaz*,
3 426 U.S. 67, 77 (1976). By refusing to provide Petitioner with a bond hearing,
4 Respondents subject him to prolonged and arbitrary detention beyond what the
5 Constitution and the statute allow.
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8 In this circumstance, if the noncitizen “provides good reason to believe that
9 there is no significant likelihood of removal in the reasonably foreseeable future,
10 the Government must respond with evidence sufficient to rebut that showing.” *Id.*
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12 **a. Irreparable Harm in the Absence of an Injunction**

13 An injury is “irreparable” if it is “not accurately measurable or adequately
14 compensable by money damages.” *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*
15 102 F.3d 12, 19 (1st Cir. 1996); *see also United Steelworkers of Am., AFL-CIO v.*
16 *Textron, Inc.* 836 F.2d 6, 8 (1st Cir. 1987).
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19 Due process cases recognize a broad liberty interest rooted in the fact of
20 deportation, not just the process of removal proceedings. *See Bridges v. Wixon*,
21 326 U.S. 135, 154 (1945) (deportation “visits a great hardship on the individual
22 and deprives him of the right to stay and live and work in this land of freedom.”);
23 *see also Chhoeun v. Marin*, 2018 WL 566821, at *9 (C.D. Cal., Jan. 25, 2018)
24 (finding a “strong liberty interest” where being deported means being separated
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1 from home and family). While this liberty interest typically arises in removal
2 proceedings, courts have found procedural due process violations for persons not
3 in removal proceedings. *See, e.g., Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998)
4 (forms issued to noncitizens charged with civil document fraud violated due
5 process clause); *Rojas v. Johnson*, 305 F.Supp.3d 1176, 1180 (W.D. Wash. Mar.
6 29, 2018) (concluding that “Agency Defendants do not provide sufficient notice of
7 the one-year deadline to satisfy the Due Process clause” to asylum-seeker
8 subclasses both in and out of removal proceedings).

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12 Here, Petitioner suffers irreparable harm with each additional day of
13 detention without an opportunity to demonstrate that he is neither a danger to the
14 community nor a flight risk. The deprivation of liberty cannot be remedied by
15 monetary damages. Moreover, the balance of equities favors Petitioner because the
16 government has no legitimate interest in detaining him under an unlawful statutory
17 framework. The public interest also favors ensuring compliance with constitutional
18 guarantees and statutory limits on detention authority.
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22 **b. Likelihood of Success on the Merits and Serious Questions Going**
23 **to the Merits**

24 Immigrants who pursue lawful immigrant status in the United States have
25 rights under the Due Process Clause of the Fifth Amendment. Once a petitioner
26 has identified protected liberty or property interest, the Court must determine
27

1 whether a constitutionally sufficient process has been provided. *Mathews*, 424 U.S.
2 at 335. In making this determination, the Court balances (1) “the private interest
3 that will be affected by the official action”; (2) “the risk of an erroneous
4 deprivation of such interest through the procedures used, and the probable value, if
5 any, of additional or substitute procedural requirement would entail;” and (3) “the
6 government’s interest, including the function involved and the fiscal and
7 administrative burdens that the additional or substitute procedural requirement
8 would entail.” *Id.* Interpreted under the Constitution, the INA and its applicable
9 regulations do not permit continual detention of Petitioner after he has been
10 granted immigration relief and surpassed the 90-day removal allotment given
11 under the INA. 8 U.S.C. § 1231.

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16 Due process protects a noncitizen’s liberty interest in the adjudication of
17 discretionary applications for relief and benefits made available under the
18 immigration laws. *See Arevalo v. Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003)
19 (recognizing protected interests in the “right to seek relief” even when there is no
20 “right to the relief itself”). Petitioner has a protected due process interest in his
21 claim of unlawful detention, and due process requires that since he cannot be
22 removed to Mexico, and he cannot stay detained, that he must be released.
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1 The Government's actions toward Petitioner violate or will violate the APA
2 and the Fifth Amendment. The APA provides that a court "shall. . . hold unlawful
3 and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of
4 discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). To
5 satisfy the APA, an agency must "examine the relevant data and articulate a
6 satisfactory explanation for its action including a rational connection between the
7 facts found and the choice made." *Encino Motorcars, LLC v. Navarro*, 136 S. Ct.
8 2117, 2125 (2016) (quoting *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut.*
9 *Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

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14 When the Government has promulgated "[r]egulations with the force and
15 effect of law," those regulations "supplement the bare bones" of federal statutes
16 and in areas of the law, such that agencies must follow their own "existing valid
17 regulations," even where Government officers have broad discretion, such as in
18 immigration. *United States ex rel. Accardi Shaughnessy*, 347 U.S. 260, 266, 268
19 (1954) (reversing in immigration case after review of warrant for deportation); *see*
20 *also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("[I]t is incumbent upon agencies to
21 follow their own procedures . . . even where [they] are possibly more rigorous than
22 otherwise would be required."); *Battle v. FAA*, 393 F.3d 1330, 1336 (D.C. Cir.
23 2005) ("*Accardi* has come to stand for the proposition that agencies may not
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1 violate their own rules and regulations to the prejudice of others.”). Breaches of
2 *Accardi*’s rule constitute violations of both the APA and the Fifth Amendment’s
3 Due Process Clause. *See Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991)
4 (“*Accardi* doctrine is premised on fundamental notions of fair play underlying the
5 concept of due process”); *see also Wilson v. Comm’r of Soc. Sec.*, 378 F.3d 541,
6 545, 546 (6th Cir. 2004) (noting that an *Accardi* violation may be a due process
7 violation, and the Government’s action may be set aside pursuant to the APA);
8 *Sameena, Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) (“An
9 agency’s failure to follow its own regulations . . . may result in a violation of an
10 individual’s constitutional right to due process.”).

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15 1. *Accardi*’s “ambit” is “not limited” to “rules attaining the status of
16 formal regulation.” *Montilla*, 926 F.2d at 167. It applies to both promulgated
17 regulations and other processes and programs that guide the Government’s
18 discretion. *See Zhang v. Slattery*, 840 F. Supp. 292, 293- 96 (S.D.N.Y. 1994)
19 (holding that the Government violated the APA by ignoring its non- promulgated
20 immigration “program”); *see also Pasquini v. Morris*, 700 F.2d 658, 661-63 (11th
21 Cir. 1983) (same, but for informal criteria). *Accardi* means that when the
22 Government sets out a process whereby relief can be pursued, a “right to *seek*
23 relief” is created, even when there is no “right to the relief itself.” *Arevalo v.*
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1 *Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) (emphasis added) (citing *Accardi*, 347 U.S.
2 at 268).

3
4 Federal district courts have already recognized that DHS's reliance on §
5 1225(b)(2) to categorically deny bond hearings is unlawful. In *Ramon Rodriguez*
6 *Vazquez v. Bostock*, No. 3:25-cv-05240 (N.D. Cal. Apr. 24, 2025), the court issued
7 a preliminary injunction requiring ICE to provide a bond hearing to a petitioner
8 detained under § 1225(b)(2), holding that custody in such circumstances properly
9 falls under § 1226(a). Similarly, in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-
10 01873 (C.D. Cal. 2025), the court granted a temporary restraining order requiring
11 bond hearings within seven days and prohibiting ICE from transferring or
12 removing petitioners without court approval. These rulings demonstrate both the
13 statutory error and constitutional infirmity of Respondents' position. Petitioner's
14 claim is therefore not novel, but squarely aligned with other federal courts that
15 have already granted the precise relief sought here.
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21 **c. There is No Substantial Injury to Other Parties and Injunctive**
22 **Relief is in the Public Interest**

23 The issuing of a temporary restraining order and a preliminary injunction is
24 warranted because the balance of equities tips in the favor of the Petitioner and the
25 injunction is squarely within the public interest. The government's equities also
26 weigh in favor of issuing a preliminary injunction here.
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28

1 The Petitioner, the public, and the Government all have a vested interest in
2 fair and equitable legal proceedings for all people, citizens and non-citizens alike.
3
4 *See Reno v. Flores*, 507 U.S. 292 (1993) (Finding that non-citizens are entitled to
5 5th Amendment due process).

6
7 Further, granting injunctive relief in this case will not cause substantial injury
8 to Respondents or to the government. The government has no legally cognizable
9 interest in detaining Petitioner under an unlawful statutory framework. An injunction
10 requiring that Petitioner be provided a custody hearing under 8 U.S.C. § 1226(a)
11 merely enforces the law as written and ensures compliance with constitutional
12 protections. As courts have consistently recognized, the government cannot be
13 harmed by an order that prevents it from engaging in unlawful conduct.
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16 The Government “cannot suffer harm from an injunction that merely ends an
17 unlawful practice or reads a statute as required to avoid constitutional concerns.”
18 *R.I.L-R v. Johnson*, 80 F. Supp. 3d at 191 (D.D.C. Feb. 20, 2015) (citing *Rodriguez*
19 *v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013)). Further, “the public interest is
20 served when administrative agencies comply with [the requirements of U.S. law].”
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23 *Id.*

24
25 **d. Matter of Yajure Hurtado Is Not Binding on this Court and Should**
26 **Not Be Followed**

27 The BIA’s recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216
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1 (BIA 2025), extends § 235(b)(2)(A) beyond its text and purpose to bar bond for all
2 individuals who entered without inspection, no matter how long they have resided
3 in the United States. That interpretation is deeply flawed.
4

5 First, it contradicts the statutory scheme. Section 235(b)(2)(A) governs
6 “applicants for admission”, those encountered at or near the border. Petitioner, who
7 has resided in the interior of the United States since 2006, is not in that category.
8 Section 236(a) is the detention authority that properly applies.
9
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11 Second, the decision departs from decades of agency practice. The Board
12 itself acknowledged that “for years Immigration Judges conducted bond hearings for
13 aliens who entered the United States without inspection.” *Id.* at 225. This admission
14 underscores that § 236(a) has long been understood to provide custody authority in
15 such cases. The Board’s sudden reversal represents an unexplained break from
16 settled practice, rendering it arbitrary and unexplained under the APA.
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19 Although the Board later attempted to walk back this acknowledgment, stating
20 that “our acknowledgment that aliens detained under § 236 may be eligible for
21 discretionary release on bond does not mean all aliens are eligible,” *id.* at 227, this
22 disclaimer does not erase the historical fact of settled agency practice. Nor does it
23 explain why individuals like Petitioner who entered sixteen years ago, established
24 long-term residence, and were arrested in the interior should suddenly be stripped of
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1 bond eligibility. The Board's narrowing language only underscores the arbitrariness
2 of its reinterpretation. By conceding the longstanding bond practice yet declaring it
3 "beyond the scope" to resolve, the BIA effectively confirmed that its shift was
4 policy-driven, not compelled by statutory text. That makes the decision both
5 unpersuasive and invalid.
6
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8 Third, the decision raises serious constitutional problems. Mandatory
9 detention without access to a bond hearing, especially for long-term residents like
10 Petitioner with strong family and community ties, violates the Due Process Clause.
11 Courts construe statutes to avoid such constitutional infirmities. This Court should
12 therefore reject *Yajure Hurtado's* interpretation and apply § 236(a), which
13 authorizes discretionary release on bond.
14
15

16 The Board's interpretation in *Matter of Yajure Hurtado* is not only
17 inconsistent with statutory text and decades of settled practice but has also already
18 faced judicial correction. Federal courts considering the same issue have recognized
19 that DHS's expansion of § 1225(b)(2) produces unlawful and unconstitutional
20 results. In recent cases from the Northern and Central Districts of California, the
21 courts required ICE to provide bond hearings to noncitizens whom DHS had
22 classified under § 1225(b)(2), making clear that custody in such cases is properly
23 governed by § 236(a). These rulings reflect a growing recognition among Article III
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1 courts that DHS's reading of § 1225(b)(2) cannot stand. This Court should follow
2 the same reasoning and hold that Petitioner's detention without access to bond is
3 unlawful.
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5 **F. Federal Courts have rejected DHS's position.**

6
7 Recent federal court decisions confirm that Respondents' reliance on §
8 1225(b)(2) to detain Petitioner without a bond hearing is unlawful. In *Cuevas*
9 *Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025), the
10 district court expressly distinguished *Matter of Yajure Hurtado*, it rejected its
11 sweeping application of § 1225(b)(2) and held that noncitizens apprehended in the
12 interior after long residence in the United States are properly detained under §
13 236(a), not § 1225(b)(2). *Cuevas Guzman* reaffirmed the longstanding rule that entry
14 without inspection does not permanently bar a person from eligibility for bond once
15 they are living in the country. That holding directly applies here.
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19 Similarly, in *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D.
20 Cal. Sept. 8, 2025), the court recognized that the BIA's interpretation in *Yajure*
21 forecloses administrative relief, rendering exhaustion futile. The same is true for
22 Petitioner, who cannot meaningfully seek bond redetermination before EOIR given
23 that the IJ held that he had no jurisdiction.
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26 In *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025),
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1 the district court issued a preliminary injunction requiring ICE to provide a bond
2 hearing to a petitioner detained under § 1225(b)(2), holding that custody in such
3 circumstances falls under § 1226(a). That decision confirms that habeas relief is the
4 proper vehicle and that this Court has the authority to order the same remedy for
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6
7 Petitioner.

8 These cases establish that DHS's reliance on § 1225(b)(2) for long-term
9 residents like Petitioner is inconsistent with statutory text, contrary to constitutional
10 protections, and already rejected by multiple courts within this Circuit.

12 In *Singh v. Lewis*, No. 4:25-cv-96 (W.D. Ky. Sept. 22, 2025), the district court
13 granted a habeas petition and ordered release, finding that DHS's reclassification of
14 interior arrests under § 1225(b)(2) violated both the INA and due process. The court
15 rejected the government's reliance on *Matter of Yajure Hurtado*, concluding that "an
16 individual is not 'seeking admission' when he never attempted to do so," and held
17 that detention must proceed under § 1226(a). The court further found that the
18 automatic-stay regulation at 8 C.F.R. § 1003.19(i)(2) unlawfully deprived the
19 petitioner of liberty without due process and ordered his immediate release upon
20 posting bond.
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25 Similarly, in *Beltrán Barrera v. Tindall*, No. 3:25-cv-541 (W.D. Ky. Sept. 19,
26 2025), the court held that DHS's blanket application of § 1225(b)(2) to individuals
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1 apprehended years after entering the United States was contrary to the statutory text
2 and structure of the INA. The court emphasized that Congress intended § 1225 to
3 govern only applicants for admission encountered at the border, and it therefore
4 ordered the petitioner's release under § 1226(a)
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7 Finally, in *Benítez-Cornejo v. Cantu*, No. CV-25-03672-PHX-JJT (ESW) (D.
8 Ariz. 2025), the District of Arizona granted habeas relief on the same statutory
9 question presented here, holding that individuals arrested in Arizona after years of
10 residence fall under § 1226(a) and must receive individualized bond hearings. The
11 court rejected DHS's reliance on *Yajure Hurtado* as inconsistent with the Ninth
12 Circuit's due-process jurisprudence and the statutory framework of the INA
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15 Aside from the Ninth Circuit, numerous district courts have disagreed with
16 the BIA's analysis in *Matter of Yajure Hurtado* and granted habeas relief to
17 petitioners similarly situated to Petitioner, recognizing that custody in such cases
18 properly falls under § 236(a).
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- 20
21 • **First Circuit:** *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025)
22 (expressly disagreeing with BIA's analysis in *Yajure Hurtado*); *Jimenez v.*
23 *FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v.*
24 *Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025
25 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238
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1 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass.
2 Aug. 14, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025).

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4 • **Second Circuit:** *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug.
5 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025).

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7 • **Fourth Circuit:** *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug.
8 24, 2025).

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10 • **Fifth Circuit:** *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025).

11 • **Sixth Circuit:** *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich.
12 Sept. 9, 2025) (rejecting BIA's analysis in *Yajure Hurtado*); *Lopez-Campos*
13 *v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025).

14
15 • **Eighth Circuit:** *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb.
16 Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept.
17 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025);
18 *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Jacinto v. Trump*,
19 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Maldonado v. Olson*, 2025 WL
20 2374411 (D. Minn. Aug. 15, 2025); *Garcia Jimenez v. Kramer*, 2025 WL
21 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224
22 (D. Neb. Aug. 14, 2025).

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26 • **Ninth Circuit:** *Caicedo Hiestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal.
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1 Sept. 9, 2025). *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal.
2 Sept. 3, 2025). *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal.
3 Sept. 3, 2025). *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal.
4 Aug. 15, 2025). *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11,
5 2025).
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8 Because multiple courts have already recognized the unlawfulness of DHS's
9 reliance on § 1225(b)(2) to deny bond hearings. Petitioner's claim for relief thus
10 aligns with an established and growing consensus.
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12 **VII. CLAIMS FOR RELIEF**

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14 **1. PETITIONER'S CONTINUED DETENTION VIOLATES DUE
15 PROCESS, THE INA, AND THE APPLICABLE REGULATIONS**

16 Petitioner re-alleges and incorporates by reference each and every allegation
17 contained in the preceding paragraphs as if set forth fully herein. Due process
18 protects a noncitizen's liberty interest in freedom from arbitrary civil confinement.
19 Petitioner has a protected due process interest in seeking judicial review of his
20 continued detention and in obtaining a custody determination in accordance with
21 the INA. By treating Petitioner as subject to mandatory detention under §
22 1225(b)(2) rather than discretionary custody under § 1226(a), Respondents have
23 deprived him of his liberty without adequate process and in excess of their
24 statutory authority.
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1 Respondents' reliance on INA § 235(b)(2)(A), as reinforced by the BIA's
2 recent decision in *Matter of Yajure Hurtado*, unlawfully deprives Petitioner of his
3 statutory right to a bond hearing under § 236(a). Even the Board admitted that for
4 years Immigration Judges conducted such hearings for EWIs before abruptly
5 reversing course. That reversal is inconsistent with the INA, arbitrary and
6 capricious under the APA, and unconstitutional under the Due Process Clause of
7 the Fifth Amendment. This Court is not bound by *Yajure Hurtado* and should
8 decline to follow it.
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12 **2. CONTNUED DETENTION OF PETITIONER VIOLATES THE**
13 **ADMINISTRATIVE PROCEDURE ACT**

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15 Petitioner re-alleges and incorporates by reference each and every allegation
16 contained in the preceding paragraphs as if set forth fully herein. Respondents'
17 actions are "arbitrary, capricious, an abuse of discretion, or otherwise not in
18 accordance with law" and "in excess of statutory jurisdiction, authority, or
19 limitations." 5 U.S.C. §§ 706(2)(A), (C). For decades, DHS and EOIR interpreted
20 the INA to mean that individuals like Petitioner, those apprehended in the interior
21 long after entry, are detained under § 1226(a). The abrupt reversal of this settled
22 interpretation, without explanation or notice-and-comment, violates the APA.
23 Absent this Court's intervention, Petitioner has no adequate remedy to challenge
24 the unlawful classification of his custody.
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1 “acting with ‘deliberate indifference to [a] known or obvious danger.’” *Kennedy v.*
2 *City of Ridgefield*, 439 F.3d 1055, 1062 (9th Cir. 2006) (quoting *Munger v. City of*
3 *Glasgow*, 227 F.3d 1082, 1086 (9th Cir. 2000) and *L.W. v. Grubbs*, 92 F.3d 894,
4 900 (9th Cir. 1996)). When the government’s actions leave an individual “in a
5 situation that [is] more dangerous than the one in which [it] found him,” the
6 government has affirmatively placed that individual in danger. *Hernandez v. City*
7 *of San Jose*, 897 F.3d 1125, 1133 (9th Cir. 2018) (quoting *Munger*, F.3d at 1086).
8 The critical inquiry is thus whether the government’s actions “create[d] or
9 expose[d] an individual to a danger which he or she would not have otherwise
10 faced.” *Kennedy*, 439 F.3d at 1061; *Cf. J.P. v. Sessions*, No. Civ. 18-06081 JAK
11 (SKx), 2019 WL 6723686, at *36 (C.D. Cal. Nov. 5, 2019) (federal government
12 “‘acted with deliberate indifference to a known or obvious danger’ by
13 implementing the [family separation] policy with awareness of the potential harm
14 it would cause and intending to use that as a basis to deter future attempts by those
15 similarly situated to enter the United States” (alterations omitted) (quoting
16 *Hernandez*, 897 F.3d at 1137, and *Kennedy*, 439 F.3d at 1062)). Even if Petitioner
17 was required to show deliberate indifference as civil detainees—and he is not, see
18 *Jones v. Blanas*, 393 F.3d 918, 933 (9th Cir. 2004)—he could easily do so. The
19 government acts with deliberate indifference to a known or obvious danger when it
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1 “recognize[s] an unreasonable risk and actually intend[s] to expose [the plaintiff]
2 to such risks without regard to the consequences to [the plaintiff].” *Hernandez*, 897
3 F.3d at 11 (alterations omitted) (quoting *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974
4 (9th Cir. 2011)). An unreasonable risk includes future harm caused by conditions
5 of confinement. *See Helling v. McKinney*, 509 U.S. 25, 33 (1993).
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8 Here, Respondents have placed Petitioner in greater danger by misclassifying
9 him under § 1225(b)(2) and denying him the bond procedures guaranteed under §
10 1226(a). By treating him as mandatorily detained without any individualized
11 assessment of flight risk or danger, the government has subjected him to prolonged
12 confinement in punitive conditions with no lawful basis for denying him access to
13 bond. Respondents acted with deliberate indifference to the obvious risk of harm
14 inherent in prolonged and unnecessary detention, including the physical,
15 emotional, and familial harms that flow from being confined when the statute does
16 not authorize it.
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21 **VIII. REQUEST FOR ORAL ARGUMENT**

22 Petitioner respectfully requests oral argument on this Petition.
23

24 **IX. PRAYER FOR RELIEF**

25 WHWEREFORE, Petitioner respectfully requests that this Court:
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- 27 1. Assume jurisdiction over this matter;

- 1 2. Issue a Writ of Habeas Corpus on the ground that Petitioner's continued
2 detention is unlawful and order his immediate release;
- 3 3. In the alternative, issue injunctive relief ordering Respondents to provide
4 Petitioner with an individualized custody determination before an
5 Immigration Judge under 8 U.S.C. § 1226(a) within seven (7) days, or to
6 release him immediately;;
- 7 4. Order Respondents file a return within three days pursuant to 28 U.S.C. §
8 2243;
- 9 5. Declare that the process as applied to Petitioner by Respondents violates the
10 Suspension Clause, the Due Process Clause of the Fifth Amendment, the
11 INA, the APA, and federal regulations;
- 12 6. Order Respondents to provide five days of notice to the Court and Petitioner
13 of his imminent removal;
- 14 7. Order Respondents to follow the applicable rules, regulations, law, and the
15 Constitution.
- 16 8. Award Petitioner his costs and reasonable attorneys' fees in this action as
17 provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other
18 statutes;
- 19 9. Grant such further relief as the Court deems just and proper.

20 Dated: December 18, 2025,
21 Tucson, AZ,

Respectfully submitted,
22 By: /s/ Siovhan Ayala
23 Siovhan Ayala
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2 **VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

3 I am submitting this verification on behalf of the Petitioner because I am one
4 of the Petitioner's attorneys. I have discussed with the Petitioner's legal team the
5 events described in this Petition. Based on those discussions, on information and
6 belief, I hereby verify that the factual statements made in the attached Amended
7 Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and
8 Injunctive Relief are true and correct to the best of my knowledge.
9
10
11

12 Dated: December 18, 2025,

13
14 Tucson, AZ,

15 By: /s/ Siovhana Ayala
16 Siovhana Ayala
17 Attorney for the Petitioner
18 AYALA LAW OFFICE, PC
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