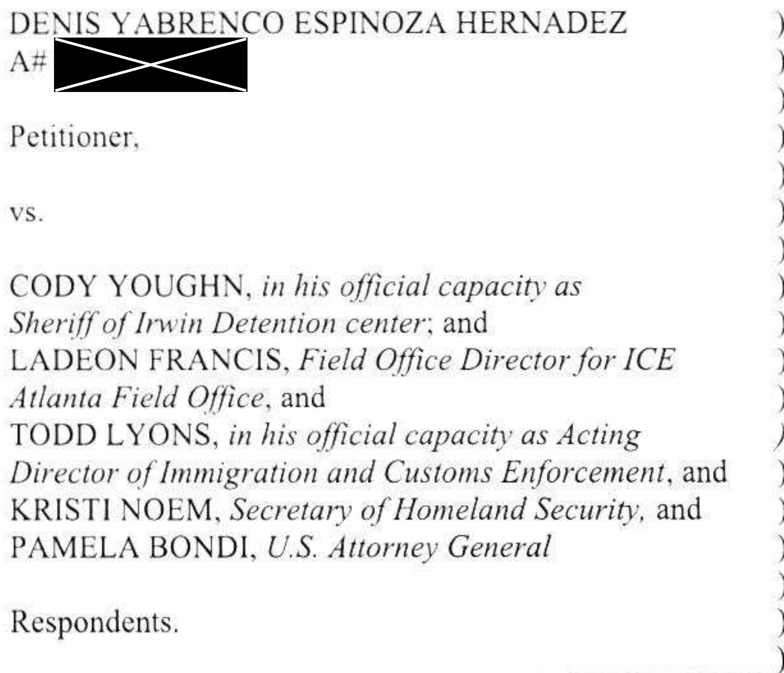
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION



DENIS YABRENCO ESPINOZA HERNADEZ)
A# [redacted])
)
Petitioner,)
) CASE NO.:
vs.) 7:25-cv-201
)
CODY YOUGHN, *in his official capacity as*)
Sheriff of Irwin 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*)
)
Respondents.)
)

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

AND COMPLAINT FOR DECLARATIVE AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. This case challenges the unlawful of Petitioner, Denis Yabrenco ESPINOZA HERNANDEZ (Petitioner), who was arrested and taken into custody and currently at Irwin County Detention Center without notice, without an opportunity to respond, and without any violation of his Order of Release on Recognizance (OREC) and Intensive Supervision Appearance Program (ISAP) conditions. *See* Exhibit 1 ICE Locator.
2. Petitioner was suddenly arrested on December 5, 2025, when he appeared voluntarily and in full compliance with his OREC at a scheduled appointment with the ISAP in Riverdale, Georgia. *See* Exhibit 3 OREC.

3. At the time of his arrest, Petitioner was fully compliant with all ISAP conditions, including prior electronic monitoring, routine check-ins, location verification, and home visits. He had not violated any condition of supervision and posed no flight risk or danger to the community, as evidenced by ICE's continued placement of Petitioner in ISAP.
4. In light of this recent shift in enforcement practice, re-detention constitutes an unlawful revocation of supervised release, carried out in direct violation of ICE's own regulations, and the procedural and substantive protections of the Fifth Amendment's Due Process Clause. Petitioner was never afforded an opportunity to respond, contest the alleged basis for detention, or receive a written decision explaining the authority or justification for ICE's action. Such conduct reflects a broader enforcement practice of detaining compliant individuals during routine reporting appointments and depriving them of liberty without due process of law.
5. Respondents' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and implementing regulations, the Administrative Procedure Act, and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions.
6. Petitioner therefore brings this corrective action for habeas corpus, injunctive, and declaratory relief to remedy his current and ongoing unlawful detention and seeks an order directing Respondents to immediately release him from custody. Petitioner further seeks an injunction prohibiting Respondents from re-detaining him or revoking his supervised release absent full compliance with statutory and regulatory requirements, including individualized lawful findings, written notice, and a meaningful opportunity

to be heard, as required by the Constitution and governing immigration regulations.

II. JURISDICTION

7. 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.
8. 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.
9. 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.

10. 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.

11. In this case, Petitioner asserts an ongoing constitutional violation, including the deprivation of physical liberty without due process of law, arbitrary and capricious agency action, and the unlawful revocation of his supervised release without notice, hearing, or lawful findings. Accordingly, this Court has not only the authority, but the obligation, to adjudicate the constitutional and statutory violations presented in this Petition and to grant immediate and effective relief to remedy the ongoing infringement of Petitioner's fundamental rights.

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 carve-out.

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 County Detention Center in, under the custody of the Department of Homeland Security (DHS). 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, Denis Yabrenco HERNANDEZ ESPINOZA, is a 52-year-old noncitizen who has resided in the United States for several years. He resides with his U.S. citizen partner and serves as the primary caregiver and financial provider for the household. He was recently detained during a routine check-in with ICE without notice or an opportunity to respond. .

23. Respondent Cody Youghn is the responsible Warden of Irwin County Detention Center. As such, Respondent 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 Youghn has immediate physical custody of the Petitioner and is sued in his official capacity.

24. Respondent Ladeon Francis Atlanta Field Office Director for Immigration and Customs Enforcement (hereinafter "FOD") Atlanta Field Office. As such, Respondent Francis or the supervision, detention, and enforcement actions concerning noncitizens under ICE Georgia jurisdiction, including Petitioner. Respondent Francis is being sued in his official capacity.

25. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (hereinafter "ICE"). As such, Respondent Lyons is responsible for the oversight of ICE operations. Respondent Lyons is being sued in his official capacity.

26. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (hereinafter "DHS"). As Secretary of DHS, Secretary Noem is 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 as U.S. government agencies are Respondents in this Petition.

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. EXHAUSTION OF REMEDIES

30. **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.

31. 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.

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

VI. STATEMENT OF FACTS AND PROCEDURAL HISTORY

33. Petitioner, Denis Yabrenco Hernandez Espinoza, is a noncitizen currently detained at the Irwin County Detention Center in Ocilla, Georgia. Petitioner has been fully compliant with all immigration supervision requirements, including participation in the Intensive Supervision Appearance Program (ISAP), prior to his sudden and unlawful detention on December 5, 2025 when he went to check in.

34. Petitioner entered the United States several years ago and was granted a humanitarian parole or permission to enter under an OREC.

35. ICE required him to be enrolled in ISAP and he has fully complied with all conditions imposed by ICE. As part of ISAP, Petitioner initially wore an electronic ankle monitor,

submitted photographs and location check-ins through the ISAP application, complied with both in-person and telephonic reporting requirements, and permitted ISAP officers to conduct home visits. At no point did Petitioner violate any condition of supervision. ICE's continued placement of Petitioner in ISAP demonstrates the agency's determination that he is neither a flight risk nor a danger to the community.

36. On December 5, 2025, Petitioner appeared voluntarily for a scheduled ISAP check-in at the ISAP office in Riverdale, Georgia. He arrived with his partner and waited for over two hours without explanation. A male individual in civilian clothing, who did not wear a uniform or display any badge or identification, approached Petitioner's partner and informed her that Petitioner was being detained and instructed her to leave. Petitioner's partner was not shown a warrant, notice, or revocation order. He was unaware why he was detained.

37. Petitioner himself was never informed of the reason for his detention, was not given notice of any alleged ISAP violation, and was not afforded any opportunity to contest the detention. Following his arrest, Petitioner was transferred to 180 Ted Turner Drive SW, Atlanta, Georgia. On December 7, 2025, he was transferred to the Irwin County Detention Center, where he remains detained to date.

38. It is important to note that at no time, during the ISAP office visit, during transfer to 180 Ted Turner Drive, or upon arrival at Irwin County Detention Center was Petitioner provided with: (a) a written notice revoking his ISAP participation or Order of Supervision; (b) a statement of reasons for his detention; (c) an interview or opportunity to respond; (d) identification of the authorized official who ordered the revocation; or

(e) any warrant, charging document. Petitioner repeatedly inquired about the reason for his detention, but ICE officers provided no information.

39. Petitioner has no pending criminal charges, no history of violence, and no record of noncompliance with immigration supervision. His only prior charge—a minor traffic offense from 2018—was fully resolved years ago and cannot justify the sudden revocation of his liberty.

40. Petitioner's Notice to Appear was docketed with the immigration Court on December 8, 2025 and he does not have an upcoming immigration court hearing. Exhibit 4. Nevertheless, he is not subject to a final order of removal. His detention was effectuated outside any lawful adjudicatory process and in direct violation of ICE regulations. Petitioner's detention constitutes an unlawful and summary revocation of supervised release, carried out without notice, authority, or an opportunity to be heard. Absent immediate judicial intervention, Petitioner will continue to suffer irreparable harm from this unconstitutional deprivation of liberty.

41. Petitioner is an active member of his local church community, and all his family members depend on him for financial, emotional, and familial support. He has resided in the United States with his long-term U.S. citizen partner and their blended family. Petitioner is the primary financial provider and caregiver for his household.

42. ICE has consistently found Petitioner to be neither a flight risk nor a danger to the community, as evidenced by his continuous release under ISAP since 2022. Over more than three years, Petitioner has fully complied with every reporting requirement, remained at the same verified residence in Clayton County, and maintained steady

cooperation with ICE officers while preserving strong family and community ties. Despite his long history of full compliance, Petitioner remains unlawfully detained.

43. Upon information and belief, as of the time of filing of this Writ of Habeas, Petitioner remains confined the Irwin County Detention Center, 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.*

44. On December 18, 2025, the U.S. District Court for the Central District of California entered a Final Judgment in the nationwide class action *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). Specifically, the court: (1) DECLARED that all members of the "Bond Eligible Class" are detained under 8 U.S.C. § 1226(a), are not subject to mandatory detention under § 1225(b)(2), and are entitled to a bond hearing before an immigration judge; (2) VACATED ICE's policy, as described in its July 8, 2025 "Interim Guidance Regarding Detention Authority for Applicants for Admission," finding it unlawful under the APA;

(2) ENTERED FINAL JUDGMENT as to Counts I, II, and III of the Amended Class Complaint and certified those claims for immediate appeal pursuant to Federal Rule of Civil Procedure 54(b). Although Petitioner is not a member of the class as he was apprehended upon arrival, the vacated ICE policy treating him as an "arriving alien" or "applicant for admission" is still valid as that policy was vacated as unlawful under the APA. *Id.*

VII. RESPONDENTS' UNLAWFUL REVOCATION OF RELEASE AND RE-DETENTION

45. Petitioner's detention is not the result of an initial custody determination but an unlawful re-arrest executed in violation of mandatory federal regulations, his constitutional right to due process, and the agency's own prior binding finding that he was eligible for discretionary release. As such, his detention was unlawful ab initio and must be remedied by immediate release.

A. The Revocation Violated Mandatory Regulations and Was Executed Without Lawful Authority

46. The authority to revoke an Order of Release on Recognizance (OREC) is strictly limited by regulation to a narrow group of high-level officials. 8 C.F.R. § 236.1(c)(9) provides: "When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign), in which event the alien may be taken into physical custody and detained." This authority is exclusive, and DHS Delegation Order 7030.2 expressly

prohibits its redelegation. Exhibit 5. Any revocation by an unauthorized official is therefore ultra vires and invalid.

47. Petitioner was released on a Form I-220A (Order of Release on Recognizance), which documents a custody determination made under 8 U.S.C. § 1226(a) and its implementing regulation, 8 C.F.R. § 236.1. This is not parole under 8 U.S.C. § 1182(d)(5)(A). Both federal courts and the Board of Immigration Appeals have repeatedly recognized that an OREC constitutes a release under § 1226(a) pending removal proceedings. See, e.g., *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115–16 (9th Cir. 2007); *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023).

48. Furthermore, the regulatory framework for changing a noncitizen's custody status is explicit and mandatory. To revoke an OREC, DHS must: (1) issue a new custody determination, typically via Form I-286; (2) provide contemporaneous written notice to the noncitizen; and (3) advise the individual of the right to seek prompt review by an Immigration Judge. See 8 C.F.R. § 236.1(d)(1)–(3). These are not mere formalities but substantive safeguards to ensure any deprivation of liberty is based on individualized information and subject to fair adjudication.

49. Here, none of these mandatory procedures were followed. Petitioner was summarily arrested without being provided a new custody determination, written notice, a statement of reasons, or identification of the official who ordered the revocation. Failure to comply with these procedures renders the revocation invalid. See, e.g., *Santamaria Orellana v. Baker*, No. 1:25-cv-02841 (D. Md. Oct. 7, 2025); *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765, at 10 (E.D.N.Y. Sept. 29, 2025).

B. The Revocation Violated Petitioner's Fifth Amendment Right to Due Process

50. Because Petitioner had been released on an OREC, he acquired a protected liberty interest in his continued freedom. The summary revocation of that liberty without any process whatsoever violates the Fifth Amendment's Due Process Clause. The governing standard for procedural due process is the three-part balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), which weighs the private interest, the risk of erroneous deprivation, and the government's interest. Every factor weighs decisively in Petitioner's favor.

51. First, Petitioner's private liberty interest is paramount. He has lived in the United States for years on supervised release, fully complied with all conditions, and built deep family and community ties. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The abrupt, unexplained deprivation of this liberty constitutes a profound intrusion.

52. Second, the risk of erroneous deprivation from the procedures used—which were no procedures at all—is exceptionally high. Detaining a compliant individual without advance notice, an individualized assessment, or an opportunity to be heard creates a near-certainty of error. The procedural safeguards required by regulation and affirmed by federal courts—notice, a hearing, and a decision by an authorized official—are the "substitute procedural safeguards" that would eliminate this risk. Their complete absence here makes the due process violation manifest. See, e.g., *J.U. v. Maldonado*, 2025 WL 2772765, at 10 (holding that "ongoing detention of Petitioner with no process at all... violates his due process rights"); *Pinchi v. Noem*, No. 5:25-cv-05632-PCP, 2025

WL 2084921, at 5 (N.D. Cal. July 24, 2025); *Kelly v. Almodovar*, No. 25 Civ. 6448 (AT), 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025).

53. Third, the government's interest does not justify this lawless conduct. While the government has an interest in detaining noncitizens who pose a flight risk or danger, that interest is nonexistent here, as evidenced by Respondents' own years-long determination that Petitioner was suitable for release on supervision. The administrative burden of providing notice and a hearing is minimal compared to the severe harm of arbitrary detention. The government's failure to provide these basic procedural protections before re-detaining Petitioner renders his redetention unconstitutional under the Due Process Clause and mandates his immediate release.

C. Respondents Are Estopped From Re-Characterizing Petitioner's Detention Status

54. By releasing Petitioner on an OREC, DHS made a binding determination that his custody was governed by 8 U.S.C. § 1226(a), the statute authorizing discretionary release. Respondents are now barred by the doctrine of collateral estoppel from re-litigating that issue and claiming Petitioner is subject to mandatory detention under a different statute, 8 U.S.C. § 1225(b).

55. Collateral estoppel, or issue preclusion, prevents a party from re-arguing an issue of fact or law that was already decided against that party in a prior proceeding. Here, the government previously and explicitly determined that Petitioner was eligible for release under § 1226 when it granted him an OREC. That decision necessarily included the legal finding that he was not subject to mandatory detention under § 1225. Petitioner relied on that determination for years, complying with all conditions of his release. To allow Respondents to now reverse their position and invoke a different, more punitive

statutory provision would be fundamentally unfair and would undermine the finality of the agency's own decisions. Having made its choice to proceed under § 1226, the government is estopped from now claiming that statute never applied and that Petitioner was, in fact, subject to mandatory detention all along.

VIII. LEGAL FRAMEWORK FOR THE RELIEF SOUGHT

A. Habeas Jurisdiction

56. 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); 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).

57. "[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).

58. 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).

59. 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.*

60. 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. The Administrative Procedure Act (APA)

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

62. 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).

63. 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.

64. 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.

65. 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

66. 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.").

67. *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. CAUSES OF ACTION AND CLAIMS FOR RELIEF

COUNT ONE

Unlawful Detention in Violation of the INA and Agency Regulations

Summary of Claim of Petitioner's First Claim for Relief: *Respondents are detaining Petitioner under the wrong statute. His custody is governed by 8 U.S.C. § 1226(a) and its implementing regulations (8 C.F.R. §§ 236.1, 1236.1, 1003.19), which entitle him to a bond hearing. By applying the mandatory detention provision of § 1225(b), and in doing so violating their own longstanding regulations and policies, Respondents have violated the INA and the Accardi doctrine..*

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

A. Petitioner's Detention is Governed by 8 U.S.C. § 1226(a), Not § 1225(b)

69. 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).

70. 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).

71. 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).

72. 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.

73. 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.

74. 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.

B. Respondents Violated Their Own Regulations and the Accardi Doctrine.

75. 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.

76. 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.

77. 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.

78. 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").

79. "[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.

80. 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.

81. 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.

82. 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.

83. 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 TWO

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

Summary of Claim of Petitioner's Second Claim for Relief:

*A. **Substantive Due Process**: The detention is arbitrary and punitive because it bears no reasonable relation to a legitimate government purpose. As evidenced by years of compliant supervision, Petitioner is neither a flight risk nor a danger.*

***B. Procedural Due Process:** Respondents' new policy of automatically detaining individuals like Petitioner under § 1225(b) deprives him of liberty without the required notice and a meaningful opportunity to be heard before a neutral decision-maker to contest this new classification, in violation of the principles laid out in Mathews v. Eldridge*

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

A. <u>Violation of Substantive Due Process</u>

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

86. 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.

87. 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).

88. 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.

89. 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.

90. 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.

91. 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*.

B. Violation of Procedural Due Process

92. 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.

93. 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.

94. 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.

95. 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).

96. 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.

97. 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 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 Petitioner's 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.

98. 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 THREE

Violation of the Administrative Procedure Act (APA)

***Summary of Claim of Petitioner's Third Claim for Relief*:**

Respondents' final agency actions are unlawful under 5 U.S.C. § 706(2) because they are:(A) Contrary to Law; (B) Contrary to Constitutional Right (violating the INA and the Due Process Clause); (C) In Excess of Statutory Jurisdiction, Authority, or Limitations (as Congress did not authorize mandatory detention for this population); and (D) Arbitrary and Capricious (as the agencies failed to provide a reasoned basis for departing from decades of practice and failed to consider reliance interests).

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

A. <u>The Agency's Actions Are Contrary to Law and Constitutional Right (5 U.S.C. § 706(2)(A), (B))</u>

100. 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).

101. 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).

102. 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.

103. 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).

104. 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.

105. 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.

106. 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.

B. The Agency's Actions Are In Excess of Statutory Authority (5 U.S.C. § 706(2)(C))

107. "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.

108. 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).

109. "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).

110. 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.

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

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

113. 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.

114. 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.

C. The Agency's Actions Are Arbitrary and Capricious (5 U.S.C. § 706(2)(A))

115. 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).

116. 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).

117. 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).

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

COUNT FOUR

Violation of the Final Judgment in *Maldonado Bautista*

and Continued Unlawful Detention

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

120. Petitioner is NOT a member of the nationwide "Bond Eligible Class" in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). The reason is that Petitioner was apprehended at the border upon his entry into the U.S. several years ago.

121. Although Petitioner may fall outside the *Maldonado Bautista* class definition, the Final Judgment in that case nonetheless provides dispositive support for his release. The court did not merely declare the government's § 1225(b) policy to be wrong; it **VACATED** the July 8, 2025, 'Interim Guidance' under the Administrative Procedure Act, finding it 'not in accordance with law.' A vacated agency policy is a legal nullity. Respondents cannot lawfully detain Petitioner—or anyone—based on a policy that a federal court has rendered void. Any reliance on it is, by definition, an action without a legal basis, making Petitioner's detention unlawful *ab initio* and independently

warrants Petitioner's immediate release.

X. REMEDIES

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

122. 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 cases 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

123. 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

124. Petitioner's arrest and continued detention are unlawful from the outset because his OREC was unlawfully revoked. Furthermore, 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.

125. 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.

126. 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.

<u>If Court Grants Bond Hearing – Ensure Burdens Are Met</u>

127. 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).

Specific Remedies Suitable for Similarly-Situated Petitioners

128. Petitioner's fact pattern is similar to *Barco Mercado v. Francis*, No. 25-cv-6582 (LAK), 2025 WL 3295903, (S.D. NY, Nov. 26, 2025) where Petitioner was previously released on bond, applied for asylum and rearrested recently by the government under § 1225(b) and held without bond. The Court granted his writ of habeas returning him to his previous bond conditions ("Mr. Barco shall remain free of detention or any other restraint under the immigration laws of the United States to which he was not subject upon his release on bond in 2022"). See also numerous cases cited by that court in Appendix A to its decision warranting immediate release.

129. In another similar cases, see *De Jesus Aguilar v. English*, No. 3:25-CV-898 DRL-SJF, 2025 WL 3280219 (N.D. IN., Nov 25, 2025), where the Court granted outright release to undersigned counsel's client and ordered his release immediately from custody under the same conditions that existed before his detention (bond), in a similar case to Petitioner's. See also *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787 (N.D. IL., Oct. 24, 2025) – where the Petitioner entered on foot, got caught at the border upon entry and released on his own recognizance to apply for asylum. The Court granted the writ of habeas and ordered the government to either: (1) provide Petitioner with a bond hearing before an immigration judge, at which the Government shall bear the burden of justifying his continued detention by clear and convincing evidence of dangerous or risk of flight; or (2) release Petitioner from custody, under reasonable conditions of supervision. Id; *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL

2976923 (W.D. Tex. October 21, 2025) (Petitioner previously released on OREC granted bond hearing before an Immigration Judge, at which the Government shall bear the burden of justifying, by clear and convincing evidence of dangerousness or flight risk; or (2) release from custody, under reasonable conditions of supervision). There are many more authorities ordering immediate release or shifting the burden to the government when Petitioner has been previously granted release on OREC or bond and complied with the conditions of release.

XI. CONCLUSION AND PRAYER FOR RELIEF

130. 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 and unconditionally release Petitioner from custody (this remedy is required because Petitioner's detention was unlawful ab initio);

(4) Alternatively, order that Petitioner be released under his current Order of Release on Recognizance (or previous one unlawfully revoked) and not be taken into ICE custody absent full compliance with statutory and regulatory due process protections;

(5) **Enjoin** Respondents from re-detaining Petitioner or revoking his Order of Release on Recognizance absent strict compliance with all governing regulations, including a showing of specific, individualized changed circumstances making his removal significantly likely in the reasonably foreseeable future, supported by a written decision from a duly authorized official;

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

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

Respectfully Submitted,

This 22nd 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 22nd day of December, 2025.

/s/ Karen Weinstock
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