

Dan Gividen*

**Pro Hac Vice Admission Pending*

Texas SBN. 24075434

18208 Preston Rd., Ste. D9-284

Dallas, TX 75252

Phone: (972) 256-8641

Dan@GividenLaw.com

Perna Preshika Lal

Local Counsel

SBN: 354786

Lal Legal APLC

2001 Addison St, STE 300

Berkeley CA 94704

Phone: (800) 552-5616

perna@lallegal.com

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

WILFRAN RAFAEL VARGAS SIVIRA,

PETITIONER,

v.

KRISTI NOEM, Secretary, U.S. Department
of Homeland Security; U.S.
DEPARTMENT OF HOMELAND
SECURITY; TODD LYONS, Acting
Director of ICE; PAMELA BONDI, U.S.
Attorney General; ORESTES CRUZ,
Acting Field Office Director of Enforcement
and Removal Operations, San Francisco
Field Office, Immigration and Customs
Enforcement,

RESPONDENTS.

Case No: 1:25-at-01384

PETITION FOR A WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C. § 2241,
BY A PERSON SUBJECT TO UNLAWFUL
DETENTION

PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

1
2
3 1. Petitioner, Wilfran Rafael Vargas Sivira, is a native of Venezuela who last
4 entered the United States without inspection on August 23, 2022. Mr. Sivira is a loving
5 partner to his U.S. citizen fiancé. Currently, he is being detained without bond for removal
6 proceedings before an IJ under 8 U.S.C. § 1229a. As explained below, Petitioner seeks this
7 Court's urgent intervention, without which, Immigration and Customs Enforcement (ICE)
8 will continue to unlawfully detain him at the outset of and for the duration of removal
9 proceedings.

10 2. The central issue presented by this habeas petition is straightforward: Is
11 revocation of parole and detention without warning unlawful in Petitioner's case where he
12 was treated as if released freely into the U.S.? Or does his liberty interest remain in the
13 same diminished state as it is at the border, despite establishing a life here and gaining
14 Temporary Protected Status (TPS)?

15 3. Petitioner's position is that as applied in his case, detention without the
16 opportunity for a bond hearing before an IJ is unlawful. Petitioner was paroled into the
17 United States pursuant to 8 U.S.C. § 1182(d)(5)(A) as a matter of convenience to the
18 government. For three years, he was treated as if his liberty would not be taken and even
19 allowed to gain TPS while waiting for the government to place him in proceedings under
20 8 U.S.C. § 1229a.

21 4. Where, as here, Petitioner was allowed to enter the interior of the U.S.,
22 establish a life, get employment authorization, and gain Temporary Protected Status over

1 several years, he should be afforded the same liberty interest as a person encountered in
2 the interior rather than someone at or near the border.

3 5. For these reasons and those discussed below, Petitioner respectfully
4 requests the Court grant his Motion for a Preliminary Injunction and Habeas Petition, and
5 as a result, order the government to either promptly provide him with a bond hearing before
6 a neutral IJ or release him.

7 JURISDICTION

8 6. This case arises under the Constitution of the United States, the Immigration
9 and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*, and the Administrative Procedures
10 Act (“APA”), 5 U.S.C. §§ 500-596, 701-706.

11 7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241, *et seq.*
12 (habeas corpus), U.S. Const. art. I, § 9, cl. 2 (Suspension Clause), 28 U.S.C. § 1331 (federal
13 question), 28 U.S.C. § 1346 (United States as Respondent), and 28 U.S.C. § 1651 (All
14 Writs Act). Respondents have waived sovereign immunity for purposes of this suit. 5
15 U.S.C. §§ 702, 706.

16 8. The Court may grant relief under the habeas corpus statutes, 28 U.S.C. §
17 2241, *et seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs Act,
18 28 U.S.C. § 1651; and the Court’s inherent equitable powers.

19 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e)(1) because
20 Respondents are agencies or officers of agencies of the United States, Respondents and
21 Petitioner reside in this District, Petitioner is detained in this District at California City

1 Detention Facility, and a substantial part of the events or omissions giving rise to
2 Petitioner's claims occurred in this District.

3 **THE NEED FOR IMMEDIATE CONSIDERATION IN ACCORDANCE WITH**
4 **HABEAS CORPUS PURPOSE AND REQUIREMENTS**

5 10. The writ of habeas corpus is “available to every individual detained within
6 the United States.”¹ “The essence of habeas corpus is an attack by a person in custody upon
7 the legality of that custody, and ... the traditional function of the writ is to secure release
8 from illegal custody.”² “Historically, ‘the writ of habeas corpus has served as a means of
9 reviewing the legality of Executive detention, and it is in that context that its protections
10 have been strongest.’”³ “A district court's habeas jurisdiction,” therefore, “includes
11 challenges to immigration-related detention.”⁴

12 11. Pursuant to 28 U.S.C. § 2243, a court may grant the petition for writ of habeas
13 corpus or issue an order to show cause (“OSC”) to the respondents “forthwith.”⁵ If an order
14 to show cause is issued, respondents should generally be required to file a return “within
15 *three* days unless for good cause additional time . . . is allowed.”⁶

¹ *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art I, § 9, cl. 2).

² *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

³ *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *3–6 (D. Nev. Sept. 17, 2025) (quoting *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001)).

⁴ *Id.* (citing *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) and *Demore v. Kim*, 538 U.S. 510, 517 (2003)).

⁵ 28 U.S.C. § 2243.

⁶ *Id.* (emphasis added).

12. This Motion is predicated on a petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241, a remedy that Congress and the courts have long recognized demands swift judicial review. Indeed, 28 U.S.C. § 2243 mandates an expedited show-cause response precisely because the petition's central claim is an ongoing, unlawful deprivation of liberty. It is axiomatic that the loss of liberty, even for a single day, constitutes profound and irreparable harm. Therefore, the failure to rule on the requested injunction within 14 days is not mere delay; it is a constructive denial of the motion itself. Each day of inaction inflicts the very irreparable injury the petition seeks to prevent, rendering the extraordinary remedy of habeas functionally meaningless and frustrating the "swift" relief that § 2243 requires.

PARTIES

13. Petitioner, Mr. Sivira, is a citizen of Venezuela who last entered the United States on August 23, 2022. He was paroled under 8 U.S.C. § 1182(d)(5)(A) at that time. He was detained by ICE in the interior of the country more than 3 years later, on October 22, 2025. After detaining Petitioner, ICE did not set a bond. Petitioner was treated as if he was any other “applicant for admission,” rather than an arriving alien and allowed to enter the interior of the country. He thus has a liberty interest similar to all other applicants for admission who are subject to § 1226(a) when § 1226(a) is interpreted correctly as it has been for decades. Furthermore, based on DHS’ novel new interpretation and the BIA’s decision in in *Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), even if he were deemed in the same position as all other applicants for admission, he will not be provided with a bond hearing. Rather, since *Hurtado*, every EWI alien bond request is denied either by a

1 written or oral order that includes some form of the phrase “the BIA’s decision in *Hurtado*
2 is what I am required to follow, so I do not have jurisdiction to give you a bond.”

3 14. Respondent Kristi Noem is the Secretary of the Department of Homeland
4 Security. She is responsible for the implementation and enforcement of the Immigration
5 and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s
6 detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her
7 official capacity.

8 15. Respondent Department of Homeland Security (DHS) is the federal agency
9 responsible for implementing and enforcing the INA, including the detention and removal
10 of noncitizens.

11 16. Respondent Pamela Bondi is the Attorney General of the United States. She
12 is responsible for the Department of Justice, of which the Executive Office for Immigration
13 Review and the immigration court system it operates is a component agency. She is sued
14 in her official capacity.

15 17. Respondent Todd Lyons is Acting Director and Senior Official Performing
16 the Duties of the Director of ICE. Respondent Lyons is responsible for ICE’s policies,
17 practices, and procedures, including those relating to removal procedures and the detention
18 of immigrants during their removal procedures. Respondent Lyons is a legal custodian of
19 Petitioner. Respondent Lyons is sued in his official capacity.

20 18. Respondent Orestes Cruz is the Acting Director of the San Francisco Field
21 Office of ICE’s Enforcement and Removal Operations division. As such, Respondent Cruz

1 is Petitioner's immediate custodian and is responsible for Petitioner's detention and
2 removal. Respondent Cruz is named in his official capacity.

3 **STATEMENT OF FACTS**

4 19. The Petitioner, Mr. Sivira, is a citizen of Venezuela who last entered the
5 United States on August 23, 2022. He was paroled by DHS under § 1182(d)(5)(A) on that
6 same date. Mr. Sivira is the loving partner of his U.S. citizen fiancé. After being paroled,
7 Mr. Sivira filed was granted Temporary Protected Status and given work authorization by
8 DHS. He filed an I-589 Asylum Application based on his fear of return to Venezuela which
9 DHS has failed to adjudicate in the years since it was filed. He has been gainfully employed
10 at a mattress factory. He intends to marry his fiancé as soon as they can receive approval.

11 20. Mr. Sivira has no criminal history. He has been diligent in pursuing his
12 immigration case through requesting and receiving TPS and filing an asylum application
13 well within a year of arriving to the United States. He has also been dutifully complying
14 with parole requirements by appearing at scheduled check-ins with ICE. It was at one of
15 these check-ins at the Dallas Field Office where Mr. Sivira was detained on October 22,
16 2025, despite doing nothing wrong.

17 21. The Department of Homeland Security (DHS) served Petitioner with a
18 Notice to Appear (NTA), placing him in removal proceedings. The NTA charges him with
19 being removable under 8 U.S.C. § 1182(a)(7)(B) as a nonimmigrant who is not in
20 possession of a valid nonimmigrant visa or border crossing card. ICE did not set a bond
21 after detaining him. And any request for a bond hearing before an IJ will or would be denied
22 based on the government charging him as an arriving alien, despite being treated as if he is

1 EWI or any other applicant for admission. Additionally, the government's new (incorrect)
2 claim that all EWI aliens are subject to mandatory detention under 8 U.S.C. §
3 1225(b)(2)(A) would keep him from having a bond hearing even if treated by the
4 government as EWI. Mr. Sivira's detention by ICE without a bond hearing is unlawful
5 under both the INA and the U.S. Constitution. He will remain unlawfully detained without
6 this Court's intervention.

7 **LEGAL FRAMEWORK**

8 **I. Overview of Relevant Constitutional Principles.**

9 22. Congress may expand the protections granted by the Constitution through
10 statute, but it cannot legislate away fundamental constitutional guarantees. The Fourth
11 Amendment's protection against unreasonable seizures applies to all persons within the
12 territory of the United States, including noncitizens. Immigration officials may not detain
13 individuals encountered in the interior indefinitely or without probable cause; the Fourth
14 Amendment simply does not permit it.

15 23. ““Longstanding precedent establishes that ‘[t]he Fourth Amendment applies
16 to all seizures of the person, including seizures that involve only a brief detention short of
17 traditional arrest.’”⁷ The law in this area is not grey. Rather, for decades, it has been “clearly
18 established . . . that immigration stops and arrests [are] subject to the same Fourth

⁷ *Morales v. Chadbourne*, 793 F.3d 208, 215 (2015) (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, (1975) (citing *Davis v. Mississippi*, 394 U.S. 721 (1969); *Terry v. Ohio*, 392 U.S. 1, 16–19, (1968)); see also *Dunaway v. New York*, 442 U.S. 200, 216 (1979) (“[D]etention for custodial interrogation—regardless of its label—intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest.”).

1 Amendment requirements that apply to other stops and arrests—reasonable suspicion for a
 2 brief stop, and probable cause for any further arrest and detention.”⁸ The clarity of the law
 3 in this area is bolstered by the statutes proscribing its arrest authority: 8 U.S.C. § 1226(a)
 4 and 8 U.S.C. § 1357. These statutes, “[c]ourts have consistently held,” “must be read in
 5 light of constitutional standards, so that ‘reason to believe’ must be considered the
 6 equivalent of probable cause.”⁹ The “robust consensus of cases [and] persuasive authority”
 7 in this area makes it “beyond debate that an immigration officer . . . would need probable
 8 cause to arrest and detain individuals for the purpose of investigating their immigration
 9 status.”¹⁰

10 24. The Due Process Clause of the Fifth Amendment guarantees that no person
 11 in the United States shall be deprived of liberty without due process.¹¹ These substantive
 12 and procedural due process protections apply to all people, including noncitizens,
 13 regardless of their immigration status.¹² The Due Process Clause provides heightened

⁸ *Id.* at 215.

⁹ *Id.* at 216-17 (citing *Au Yi Lau*, 445 F.2d at 222; *see, e.g., Tejeda-Mata v. Immigration & Naturalization Serv.*, 626 F.2d 721, 725 (9th Cir.1980) (“The phrase ‘has reason to believe’ [in § 1357] has been equated with the constitutional requirement of probable cause.”); *United States v. Cantu*, 519 F.2d 494, 496 (7th Cir.1975) (“The words [in § 1357] of the statute ‘reason to believe’ are properly taken to signify probable cause.”); *see also United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir.2010) (“Because the Fourth Amendment applies to arrests of illegal aliens, the term ‘reason to believe’ in § 1357(a)(2) means constitutionally required probable cause.”)).

¹⁰ (*Id.*)

¹¹ U.S. Const. amend. V.

¹² *Trump v. J.G.G.*, 604 U. S. ---145 S. Ct. 1003, 1006 (2025) (*per curiam*) (“‘It is well established that the Fifth Amendment entitles aliens to due process of law’ in the context of removal proceedings.” (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993))).

1 protection against government interference with certain fundamental rights—and freedom
2 from detention lies at the heart of the Due Process Clause’s protections. For persons in the
3 United States (even unlawfully), courts have found that noncitizens who have established
4 a life here—albeit without authorization—possess a strong liberty interest in their freedom
5 from detention.

6 25. The Supreme Court has explained the critical distinction between those
7 outside the U.S. and those within it when it comes to the due process required before they
8 may be deprived of their liberty:

9 The distinction between an alien who has effected an entry into the
10 United States and one who has never entered runs throughout
11 immigration law. It is well established that certain constitutional
12 protections available to persons inside the United States are unavailable
13 to aliens outside of our geographic borders. But once an alien enters the
14 country, the legal circumstance changes, for the Due Process Clause
15 applies to all “persons” within the United States, including aliens,
16 whether their presence here is lawful, unlawful, temporary, or
17 permanent. Indeed, this Court has held that the Due Process Clause
18 protects an alien subject to a final order of deportation, though the
19 nature of that protection may vary depending upon status and
20 circumstance.¹³

21
22 26. In *Zadvydas v. Davis*, the Supreme Court left no doubt that civil detention,
23 including in the immigration context, requires a sufficient justification—namely
24 preventing flight or danger to the community.¹⁴ Where no such justification exists detention
25 without due process is unconstitutional.¹⁵

¹³ *Zadvydas v. Davis*, 533 U.S. 678, 693–94 (2001)

¹⁴ *Id.*

¹⁵ *Id.*

1 **II. Congress specifically defined the terms “Application for Admission,”**
2 **“Admission,” and “Admitted,” to leave no doubt that that one who is**
3 **“seeking admission” must be physically outside of the United States and**
4 **asking to come in.**

5 27. Under the post-IIRIRA INA, it is admission, not entry, that matters. The term
6 “admission” and “admitted,” previously absent from the INA, were added and defined at 8
7 U.S.C. § 1101(a)(13)(A), which provides:

8 The terms ‘admission’ and ‘admitted’ mean, with respect to an alien, the lawful
9 entry of the alien *into the United States* after inspection and authorization by an
10 immigration officer.
11

12 28. Meanwhile, the related term “application for admission” (also added by
13 IIRIRA) defined at 8 U.S.C. § 1101(a)(4), provides: “The term ‘application for admission’
14 has reference to the application for admission *into the United States* and not to the
15 application for the issuance of an immigrant or nonimmigrant visa.”¹⁶

16 29. The terms “application for admission,” “admission,” and “admitted” all make
17 Congress’ intent clear: Admission cannot happen anywhere other than when at the
18 proverbial door asking to come in. Circuit courts interpreting INA provisions referencing
19 the definition of “admission” at 8 U.S.C. § 1101(a)(13), have explained:

20 This definition “is limited and does not encompass a post-entry adjustment of
21 status,” because it “refers expressly to *entry into* the United States, denoting by
22 its plain terms passage into the country from abroad at a port of entry.”¹⁷

¹⁶ 8 U.S.C. § 1101(a)(4) (emphasis added).

¹⁷ *Medina-Rosales v. Holder*, 778 F.3d 1140, 1145 (10th Cir. 2015) (quoting *Negrete-Ramirez v. Holder*, 741 F.3d 1047, 1051 (9th Cir. 2014)); *see also Papazoglou v. Holder*, 725 F.3d 790, 793 (7th Cir. 2013) (“That provision therefore encompasses the action of an entry into the United States, accompanied by an inspection or authorization.”); *Bracamontes v. Holder*, 675 F.3d 380, 385 (4th Cir. 2012) (“Clearly, neither term includes an adjustment of status; instead, both contemplate a physical crossing of the border following the sanction and approval of United States authorities.”); *Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir.

1
2
3 30. By explicitly defining these terms, the "work" of determining their meaning
4 and the meaning of statutes using them has been done by Congress.¹⁸ And in so doing,
5 courts analyzing such provisions have rejected the government's claims that an admission
6 can happen from within the U.S.¹⁹ This has been repeatedly affirmed by courts interpreting
7 INA provisions containing these terms.²⁰

8 31. Caselaw applying the definition to other provisions has also left no doubt that
9 the single most important requirement for an "admission" post-IIRIRA is being outside of
10 the United States and passing through a POE after inspection by an immigration officer.
11 This is true even when the noncitizen does not have documents giving them lawful status.
12 Subsequent to IIRIRA, the BIA and every circuit court to address the issue has concluded
13 that "the terms 'admitted' and 'admission,' as defined in [§ 1101(a)(13)(A)], denote
14 procedural regularity . . . rather than compliance with substantive legal requirements."²¹
15 This means that a noncitizen who does not have documents allowing them to enter the U.S.

2008) (recognizing that " 'admission' is the lawful *entry* of an noncitizen after inspection, something quite different ... from post-entry adjustment of status").

¹⁸ *Martinez v. Mukasey*, 519 F.3d 532, 543-44 (5th Cir. 2008).

¹⁹ See e.g. *id.* (rejecting the government's argument that a noncitizen's adjustment of status within the United States was the equivalent of "being admitted to the United States as an alien lawfully admitted for permanent residence" as that phrase is used in 8 U.S.C. § 1182(h)).

²⁰ See generally *Vartelas v. Holder*, 566 U.S. 257 (2012) (discussing IIRIRA's elimination of the entry doctrine through defining admission in 8 U.S.C. § 1101(a)(13) and the application of subparagraphs (C)(i)-(vi) to LPRs who, after a departure, are returning to the U.S. and seeking admission into it which it ultimately held violated the constitution's prohibition against retroactivity).

²¹ *Matter of Quilantan*, 25 I. & N. Dec. 285, 290 (BIA 2010); see also *Martinez v. Att'y Gen.*, 693 F.3d 408, 414 (3d Cir. 2012); *Sum v. Holder*, 602 F.3d 1092, 1096 (9th Cir. 2010); *Emokah v. Mukasey*, 523 F.3d 110, 118 (2d Cir. 2008).

1 who is nonetheless waived through a POE by an immigration officer has been admitted and
2 is not an applicant for admission as defined by § 1225(a)(1).²²

3 32. The statutory definitions provided by Congress both by their use of the
4 language “into the United States” and the case law applying those definitions throughout
5 the INA where those terms appear, leave little room to dispute that the focus is on coming
6 into the U.S. from outside at a designated POE.

7 **III. 8 U.S.C. § 1225’s purpose is to set forth the procedures for inspection of the**
8 **millions of “applicants for admission” who arrive at the country’s POEs**
9 **every year.**

10 33. Annually, millions of foreign nationals arrive at United States Ports of Entry
11 (POEs)²³ seeking entry.²⁴ In 2022 for example, DHS granted approximately 97 million
12 admissions into the U.S., with an estimated 45 million of those admissions being
13 nonimmigrants who were issued an I-94.²⁵ The majority of these individuals present
14 facially valid non-immigrant visas, such as B-1/B-2 visitor, F-1 student, or H-1B temporary
15 worker visas.²⁶

16 34. Upon arrival, every such individual, regardless of their documentation, is
17 legally deemed an “applicant for admission” pursuant to INA § 1225(a)(1). This

²² *Id.*

²³ The term “POE” is used throughout this brief as a shorthand reference to any time or place designated by the attorney general for the admission of noncitizens.

²⁴ (See Ex. 1 – Annual Flow Report, U.S. Nonimmigrant Admissions: 2022, Alice Ward, Office of Homeland Security Statistics, U.S. Dept. of Homeland Security.)

²⁵ (*Id.*)

²⁶ (*Id.*)

1 foundational statute, which governs the inspection procedures at all POEs, defines an
2 "applicant for admission" as either "[1] An alien present in the United States who has not
3 been admitted or [2] who arrives in the United States..." 8 U.S.C. § 1225(a)(1).

4 35. The inspection process mandated by INA § 1225 functions as a critical
5 sorting mechanism, resulting in one of three primary outcomes. First, an inspecting officer
6 may determine that the noncitizen possesses valid, unexpired documents and is admissible,
7 thereby admitting them into the United States.

8 36. Second, if the officer determines the noncitizen is inadmissible either for
9 seeking entry through fraud or material misrepresentation (8 U.S.C. § 1182(a)(6)(C)) or
10 for lacking valid entry documents (8 U.S.C. § 1182(a)(7)), the noncitizen will be subject
11 to expedited removal (ER) pursuant to 8 U.S.C. § 1225(b)(1). Significantly, there are many
12 grounds of inadmissibility,²⁷ but only noncitizens determined to be inadmissible under §
13 1182(a)(6)(C) or § 1182(a)(7) may be processed for ER.²⁸

14 37. In the second scenario, the noncitizen is subject to expedited removal under
15 INA § 1225(b)(1)(A). This is a summary process intended to be completed in a matter of
16 hours, if not minutes. At airports and seaports, this authority is most commonly invoked
17 not for lack of documents, but for alleged fraud or willful misrepresentation under §
18 1182(a)(6)(C).

²⁷ See generally 8 U.S.C. § 1182(a).

²⁸ 8 U.S.C. § 1225(b)(1)(A)(1).

1 38. For example, an inspecting officer may conclude that a noncitizen arriving
2 with a validly issued B-2 visitor visa is misrepresenting their nonimmigrant intent and
3 secretly plans to remain permanently. Following questioning, the officer issues a Form I-
4 860, a summary order of removal. Critically, this expedited removal order is immediate
5 and final. The noncitizen receives no hearing before an Immigration Judge. No appeal. And
6 they receive none of the procedural rights afforded in full removal proceedings under §
7 1229a.²⁹ While such noncitizens may claim a fear of return, triggering a separate review
8 process, that distinct process itself does not shed light on the issues presented in this matter.

9 ³⁰

10 39. Significantly, once a noncitizen is issued an ER order, the noncitizen's
11 subsequent removal (as well as any incidental detention) is under the custody and detention
12 authority proscribed by 8 U.S.C. § 1231. The goal is for such removal immediately either
13 by return to the contiguous territory the noncitizen arrived from or on the carrier/vessel
14 they arrived on if by sea or land. Issued without anything resembling a hearing or process,
15 the ER order is issued on a single page I-860, an earlier version of which can be seen below.

²⁹ 8 U.S.C. § 1225(b)(1)(C).

³⁰ It is, nonetheless, important to point out that Congress was careful to unambiguously state its intent that aliens placed in this fear review process through § 1225(b)(2)(B)(iii)(I), explicitly titled "Mandatory detention" proscribes exactly that: "Any alien subject to procedures under this clause shall be detained pending a final determination of credible fear of persecution, and, if found not to have such a fear, until removed. The fact that Congress went out of its way to specifically mandate detention for those in this process but never sought to provide a similarly worded provision accompanying § 1225(b)(2)(A) is consistent with both Petitioner's interpretation under the statutory terms and the plain language interpretation employed by many.

U.S. Department of Homeland Security **Notice and Order of Expedited Removal**

DETERMINATION OF INADMISSIBILITY

Event Number: _____
File No: _____
Date: _____

In the Matter of: _____

Pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act), (8 U.S.C. 1225(b)(1)), the Department of Homeland Security has determined that you are inadmissible to the United States under section(s) 212(a) ☐ (s)(C)(i) ☐ (s)(C)(ii) ☐ (7)(A)(i)(I) ☐ (7)(A)(i)(II) ☐ (7)(B)(i)(I) and/or ☐ (7)(B)(i)(II) of the Act, as amended, and therefore are subject to removal, in that:

Name and title of immigration officer (Print) Signature of immigration officer

**ORDER OF REMOVAL
UNDER SECTION 235(b)(1) OF THE ACT**

Based upon the determination set forth above and evidence presented during inspection or examination pursuant to section 235 of the Act, and by the authority contained in section 235(b)(1) of the Act, you are found to be inadmissible as charged and ordered removed from the United States.

Name and title of immigration officer (Print) Signature of immigration officer

Name and title of supervisor (Print) Signature of supervisor, if available

☐ Check here if supervisory concurrence was obtained by telephone or other means (no supervisor on duty).

CERTIFICATE OF SERVICE

I personally served the original of this notice upon the above-named person on _____ (Date).

Signature of immigration officer

Form I-860 (Rev. 03/01/07)

1

2 40. The third category encompasses all “other aliens” specified in §

3 1225(b)(2)(A). These are applicants encountered at a POE who are seeking admission but

4 are determined by an officer not to be “clearly and beyond doubt entitled to admission”

5 under one of the grounds of inadmissibility set forth in § 1182.³¹ Every one of the grounds

6 of inadmissibility in § 1182—except EWI—may be applicable at the POEs, and therefore,

7 may result in a referral to § 1229a proceedings. When placed in § 1229a proceedings, these

8 noncitizens are commonly referred to as “arriving aliens.”

³¹ § 1225(b)(2)(A)

41. For instance, if an inspecting officer at an airport encounters a Lawful Permanent Resident (LPR) with a conviction that potentially renders them inadmissible under the criminal grounds at § 1182(a)(2), that officer lacks the authority to issue an expedited removal order.³² Instead, the officer's sole recourse under the statute is to refer the noncitizen for full removal proceedings before an Immigration Judge pursuant to § 1229a, where the noncitizen will have the opportunity to be heard, contest the charges, and apply for any relief from removal which they are eligible to seek before an IJ.³³

42. As this statutory framework demonstrates, the procedures detailed in § 1225 are designed for, and overwhelmingly applied at, the nation's ports of entry. Just as the plurality in *Jennings v. Rodriguez*, repeatedly alluded to, § 1225(b) authorizes detention of those applicants for admission who are “seeking admission into the country”—while it is 8 U.S.C. § 1226 which authorizes detention of those “already in the country.”³⁴

43. In sum, far from a “detention” statute, § 1225 is the precise mechanism by which millions of applicants for admission arriving at the POEs are inspected, admitted, referred for proceedings, or summarily removed every year.

IV. **Section 1225(b) is clearly meant to apply at or near the border and nowhere else.**

A. Section 1225(b) reflects the “entry fiction” doctrine

³² See *id.* (proscribing its application only to those applicants for admission found inadmissible pursuant to § 1182(a)(6)(C) or § 1182(a)(7)).

³³ *Id.*

³⁴ *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

1 44. Section 1225(b) reflects the “entry fiction” doctrine. That doctrine allows
2 courts to treat a noncitizen arriving at a border or POE as if they have never entered the
3 country even when they are technically within U.S. territory, whether at a checkpoint,
4 airport, or detention facility.³⁵

5 45. Since it has long been established that noncitizens at the border or POEs
6 typically have more limited constitutional protections than noncitizens present within the
7 country, those noncitizens that are subject to the “entry fiction” doctrine also have limited
8 constitutional rights.³⁶ In particular, the Supreme Court has long held that the government’s
9 detention authority in those situations seems least constrained by due process
10 considerations.³⁷

11 46. The lack of a warrant requirement in § 1225(b) reflects the lower due process
12 protections afforded at or near the border based on these principles. Likewise, the
13 mandatory language for detention in § 1225(b)(2)(A) reflects the government’s need to
14 quickly stop those attempting to unlawfully enter and promptly return them when
15 necessary. Thus, § 1225(b) is clearly meant to apply only at the border, as anyone within
16 the interior of the U.S. has heightened or full due process rights which would require a

³⁵ See *Zadvydas*, 533 U.S. at 693.

³⁶ *Zadvydas v. Davis*, 533 U.S. 678, 693–94 (2001)

³⁷ See, e.g., *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215–16 (1953) (Court ruling that an alien’s “temporary harborage” on Ellis Island pending the government’s attempts to remove him did not constitute an “entry” into the United States, and that he could be “treated as if stopped at the border.”).

warrant for arrest, among other things.³⁸ This is the very reason that § 1226(a) does have a very clear warrant requirement.³⁹

B. There is no question that *Jennings* reached the conclusion it did with the understanding that § 1225(b) applies at or near the border and § 1226(a) to those encountered in the interior and not subject to expedited removal—these are key distinctions that would have otherwise changed the analysis.

47. While 8 U.S.C. § 1225 does not explicitly state that its application is limited to ports of entry (POEs) or their immediate vicinity, this was without question the Supreme Court's understanding in *Jennings*. The Court's conclusions regarding the statute's interpretation and constitutionality relied heavily on the historically limited rights afforded to aliens at the country's borders. This was not an incidental assumption; the Supreme Court is fully cognizant of the limited constitutional rights at the border, and the government itself argued this precise distinction in support of its interpretation of § 1225 and § 1226.

48. This understanding was evident during the *Jennings* oral argument. Justice Breyer, for instance, pointed out the difficult task noncitizens faced regarding § 1225 due to it being applied at the border.⁴⁰ Furthermore, there is no question the Supreme Court understood § 1226(a)—not § 1225(b)—to apply to noncitizens who were encountered *within* the United States (and not subject to expedited removal).

³⁸ U.S. Const. amend. IV

³⁹ 8 U.S.C. § 1226(a)

⁴⁰ (App. - Ex. 1 – Transcript of Oral Arguments in *Jennings v. Rodriguez*.)

1 49. Indeed, the Court presented the precise question this Court is being asked to
2 answer now to the Solicitor General more than once. For example, Justice Sotomayor
3 asked, "Clarifying question. For an alien who is found in the United States illegally, has
4 not been admitted, are they held under 1225(b) or are they held under 1226(a)?"⁴¹

5 50. The Solicitor General responded, "So they are held under – if they are not –
6 if they are not detained within 100 miles of the border or within 14 days...then they are
7 under 1226(a) and not (c)."⁴²

8 51. Seeking further clarity, Justice Sotomayor posed a hypothetical of a
9 noncitizen stating, "I'm talking about an alien who has come into the United States illegally
10 without being admitted who takes up residence 50 miles from the border."⁴³

11 52. Without hesitation, the Solicitor General confirmed: "The answer is they are
12 held under 1226(a) and that they get a bond hearing under it - - and this is at page 156a of
13 the appendix."⁴⁴

14 53. As discussed below, the simple reality is that the Supreme Court and all the
15 litigants in *Jennings* recognized that § 1225 is a statute applicable at or near the border, and
16 therefore, the warrant requirement of the Fourth Amendment and the due process clause of
17 the Fifth Amendment have little or no application.

⁴¹ (*Id.* at p. 7.)

⁴² (*Id.* at pp. 7-8.)

⁴³ (*Id.* at p. 8.)

⁴⁴ (*Id.* at p. 8-9.)

1 C. The statutory framework likewise makes clear that § 1225 applies at
2 or near the border even if the language of §§ 1225 and 1226 are not
3 explicit.

4 54. Some might assert that nothing in § 1225 says it applies only at POEs and
5 near the border so it must apply everywhere and anywhere. But this ignores context and
6 the assumption that Congress seeks to legislate constitutionally. Moreover, just as § 1225
7 does not explicitly state its application is at or near the border, § 1226 does not say its
8 application is in the interior of the United States. The absence of such language does not
9 change the fact that its application is in the interior of the United States. This distinction
10 between the geographical location of their application was explicitly acknowledged in
11 *Jennings*.

12 55. The application of § 1225 at POEs and near the border is obvious, unless
13 one's entire test for interpretation is whether the statute explicitly states: "this statute applies
14 only at X." The placement of § 1225 strongly supports its border-centric application. It is
15 preceded by statutes plainly applying at POEs: § 1221 (arrival/departure manifests), § 1222
16 (detention and health examinations of arriving aliens), § 1223 (contracts with
17 transportation companies regarding arriving aliens), and § 1224 (designation of POEs for
18 aircraft). It is immediately followed by § 1225A, governing pre-inspection at airports.
19 Simply put, § 1225 is surrounded by statutes that obviously apply at the borders and POEs.

20 56. Furthermore, the statute's implementing regulations affirm this
21 understanding. The very first section, 8 C.F.R. § 235.1(a), states: "Generally. Application
22 to lawfully enter the United States shall be made in person to an immigration officer at a
23 U.S. port-of-entry when the port is open for inspection, or as otherwise designated in this

1 section." The subsequent regulatory sections under 8 C.F.R. § 235 *et. seq.* consistently
2 address procedures at the point of entry. Furthermore, most of the implementing regulations
3 have to do with airports, vessels, and other things that are clearly taking place at the border.

4 V. **In practice, those “other aliens” contemplated by § 1225(b)(2)(A) are often**
5 **released into the interior of the U.S.**

6 56. Section 1225(b)(2)(A) contemplates detention for the third category of “other
7 aliens” or arriving aliens as discussed above. However, in practice, many noncitizens in
8 this category are allowed to enter the interior of the U.S. beyond any areas that would be
9 captured under the “entry fiction” doctrine. Instead, these noncitizens are allowed enter the
10 U.S. to wait for their § 1229a proceedings to begin without being held in detention. This
11 group includes those charged under §§ 1182(a)(6)(C) and (a)(7), who could have been
12 subject to ER proceedings under §1225(b)(1)(A) if the government wished.

13 57. The government releases this group in various ways. Some are under an
14 Order of Recognizance (OREC) via Form I-220A. Others are paroled into the country
15 pursuant to § 1182(d)(5)(A). In both scenarios, noncitizens are often required to check in
16 at ICE Field Office closest to their final destination. In fact, in recent years, Customs and
17 Border Patrol (CBP) has often paroled noncitizens so that the noncitizen can schedule an
18 appointment to appear at an ICE facility for removal proceedings to be initiated.⁴⁵ The goal
19 is to create “a processing mechanism to allow more expeditious processing of individuals

⁴⁵ Memo, Ortiz, Chief Border Patrol, *Policy of Parole with Conditions in Limited Circumstances Prior to the Issuance of Charging Document (Parole with Conditions)*, May 10, 2023, AILA Doc. No. 23051200. In this situation, an NTA is not typically issued at the border. It is instead issued several months later at a noncitizen’s first check in.

1 who agents determine would be appropriate for section 240 [8 U.S.C. § 1229a] removal
2 proceedings.”⁴⁶

3 58. Because the immigration court system is so backlogged, most of the
4 noncitizens allowed to enter the country in this scenario will wait at least a year for their
5 first hearing, if not longer.⁴⁷ During those years, they are allowed to be free and generally
6 live life just like anyone else in the interior of the U.S. As long as the noncitizen is not
7 arrested for a crime, they typically only have occasional check ins with ICE either in person
8 or via phone.

9 **VI. The default rule is that noncitizens encountered in the U.S. and placed in §**
10 **1229a removal proceedings are, at any point prior to the entry of a final**
11 **order of removal, entitled to a bond hearing before an IJ unless one of the**
12 **exceptions applies.**

13 59. Pursuant to the INA, its implementing regulations, and decades of consistent
14 agency practice, noncitizens placed into full § 1229a proceedings who are not described in
15 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19(h)(2) are entitled to a bond hearing before an IJ.
16 Indeed, § 1226(a) applies by default to all persons “pending a decision on whether the
17 [noncitizen] is to be removed from the United States.”

18 60. When the provisions related to inspection, expedited removal, and removal
19 proceedings before an IJ were amended by IIRIRA, Congress clarified “the amendment of
20 § 1226(a) simply “restate[d]” the detention authority previously found at § 1252(a) “to

⁴⁶ *Id.*

⁴⁷ Immigration court statistics can be found at this link:
https://tracreports.org/immigration/quickfacts/eoir.html#eoir_backlog

1 arrest, detain, and release on bond an alien who is not lawfully in the United States.”⁴⁸
 2 Meanwhile, the amendments did not disturb “the existing mandatory detention scheme for
 3 noncitizens arriving in the U.S. without a clear right to admission and expanded the scope
 4 of” expedited removal to “include certain recently arrived noncitizens.”⁴⁹ These
 5 amendments and the statutory scheme simply “reflected [Congress’] understanding of
 6 longstanding due process precedent that recognizes the more substantial due process rights
 7 of noncitizens already residing in the U.S. with those of noncitizens recently arriving.”⁵⁰

8 61. Following the enactment of the IIRIRA, EOIR drafted new regulations
 9 explaining that, in general, EWI noncitizens, while applicants for admission, are detained
 10 for § 1229a proceedings under § 1226(a).⁵¹ Thus, in the decades that followed, most people
 11 who entered without inspection and were placed in standard removal proceedings received
 12 bond hearings, unless their criminal history rendered them ineligible.⁵²

⁴⁸ *Id.* (citing H.R. Rep. No. 104-469, pt. 1, at 229 (1996) and H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.)).

⁴⁹ *Id.*

⁵⁰ *Id.* (citing H.R. Rep. No. 104-469, p. 1, at 163-66 (recognizing the “constitutional liberty interest[s]” of noncitizens present in the U.S., versus the assumed minimal due process rights of arriving noncitizens) (citing *Knauff v. Shaughnessy*, 338 U.S. 537 (1950))).

⁵¹ *See id.* (“The EOIR’s regulations drafted following the enactment of the IIRIRA explained this distinction.”) (citing Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection).

⁵² *Id.* (“[I]n the decades since IIRIRA was enacted, DHS and the EOIR have applied § 1226(a) to the detention of individuals apprehended within the continental U.S. who entered without inspection and provided them access to release on bond.”).

1 62. This, as every agency administering the INA and immigration attorney
2 practicing when IIRIRA was passed knows, is nothing more than the obvious conclusion
3 from the INA's statutory scheme (post-IIRIRA), the implementing regulations, and their
4 actual application in millions of § 1229a proceedings for decades.

5 **APPLICATION OF THE RELEVANT LEGAL FRAMEWORK**

6 **VII. Congress can give more rights than the constitution through statute, but it**
7 **cannot lower the protections it provides.**

8 63. Congress may expand procedural protections through statute, but it cannot
9 legislate away fundamental constitutional guarantees. The Fourth Amendment's protection
10 against unreasonable seizures applies to all persons within the territory of the United States,
11 including noncitizens. Immigration officials may not detain individuals encountered in the
12 interior indefinitely or without probable cause; the Fourth Amendment simply does not
13 permit it. Likewise, the constitution's due process clause protections must be afforded to
14 all those living in the U.S. before being deprived of their liberty.

15 64. At the nation's borders, however, the constitution's protections are lowered
16 and almost nonexistent for those who are not in the U.S. The absence of a warrant
17 requirement in 8 U.S.C § 1225, therefore, is in line with the longstanding principle that the
18 search and seizure of persons at our country's borders are not subject to the Fourth
19 Amendment's warrant requirement..⁵³

⁵³ See *United States v. Flores-Montano*, 541 U.S. 149, 153 (2004) ("Congress, since the beginning of our Government, has granted the Executive Plenary authority to conduct routine searches and seizures at the border, without probable cause or a warrant . . .") (internal citations omitted); *United States v. Cotterman*, 637 F.3d 1068, 1076 (9th Cir. 2011) ("[T]here is [no] room for disagreement over the compelling underpinnings of the doctrine" exempting border searches and seizures from the Fourth Amendment's

1 A. The absence of a warrant requirement in § 1225(b)(2)(A) requires that
 2 the statute continues to be interpreted as limited to arriving aliens at
 3 the POE, border, or near the border, otherwise it is unconstitutional.

4 65. Although the constitution’s protections are lowered at or near the border, the
 5 caselaw is clear that full constitutional protections are due to anyone in the interior of the
 6 United States, no matter their status.⁵⁴ Beyond distance from the border, the Supreme Court
 7 has also recognized the heightened liberty interest for those who have established ties to
 8 the U.S. For example, the Court in *United States v. Verdugo-Urquidez* stated, “aliens
 9 receive constitutional protections when they have come within the territory of the United
 10 States and developed substantial connections with this country.”⁵⁵ In another case the Court
 11 noted that once a noncitizen “begins to develop the ties that go with permanent residence
 12 his constitutional status changes accordingly.”⁵⁶ Yet another case states, “[t]he alien...has
 13 been accorded a generous and ascending scale of rights as he increases his identity with
 14 our society.”⁵⁷

15 66. Just as established as the border exception to the Fourth Amendment is the
 16 fact that immigration stops and arrests elsewhere are subject to the Fourth Amendment’s
 17 protections. Indeed, “[l]ongstanding precedent establishes that ‘[t]he Fourth Amendment

warrant requirement. “It is well established that the sovereign need not make any special showing to justify its search of persons and property at the international border.”).

⁵⁴ See *Zadvydas*, 533 U.S. at 693 (But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, temporary, or permanent.”)

⁵⁵ *United States v. Verdugo-Urquidez*, 494 U.S. 2590 (1990).

⁵⁶ *Landon v. Plascencia*, 459 U.S. 21 (1982).

⁵⁷ *Johnson v. Eisentrager*, 339 U.S. 763, 770 (1950).

1 applies to all seizures of the person, including seizures that involve only a brief detention
2 short of traditional arrest.”⁵⁸ The law in this area is not grey. Rather, since at least 2009,
3 it has been “clearly established . . . that immigration stops and arrests [are] subject to the
4 same Fourth Amendment requirements that apply to other stops and arrests—reasonable
5 suspicion for a brief stop, and probable cause for any further arrest and detention.”⁵⁹

6 67. The clarity of the law in this area is bolstered by the proscriptions of 8 U.S.C.
7 § 1357, which “[c]ourts have consistently held” the inclusion of the phrase “reason to
8 believe” in § 1357 “must be read in light of constitutional standards, so that ‘reason to
9 believe’ must be considered the equivalent of probable cause.”⁶⁰ The “robust consensus of
10 cases [and] persuasive authority” in this area makes it “beyond debate that an immigration
11 officer . . . would need probable cause to arrest and detain individuals for the purpose of
12 investigating their immigration status.”⁶¹

⁵⁸ *Morales v. Chadbourne*, 793 F.3d 208, 215 (2015) (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, (1975) (citing *Davis v. Mississippi*, 394 U.S. 721 (1969); *Terry v. Ohio*, 392 U.S. 1, 16–19, (1968)); see also *Dunaway v. New York*, 442 U.S. 200, 216 (1979) (“[D]etention for custodial interrogation—regardless of its label—intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest.”).

⁵⁹ *Id.* at 215.

⁶⁰ *Id.* at 216–17 (citing *Au Yi Lau*, 445 F.2d at 222; see, e.g., *Tejeda-Mata v. Immigration & Naturalization Serv.*, 626 F.2d 721, 725 (9th Cir.1980) (“The phrase ‘has reason to believe’ [in § 1357] has been equated with the constitutional requirement of probable cause.”); *United States v. Cantu*, 519 F.2d 494, 496 (7th Cir.1975) (“The words [in § 1357] of the statute ‘reason to believe’ are properly taken to signify probable cause.”); see also *United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir.2010) (“Because the Fourth Amendment applies to arrests of illegal aliens, the term ‘reason to believe’ in § 1357(a)(2) means constitutionally required probable cause.”).

⁶¹ *Id.*

1 68. The Fourth Amendment requirements and numerous cases from the Supreme
2 Court confirming anyone in the interior of the U.S. regardless of immigration status
3 receives full due process are abundantly clear. Despite this, the government argues that a
4 statute with no warrant requirement (§ 1225(b)(2)(A)), historically applied at or near the
5 border, allows DHS to arrest or detain aliens in the interior of the United States without
6 any concern for the Fourth Amendment's protections. This is especially egregious given
7 that DHS itself *allowed* Petitioner and others to enter the interior and establish ties. Such
8 an interpretation is unconstitutional and any interpretation that would have such a result
9 must be avoided.

10 A. The deprivation of liberty in the form of detaining someone is limited
11 to confinement for punishment related to a criminal offense, and is not
12 permitted for civil purposes absent the only permissible significantly
13 compelling justifications for it—namely preventing risk of flight or
14 danger to the community.

15
16 69. *Zadyvdas* left no doubt that civil detention, including in the immigration
17 context, requires a sufficient justification—namely preventing flight or danger to the
18 community..⁶² Where no such justification exists, detention without due process is
19 unconstitutional..⁶³

20 70. Indeed, the actual mandatory detention provisions, § 1226(c), § 1231, and 8
21 C.F.R. § 1003.19(h)(ii), are simply a codification of circumstances typically believed to be
22 indicative of flight risk or danger to the community. Whether it be as a result of having no

⁶² *Id.*

⁶³ *Id.*

1 ties in the U.S. for arriving aliens, or a criminal conviction indicative of danger, these
2 detention provisions all are rooted in flight risk and danger, which are the only two
3 justifications for depriving one of their liberty.

4 71. Here, the notion that Petitioner, who is not a flight risk or danger to anyone
5 may be held without a bond hearing to determine if there is a special justification for such
6 detention is contrary to the due process everyone was once afforded in this country.
7 Petitioner is not a danger to the community as he has never been arrested or committed any
8 crimes, including in the U.S. He is also certainly not a flight risk having timely filed an
9 asylum application, was granted Temporary Protected Status (TPS), attended every ICE
10 check-in, and established community ties including his U.S. citizen fiancé.

11 **VIII. DHS has consistently treated Petitioner as though he is any other “applicant**
12 **for admission” that is subject to § 1226, and therefore, has created a liberty**
13 **interest that cannot be abrogated by the government unilaterally deciding**
14 **to “switch tracks.”**

15 72. Significantly, DHS created the situation in which Petitioner finds himself.
16 For DHS’ convenience in processing, Petitioner was paroled in and allowed to enter the
17 interior of the U.S. DHS could have applied § 1225(b) and either put Petitioner in ER
18 proceedings or kept him detained as an arriving alien under § 1225(b)(2)(A). Instead, the
19 government treated him like all other “applicants for admission,” including EWI aliens in
20 that he moved beyond the border, POEs, and any other locations deemed not in the U.S.
21 for purposes of the “entry fiction” doctrine.

22 73. Petitioner did not get the classic immigration choice of remaining on Ellis
23 Island (i.e. detention) while waiting for the government to process his request to enter or

1 choose to be put on the next ship (or bus across the border) back the direction he came in
2 lieu of detention. Instead, DHS chose for Petitioner a scenario in which he was not
3 physically detained and therefore created an expectation for Petitioner that he was free
4 within the United States. As such, Petitioner was given every reason to believe that as long
5 as he did what was asked of him and did not violate the law, he would remain free from
6 restraint while his § 1229a proceedings were pending. These expectations were repeatedly
7 confirmed over the last three years, particularly by Petitioner being granted TPS. In reliance
8 on this, he established community ties, including a serious relationship with and
9 engagement to a U.S. citizen.

10 74. But now that DHS policies and priorities have changed, they would like to
11 retroactively apply § 1225(b)(2)(A) as if Respondent was still sitting at or near the border.
12 Just because the current administration disagrees with the practices of the prior
13 administration, does not mean that it gets to abrogate liberty interests that have been
14 created, particularly when those liberty interests were created by the government's own
15 actions.⁶⁴

16 75. Courts faced with such arguments from the government in similar cases
17 where DHS had previously consistently treated noncitizens as being subject to § 1226 have
18 rejected this purported switching. In so doing, courts have explained that "settled law
19 precludes the Government from now switching gears to contend that he has actually been

⁶⁴ See *Monteon-Camargo v. Barr*, 918 F.3d 423, 430 (5th Cir. 2019) (retroactive application violates the core "due process interests in fair notice, reasonable reliance, and settled expectations.") (quoting *De Niz Robles v. Lynch*, 803 F.3d 1165, 1169 (10th Cir. 2015) (Gorsuch, J.)).

1 detained under Section 1225(b)(2)."⁶⁵ In this context, courts have also found DHS' prior
 2 treatment of a noncitizen as though they are subject to § 1226 has resulted in concluding
 3 such a person "enjoys a liberty interest under § 1226(a) and the procedural protections
 4 thereunder that cannot be unilaterally abrogated without process by the Government simply
 5 "switching tracks."⁶⁶

6 **IX. Any argument by DHS that Petitioner should be subject to § 1225(b)(2)(A)**
 7 **regardless of what type of "applicant for admission" he is, is incorrect for**
 8 **many reasons and has been rejected by courts across the country.**

9 A. DHS in Conjunction with the Immigration Court Take New Position
 10 Interpreting 8 U.S.C. § 1225(b)(2)(A) to Subject Every "Applicant for
 11 Admission" to Mandatory Detention.

12 76. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy
 13 that rejected well-established understanding of the statutory framework and reversed
 14 decades of practice.⁶⁷

15 77. The new policy, entitled "Interim Guidance Regarding Detention Authority
 16 for Applicants for Admission,"⁶⁸ claims that all persons who entered the United States
 17 without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225,
 18 and therefore are subject to mandatory detention provision under § 1225(b)(2)(A). The

⁶⁵ *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787, at *6 (N.D. Ill. Oct. 24, 2025).

⁶⁶ *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *7–8 (N.D. Cal. Sept. 12, 2025) (cleaned up).

⁶⁷ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

⁶⁸ *Id.*

1 "policy" ICE announced applies regardless of when a person is apprehended and affects
 2 those who have resided in the United States for months, years, and even decades.⁶⁹

3 78. On September 5, 2025, the BIA issued a decision in *Matter of Hurtado*, 29 I.
 4 & N. Dec. 216 (BIA 2025), which acted as a rubberstamp to the new DHS interpretation
 5 taken in “conjunction with” the immigration courts.⁷⁰ The decision claimed to simply be
 6 interpreting the “plain language” of 8 U.S.C. § 1225(b)(2)(A) which states,

7 [I]n the case of an alien who is an applicant for admission, if the examining
 8 immigration officer determines that an alien *seeking admission* is not clearly
 9 and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained
 10 for a proceeding under section 1229a of this title.⁷¹

11 79. The BIA’s reasoning per *Hurtado* is that the plain language above means
 12 every “applicant for admission . . . shall be detained for” removal proceedings.⁷² But as
 13 several district courts have already pointed out:

14 [T]he government’s “interpretation of the statute (1) disregards the plain
 15 meaning of section 1225(b)(2)(A); (2) disregards the relationship between
 16 sections 1225 and 1226; (3) would render a recent amendment to section
 17 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory
 18 interpretation and practice.”⁷³

⁶⁹ *Id.*

⁷⁰ *Matter of Hurtado*, 29 I&N Dec. 216.

⁷¹ § 1225(b)(2)(A) (emphasis added).

⁷² *Hurtado*, 29 I&N Dec. at 219.

⁷³ *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025); *see also*, *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, — F.Supp.3d —, —, 2025 WL 2084238, at *9 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, — F.Supp.3d —, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025); Doc. 11, *Benitez v. Noem*, No. 5:25-cv-02190 (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Romero v. Hyde*, No. 25-11631-BEM, — F.Supp.3d —, 2025 WL 2403827 (D. Mass. Aug. 19,

1
2 B. The Statutory and Regulatory Framework of the Entire Act
3 Demonstrates the Government's New Position is Simply Untenable
4 Under Any One of Many Canons of Statutory Construction

5 80. The government's new position hinges on a simplistic and overbroad reading
6 of § 1225(b)(2)(A) and the definition of "applicant for admission" found in § 1225(a)(1).⁷⁴
7 More specifically, the government takes the definition of applicant for admission in (a)(1),
8 and leaps to the conclusion that all such applicants for admission must be "seeking
9 admission," and therefore, subject to detention under § 1225(b)(2)(A) regardless of when
10 or where they are encountered.⁷⁵ This interpretation ignores the careful distinctions drawn
11 throughout the INA and its implementing regulations.

12 81. As an initial matter, *Hurtado* ironically claims to read the plain language of
13 § 1225(b)(2)(A), but as many courts have pointed out the BIA only reaches its conclusion
14 by omitting "plain language" contradicting its interpretation. Specifically, to be subject to
15 § 1225(b)(2)(A), the plain text requires an individual to be 1) an "applicant for admission";
16 2) "seeking admission"; and 3) determined by an examining immigration officer to be "not

2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, — F.Supp.3d —, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted* 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); Doc. 11, *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, *13 (C.D. Cal. July 28, 2025).

⁷⁴ See *Hurtado*, 29 I&N Dec. at 216-220.

⁷⁵ *Id.*

1 clearly and beyond a doubt entitled to be admitted.”⁷⁶ The second element of §
2 1225(b)(2)(A)—which requires that he be *seeking admission*—is not met in the case of
3 EWI aliens, for example, who are found miles away from the land border and years after
4 their entry.

5 82. As explained above, Congress left no room to dispute that an admission may
6 only take place at a designated POE when asking to enter after inspection by an
7 immigration officer. Accordingly, EWI aliens and those released into the interior of the
8 U.S. as in Petitioner’s case, cannot be said to be *seeking admission* when arrested and
9 detained in the interior well after entering. Rather, consistent with pre-IIRIRA detention
10 provisions and decades of agency action, § 1225(b)(2) only implicates noncitizens who are
11 “*seeking admission*” into the United States.⁷⁷

12 83. The government’s position not only asks the Court to ignore the definitions
13 given to “admission” in the INA, as well as the decisions from most circuits, including the
14 Fifth Circuit, making it clear that those definitions—requiring a very specific event at the
15 threshold of the country—must be applied where they appear throughout the INA.⁷⁸

⁷⁶ 8 U.S.C. § 1225(b)(2)(A); *see also* *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025) (affirming these “several conditions must be met” for a noncitizen to be subject to mandatory detention under § 1225(b)(2)(A)).

⁷⁷ *Id.*

⁷⁸ *Medina-Rosales v. Holder*, 778 F.3d 1140, 1145 (10th Cir. 2015) (quoting *Negrete-Ramirez*, 741 F.3d at 1051); *see also* *Papazoglou*, 725 F.3d at 793 (“That provision therefore encompasses the action of an entry into the United States, accompanied by an inspection or authorization.”); *Bracamontes*, 675 F.3d at 385 (“Clearly, neither term includes an adjustment of status; instead, both contemplate a physical crossing of the border following the sanction and approval of United States authorities.”); *Martinez*, 519 F.3d at 544 (recognizing that “‘admission’ is the lawful *entry* of an alien after inspection, something quite different ... from post-entry adjustment of status”)

1 84. To ignore the defined terms as well as the plain language in which they are
 2 used, which limits the application of 8 U.S.C. § 1225(b)(2) to noncitizens seeking
 3 admission into the United States, is to not give effect to the meaning of words and to make
 4 the words included in the statute superfluous.⁷⁹ It would violate the most basic of
 5 interpretive canons, which is that “[a] statute should be construed so that effect is given to
 6 all its provisions, so that no part will be inoperative or superfluous, void or insignificant
 7”⁸⁰

8 85. The statutory use of the present and present progressive tenses—“is an
 9 applicant for admission” “seeking admission”—excludes noncitizens apprehended in the
 10 interior, because they are no longer in the process of arriving in or seeking admission to
 11 the United States.⁸¹ Throughout the country district courts have agreed with this plain
 12 reading, which gives effect to the meaning of each word, holding that § 1225(b)(2)(A) must
 13 be read to apply only to noncitizens who are apprehended while seeking to enter the
 14 country, and that noncitizens already residing in the United States, including those who are

⁷⁹ *Corley v. United States*, 556 U.S. 303, 314 (U.S. 2009).

⁸⁰ *Id.* (citing *Hibbs v. Winn*, 542 U.S. 88, 101, 124 S.Ct. 2276, 159 L.Ed.2d 172 (2004) (quoting 2A N. Singer, *Statutes and Statutory Construction* § 46.06, pp.181–186 (rev. 6th ed.2000)).

⁸¹ *See Martinez v. Hyde*, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); *accord Lopez Benitez v. Francis*, 2025 WL 2371588, at *6–7 (S.D.N.Y. Aug. 13, 2025). *See also United States v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of a verb tense is significant in construing statutes.”); *Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing “is arriving” in 8 U.S.C. § 1225(b)(1)(A)(i) and observing that “[t]he use of the present progressive, like use of the present participle, denotes an ongoing process”).

1 charged with inadmissibility, continue to fall under the discretionary detention scheme in
2 § 1226.⁸²

3 86. Further support for the overwhelming conclusion reached by courts can be
4 found in the various statutes proscribing various arrest and detention authorities depending
5 on the circumstances.⁸³

6 C. The new Laken Riley Act (LRA) is rendered superfluous by the
7 government's new interpretation.

8 81. Recently, countless courts have repeatedly pointed out that under the
9 government's new theory, the LRA is completely devoid of any meaning as every person
10 described in § 1226(c)(1)(E)(i) was already subject to mandatory detention under the

⁸² See *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 779 F. Supp. 3d 1239, 1256–59 (W.D. Wash. 2025) (granting preliminary injunction prohibiting I.J.s from denying bond to individuals apprehended in the interior based on INA § 1225(b)(2)); see also *Gomes v. Hyde*, 2025 WL 1869299 at *6–7 (D. Mass. July 7, 2025) (relying on statutory structure and Laken Riley Act amendments to § 1226 to find that recent entrant re-detained on a warrant was not subject to § 1225(b)(2)); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *6–8 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025); *Rocha Rosado v. Figueroa*, 2025 WL 2337099, at *8–10 (D. Ariz. Aug. 11, 2025); *Aguilar Maldonado v. Olson*, 2025 WL 2374411, at *11–13 (D. Minn. Aug. 15, 2025); accord *Castillo Lachapel v. Joyce*, 2025 WL 1685576, at *2 (S.D.N.Y. June 16, 2025) (parties agreed that a person who had entered without inspection and was arrested in the interior was detained under § 1226(a)).

⁸³ See 8 U.S.C. § 1226(a) and 8 U.S.C. § 1357; see also *United States v. Flores-Montano*, 541 U.S. 149, 153 (2004) (“Congress, since the beginning of our Government, has granted the Executive Plenary authority to conduct routine searches and seizures at the border, without probable cause or a warrant . . .”) (internal citations omitted); *United States v. Cotterman*, 637 F.3d 1068, 1076 (9th Cir. 2011) (“[T]here is [no] room for disagreement over the compelling underpinnings of the doctrine” exempting border searches and seizures from the Fourth Amendment’s warrant requirement. “It is well established that the sovereign need not make any special showing to justify its search of persons and property at the international border.”)

1 government's new interpretation of § 1225(b)(2)(A).⁸⁴ Congress, therefore, would have
2 enacted a statute that accomplished nothing.

3 82. It is a foundational principle of statutory construction that courts must "give
4 effect, if possible, to every clause and word of a statute,"⁸⁵ and must avoid interpretations
5 that render statutory language superfluous.⁸⁶ The government's position violates this canon
6 in the most profound way, effectively nullifying an entire act of Congress. The only logical
7 conclusion is that Congress enacted § 1226(c)(1)(E) precisely because being EWI at same
8 point in the past or an "applicant for admission" alone *does not* trigger mandatory
9 detention.⁸⁷

10 B. Reliance on *Jennings* is Misplaced at Best and Misleading at Worst.

11 83. In *Matter of Hurtado*, the BIA claims that the Supreme Court's decision in
12 *Jennings v. Rodriguez*, 583 U.S. 281 (2018) dictates this result. This claim, as one court
13 put it, however, "is, to say the least, not without some doubt."⁸⁸ Contrary to the BIA's

⁸⁴ See e.g., *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *6–7 (E.D. Mich. Sept. 9, 2025) ("The BIA also argued that § 1225(b)(2)(A) does not render superfluous the Laken Riley Act. . . But. . . considering both §§ 1225(b)(2)(A) and 1226(c)(1)(E) mandate detention for inadmissible citizens, whether one includes additional conditions for such detention does not alter the redundant impact.").

⁸⁵ *Duncan v. Walker*, 533 U.S. 167, 174 (2001).

⁸⁶ See *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013).

⁸⁷ Another (of many) applicable canons of statutory construction is the principle of *expressio unius est exclusio alterius*—the expression of one thing is the exclusion of another—further clarifies congressional intent. Within INA § 235 itself, Congress knew precisely how to mandate detention when it intended to. For example, INA § 235(b)(1)(B)(iii)(IV), titled "Mandatory detention," explicitly states that noncitizens found *not* to have a credible fear of persecution "shall be detained" pending removal. Congress's choice to use specific mandatory language in that subsection, while omitting it for all other "applicants for admission" under § 235(a), demonstrates a clear intent not to subject all such individuals to mandatory detention.

⁸⁸ *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934, at *4–6 (D. Neb. Sept. 18, 2025).

1 claims about *Jennings*, Article III courts have seemingly uniformly pointed out that
2 *Jenning* actually said: ““U.S. immigration law authorizes the Government to detain certain
3 aliens *seeking admission into the country* under §§ 1225(b)(1) and (b)(2) ... [and] to detain
4 certain aliens *already in the country* pending the outcome of removal proceedings under
5 §§ 1226(a) and (c).”⁸⁹ Furthermore, as discussed above and illustrated by the oral argument
6 transcript provided in the Appendix, the *Jennings* court was operating under the belief that
7 the application of § 1225 was at or near the border. A change in this fact completely changes
8 the constitutional analysis. This is particularly true given the fact that when the Solicitor
9 General was directly asked—more than once and in more than one way—what statute an
10 alien who entered illegally who was not subject to expedited removal was detained under,
11 he unequivocally responded § 1226(a) every time.

12 **X. Irreparable Harm**

13 84. Continued unlawful detention is, by its very nature, an irreparable injury.⁹⁰
14 The Supreme Court has affirmed that “[f]reedom from imprisonment...lies at the heart of
15 the liberty” protected by the Due Process Clause.⁹¹ “Where, as here, the ‘alleged

⁸⁹ *Jennings*, 583 U.S. at 289 (emphasis added).

⁹⁰ *Phan*, 2025 WL 1993735, at *5 (“Further, ‘[i]t is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’”) (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))).

⁹¹ *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

1 deprivation of a constitutional right is involved, most courts hold that no further showing
2 of irreparable injury is necessary.”⁹²

3 85. Every day Petitioner is detained in ICE custody in direct contravention of the
4 statute and U.S. constitution he suffers irreparable harm. The complete sudden loss of one’s
5 freedom and liberty takes a significant toll on anyone in Petitioner’s circumstances.

6 86. Recently, many noncitizens in ICE custody of suffered the ultimate
7 irreparable harm of death while in ICE custody. On May 14, 2025, in an oversight hearing
8 before the House Appropriations Committee, Todd Lyons, acting director of Immigration
9 and Customs Enforcement, testified that 9 people have died in ICE custody since January
10 20, 2025.⁹³ A month after this testimony, on June 23, 2025, a 49-year old Canadian citizen
11 died in ICE custody.⁹⁴ Reports of overcrowding, individuals being detained at facilities that
12 are meant for processing and not set up for detention beyond a few hours are increasing,
13 and other inhumane detention practices continue to rise. The risk of death, emotional
14 trauma, and/or other irreparable harm coming to Petitioner is, tragically, all too real a
15 possibility.

⁹² *Phan*, 2025 WL 1993735, at *5 (citing *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting Wright, Miller, & Kane, *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004))).

⁹³ This testimony can be found at the following link: <https://www.youtube.com/watch?v=QvoURiaxBmA>.

⁹⁴ The ICE press release on this death can be found at the following link: <https://www.ice.gov/news/releases/canadian-national-ice-custody-passes-away>

1 87. Meanwhile, there will be ZERO harm to Respondents if Petitioner is
2 immediately released from ICE custody, or at a minimum, granted the bond hearing he
3 should be entitled to.

4 **XI. Procedural Due Process Violation Under *Mathews***

5 88. Due process requires an opportunity to be heard at a meaningful time and in
6 a meaningful manner.⁹⁵ Petitioner received no such opportunity and/or no such opportunity
7 is available through the immigration courts at this time.

8 89. To determine whether government conduct violates procedural due process,
9 there are three factors in *Mathews* for courts to weigh: (1) the private interest affected by
10 the government action; (2) the risk that current procedures will cause an erroneous
11 deprivation of the private interest, and the extent to which that risk could be reduced by
12 additional safeguards; and (3) the government's interest in maintaining the current
13 procedures.⁹⁶

14 **A. Private Interest**

15 90. Petitioner's private interest is the right to be free from government
16 detention. Being free from physical detention by the government is at the core of due
17 process protection, and "is the most elemental of liberty interests."⁹⁷ In our country,
18 "liberty is the norm, and detention without trial "is the carefully limited exception."⁹⁸

⁹⁵ *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

⁹⁶ *Id.* at 335.

⁹⁷ *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

⁹⁸ *Id.*

1 Petitioner's interest in being free from government detention is magnified by the fact that
2 he has a fiancé who loves and depends on him.

3 91. Further, detention at a remote detention center thousands of miles away from
4 his home and with limited visiting hours makes it unnecessarily difficult for his fiancé to
5 see him. And, even if he does, they are separated by a glass barrier that prevents them from
6 touching and hugging one another. While detained, Petitioner is unable to financially
7 provide for himself and his fiancé. Furthermore, Petitioner's detention in an entirely
8 different state makes it incredibly difficult for him to marry his fiancé, especially after they
9 started the process while Petitioner was still detained in Texas.

10 92. Though Petitioner should have been able to reunite with his fiancé after a
11 bond hearing before an IJ, such hearing is not available to him without federal court
12 intervention.

13 93. The private interest here is fundamental: freedom from detention. It weighs
14 heavily in the consideration of the *Mathews* factors.

15 B. Risk of Erroneous Deprivation

16 94. The second factor—the risk of erroneous deprivation of Petitioner's liberty—
17 is likewise substantial. The government's sudden change in detention policy for those
18 noncitizens the government itself released into the interior years ago despite a lack of flight
19 risk or danger to the community is unfair. Additionally, the government's about face in the
20 way it interprets § 1225(b)(2)(A) to apply to all “applicants for admission,” prevents
21 Petitioner from having a bond hearing at all even if he were indeed found to be in the same
22 position as any other “applicant for admission” because of the liberty interests created

1 during the past three years. This is particularly true when there is significant evidence that
2 this new position was reached by DHS, the “prosecuting agency” in conjunction with
3 “EOIR” the agency that is supposed to be providing neutral adjudication of the noncitizen’s
4 proceedings. “Such a rule [and process] is anomalous in our legal system,” and it represents
5 a basic conflict that has been disapproved of in this context and others.⁹⁹ When procedural
6 protections are almost non-existent, it markedly increases the risk of erroneous deprivation
7 of Petitioner’s liberty interests.¹⁰⁰

8 95. The erroneous deprivation of Petitioner’s liberty is particularly likely here
9 where he is not described in any of the provisions of § 1226(c), has ties to the community
10 through his U.S. citizen fiancé, no criminal history, a strong asylum claim, and previously
11 had TPS.

12 C. Government Interest

13 96. The government has no valid interest in depriving Petitioner of a bond
14 hearing. The government’s interest is supposed to be in upholding the Constitution and
15 laws, both of which are plainly violated by its recent actions and continued unlawful
16 detention of Petitioner. Depriving anyone of their liberty is a serious thing that should only
17 be done as punishment or when necessary to prevent flight or danger to the community.

⁹⁹ *Günaydin*, 2025 WL 1459154, at *8; *see also* *Marcello v. Bonds*, 349 U.S. 302, 305–06, 75 S. Ct. 757 (1955) (holding that officer adjudicating immigration case cannot undertake prosecutorial role in the same matter).

¹⁰⁰ *See Black v. Dir. Thomas Decker*, 103 F.4th 133, 152 (2d Cir. 2024).

1 97. To balance liberty interests against interests in assuring appearance and
2 safety, the INA explicitly provides bond hearings for noncitizens who are not a danger or
3 flight risk. The government, however, wants to detain everyone without any regard to
4 whether they are a danger or a flight risk.¹⁰¹ On balance, the private interests affected and
5 the risk of erroneous deprivation under the current procedures greatly outweigh the
6 government's interest in detaining anyone they want regardless of whether it is necessary
7 or lawful. Petitioner's arbitrary detention without a bond hearing by a neutral adjudicator
8 violates Petitioner's substantive due process rights as guaranteed by the Fifth Amendment.

9 **CLAIMS FOR RELIEF**

10 **COUNT I: VIOLATION OF DUE PROCESS**

11 98. Petitioner repeats, re-alleges, and incorporates by reference each and every
12 allegation in the preceding paragraphs as if fully set forth herein.

13 99. The government may not deprive a person of life, liberty, or property without
14 due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from
15 government custody, detention, or other forms of physical restraint—lies at the heart of the
16 liberty that the Clause protects."¹⁰²

17 100. Petitioner has a fundamental interest in liberty and being free from official
18 restraint.

¹⁰¹ *Jacinto v. Trump*, 2025 WL 2402271, at *4 ("The governmental interest in the continued detention of these least-dangerous individuals, in contravention of the order of a neutral factfinder, does not outweigh the liberty interest at stake.").

¹⁰² *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

101. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter and issue a writ of habeas corpus requiring that Respondents release Petitioner immediately, or provide Petitioner with a bond hearing before a neutral IJ pursuant to 8 U.S.C. § 1226(a) within three days;
- b. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- c. Declaratory judgment pursuant to 28 U.S.C. § 2201, declaring that applicants for admission detained in the interior long after their initial entry and encounter who are placed in removal proceedings are entitled to a bond hearing before a neutral adjudicator.
- d. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"); and
- e. Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED,

/s/ Dan Gividen

Dan Gividen

**Pro Hac Vice Admission Pending*

Texas SBN. 24075434

18208 Preston Rd., Ste. D9-284

Dallas, TX 75252

Phone: (972) 256-8641

Dan@GividenLaw.com

/s/ Prerna Preshika Lal

Prerna Preshika Lal

Local Counsel

SBN: 354786
Lal Legal APLC
2001 Addison St, STE 300
Berkeley CA 94704
Phone: (800) 552-5616

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DECLARATION OF SERVICE

I hereby certify that on December 23, 2025, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will serve a copy of this document upon all counsels of record.

DATED this December 23, 2025 at Berkeley, California.

/s/ Prerna P. Lal

Prerna Preshika Lal

Local Counsel

2001 Addison Street Ste 300

Berkeley, CA 94704

Phone: (800) 552-5616

prerna@lallegal.com