**UNITED STATES DISTRICT COURT**
**SOUERN DISTRICT OF GEORGIA**

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| **ADONNIS ZAMBRANO VITERI,**<br><br>Petitioner<br><br>vs.<br><br>**TODD LYONS**, Acting Director, Immigration and Customs Enforcement, **KRISTI NOEM**, Secretary of United States Department of Homeland Security, **LADEON FRANCIS**, Immigration and Customs Enforcement, Newark Field Office Director, **TONY NORMAND,** Director, Delaney Hall Detention Facility, **PAMELA BONDI**, United States Attorney General,<br><br>Respondents | **CASE NO. 5:25-cv-248**<br><br>**PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** |

## INTRODUCTION

1. Petitioner, Adonnis Ricardo Zambrano Viteri, ("Petitioner" or "Mr. Zambrano"), is in the physical custody of the Respondents at Folkston ICE Processing Center in Folkston, GA.
2. He is unlawfully detained because (a) he was previously released by the Department of Homeland Security ("DHS") and was re-detained without any change in circumstances, and (b) because the DHS and the Department of Justice ("DOJ") have wrongfully imposed mandatory detention without bond merely because he entered the United States without inspection.
3. Petitioner entered the U.S. on November 6, 2022 and was paroled pursuant to INA 212(d)(5), which required a determination that he is not a flight risk or a danger to the community.
4. Petitioner was re-detained on December 16, 2025.
5. Petitioner was transferred to Folkston ICE Processing Center on Dec. 19, 2025.
6. Petitioner's re-detention was unlawful without any change in circumstance or violation of the terms of his parole.
7. Petitioner is charged at the Immigration Court ("IC") with having entered the U.S. without admission or inspection ("EWI"). See 8 U.S.C. §1182(a)(6)(A)(i).
8. Respondents are holding Petitioner without a bond hearing pursuant to their unlawful policy subjecting all persons who EWI to mandatory detention under §1225(b)(2)(A) and Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025).
9. Petitioner's re-detention and detention without bond violate Due Process, the plain language of the Immigration and Nationality Act ("INA") and the Administrative Procedures Act ("APA").
10. The plain language of the INA, 8 U.S.C. §1226 and decades of precedent make Petitioner eligible for a bond.

11. Constitutional law requires that the Government bear the burden by clear and convincing evidence at the bond hearing to prove the Petitioner is a flight risk or danger to the community and the DOJ's caselaw placing the burden of proof on the Petitioner is unlawful.

12. Accordingly, Petitioner seeks a writ of habeas corpus ordering his immediate release, that this Court set a reasonable bond or that a bond hearing is ordered within five days in which the burden of proof is on the government to prove by clear and convincing evidence that Petitioner is a flight risk or danger to the community.

## II. JURISDICTION AND VENUE

13. This Court has jurisdiction under 28 U.S.C. §2241(c)(5)(habeas corpus), 28 U.S.C. 1331 (federal question), and Article I, section 9, clause 2 of the U.S. Constitution (the Suspension Clause).

14. This Court may grant relief pursuant to 28 U.S.C. §2241, the Declaratory Judgment Act, 28 U.S.C. §2201, et. seq., and the All Writs Act, 28 U.S.C. §1651.

15. Venue is proper in the Southern District of Georgia because Petitioner is located at Folkston ICE Processing Center in Folkston, GA, under color of the authority of the United States, in violation of the Constitution and laws thereof, 28 U.S.C. §§1391, 2241, and because Respondent's potential and likely transfers to varying jurisdictions would prevent any other court from obtaining jurisdiction.

16. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this district, where Petitioner is, or was, in Respondent's custody. 28 U.S.C. §1391€.

## III. REQUIREMENTS OF 28 U.S.C. §2243

17. 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. If an order to show cause issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed."

## IV. PARTIES

18. Petitioner is detained by DHS unlawfully at Folkston ICE Processing Center in Folkston, GA.
19. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement ("ICE"). He is one of Petitioner's custodians and is named in his official capacity.
20. Respondent Kristi Noem is the Secretary of Homeland Security and is Petitioner's ultimate custodian. She is sued in her official capacity.
21. Respondent Ladeon Francis is the Field Office Director for ICE Atlanta Field Office. His is one of Petitioner's custodians and is named in his official capacity.
22. Respondent Tony Normand is the director of Folkston ICE Processing Center where Petitioner is detained. He is named in his official capacity.
23. Respondent Pamela Bondi is the Attorney General of the United States. She oversees the EOIR and is sued in her official capacity.

## V. FACTS

24. Petitioner entered the United States without inspection on, or about, Jan. 6, 2023. He was detained by the DHS – Border Patrol and released on Parole pursuant to INA 212(d)(5).
25. Removal proceedings in the Immigration Court were initiated based on 8 U.S.C §1229a and an allegation of inadmissibility pursuant to 8 U.S.C. §1182(a)(6)(A)(i) as someone who entered the U.S. without inspection. No court proceedings occurred.

26. Petitioner timely filed an I-589 application for asylum and received an Employment Authorization Document ("EAD").
27. He has been working at Advance Distribution System for about one year.
28. On October 5, 2024, Petitioner married a U.S. citizen. He is the step-father to the 9, 13 and 19-year old children. His wife submitted an I-130, petition for alien relative, on January 8, 2025.
29. Petitioner had not been arrested or charged with a crime, had not failed to report, and had not violated the terms of his parole in any meaningful way.
30. On December 9, 2025, he was supposed to check in with ICE. He had been working a lot and forgot.
31. On December 16, 2025, he went to the ICE office to check in and was detained.
32. He is presently scheduled for a Master Calendar Hearing ("MCH" on January 7, 2026.
33. The Immigration Court has become a forum without Due Process, that does not provide adequate time for non-citizens to prepare their defenses and that disregards decades of law and precedent because IJs who fail to abide by the unlawful detain and deport policies of the Department of Justice and the Executive branch are terminated from employment.

## VI. LEGAL FRAEMEWORK

34. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. Zadvydas v. Davis, 533 U.S. 678, 690 (2001).
35. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. Reno v. Flores, 507 U.S. 292, 306 (1993).

36. The Immigration and Nationality Act ("INA") establishes various procedures through which individuals may be detained pending a decision on whether the noncitizen is to be removed. 8 U.S.C. § 1226(a).

37. Removal proceedings described in section 240 of the INA are used to determine whether individuals, such as Petitioner, should be removed from the United States. See 8 U.S.C. § 1229a.

38. Immigration detention is a form of civil confinement that "constitutes a significant deprivation of liberty that requires due process protection." Addington v. Texas, 441 U.S. 418, 4253 (1979).

39. 8 U.S.C. § 1226(a) provides for the general detention scheme of non-criminal non-citizens. Once a non-citizen is apprehended, the Government makes the initial custody determination. See 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). After the initial custody determination, an Immigration Judge can redetermine the decision. See 8 C.F.R. §§ 1003.19, 236.1(d), 1236.1(d)

40. Under § 1226(a), an individual may be released if he does not present a danger to persons or property and is not a flight risk. Zadvydas v. Davis, 533 U.S. 678, 690 (2001); Matter of Guerra, 24 I&N Dec. 37 (BIA 2006).

41. Petitioner further contends that any detention at this time, after having previously been released on his own recognizance and never violated the terms of his release, is unlawful.

42. Once a determination to release an individual from custody is made, the release order may be revisited when the facts or circumstances warrant revocation or reconsideration. 8 U.S.C. § 1226(b). For an individual who was once in custody, the Attorney General may take that individual back into custody by revoking the individual's release when the facts and circumstances warrant it.

43. Revocation and return to custody is authorized only based on the individualized facts and circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation decisions are limited in nature and may only be made by certain authorized officials. 8 C.F.R. § 1236.1(c)(9).

44. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

45. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in removal proceedings before an IJ. See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

46. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

47. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)-(b).

48. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

49. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

50. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). See Inspection and

Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

51. Thus, in the decades that followed, most people who entered without inspection and were placed in removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

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

53. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). See Exhibit A. The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

54. On September 5, 2025, the DOJ, in the form of the Board of Immigration Appeals, adopted this same position in a published decision, Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

55. Since Respondents adopted their new policies, virtually every one of the hundreds of courts to review the issued has concluded that mandatory detention for those residing in the

United States is unlawful. See Exhibit B: Arif Demirel v. Federal Detentio Center Philadelphia, Case 2:25-cv-05488-PD, Appendix A: Appendix of Cases.

56. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

57. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the Rodriguez Vazquez court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." Rodriguez Vazquez, 779 F. Supp. 3d at 1257 (citing Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 400 (2010)); see also Gomes, 2025 WL 1869299, at *7.

58. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

59. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." Jennings v. Rodriguez, 583 U.S. 281, 287 (2018).

60. Although § 1226(a) is silent as to who bears the burden of proof at a bond hearing, the BIA has unconstitutionally placed the burden on non-citizens. In re Adeniji, 22 I&N Dec. 1102,

1116 (BIA 1999) (holding that "respondent must demonstrate that his release would not pose a danger to property or persons, and that he is likely to appear for any future proceedings").

61. Until the immigration reforms of 1996, the Board of Immigration Appeals, which is a part of the Department of Justice, interpreted the statute's discretionary authority as involving a presumption against detention and the Government shouldered the burden of proving that the noncitizen's detention was warranted. Lopez v. Decker, 978 F.3d 842, 848 (2nd Cir. 2020) (describing the history of § 1226(a)); Matter of Patel, 15 I&N Dec. 666 (BIA 1976) ("An alien generally is not and should not be detained or required to post bond except on a finding that he is a threat to national security or that he is a poor bail risk."); Alina Das, Immigration Detention: Information Gaps and Institutional Barriers to Reform, 80 U. Chi. L. Rev. 137, 157-58 (2013).

62. After passage of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 3009 (1996), the former Immigration and Naturalization Service (INS) amended the regulations that changed the standard for the initial post-arrest custody determination made by immigration officers. Lopez v. Decker, 978 F.3d at 849. The noncitizen is now required "to demonstrate to the satisfaction of the [immigration] officer" that the noncitizen is neither a flight risk nor a danger to property or persons, and that he is likely to appear at future hearings. 8 C.F.R. § 236.1(c)(8).

63. In enacting § 236.1(c)(8), the INS acknowledged the sharp departure from long established procedures. Alina Das, Immigration Detention: Information Gaps and Institutional Barriers to Reform, 80 U. Chi. L. Rev. at 156 (citing to Final Rule: Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (1997)).

64. Later, the BIA began applying the standard in § 236.1(c)(8) to reviews by immigration judges of an arresting officer's decision to detain a noncitizen. Lopez v. Decker, 978 F.3d at 849 (citing to Matter of Adeniji, 22 I&N Dec. 1102, 1112 (1999) and Matter of Guerra, 24 I&N Dec. 37, 38 (BIA 2006)). Since Adeniji, the BIA has repeatedly reaffirmed that the burden should be on non-citizens. See Matter of Fatahi, 26 I&N Dec. 791, 793 (BIA 2016); In re Guerra, 24 I&N Dec. 37, 40 (BIA 2006) ("[t]he burden is on the alien to show to the satisfaction of the [immigration judge] that he or she merits release on bond.").

65. To be released under § 1226(a), a noncitizen "must establish to the satisfaction of the Immigration Judge, or the Board, that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight." Matter of Guerra, 24 I&N Dec. at 38 (citing Matter of Adeniji, supra.). This regulatory rule, however, runs counter to the constitutional imperative that liberty is the norm. The Supreme Court has made plain that "commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." Addington v. Texas, 441 U.S. 418, 425 (1979).

66. The Due Process Clause requires a constitutionally adequate bond hearing. "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). Detention must "bear [a] reasonable relation to the purpose for which the individual [was] committed." Id. at 690 (quoting Jackson v. Indiana, 406 U.S. 715, 738 (1972)).

67. The Supreme Court has held that the Due Process Clause "applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." Zadvydas v. Davis, 533 U.S. at 693. Throughout the Court's civil detention jurisprudence, it has always required the government to bear the burden of

proof. Addington v. Texas, 441 U.S. 418 (1979). Thus, the Court has required that civil detention be the "exception", not the norm. See United States v. Salerno, 481 U.S. 739, 755 (1987) (allowing for pretrial detention in "carefully limited" circumstances).

68. In Addington v. Texas, 441 U.S. 418 (1979), the Court held that in civil commitment proceedings, the government's burden of proof must be "equal to or greater that the 'clear and convincing' standard" to meet due process guarantees. Addington v. Texas, 441 U.S. at 433. The appellant in Addington, a mental patient who had been committed indefinitely to a state mental hospital, sought review of the decision from the Texas Supreme Court which held that a preponderance of the evidence standard satisfied the due process requirement. Addington v. Texas, 441 U.S. at 421-22.

69. At a minimum, due process requires "adequate procedural protections" to ensure that the Government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." Zadvydas v. Davis, 533 U.S. at 690 (quoting Kansas v. Hendricks, 521 U.S. 346, 356 (1997)).

70. In civil detention cases, the Supreme Court "repeatedly has recognized that civil commitment for *any* purpose constitutes a significant deprivation of liberty." Singh, 638 F.3d 1196, 1204–05 (9th Cir. 2011) (quoting Addington v. Texas, 441 U.S. 418, 425 (1979)) (emphasis in original).

71. In particular, civil detention is impermissible without an individualized hearing before a neutral decision maker that tests the Government's justification for imprisonment. See United States v. Salerno, 481 U.S. 739, 750-751 (1987)(upholding civil pretrial detention of individuals charged with crimes only upon individualized findings of dangerousness or flight risk at custody hearings); Foucha v. Louisiana, 504 U.S. 71, 81-83 (1992)(requiring individualized finding of mental illness and dangerousness for civil commitment); Kansas

v. Hendricks, 521 U.S. at 357 (upholding civil commitment of sex offenders after jury trial on lack of volitional control and dangerousness).

72. The Ninth Circuit and other district courts have held that immigration detainees are entitled to bond hearings at which the Federal Government bears the burden to prove by clear and convincing evidence that detainees would be a flight risk or danger to the community. See e.g., Singh, 638 F.3d at 1204-1205; Pensamiento v. McDonald 315 F.Supp. 3d 684, 692 (D.Mass 2018)(holding that due process requires the burden of proof be placed on the government in custody redetermination hearings for non-criminal aliens); Alvarez Figueroa v. McDonald, Civil Action No. 18-100097-PBS, 2018 U.S. Dist. LEXIS 80781, at *15-16 (D.Mass May 14, 2018)("The Zadvydas Court then cited to criminal pretrial detention and civil commitment cases, making it clear that one important procedural protection for preventive detention is the placement of the burden of proof on the government."; Doe v. Tompkins, Case No. 18-cv-12266-PBS, 2019 U.S. Dist. LEXIS 22616, at *4 (D. Mass. Feb. 12, 2019)(holding that due process requires that the burden of proving that the respondent is dangerous and is a flight risk be placed on the government in §1226(a) custody redetermination hearings); Diaz-Ortiz v. Tompkins, Case No. 18-cv-12600-PBS, 2019 U.S. Dist. LEXIS 14155, at *3-4 (D. Mass Jan. 29, 2019); Martinez v. Decker, No. 18-cv-6527-JMF, 2018 U.S. Dist. LEXIS 178577, at *13 (S.D.N.Y. Oct. 17, 2018)(concluded that "due process requires the Government to bear the burden of proving that detention is justified at a bond hearing under Section 1226(a)."); Darko v. Sessions, 342 F.Supp.3d 429, 436 (S.D.N.Y 2018)(same; further, "the Court concludes that the government must bear the burden by clear and convincing evidence."); Haughton v. Crawford, 221 F.Supp. 3d 712, 713-17 (E.D.Va. 2016)("the significant deprivation of liberty warrants the robust procedural protections afforded by requiring the government to demonstrate by clear and convincing evidence that petitioner's ongoing detention is

appropriate to protect the community and ensure petitioner's appearance at future proceedings."); Portillo v. Hott, 322 F.Supp.3d 698, 2018 WL 3237898, at *8 *n.9 (E.D.Va 2018)(reaffirming Haughton as "good authority").

73. Petitioner contends, that in the present environment, in which the Executive Branch, the Department of Justice as a whole, especially the Immigration Courts, have eschewed their duty to do justice and stated publicly their disregard of any intention to be impartial or neutral through a series of published decisions by the Board of Immigration Appeals all limiting rights and relief in removal proceedings, through revocation of protections afforded to non-citizens from countries, such as Haiti and Sudan that are plainly unsafe, through advertisements for "Deportation Judges" rather than "Immigration Judges," through firing dozens or hundreds of experienced immigration judges and replacing them with military lawyers who have no experience in immigration law whatsoever, and in one circumstance firing one of those military lawyers within 30 days because he granted too many asylum applications, it is impossible to obtain a fair and impartial hearing in the immigration court because immigration judges know they will be fired if they decide in favor of the non-citizens and this Court must directly address custody.

## VII. CLAIMS FOR RELIEF

### COUNT ONE

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

**Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**

74. Petitioner restates and realleges all paragraphs as if fully set forth here.

75. Under the APA, a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

76. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." Nat'l Ass'n of Home Builders v. Defs. of Wildlife, 551 U.S. 644, 658 (2007) (quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)).
77. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." Dep't of Com. v. New York, 139 S. Ct. 2551, 2569 (2019) (citation omitted).
78. By categorically revoking Petitioner's release without consideration of his individualized facts and circumstances, Respondents have violated the APA.
79. By detaining the Petitioner categorically, Respondents have further abused their discretion because there have been no changes to his facts or circumstances since the agency made its initial custody determinations that support the revocation of his release from custody.
80. Respondents have already considered Petitioner's facts and circumstances and determined that he was not a flight risk or danger to the community. There have been no changes to the facts that justify this revocation of his release on his own recognizance. The fact that Petitioner has already been granted release by Respondents under the same facts and circumstances shows that Respondents do not consider him, on an individualized basis, to be a danger to the community or a flight risk.

**COUNT TWO**

**Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with Law and in Excess of Statutory Authority Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**

81. Petitioner restates and realleges all paragraphs as if fully set forth here.

82. Under the APA, a court "shall . . . hold unlawful . . . agency action" that is "not in accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction, authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D).

83. 8 U.S.C. § 1226(b) authorizes that "[t]he Attorney General at any time may revoke a bond or parole authorized under [8 U.S.C. § 1226(a)" and rearrest a noncitizen under the initial warrant. In implementing this statutory provision, 8 C.F.R. § 1236.1(c)(9) clarifies that such revocations of release from custody may only be carried out 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)."

84. It is a well-established administrative principle that "agency action taken without lawful authority is at least voidable, if not void ab initio." L.M.-M. v. Cuccinelli, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing SW General, Inc. v. NLRB, 796 F.3d 67, 79 (D.C. Cir. 2015); see also Hooks v. Kitsap Tenant Support Servs., Inc., 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by unauthorized official).

85. On information and belief, Respondents have revoked or are revoking Petitioner's prior custody determination as a result of a categorical policy prepared by and implemented by unidentified government officials in Washington, not through the individual exercise of discretion required by law or by the individuals enumerated by regulation to do so.

86. Because Petitioner's revocation of release from custody has been made or will be categorically directed by government officials not authorized by law to make this determination, Respondents' detention of Petitioner is not in accordance with law and in excess of statutory authority.

## COUNT THREE

**Violation of Fifth Amendment Right to Due Process Procedural Due Process**

87. Petitioner restates and realleges all paragraphs as if fully set forth here.

88. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." Zadvydas, 533 U.S. at 693; accord Flores, 507 U.S. at 306.

89. Due process requires that government action be rational and non-arbitrary. See U.S. v. Trimble, 487 F.3d 752, 757 (9th Cir. 2007).

90. While the government has discretion to detain individuals under 8 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not "unlimited" and must comport with constitutional due process. See Zadvydas, 533 U.S. at 698.

91. Here, Respondents have chosen to revoke Petitioner's release in an arbitrary manner and not based on a rational and individualized determination of whether he is a safety or flight risk, in violation of due process. Because no individualized custody revocation has been made and no circumstances have changed to make Petitioner a flight risk or a danger to the community, Respondents' revocation of Petitioner's release violates his right to procedural due process.

## COUNT FOUR

**Violation of the INA**

92. Petitioner incorporates by reference the allegations of facts set forth in the preceding paragraphs.

93. 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.

94. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

## COUNT FIVE

### Violation of Due Process

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

**96.** The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

**97.** Petitioner has a fundamental interest in liberty and being free from official restraint.

**98.** The government's detention of Petitioner without a bond redetermination in which it is the government's burden to prove by clear and convincing evidence he is a flight risk or danger to others violates his right to due process.

## COUNT SIX

### Procedural Due Process – Evidence Fails to Show Flight Risk

99. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

100. Petitioner's detention is unlawful and violates his right to due process because the Government's evidence that Petitioner is a flight risk fails as a matter of law.

101. The Court should release the Petitioner or conduct its own custody determination hearing.

## COUNT SEVEN

**Administrative Procedure Act – Contrary to Law and Arbitrary and Capricious Agency Policy**

102. Petitioner re-alleges and incorporates herein by reference every allegation set forth in the preceding paragraphs.

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

104. The BIA's determination that noncitizens bear the burden of proof in immigration bond hearings is unlawful and conflicts with Supreme Court law.

105. Respondents have failed to articulate reasoned explanations for their reading of the INA, have considered factors that Congress did not intend to be considered, have entirely failed to consider important aspects of the problem, and have offered explanations for their decisions that run counter to the evidence, the law and the Respondent's own policies and precedents.

106. Imposing the burden of proof on noncitizens detained under §1226(a) is arbitrary, capricious and not in accordance with law. As such it violates the APA. See 5 U.S.C.

§706(2). Further, their refusal to provide Petitioner with a constitutionally adequate bond hearing violates §706(1) of the APA.

## VIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request the Court to:

a. Assume jurisdiction over this matter;

b. Order that Petitioner not be transferred to another jurisdiction other than the Southern District of Georgia or the District of New Jersey, while this petition is pending;

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

d. Declare that Petitioner's re-detention was unlawful in violation of Due Process and the INA and order Petitioner's immediate release;

e. Alternatively, declare that Petitioner's detention without an individualized bond hearing is unlawful in violation of Due Process and the INA and order such a hearing be scheduled within two days to be heard within five days with the burden of proof on the Government to prove by clear and convincing evidence that Petitioner is a flight risk or danger to the community;

f. Order that no conditions that constitute de facto custody, such as house arrest, geographic limitations or GPS monitoring be imposed upon Petitioner's release;

g. Order that Respondents are prohibited from re-detaining Petitioner absent advance authorization from this Court;

h. Award Petitioners attorney's fees and cost under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. §2412, and on any other basis justified by law;

i. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,

Date: December 23, 2025

By: /s/ Eric M. Mark
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Local counsel

Attorneys for Petitioner

**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.

Date: December 23, 2025

By: /s/ Eric M. Mark
Eric M. Mark
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**PROOF OF SERVICE**

On December 23, 2025, I, Eric M. Mark, of full age, served the following documents:

**PETITIONERS' PETITION FOR WRIT OF HABEAS CORPUS** by certified mail, each addressed as follows:

Kristi Noem
U.S. Department of Homeland Security
9707 Martin Luther King Jr Ave SE
Washington, D.C. 20528

Todd Lyons
U.S. Immigration and Customs Enforcement is:
500 12th Street SW
Washington, DC 20536

Ladeon Francis

Acting Field Office Director
Enforcement and Removal Operations
Atlanta Field Office
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Atlanta, GA 30303

Tony Normand, Warden
Folkston ICE Processing Center
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E Folkston, GA 31537

Pamela Bondi
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U.S. Attorney's Office
ATTN: Civil Process Clerk
22 Barnard Street
Suite 300
Savannah, GA 31401

/s/ Eric M. Mark

Eric M. Mark, Esq.