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

10 Carlos Barrios Martinez,

11 Petitioner,

12 vs.

13 Kristi Noem, Secretary of the U.S.
14 Department of Homeland Security;

15 Pamela Bondi, Attorney General of the
16 United States;

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

20 Luis Rocha, Warden, Florence
21 Correctional Center;

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

25 Respondents.
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Case No.:

File No: 

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

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

**ORAL ARGUMENT
REQUESTED**

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4 **INTRODUCTION**

5 **Comes now,** Petitioner, Carlos Barrios-Martinez, brings this Verified
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7 Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive
8 Relief pursuant to 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; the
9 Immigration and Nationality Act (“INA”) and regulations thereunder; the
10 Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*; Article I, Section
11 9, Clause 2 of the United States Constitution (“Suspension Clause”). The efforts to
12 continually detain petitioner constitute a “severe restraint” on her individual liberty
13 such that Petitioner is “in custody” of the Respondents in violation of the ... laws
14 of the United States. *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28
15 U.S.C. § 2241. DHS asserts that Petitioner is subject to mandatory detention under
16 8 U.S.C. § 1225(b)(2), however, that provision does not apply to him. Instead,
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18 Petitioner’s custody is governed by 8 U.S.C. § 1226(a), which authorizes release
19 on bond or conditional parole. By denying Petitioner an individualized bond
20 hearing, Respondents violate the Immigration and Nationality Act (“INA”), the
21 Administrative Procedure Act (“APA”), and the United States Constitution.
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26 Petitioner, who entered the United States in 2000 and has only one exit in
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1 2003, and has resided here ever since, is not an applicant for admission. His
2 custody is properly governed by 8 U.S.C. § 1226(a), which authorizes release on
3 bond or conditional parole.
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5 The Board of Immigration Appeals has issued *Matter of Yajure Hurtado*, 29
6 I&N Dec. 216 (BIA 2025), interpreting INA § 235(b)(2)(A) to require mandatory
7 detention of all individuals who entered without inspection. That decision
8 represents the agency's most recent view of the detention statute, but it illustrates
9 DHS's unlawful expansion of § 235(b)(2)(A). That decision does not control this
10 Court. Petitioner entered the United States in 2000, and he has lived in the U.S
11 since before ICE arrested him. He is not an "arriving alien" at the threshold
12 seeking admission, but rather a long-term resident who falls under § 236(a).
13 Additionally, the BIA has issued *Matter of Q. Li*, 26 I&N Dec. 66 (BIA 2025),
14 interpreting the permanent mandatory detention of individuals apprehended at the
15 border.
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21 Pursuant to this Court's inherent powers in habeas corpus proceedings, Mr.
22 Barrios respectfully requests this Court order Respondents to release him from
23 detention.
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25 **I. PARTIES**
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1 A. Petitioner Carlos Barrios-Martinez is a native of Mexico. He is currently
2 detained at the Florence Correctional Center, 1100 N. Bowling Road,
3 Florence, AZ 85132.

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5 B. Respondent Pamela Bondi is named in her official capacity as the Attorney
6 General of the United States. In this capacity, she is responsible for the
7 administration of the immigration laws as exercised by the Executive Office
8 for Immigration Review, pursuant to section 103(g) of the INA, 8 U.S.C. §
9 1103(g). She routinely transacts business in the District of Arizona, is legally
10 responsible for administering Petitioner's removal proceedings and the
11 standards used in those proceedings, and as such, is the legal custodian of
12 Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950
13 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.
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16 C. Respondent, John Cantu, is the Phoenix Field Office Director for
17 Enforcement and Removal Operations, U.S. Immigration and Customs
18 Enforcement. He is the local ICE official who has immediate authority over
19 the Petitioner. Respondent Cantu's address is Field Office Director,
20 Enforcement and Removal Operations, U.S. Immigration and Customs
21 Enforcement, Phoenix Field Office, 2035 N. Central Avenue, Phoenix, AZ,
22 85004.
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1 D. Respondent, Kristi Noem, is the Acting Secretary of the U.S. Department of
2 Homeland Security (“DHS”), the federal agency responsible for enforcing
3 Petitioner’s arrest, detention and removal. DHS’s address is U.S.
4 Department of Homeland Security, Washington, DC 20528.
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7 E. Respondent Luis Rocha, is the warden of the Florence Correctional Center,
8 where Petitioner is being held. He is the custodian of Petitioner and is named
9 in his official capacity. His address is 1100 N. Bowling Road, Florence, AZ
10 85132.
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12 F. Todd M. Lyons is the Acting Director, Immigration and Customs
13 Enforcement, U.S. Department of Homeland Security, the federal agency
14 responsible for enforcing Petitioner’s arrest, detention and removal. DHS’s
15 address is U.S. Department of Homeland Security, Washington, DC 20528.
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18 **II. JURISDICTION AND VENUE**
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20 The Court has jurisdiction under the Suspension Clause. The Suspension
21 Clause provides, "The privilege of the Writ of Habeas Corpus shall not be
22 suspended, unless when in Cases of Rebellion or Invasion the public Safety may
23 require it." U.S. Const. Art. I § 9, cl. 2.
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25 This case arises under the United States Constitution; the INA, 8 U.S.C. §§
26 1101 et seq.; the APA, 5 U.S.C §§ 701 et seq.; the Due Process Clause of the Fifth
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1 Amendment and the Fourteenth Amendment. Petitioner’s current detention
2 pending her removal order as enforced by Respondents constitutes a “severe
3 restraint [] on [Petitioner’s] individual liberty,” such that Petitioner is “in custody
4 in violation of the . . . laws . . . of the United States.” *See Hensley*, 411 U.S. at 351
5 (1973); 28 U.S.C. § 2241(c)(3).
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8 No Supreme Court or Ninth Circuit precedent applicable to immigration
9 detainees, nor the habeas statute, indicate that venue is not proper in the District of
10 Arizona. See 28 U.S.C. § 2241. Venue is proper in the District of Arizona because
11 a substantial part of the events and omissions which gave rise to this action
12 occurred in the district. 28 U.S.C. § 1391(b)(2). Petitioner is currently being held at
13 the Florence Correctional Center in Florence, Arizona. He is in removal
14 proceedings before the Immigration Court in Florence, Arizona, and on December
15 23, 2025, his request for a custody redetermination was denied on the grounds that
16 Petitioner had been classified as subject to mandatory detention under 8 U.S.C. §
17 1225(b)(2).
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22 **III. FACTS GIVING RISE TO THE HABEAS PETITION**

23 Petitioner, Mr. Barrios, is a 52-year-old native and citizen of Mexico. He
24 entered the United States without inspection in 2000 and has resided continuously
25 in in the U.S since that date, except for one exit to Mexico in 2003.
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1 Officers of U.S. Immigration and Customs Enforcement (“ICE”) arrested
2 Petitioner in Arizona and placed him in removal proceedings under § 240 of the
3 Immigration and Nationality Act (“INA”). Years later, he was taken into custody
4 by DHS. He was then transported to the Florence Correctional Center in Florence,
5 Arizona, where he remains detained today.
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8 Following his arrest, ICE determined that Petitioner was subject to
9 mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). On December 18, 2025,
10 Petitioner requested a custody redetermination before an Immigration Judge, but
11 his request was denied on the grounds that the Immigration Court lacked
12 jurisdiction because DHS had classified her as subject to § 1225(b)(2) on
13 December 23, 2025.
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16 On September 5, 2025, the Board of Immigration Appeals issued *Matter of*
17 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that individuals who
18 entered without inspection are “applicants for admission” subject to mandatory
19 detention under INA § 235(b)(2)(A). That decision does not bind this Court.
20
21 Petitioner, who entered the United States in 2023 and has lived here ever since is
22 not an arriving alien at the border but a long-term resident whose custody falls
23 under § 236(a). For decades, Immigration Judges conducted bond hearings for
24 individuals in Petitioner’s position, a practice the Board itself acknowledged before
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1 abruptly reversing course. DHS's reliance on § 1225(b)(2) to justify Petitioner's
2 detention is contrary to the statute's plain text, longstanding administrative
3 practice, and decades of settled interpretation. Because DHS has improperly
4 categorized him under § 1225(b)(2), Petitioner has been deprived of the
5 opportunity for an individualized bond hearing, leaving him in prolonged and
6 unlawful detention in violation of the INA, the APA, and the U.S. Constitution.
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9 The expansive interpretation of the law in *Matter of Yajure Hurtado*, 29 I&N
10 Dec. 216 (BIA 2025) is untenable and contrary to the plain face of the statute. For
11 the same reason that Petitioners in *Matter of Yajure Hurtado* are no longer
12 applicants for admission, Mr. Barrios also is not an applicant for admission. He
13 has resided in the United States for over twenty-five years.
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16 Petitioner has no disqualifying criminal convictions that would render him
17 subject to mandatory detention under 8 U.S.C. § 1226(c). In fact, he has no
18 criminal history. Nor is he an applicant for admission apprehended at a port of
19 entry. Instead, he has lived in the interior of the United States for more than
20 twenty-five years, living with his family. He has been in removal proceedings; he
21 has not missed a hearing; and he has been responsibly pursuing his case. He has
22 significant ties to the community in the U.S., including a U.S. Citizen son, who is
23 27 years old.
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1 DHS's reliance on § 1225(b)(2) to justify Petitioner's detention is contrary
2 to the statute's plain text, longstanding administrative practice, and decades of
3 settled interpretation.
4

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

12 Respondents' power to detain and deport someone is not limitless, nor is it
13 shielded from judicial review. *See Calderon v. Sessions*, 330 F. Supp. 3d 944, 950
14 (S.D.N.Y. 2018) (appeal withdrawn sub nom.).
15

16 "Habeas corpus is at its core, an equitable remedy." *Schlup v. Delo*, 513 U.S.
17 298, 319 (1995). Judges have "broad discretion" to fashion an appropriate remedy.
18 *Carafas v. La Vallee*, 391 U.S. 234 (1968). It may extend beyond simply ordering
19 the release of a petitioner and is to "be administered with the initiative and
20 flexibility essential to ensure that miscarriages of justices within its reach are
21 surfaced and corrected." *Harris v. Nelson*, 394 U.S. 286, 291 (1969). Habeas
22 corpus "never has been a static, narrow, formalistic remedy; its scope has been to
23 achieve its grand purpose - the protection of individuals against erosion of their
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1 right to be free from wrongful restraints upon their liberty.” *Jones v. Cunningham*,
2 371 U.S. 236, 243 (1963). At its historical core, habeas corpus “has served as a
3 means of reviewing the legality of Executive detention, and it is in that context that
4 its protections have been strongest.” *Rasul v. Bush*, 542 U.S. 466, 474 (2004)
5 (citations omitted). These protections extend fully to noncitizens subject to an
6 order of removal. *See Martinez v. McAleenan*, 385 F.Supp.3d 349, 355 (“Due to its
7 talismanic significance in protecting individual liberty from unlawful detention,
8 habeas corpus is fundamentally governed by equity. The Supreme Court has
9 granted the writ when justice has so required.”) (citing *Munaf v. Grren*, 128 S.Ct.
10 2207 (2008) and *Carafas v. LaVallee*, 392 U.S. 234 (1968)). The Supreme Court
11 has noted the writ’s “scope and flexibility--its capacity to reach all manner of
12 illegal detention--its ability to cut through barriers of form and procedural mazes.”
13 *Harris*, 394 U.S. at 291.

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19 **V. REQUEST FOR RELIEF**

20 Pending the adjudication of this Petition, Petitioner respectfully requests that
21 the Court use its authority under 28 U.S.C. § 2243 to order the Respondents to file
22 a return within three days, unless they can show good cause for additional time.
23 See 28 U.S.C. §2243. (Order to show cause why a petition for a writ of habeas
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1 corpus should not be granted should be “returned within three days unless for good
2 cause additional time, not exceeding twenty days, is allowed”).
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4 Petitioner requests that this Court issue an order that Respondents must
5 notify the Court and Petitioner’s counsel five days prior to any removal of
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7 Petitioner.

8 Petitioner further asks this Court to declare that he is not subject to
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10 mandatory detention under 8 U.S.C. § 1225(b)(2). Petitioner also requests that the
11 Court grant such other and further relief as it deems just and proper.

12 Furthermore, Petitioner requests to be released from detention.
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14 **VI. EXHAUSTION OF REMEDIES**

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16 Exhaustion of remedies is not required for this habeas petition because
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18 Petitioner challenges the government’s unlawful classification of his detention as
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20 mandatory under 8 U.S.C. § 1225(b)(2). The Immigration Court has taken the
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22 position that it lacks jurisdiction to review custody where DHS asserts mandatory
23
24 detention. Any further attempt to pursue administrative remedies would therefore
25
26 be futile.

27 Even if exhaustion were required, Petitioner has already sought custody
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redetermination before an Immigration Judge. On December 23, 2025, his request
for bond was denied on the grounds that Petitioner falls under § 1225(b)(2).

1 Having raised the issue and been denied relief, Petitioner has satisfied or, in the
2 alternative, is excused from any exhaustion requirement.
3

4 Because the BIA has ruled in *Yajure Hurtado* that § 235(b)(2)(A) mandates
5 detention, further pursuit of administrative remedies would be futile. Only this
6 Court has the authority to determine whether that interpretation is lawful and
7 constitutional.
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9 **PRELIMINARY INJUNCTION**

10 **1. Legal Standard**

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

2 Petitioner is unlawfully detained under the government’s assertion that he is
3 subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). This position is
4 contrary to the plain text of the statute, longstanding agency practice, and recent
5 federal district court rulings. As a noncitizen who entered the United States in 2023,
6 Petitioner is not “seeking admission” at a port of entry and therefore cannot be held
7 under § 1225(b)(2). His custody is properly governed by 8 U.S.C. § 1226(a), which
8 authorizes an individualized custody determination and potential release on bond.
9 The denial of a bond hearing deprives Petitioner of liberty without due process of
10 law.
11

12 Under the Due Process Clause of the Fifth Amendment, no person shall be
13 deprived of life, liberty, or property, without due process of law. U.S. Const. Amend.
14 V. Non-citizens on U.S. soil have constitutional rights, including the right to due
15 process of law. *Yick Wo v. Hopkins*, 118 U.S. 356, 368-69 (1886); *Matthew v. Diaz*,
16 426 U.S. 67, 77 (1976). By refusing to provide Petitioner with a bond hearing,
17 Respondents subject him to prolonged and arbitrary detention beyond what the
18 Constitution and the statute allow.
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1 In this circumstance, if the noncitizen “provides good reason to believe that
2 there is no significant likelihood of removal in the reasonably foreseeable future,
3 the Government must respond with evidence sufficient to rebut that showing.” *Id.*

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5 **a. Irreparable Harm in the Absence of an Injunction**

6 An injury is “irreparable” if it is “not accurately measurable or adequately
7 compensable by money damages.” *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*
8 102 F.3d 12, 19 (1st Cir. 1996); *see also United Steelworkers of Am., AFL-CIO v.*
9 *Textron, Inc.* 836 F.2d 6, 8 (1st Cir. 1987).
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11

12 Due process cases recognize a broad liberty interest rooted in the fact of
13 deportation, not just the process of removal proceedings. *See Bridges v. Wixon,*
14 326 U.S. 135, 154 (1945) (deportation “visits a great hardship on the individual
15 and deprives him of the right to stay and live and work in this land of freedom.”);
16 *see also Chhoeun v. Marin,* 2018 WL 566821, at *9 (C.D. Cal., Jan. 25, 2018)
17 (finding a “strong liberty interest” where being deported means being separated
18 from home and family). While this liberty interest typically arises in removal
19 proceedings, courts have found procedural due process violations for persons not
20 in removal proceedings. *See, e.g., Walters v. Reno,* 145 F.3d 1032 (9th Cir. 1998)
21 (forms issued to noncitizens charged with civil document fraud violated due
22 process clause); *Rojas v. Johnson,* 305 F.Supp.3d 1176, 1180 (W.D. Wash. Mar.
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1 29, 2018) (concluding that “Agency Defendants do not provide sufficient notice of
2 the one-year deadline to satisfy the Due Process clause” to asylum-seeker
3 subclasses both in and out of removal proceedings).
4

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

17 Immigrants who pursue lawful immigrant status in the United States have
18 rights under the Due Process Clause of the Fifth Amendment. Once a petitioner
19 has identified protected liberty or property interest, the Court must determine
20 whether a constitutionally sufficient process has been provided. *Mathews*, 424 U.S.
21 at 335. In making this determination, the Court balances (1) “the private interest
22 that will be affected by the official action”; (2) “the risk of an erroneous
23 deprivation of such interest through the procedures used, and the probable value, if
24 any, of additional or substitute procedural requirement would entail;” and (3) “the
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1 government's interest, including the function involved and the fiscal and
2 administrative burdens that the additional or substitute procedural requirement
3 would entail." *Id.* Interpreted under the Constitution, the INA and its applicable
4 regulations do not permit continual detention of Petitioner after he has been
5 granted immigration relief and surpassed the 90-day removal allotment given
6 under the INA. 8 U.S.C. § 1231.
7

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

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

5
6 1. *Accardi’s* “ambit” is “not limited” to “rules attaining the status of
7 formal regulation.” *Montilla*, 926 F.2d at 167. It applies to both promulgated
8 regulations and other processes and programs that guide the Government’s
9 discretion. *See Zhang v. Slattery*, 840 F. Supp. 292, 293- 96 (S.D.N.Y. 1994)
10 (holding that the Government violated the APA by ignoring its non- promulgated
11 immigration “program”); *see also Pasquini v. Morris*, 700 F.2d 658, 661-63 (11th
12 Cir. 1983) (same, but for informal criteria). *Accardi* means that when the
13 Government sets out a process whereby relief can be pursued, a “right to *seek*
14 relief” is created, even when there is no “right to the relief itself.” *Arevalo v.*
15 *Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) (emphasis added) (citing *Accardi*, 347 U.S.
16 at 268).

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22 Federal district courts have already recognized that DHS’s reliance on §
23 1225(b)(2) to categorically deny bond hearings is unlawful. In *Ramon Rodriguez*
24 *Vazquez v. Bostock*, No. 3:25-cv-05240 (N.D. Cal. Apr. 24, 2025), the court issued
25 a preliminary injunction requiring ICE to provide a bond hearing to a petitioner
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1 detained under § 1225(b)(2), holding that custody in such circumstances properly
2 falls under § 1226(a). Similarly, in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-
3 01873 (C.D. Cal. 2025), the court granted a temporary restraining order requiring
4 bond hearings within seven days and prohibiting ICE from transferring or
5 removing petitioners without court approval. These rulings demonstrate both the
6 statutory error and constitutional infirmity of Respondents' position. Petitioner's
7 claim is therefore not novel, but squarely aligned with other federal courts that
8 have already granted the precise relief sought here.
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12 **c. There is No Substantial Injury to Other Parties and Injunctive**
13 **Relief is in the Public Interest**

14 The issuing of a temporary restraining order and a preliminary injunction is
15 warranted because the balance of equities tips in the favor of the Petitioner and the
16 injunction is squarely within the public interest. The government's equities also
17 weigh in favor of issuing a preliminary injunction here.
18

19 The Petitioner, the public, and the Government all have a vested interest in
20 fair and equitable legal proceedings for all people, citizens and non-citizens alike.
21 *See Reno v. Flores*, 507 U.S. 292 (1993) (Finding that non-citizens are entitled to
22 5th Amendment due process).
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25 Further, granting injunctive relief in this case will not cause substantial injury
26 to Respondents or to the government. The government has no legally cognizable
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28

1 interest in detaining Petitioner under an unlawful statutory framework. An injunction
2 requiring that Petitioner be provided a custody hearing under 8 U.S.C. § 1226(a)
3 merely enforces the law as written and ensures compliance with constitutional
4 protections. As courts have consistently recognized, the government cannot be
5 harmed by an order that prevents it from engaging in unlawful conduct.
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8 The Government “cannot suffer harm from an injunction that merely ends an
9 unlawful practice or reads a statute as required to avoid constitutional concerns.”
10 *R.I.L.-R v. Johnson*, 80 F. Supp. 3d at 191 (D.D.C. Feb. 20, 2015) (citing *Rodriguez*
11 *v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013)). Further, “the public interest is
12 served when administrative agencies comply with [the requirements of U.S. law].”
13
14

15 *Id.*

16 **d. Matter of Yajure Hurtado Is Not Binding on this Court and Should**
17 **Not Be Followed**

18
19 The BIA’s recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216
20 (BIA 2025), extends § 235(b)(2)(A) beyond its text and purpose to bar bond for all
21 individuals who entered without inspection, no matter how long they have resided
22 in the United States. That interpretation is deeply flawed.
23

24 First, it contradicts the statutory scheme. Section 235(b)(2)(A) governs
25 “applicants for admission”, those encountered at or near the border. Petitioner, who
26 has resided in the interior of the United States since 2000, is not in that category.
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1 Section 236(a) is the detention authority that properly applies.

2 Second, the decision departs from decades of agency practice. The Board
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4 itself acknowledged that “for years Immigration Judges conducted bond hearings for
5 aliens who entered the United States without inspection.” *Id.* at 225. This admission
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7 underscores that § 236(a) has long been understood to provide custody authority in
8 such cases. The Board’s sudden reversal represents an unexplained break from
9 settled practice, rendering it arbitrary and unexplained under the APA.

10
11 Although the Board later attempted to walk back this acknowledgment, stating
12 that “our acknowledgment that aliens detained under § 236 may be eligible for
13 discretionary release on bond does not mean all aliens are eligible,” *id.* at 227, this
14 disclaimer does not erase the historical fact of settled agency practice. Nor does it
15 explain why individuals like Petitioner who entered twenty-five years ago,
16 established long-term residence, and were arrested in the interior should suddenly
17 be stripped of bond eligibility. The Board’s narrowing language only underscores
18 the arbitrariness of its reinterpretation. By conceding the longstanding bond practice
19 yet declaring it “beyond the scope” to resolve, the BIA effectively confirmed that its
20 shift was policy-driven, not compelled by statutory text. That makes the decision
21 both unpersuasive and invalid.

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26 Third, the decision raises serious constitutional problems. Mandatory
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1 detention without access to a bond hearing, especially for long-term residents like
2 Petitioner with strong family and community ties, violates the Due Process Clause.
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4 Courts construe statutes to avoid such constitutional infirmities. This Court should
5 therefore reject *Yajure Hurtado*'s interpretation and apply § 236(a), which
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7 authorizes discretionary release on bond.

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

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28 **F. Federal Courts have rejected DHS's position.**

Recent federal court decisions confirm that Respondents' reliance on §
1225(b)(2) to detain Petitioner without a bond hearing is unlawful. In *Cuevas
Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025), the

1 district court expressly distinguished *Matter of Yajure Hurtado*, it rejected its
2 sweeping application of § 1225(b)(2) and held that noncitizens apprehended in the
3 interior after long residence in the United States are properly detained under §
4 236(a), not § 1225(b)(2). *Cuevas Guzman* reaffirmed the longstanding rule that entry
5 without inspection does not permanently bar a person from eligibility for bond once
6 they are living in the country. That holding directly applies here.
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9 Moreover, in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873 (C.D. Cal.
10 2025), the court granted a temporary restraining order requiring bond hearings
11 within seven days and prohibiting ICE from transferring or removing petitioners
12 without court approval
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15 Similarly, in *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D.
16 Cal. Sept. 8, 2025), the court recognized that the BIA's interpretation in *Yajure*
17 forecloses administrative relief, rendering exhaustion futile. The same is true for
18 Petitioner, who cannot meaningfully seek bond redetermination before EOIR given
19 that the IJ held that he had no jurisdiction.
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22 In *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025),
23 the district court issued a preliminary injunction requiring ICE to provide a bond
24 hearing to a petitioner detained under § 1225(b)(2), holding that custody in such
25 circumstances falls under § 1226(a). That decision confirms that habeas relief is the
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1 proper vehicle and that this Court has the authority to order the same remedy for
2 Petitioner.
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4 These cases establish that DHS's reliance on § 1225(b)(2) for long-term
5 residents like Petitioner is inconsistent with statutory text, contrary to constitutional
6 protections, and already rejected by multiple courts within this Circuit.
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8 In *Singh v. Lewis*, No. 4:25-cv-96 (W.D. Ky. Sept. 22, 2025), the district court
9 granted a habeas petition and ordered release, finding that DHS's reclassification of
10 interior arrests under § 1225(b)(2) violated both the INA and due process. The court
11 rejected the government's reliance on *Matter of Yajure Hurtado*, concluding that "an
12 individual is not 'seeking admission' when he never attempted to do so," and held
13 that detention must proceed under § 1226(a). The court further found that the
14 automatic-stay regulation at 8 C.F.R. § 1003.19(i)(2) unlawfully deprived the
15 petitioner of liberty without due process and ordered his immediate release upon
16 posting bond.
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21 Similarly, in *Beltrán Barrera v. Tindall*, No. 3:25-cv-541 (W.D. Ky. Sept. 19,
22 2025), the court held that DHS's blanket application of § 1225(b)(2) to individuals
23 apprehended years after entering the United States was contrary to the statutory text
24 and structure of the INA. The court emphasized that Congress intended § 1225 to
25 govern only applicants for admission encountered at the border, and it therefore
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1 ordered the petitioner's release under § 1226(a)

2 Moreover, in *Benítez-Cornejo v. Cantu*, No. CV-25-03672-PHX-JJT (ESW)
3 (D. Ariz. 2025), the District of Arizona granted habeas relief on the same statutory
4 question presented here, holding that individuals arrested in Arizona after years of
5 residence fall under § 1226(a) and must receive individualized bond hearings. The
6 court rejected DHS's reliance on *Yajure Hurtado* as inconsistent with the Ninth
7 Circuit's due-process jurisprudence and the statutory framework of the INA. The
8 number of cases is too numerous to cite; however, a plethora of District Courts have
9 found that detention in the form of Petitioner's is unlawful. *Chogllo Chafra v. Scott*,
10 2025 WL 2688541 (D. Me. Sept. 2, 2025); *Chang Barrios v. Shepley*, 2025 WL
11 2772579 (D. Me. Sept. 29, 2025); *Chiliquinga Yumbillo v. Stamper*, 2025 WL
12 2783642 (D. Me. Sept. 30, 2025); *Aguilar Guerra v. Joyce*, 2025 WL 2986316 (D.
13 Me. Oct. 24, 2025); *Cesario; Souza v. Hyde*, 2025 WL 2997670 (D. Mass. Oct. 24,
14 2025); *Chanaguano Caiza v. Scott*, 2025 WL 3013081 (D. Me. Oct. 28, 2025); *Sena*
15 *Gomes v. Wesling*, 2025 WL 363712 (D. Mass Dec. 16, 2025); *Gomez Mejia v.*
16 *Woosley*, 2025 WL 2933852 (W.D. Ky. Oct. 15, 2025); *Martinez-Elvir v. Olson*,
17 2025 WL 3006772 (W.D. Ky. Oct. 27, 2025); *Rodriguez Serrano v. Noem*, 2025
18 WL 3122825 (W.D. Mich. Nov. 7, 2025); *Macias v. Raycraft*, 2025 WL 3525262
19 (N.D. Ohio Dec. 9, 2025); *H.G.V.U. v. Smith*, 2025 WL 2962610 (N.D. Ill. Oct. 20,
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1 2025); *Patel v. Crowley*, 2025 WL 2996787 (N.D. Ill. Oct. 24, 2025); *Campos Leon*
2 *v. Forestal*, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Guaita Quinapanta v.*
3 *Bondi*, 2025 WL 3157867, at *7 (W.D. Wis. Nov. 12, 2025); *Giron Reyes v. Lyons*,
4 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Garcia Picazo, v. Sheehan*, 2025
5 WL 3006188 (N.D. Iowa Oct. 27, 2025); *Santiago Helbrum v. Williams*, 2025 WL
6 2840273(S.D. Iowa Sept. 30, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539
7 (D. Neb. Sept. 3, 2025); *Vargas-Murillo v. Bondi*, 2025 WL 3280904 (D. Ariz. Nov.
8 25, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025);
9 *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (expressly disagreeing
10 with BIA’s analysis in *Yajure Hurtado*); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-
11 326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass.
12 Sept. 5, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025);
13 *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*,
14 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Gomes v. Hyde*, 2025 WL 1869299
15 (D. Mass. July 7, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y.
16 Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-*
17 *Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*,
18 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL
19 2609425 (E.D. Mich. Sept. 9, 2025) (rejecting BIA’s analysis in *Yajure Hurtado*);
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1 *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);
2 *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes*
3 *Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Palma Perez v.*
4 *Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *O.E. v. Bondi*, 2025 WL 2466670
5 (D. Minn. Aug. 27, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19,
6 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Garcia*
7 *Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*,
8 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Caicedo Hinestroza v. Kaiser*, 2025
9 WL 2606983 (N.D. Cal. Sept. 9, 2025). *Hernandez Nieves v. Kaiser*, 2025 WL
10 2533110 (N.D. Cal. Sept. 3, 2025). *Vasquez Garcia et al. v. Noem*, 2025 WL
11 2549431 (S.D. Cal. Sept. 3, 2025). *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285
12 (C.D. Cal. Aug. 15, 2025). *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug.
13 11, 2025).

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19 Because multiple courts have already recognized the unlawfulness of DHS's
20 reliance on § 1225(b)(2) to deny bond hearings, Petitioner's claim for relief thus
21 aligns with an established and growing consensus.
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23 **VII. CLAIMS FOR RELIEF**

24 **1. PETITIONER'S CONTINUED DETENTION VIOLATES DUE** 25 **PROCESS, THE INA, AND THE APPLICABLE REGULATIONS** 26 27 28

1 Petitioner re-alleges and incorporates by reference each and every allegation
2 contained in the preceding paragraphs as if set forth fully herein. Due process
3 protects a noncitizen's liberty interest in freedom from arbitrary civil confinement.
4 Petitioner has a protected due process interest in seeking judicial review of his
5 continued detention and in obtaining a custody determination in accordance with
6 the INA. By treating Petitioner as subject to mandatory detention under §
7 1225(b)(2) rather than discretionary custody under § 1226(a), Respondents have
8 deprived him of his liberty without adequate process and in excess of their
9 statutory authority.
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13 Respondents' reliance on INA § 235(b)(2)(A), as reinforced by the BIA's
14 recent decision in *Matter of Yajure Hurtado*, unlawfully deprives Petitioner of his
15 statutory right to a bond hearing under § 236(a). Even the Board admitted that for
16 years Immigration Judges conducted such hearings for EWIs before abruptly
17 reversing course. That reversal is inconsistent with the INA, arbitrary and
18 capricious under the APA, and unconstitutional under the Due Process Clause of
19 the Fifth Amendment. This Court is not bound by *Yajure Hurtado* and should
20 decline to follow it.
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25 **2. CONTNUED DETENTION OF PETITIONER VIOLATES THE**
26 **ADMINISTRATIVE PROCEDURE ACT**
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1 Petitioner re-alleges and incorporates by reference each and every allegation
2 contained in the preceding paragraphs as if set forth fully herein. Respondents'
3 actions are "arbitrary, capricious, an abuse of discretion, or otherwise not in
4 accordance with law" and "in excess of statutory jurisdiction, authority, or
5 limitations." 5 U.S.C. §§ 706(2)(A), (C). For decades, DHS and EOIR interpreted
6 the INA to mean that individuals like Petitioner, those apprehended in the interior
7 long after entry, are detained under § 1226(a). The abrupt reversal of this settled
8 interpretation, without explanation or notice-and-comment, violates the APA.
9 Absent this Court's intervention, Petitioner has no adequate remedy to challenge
10 the unlawful classification of his custody.
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15 **3. PETITIONER'S CONTINUED DETENTION VIOLATES THE** 16 **SUSPENSION CLAUSE**

17 Petitioner re-alleges and incorporates by reference each and every allegation
18 contained in the preceding paragraphs as if set forth fully herein. The government's
19 assertion that § 1225(b)(2) mandates detention for individuals like Petitioner
20 effectively forecloses meaningful habeas review by depriving him of any
21 opportunity to obtain a bond hearing or individualized custody determination. Such
22 a denial of judicial review undermines the Suspension Clause of the United States
23 Constitution, which guarantees the right to challenge unlawful detention through
24 habeas corpus.
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1 **4. FIFTH AMENDMENT DUE PROCESS – STATE-CREATED**
2 **DANGER**

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4 The Due Process Clause provides that no person shall “be deprived of life,
5 liberty, or property, without due process of law.” U.S. Const. amend. V. Its
6 protections extend to “every person within the nation’s borders,” regardless of
7 immigration status. *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 781 (9th Cir. 2014);
8 *id.* (“Even one whose presence in this country is unlawful, involuntary, or
9 transitory is entitled to that constitutional protection.”) (quoting *Mathews v. Diaz*,
10 426 U.S. 67, 77 (1976)). The government violates an individual’s right to due
11 process when it (1) “affirmatively place[s] [the] individual in danger,” (2) by
12 “acting with ‘deliberate indifference to [a] known or obvious danger.’” *Kennedy v.*
13 *City of Ridgefield*, 439 F.3d 1055, 1062 (9th Cir. 2006) (quoting *Munger v. City of*
14 *Glasgow*, 227 F.3d 1082, 1086 (9th Cir. 2000) and *L.W. v. Grubbs*, 92 F.3d 894,
15 900 (9th Cir. 1996)). When the government’s actions leave an individual “in a
16 situation that [is] more dangerous than the one in which [it] found him,” the
17 government has affirmatively placed that individual in danger. *Hernandez v. City*
18 *of San Jose*, 897 F.3d 1125, 1133 (9th Cir. 2018) (quoting *Munger*, F.3d at 1086).
19 The critical inquiry is thus whether the government’s actions “create[d] or
20 expose[d] an individual to a danger which he or she would not have otherwise
21 faced.” *Kennedy*, 439 F.3d at 1061; *Cf. J.P. v. Sessions*, No. Civ. 18-06081 JAK