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

10 Jesus Ricardo Ozuna-Valencia,

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 Warden, Florence Service Processing
21 Center;

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

25 Respondents.
26
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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**

INTRODUCTION

Comes now, Petitioner, Jesus Ricardo Ozuna-Valencia, brings this Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief pursuant to 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; the Immigration and Nationality Act (“INA”) and regulations thereunder; the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*; Article I, Section 9, Clause 2 of the United States Constitution (“Suspension Clause”). The efforts to continually detain petitioner constitute a “severe restraint” on her individual liberty such that Petitioner is “in custody” of the Respondents in violation of the ... laws of the United States. *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241. DHS asserts that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), however, that provision does not apply to him. Instead, Petitioner’s custody is governed by 8 U.S.C. § 1226(a), which authorizes release on bond or conditional parole. By denying Petitioner an individualized bond hearing, Respondents violate the Immigration and Nationality Act (“INA”), the Administrative Procedure Act (“APA”), and the United States Constitution.

Petitioner, who entered the United States in 2023 with his siblings, mother

1 and U.S. Citizen father, and has resided here ever since, is not an applicant for
2 admission. His custody is properly governed by 8 U.S.C. § 1226(a), which
3 authorizes release on 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 2023, and has lived in the U.S ever
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, Jesus
22 Ricardo Ozuna-Valencia respectfully requests this Court order Respondents to
23 release him from detention.
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25 **I. PARTIES**
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1 A. Petitioner Jesus Ricardo Ozuna-Valencia is a native of Mexico. He is
2 currently detained at the Florence Service Processing Center, 3250 N. Pinal
3 Parkway, 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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15 C. Respondent, John Cantu, is the Phoenix Field Office Director for
16 Enforcement and Removal Operations, U.S. Immigration and Customs
17 Enforcement. He is the local ICE official who has immediate authority over
18 the Petitioner. Respondent Cantu's address is Field Office Director,
19 Enforcement and Removal Operations, U.S. Immigration and Customs
20 Enforcement, Phoenix Field Office, 2035 N. Central Avenue, Phoenix, AZ,
21 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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6
7 E. Respondent Warden, is the warden of the Florence Service Processing
8 Center, where Petitioner is being held. He is the custodian of Petitioner and
9 is named in his official capacity. His address is 3250 N. Pinal Parkway,
10 Florence, AZ 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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19 **II. JURISDICTION AND VENUE**

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.
24

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 Service Processing 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, Jesus Ricardo Ozuna-Valencia, is a 21-year-old native and citizen
24 of Mexico. He entered the United States without inspection in 2023 and has
25 resided continuously in in the U.S since that date.
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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 on his way to work with his brother. He was then transported to the Florence
5 Service Processing Center in Florence, 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 Moreover, the BIA has issued *Matter of Q. Li*, 26 I&N Dec. 66 (BIA 2025)
10 on May 15, 2025, interpreting the permanent mandatory detention of individuals
11 apprehended at the border. This expansive interpretation of the law is untenable
12 and contrary to the plain face of the statute. For the same reason that Petitioners in
13 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) are no longer an applicant
14 for admission, Jesus Ricardo also is not an applicant for admission. He has resided
15 in the United States for over two years.
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19 Petitioner has no disqualifying criminal convictions that would render him
20 subject to mandatory detention under 8 U.S.C. § 1226(c). Nor is he an applicant for
21 admission apprehended at a port of entry. Instead, he has lived in the interior of the
22 United States for more than two years, living with his family, which includes a
23 U.S. Citizen father. He has been in removal proceedings; he has not missed a
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1 hearing; and he has been responsibly pursuing his case. He has significant ties to
2 the community in the U.S.

3
4 DHS's reliance on § 1225(b)(2) to justify Petitioner's detention is contrary
5 to the statute's plain text, longstanding administrative practice, and decades of
6 settled interpretation.

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

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14 **IV. APPLICABLE LAW**

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

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

22 **V. REQUEST FOR RELIEF**

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

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

15 **VI. EXHAUSTION OF REMEDIES**

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

25
26 Even if exhaustion were required, Petitioner has already sought custody
27 redetermination before an Immigration Judge. On December 23, 2025, his request
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1 for bond was denied on the grounds that Petitioner falls under § 1225(b)(2).

2 Having raised the issue and been denied relief, Petitioner has satisfied or, in the
3 alternative, is excused from any exhaustion requirement.
4

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

12 **1. Legal Standard**

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

2 **2. Petitioner is Entitled to Injunctive Relief**

3
4 Petitioner is unlawfully detained under the government’s assertion that he is
5 subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). This position is
6 contrary to the plain text of the statute, longstanding agency practice, and recent
7 federal district court rulings. As a noncitizen who entered the United States in 2023,
8 Petitioner is not “seeking admission” at a port of entry and therefore cannot be held
9 under § 1225(b)(2). His custody is properly governed by 8 U.S.C. § 1226(a), which
10 authorizes an individualized custody determination and potential release on bond.
11 The denial of a bond hearing deprives Petitioner of liberty without due process of
12 law.
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15 Under the Due Process Clause of the Fifth Amendment, no person shall be
16 deprived of life, liberty, or property, without due process of law. U.S. Const. Amend.
17 V. Non-citizens on U.S. soil have constitutional rights, including the right to due
18 process of law. *Yick Wo v. Hopkins*, 118 U.S. 356, 368-69 (1886); *Matthew v. Diaz*,
19 426 U.S. 67, 77 (1976). By refusing to provide Petitioner with a bond hearing,
20 Respondents subject him to prolonged and arbitrary detention beyond what the
21 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.*

4
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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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.

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.
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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);
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3 *Sameena, Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) (“An
4 agency’s failure to follow its own regulations . . . may result in a violation of an
5 individual’s constitutional right to due process.”).

6
7 1. *Accardi*’s “ambit” is “not limited” to “rules attaining the status of
8 formal regulation.” *Montilla*, 926 F.2d at 167. It applies to both promulgated
9 regulations and other processes and programs that guide the Government’s
10 discretion. *See Zhang v. Slattery*, 840 F. Supp. 292, 293- 96 (S.D.N.Y. 1994)
11 (holding that the Government violated the APA by ignoring its non- promulgated
12 immigration “program”); *see also Pasquini v. Morris*, 700 F.2d 658, 661-63 (11th
13 Cir. 1983) (same, but for informal criteria). *Accardi* means that when the
14 Government sets out a process whereby relief can be pursued, a “right to *seek*
15 relief” is created, even when there is no “right to the relief itself.” *Arevalo v.*
16 *Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) (emphasis added) (citing *Accardi*, 347 U.S.
17 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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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 and Matter of Q. Li Are Not Binding on**
17 **this Court and Should 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. Additionally, *Matter of*
23 *Q. Li* interprets anyone who is apprehended at a border as being permanently subject
24 to mandatory detention. *Matter of Q. Li*, 26 I&N Dec. 66 (BIA 2025).
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27 First, it contradicts the statutory scheme. Section 235(b)(2)(A) governs
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1 “applicants for admission”, those encountered at or near the border. Petitioner, who
2 has resided in the interior of the United States since 2023, is not in that category.
3
4 Section 236(a) is the detention authority that properly applies.

5 Second, the decision departs from decades of agency practice. The Board
6
7 itself acknowledged that “for years Immigration Judges conducted bond hearings for
8 aliens who entered the United States without inspection.” *Id.* at 225. This admission
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10 underscores that § 236(a) has long been understood to provide custody authority in
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12 such cases. The Board’s sudden reversal represents an unexplained break from
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14 settled practice, rendering it arbitrary and unexplained under the APA.

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

1 unpersuasive and invalid.

2 Third, the decision raises serious constitutional problems. Mandatory
3 detention without access to a bond hearing, especially for long-term residents like
4 Petitioner with strong family and community ties, violates the Due Process Clause.
5 Courts construe statutes to avoid such constitutional infirmities. This Court should
6 therefore reject *Yajure Hurtado*'s and *Q. Li*'s interpretation and apply § 236(a),
7 which authorizes discretionary release on bond.
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11 The Board's interpretation in *Matter of Yajure Hurtado* and *Matter of Q. Li*
12 are not only inconsistent with statutory text and decades of settled practice but have
13 also already faced judicial correction. Federal courts considering the same issue have
14 recognized that DHS's expansion of § 1225(b)(2) produces unlawful and
15 unconstitutional results. In recent cases from the Northern and Central Districts of
16 California, the courts required ICE to provide bond hearings to noncitizens whom
17 DHS had classified under § 1225(b)(2), making clear that custody in such cases is
18 properly governed by § 236(a). These rulings reflect a growing recognition among
19 Article III courts that DHS's reading of § 1225(b)(2) cannot stand. This Court should
20 follow the same reasoning and hold that Petitioner's detention without access to
21 bond is unlawful.
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26 **F. Federal Courts have rejected DHS's position.**
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1 Recent federal court decisions confirm that Respondents' reliance on §
2 1225(b)(2) to detain Petitioner without a bond hearing is unlawful. In *Cuevas*
3 *Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025), the
4 district court expressly distinguished *Matter of Yajure Hurtado*, it rejected its
5 sweeping application of § 1225(b)(2) and held that noncitizens apprehended in the
6 interior after long residence in the United States are properly detained under §
7 236(a), not § 1225(b)(2). *Cuevas Guzman* reaffirmed the longstanding rule that entry
8 without inspection does not permanently bar a person from eligibility for bond once
9 they are living in the country. That holding directly applies here.
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11 Similarly, in *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D.
12 Cal. Sept. 8, 2025), the court recognized that the BIA's interpretation in *Yajure*
13 forecloses administrative relief, rendering exhaustion futile. The same is true for
14 Petitioner, who cannot meaningfully seek bond redetermination before EOIR given
15 that the IJ held that he had no jurisdiction.
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17 In *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025),
18 the district court issued a preliminary injunction requiring ICE to provide a bond
19 hearing to a petitioner detained under § 1225(b)(2), holding that custody in such
20 circumstances falls under § 1226(a). That decision confirms that habeas relief is the
21 proper vehicle and that this Court has the authority to order the same remedy for
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1 Petitioner.

2 These cases establish that DHS's reliance on § 1225(b)(2) for long-term
3 residents like Petitioner is inconsistent with statutory text, contrary to constitutional
4 protections, and already rejected by multiple courts within this Circuit.
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7 In *Singh v. Lewis*, No. 4:25-cv-96 (W.D. Ky. Sept. 22, 2025), the district court
8 granted a habeas petition and ordered release, finding that DHS's reclassification of
9 interior arrests under § 1225(b)(2) violated both the INA and due process. The court
10 rejected the government's reliance on *Matter of Yajure Hurtado*, concluding that "an
11 individual is not 'seeking admission' when he never attempted to do so," and held
12 that detention must proceed under § 1226(a). The court further found that the
13 automatic-stay regulation at 8 C.F.R. § 1003.19(i)(2) unlawfully deprived the
14 petitioner of liberty without due process and ordered his immediate release upon
15 posting bond.
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19 Similarly, in *Beltrán Barrera v. Tindall*, No. 3:25-cv-541 (W.D. Ky. Sept. 19,
20 2025), the court held that DHS's blanket application of § 1225(b)(2) to individuals
21 apprehended years after entering the United States was contrary to the statutory text
22 and structure of the INA. The court emphasized that Congress intended § 1225 to
23 govern only applicants for admission encountered at the border, and it therefore
24 ordered the petitioner's release under § 1226(a)
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1 Moreover, in *Benítez-Cornejo v. Cantu*, No. CV-25-03672-PHX-JJT (ESW)
2 (D. Ariz. 2025), the District of Arizona granted habeas relief on the same statutory
3 question presented here, holding that individuals arrested in Arizona after years of
4 residence fall under § 1226(a) and must receive individualized bond hearings. The
5 court rejected DHS's reliance on *Yajure Hurtado* as inconsistent with the Ninth
6 Circuit's due-process jurisprudence and the statutory framework of the INA. The
7 number of cases is too numerous to cite; however, a plethora of District Courts have
8 found that detention in the form of Petitioner's is unlawful. *Chogllo Chafila v. Scott*,
9 2025 WL 2688541 (D. Me. Sept. 2, 2025); *Chang Barrios v. Shepley*, 2025 WL
10 2772579 (D. Me. Sept. 29, 2025); *Chiliquinga Yumbillo v. Stamper*, 2025 WL
11 2783642 (D. Me. Sept. 30, 2025);; *Aguilar Guerra v. Joyce*, 2025 WL 2986316 (D.
12 Me. Oct. 24, 2025); *Cesario; Souza v. Hyde*, 2025 WL 2997670 (D. Mass. Oct. 24,
13 2025); *Chanaguano Caiza v. Scott*, 2025 WL 3013081 (D. Me. Oct. 28, 2025); *Sena*
14 *Gomes v. Wesling*, 2025 WL 363712 (D. Mass Dec. 16, 2025); *Gomez Mejia v.*
15 *Woosley*, 2025 WL 2933852 (W.D. Ky. Oct. 15, 2025); *Martinez-Elvir v. Olson*,
16 2025 WL 3006772 (W.D. Ky. Oct. 27, 2025); *Rodriguez Serrano v. Noem*, 2025
17 WL 3122825 (W.D. Mich. Nov. 7, 2025); *Macias v. Raycraft*, 2025 WL 3525262
18 (N.D. Ohio Dec. 9, 2025); *H.G.V.U. v. Smith*, 2025 WL 2962610 (N.D. Ill. Oct. 20,
19 2025); *Patel v. Crowley*, 2025 WL 2996787 (N.D. Ill. Oct. 24, 2025); *Campos Leon*
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1 v. *Forestal*, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Guaita Quinapanta v.*
2 *Bondi*, 2025 WL 3157867, at *7 (W.D. Wis. Nov. 12, 2025); *Giron Reyes v. Lyons*,
3 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Garcia Picazo, v. Sheehan*, 2025
4 WL 3006188 (N.D. Iowa Oct. 27, 2025); *Santiago Helbrum v. Williams*, 2025 WL
5 2840273(S.D. Iowa Sept. 30, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539
6 (D. Neb. Sept. 3, 2025); *Vargas-Murillo v. Bondi*, 2025 WL 3280904 (D. Ariz. Nov.
7 25, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025);
8 *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (expressly disagreeing
9 with BIA’s analysis in *Yajure Hurtado*); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-
10 326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass.
11 Sept. 5, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025);
12 *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*,
13 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Gomes v. Hyde*, 2025 WL 1869299
14 (D. Mass. July 7, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y.
15 Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-*
16 *Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*,
17 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL
18 2609425 (E.D. Mich. Sept. 9, 2025) (rejecting BIA’s analysis in *Yajure Hurtado*);
19 *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);
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1 *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes*
2 *Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Palma Perez v.*
3 *Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *O.E. v. Bondi*, 2025 WL 2466670
4 (D. Minn. Aug. 27, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19,
5 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Garcia*
6 *Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*,
7 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Caicedo Hinestroza v. Kaiser*, 2025
8 WL 2606983 (N.D. Cal. Sept. 9, 2025). *Hernandez Nieves v. Kaiser*, 2025 WL
9 2533110 (N.D. Cal. Sept. 3, 2025). *Vasquez Garcia et al. v. Noem*, 2025 WL
10 2549431 (S.D. Cal. Sept. 3, 2025). *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285
11 (C.D. Cal. Aug. 15, 2025). *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug.
12 11, 2025).

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18 Similarly, various courts have found *Matter of Q. Li* unlawful. *Gomes v.*
19 *Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Gonzalez Lopez v. Raycraft*, 2025
20 WL 3280344 (N.D. Ohio Nov. 25, 2025); *Salazar v. Dedos*, 2025 WL 2676729
21 (D.N.M. Sept. 17, 2025).

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

2 **1. PETITIONER’S CONTINUED DETENTION VIOLATES DUE**
3 **PROCESS, THE INA, AND THE APPLICABLE REGULATIONS**

4 Petitioner re-alleges and incorporates by reference each and every allegation
5 contained in the preceding paragraphs as if set forth fully herein. Due process
6 protects a noncitizen’s liberty interest in freedom from arbitrary civil confinement.
7 Petitioner has a protected due process interest in seeking judicial review of his
8 continued detention and in obtaining a custody determination in accordance with
9 the INA. By treating Petitioner as subject to mandatory detention under §
10 1225(b)(2) rather than discretionary custody under § 1226(a), Respondents have
11 deprived him of his liberty without adequate process and in excess of their
12 statutory authority.
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16 Respondents’ reliance on INA § 235(b)(2)(A), as reinforced by the BIA’s
17 recent decision in *Matter of Yajure Hurtado* and *Matter of Q. Li*, unlawfully
18 deprive Petitioner of his statutory right to a bond hearing under § 236(a). Even the
19 Board admitted that for years Immigration Judges conducted such hearings for
20 EWIs before abruptly reversing course. That reversal is inconsistent with the INA,
21 arbitrary and capricious under the APA, and unconstitutional under the Due
22 Process Clause of the Fifth Amendment. This Court is not bound by *Yajure*
23 *Hurtado* and *Matter of Q. Li* and should decline to follow it.
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1 **2. CONTNUED DETENTION OF PETITIONER VIOLATES THE**
2 **ADMINISTRATIVE PROCEDURE ACT**

3 Petitioner re-alleges and incorporates by reference each and every allegation
4 contained in the preceding paragraphs as if set forth fully herein. Respondents'
5 actions are “arbitrary, capricious, an abuse of discretion, or otherwise not in
6 accordance with law” and “in excess of statutory jurisdiction, authority, or
7 limitations.” 5 U.S.C. §§ 706(2)(A), (C). For decades, DHS and EOIR interpreted
8 the INA to mean that individuals like Petitioner, those apprehended in the interior
9 long after entry, are detained under § 1226(a). The abrupt reversal of this settled
10 interpretation, without explanation or notice-and-comment, violates the APA.
11 Absent this Court’s intervention, Petitioner has no adequate remedy to challenge
12 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
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1 Constitution, which guarantees the right to challenge unlawful detention through
2 habeas corpus.
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4 **4. FIFTH AMENDMENT DUE PROCESS – STATE-CREATED** 5 **DANGER**

6 The Due Process Clause provides that no person shall “be deprived of life,
7 liberty, or property, without due process of law.” U.S. Const. amend. V. Its
8 protections extend to “every person within the nation’s borders,” regardless of
9 immigration status. *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 781 (9th Cir. 2014);
10 *id.* (“Even one whose presence in this country is unlawful, involuntary, or
11 transitory is entitled to that constitutional protection.”) (quoting *Mathews v. Diaz*,
12 426 U.S. 67, 77 (1976)). The government violates an individual’s right to due
13 process when it (1) “affirmatively place[s] [the] individual in danger,” (2) by
14 “acting with ‘deliberate indifference to [a] known or obvious danger.’” *Kennedy v.*
15 *City of Ridgefield*, 439 F.3d 1055, 1062 (9th Cir. 2006) (quoting *Munger v. City of*
16 *Glasgow*, 227 F.3d 1082, 1086 (9th Cir. 2000) and *L.W. v. Grubbs*, 92 F.3d 894,
17 900 (9th Cir. 1996)). When the government’s actions leave an individual “in a
18 situation that [is] more dangerous than the one in which [it] found him,” the
19 government has affirmatively placed that individual in danger. *Hernandez v. City*
20 *of San Jose*, 897 F.3d 1125, 1133 (9th Cir. 2018) (quoting *Munger*, F.3d at 1086).
21 The critical inquiry is thus whether the government’s actions “create[d] or
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1 expose[d] an individual to a danger which he or she would not have otherwise
2 faced.” *Kennedy*, 439 F.3d at 1061; *Cf. J.P. v. Sessions*, No. Civ. 18-06081 JAK
3 (SKx), 2019 WL 6723686, at *36 (C.D. Cal. Nov. 5, 2019) (federal government
4 “‘acted with deliberate indifference to a known or obvious danger’ by
5 implementing the [family separation] policy with awareness of the potential harm
6 it would cause and intending to use that as a basis to deter future attempts by those
7 similarly situated to enter the United States” (alterations omitted) (quoting
8 *Hernandez*, 897 F.3d at 1137, and *Kennedy*, 439 F.3d at 1062)). Even if Petitioner
9 was required to show deliberate indifference as civil detainees—and he is not, see
10 *Jones v. Blanas*, 393 F.3d 918, 933 (9th Cir. 2004)—he could easily do so. The
11 government acts with deliberate indifference to a known or obvious danger when it
12 “recognize[s] an unreasonable risk and actually intend[s] to expose [the plaintiff]
13 to such risks without regard to the consequences to [the plaintiff].” *Hernandez*, 897
14 F.3d at 11 (alterations omitted) (quoting *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974
15 (9th Cir. 2011)). An unreasonable risk includes future harm caused by conditions
16 of confinement. *See Helling v. McKinney*, 509 U.S. 25, 33 (1993).

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23 Here, Respondents have placed Petitioner in greater danger by misclassifying
24 him under § 1225(b)(2) and denying him the bond procedures guaranteed under §
25 1226(a). By treating him as mandatorily detained without any individualized
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1 assessment of flight risk or danger, the government has subjected him to prolonged
2 confinement in punitive conditions with no lawful basis for denying him access to
3 bond. Respondents acted with deliberate indifference to the obvious risk of harm
4 inherent in prolonged and unnecessary detention, including the physical,
5 emotional, and familial harms that flow from being confined when the statute does
6 not authorize it.
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10 **VIII. REQUEST FOR ORAL ARGUMENT**

11 Petitioner respectfully requests oral argument on this Petition.
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13 **IX. PRAYER FOR RELIEF**

14 **WHWEREFORE**, Petitioner respectfully requests that this Court:
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- 16 1. Assume jurisdiction over this matter;
- 17 2. Issue a Writ of Habeas Corpus on the ground that Petitioner's continued
18 detention is unlawful and order his immediate release;
- 19 3. In the alternative, issue injunctive relief ordering Respondents to provide
20 Petitioner with an individualized custody determination before an
21 Immigration Judge under 8 U.S.C. § 1226(a) within seven (7) days, or to
22 release him immediately;
- 23 4. Order Respondents file a return within three days pursuant to 28 U.S.C. §
24 2243;
- 25 5. Declare that the process as applied to Petitioner by Respondents violates the
26 Suspension Clause, the Due Process Clause of the Fifth Amendment, the
27 INA, the APA, and federal regulations;

- 1 6. Order Respondents to provide five days of notice to the Court and Petitioner
2 of his imminent removal;
- 3 7. Order Respondents to follow the applicable rules, regulations, law, and the
4 Constitution;
- 5 8. Award Petitioner his costs and reasonable attorneys' fees in this action as
6 provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other
7 statutes.
- 8 9. Grant such further relief as the Court deems just and proper.

9 Dated: December 31, 2025,
10 Tucson, AZ,

Respectfully submitted,
11 By: /s/ Siovhana Ayala
Siovhana Ayala

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4 **VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

5 I am submitting this verification on behalf of the Petitioner because I am one
6 of the Petitioner's attorneys. I have discussed with the Petitioner's legal team the
7 events described in this Petition. Based on those discussions, on information and
8 belief, I hereby verify that the factual statements made in the attached Amended
9 Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and
10 Injunctive Relief are true and correct to the best of my knowledge.
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14 Dated: December 31, 2025,

15
16 Tucson, AZ,

By: /s/ Siovhana Ayala
Siovhana Ayala
Attorney for the Petitioner
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