UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

JORGE GALEANO NAVARRETE, Petitioner, v. WARDEN of Stewart Detention Center; KRISTIN SULLIVAN, Acting Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO") Field Office, Atlanta; KRISTI NOEM, Secretary of the Department of Homeland Security ("DHS"); and PAMELA BONDI, Attorney General of the United States, in their official capacities, Respondents.	Case No. 4:26-cv-00036 **VERIFIED AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner Jorge Galeano Navarrete, a citizen of Nicaragua, respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to challenge the legality of his detention by Immigration and Customs Enforcement ("ICE"), a component of the U.S. Department of Homeland Security ("DHS"). He

was arrested by ICE on December 15, 2025, during an ICE check-in appointment and after having lived in the interior of the country since 2022. *See* Ex. 1, Notice to Appear. Petitioner is currently detained at the Stewart Detention Center in Lumpkin, Georgia, where he has been held unlawfully since December 15, 2025.

2. This Court has recently considered whether a noncitizen who is already present in the United States, not at its port of entry seeking admission, is deemed an "applicant for admission" subjecting him to mandatory detention under Section 1225(b)(2) or, if not, subjecting him to discretionary detention with a right to a bond hearing under Section 1226(a). *See, e.g., J.A.M. v. Streeval*, No. 4:25-cv-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025) (finding petitioners' detention governed by 8 U.S.C. § 1226(a)); *P.R.S. v. Streeval*, No. 4:25-cv-343-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025) (same).

3. Despite this Court's recent rulings rejecting the Respondents' position that § 1225(b)(2)(A) applies to individuals such as Petitioner, Respondents continue to maintain that noncitizens who entered the United States without inspection are not eligible for bond redetermination hearings, because they are applicants for admission within the meaning of 8 U.S.C. § 1225(b)(2)(A).

4. An order from this Court requiring immediate release, or in the alternative a bond hearing with extra safeguards, is required here because ordering a bond hearing alone will not reliably remedy Petitioner's unlawful detention.

Experience in recent cases demonstrates that, absent clear guidance or safeguards, bond determinations may fail to meaningfully engage with individualized assessments of flight risk or danger.[1]

5. As such, Petitioner seeks a writ of habeas corpus requiring that he be released immediately, or in the alternative, ensuring Respondents conduct a *constitutionally sufficient* bond hearing within three (3) business days and subsequently file with this Court a status report.

6. To the extent this Court orders a bond hearing rather than release, Petitioner seeks that this Court's order include the following safeguards:

> (1) Make explicit that Respondents bear the burden to show flight risk or danger to society. *See, e.g., J.G. v. Warden, Irwin County Detention Center*, 501 F. Supp. 3d 1331, 1335 (M.D. Ga. 2020) (finding that the Government "must bear the burden of proof to justify a noncitizen's detention pending removal proceedings"); and
>
> (2) Order Respondents to give a status report to this Court within three (3) days of any ordered bond hearing, stating whether Petitioner has been granted bond, and, if his request for bond was denied, the reasons for that denial, to certify compliance with this Opinion.

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[1] Counsel is aware, based on recent litigation experience and communications with other immigration practitioners, that many similarly situated noncitizens have faced bond denials following habeas relief on grounds that do not meaningfully address individualized risk, showing that an order requiring a bond hearing without also ordering safeguards does not reliably remedy unlawful detention. *See e.g.*, Ex. 2, *Romero-Nolasco v. McDonald*, No. 25-cv-12492-MJJ, ECF No. 22 at 5n.2 (D. Mass. Jan. 14, 2025) ("[I]t is clear that the IJ simply did not apply the factors relevant to assessing whether a person is a flight risk to the evidence.").

JURISDICTION AND VENUE

7. This action arises under the Constitution of the United States and the INA. 8 U.S.C. § 1101 *et seq.*

8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

9. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

10. "A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, may, . . . be brought in any judicial district in which a defendant in the action resides . . . *See* 28 U.S.C. § 1391(e).

11. The Supreme Court articulated in *Rumsfeld v. Padilla* the standard for determining if a court has jurisdiction to consider a habeas corpus petition, which breaks down into two subquestions— (1) who is the proper respondent to the petition, and (2) does the Court have jurisdiction over that respondent. *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004).

12. Under *Padilla*, the "immediate custodian" of the detained petitioner is the proper respondent in such habeas actions, which is typically the warden of the facility in which the petitioner is being housed. *See id.* at 443 ("The plain language of the habeas statute thus confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement.")

13. Here, under *Padilla*, the immediate custodian of the Petitioner, and thus the proper Respondent, is the Warden of the Stewart Detention Center in Lumpkin, Georgia. *See id.* Because this Court has jurisdiction over actions arising in Stewart, Georgia, the venue is proper in this case.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

14. Petitioner has exhausted his administrative remedies to the extent required by law. There is no statutory exhaustion requirement in 28 U.S.C. § 2241. However, "that does not mean that courts may disregard a failure to exhaust and grant relief on the merits if the respondent properly asserts the defense." *Santiago-Lugo v. Warden*, 785 F.3d 467, 475 (11th Cir. 2015). "To properly exhaust administrative remedies, a petitioner must comply with an agency's deadlines and procedural rules." *Straughter v. Warden, FCC Coleman - Low*, 699 F. Supp. 3d 1304, 1306 (M.D. Fla. 2023) (citing *Woodford v. Ngo*, 548 U.S. 81, 90–91 (2006)

(discussing the Prison Litigation Reform Act's (PLRA) exhaustion requirement)). It is the Respondent's burden to prove that the Petitioner has "failed to exhaust all available administrative remedies." *Id.* at 1307.

15. However, in detention cases such as the Petitioner's, appeals to the Board of Immigration Appeals ("BIA") take several months or years. Thus, here, requiring the Petitioner to appeal his bond denial to the BIA to prudentially exhaust is not efficient, would cause irreparable harm by continuing to deprive him of his liberty, and would be futile so long as *Matter of Hurtado* remains in effect. *See McCarthy v. Madigan*, 503 U.S. 140, 146-49 (1992) *superseded by statute on other grounds as stated in Booth v. Churner*, 532 U.S. 731 (2001) (noting that traditional exceptions include where exhaustion would cause "undue prejudice to subsequent assertion of a court action" or "irreparable harm" to the petitioner, where there is "some doubt as to whether the agency was empowered to grant effective relief," or where it would be futile because "the administrative body is shown to be biased or has otherwise predetermined the issue before it") (internal quotation marks omitted). Additionally, the BIA cannot sufficiently adjudicate constitutional issues, as it lacks the authority to rule that USCIS action violates the Constitution. Constitutional claims are a matter for federal courts. *See Sterkaj v. Gonzales*, 439 F.3d 273 (6th Cir. 2006).

16. Accordingly, this Court should find that Petitioner has sufficiently exhausted all administrative remedies.

REQUIREMENTS OF 28 U.S.C. § 2243

17. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

18. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

19. Petitioner is a noncitizen who is currently detained at the Stewart Detention Center. He is in the custody, and under the direct control, of Respondents and their agents.

20. Respondent Warden of the Stewart Detention Center is sued in their official capacity. Respondent Warden is the immediate custodian of the Petitioner.

21. Respondent Kristin Sullivan is sued in her official capacity as the Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, Atlanta Field Office. Respondent Sullivan is a legal custodian of Petitioner and has authority to release her.

22. Respondent Kristi Noem is sued in her official capacity as the Secretary of the DHS. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

23. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

24. Petitioner, a noncitizen, faces unlawful detention because the DHS and Executive Office of Immigration Review ("EOIR") have concluded he is subject to mandatory detention based on a recently released ICE memo directing a new interpretation of the law. *See* Ex. 3, ICE Memo "Interim Guidance Regarding Detention Authority for Applicants for Admission" dated July 8, 2025 (hereinafter "ICE Memo"). This memo admittedly states that it "has revisited its legal position on detention and release authorities." *See id.* It further states that the DHS policy was issued "in coordination with the Department of Justice (DOJ)." *Id.*

25. Petitioner fled Nicaragua and was paroled into the U.S. on or about April 20, 2022. *See* Ex. 4, Parole Documentation.

26. Petitioner submitted an asylum application with the United States Citizenship and Immigration Services ("USCIS") in or about May 2022. *See* Ex. 5, Copy of Form I-589, Asylum Application. In his application, Petitioner asserts that he was persecuted on account of [redacted]

27. Petitioner's asylum application remains pending.

28. Petitioner's only criminal history includes traffic violations from April 2023 that were dismissed in 2024. *See* Ex. 6, Copy of Traffic Violations and Dismissals.

29. Petitioner otherwise lived and worked in the U.S. without incident until ICE arrested him during an ICE check-in appointment on December 15, 2025.

30. Respondents then issued to Petitioner a factually inaccurate Notice to Appear on that same day. *See* Ex. 1, Notice to Appear ("NTA"). The NTA alleged that Petitioner had entered the U.S. at an "unknown" place and date and that he had not been admitted or paroled into the U.S. *See id.*; *see also* Ex. 4, Parole Document. The NTA further charged Petitioner as removable under § 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"), which states: "[Y]ou are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General." INA § 212(a)(6)(A)(i); 8 U.S.C. §1182(a)(6)(A)(i). *See id.* It also charged him as removable under INA §212(a)(7)(A)(i)(I) as someone who "at the time of application for admission, is not in possession of a valid unexpired immigrant visa . . . or other valid entry document required by the Act . . ."

31. Based on these allegations, Respondents denied Petitioner release from immigration custody, consistent with the new DHS policy issued on July 8, 2025, instructing all ICE employees to consider anyone inadmissible under § 1182(a)(6)(A)(i) –i.e., those who entered the U.S. without inspection–to be an "applicant for admission" under 8 § 1225(b)(2)(A) and therefore subject to mandatory detention.

32. Under 8 U.S.C. §1225(b)(2)(A), an applicant for admission seeking admission shall be detained for a removal proceeding. It is now the position of the EOIR, which houses both the Board of Immigration Appeals ("BIA") and immigration judges, that 8 U.S.C. § 1225(b)(2)(A) applies to *all* individuals who arrived in the United States without documents, regardless of how long they have lived in the United States and regardless of how far they were apprehended from the border.

33. However, § 1225(b)(2)(A) does not apply to individuals like Petitioner, who were already present in the United States when apprehended. Not to mention that Petitioner was also paroled into the country. Thus, individuals like Petitioner are subject to detention under a different statute, § 1226(a), and eligible for release on bond.

34. Nevertheless, the July 2025 ICE Memo instructs its attorneys to coordinate with the Department of Justice to reject bond redetermination hearings for applicants who previously arrived in the United States without documents.

35. The BIA adopted the same position as the July 8, 2025 ICE policy by issuing a decision holding that an immigration judge has no authority to consider bond requests for any person who entered the U.S. without admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216, 228-29 (BIA 2025).

36. On November 25, 2025, the U.S. District Court for Central District of California rejected this position, issuing an order certifying a nationwide class consisting of noncitizens who have entered the United States without inspection and who were not apprehended upon arrival and who are not otherwise subject to detention under INA §§ 236(c), 235(b)(1), or 241. *Maldonado Bautista v. Santacruz,* No. 5:25-CV-01873-SSS-BFM (Nov. 25, 2025 C.D. Cal.) (Order Granting Plaintiff-Petitioners' Motion for Class Certification). On November 20, 2025, the Court issued an order granting declaratory relief concluding that the detention of class members is governed by INA § 236(a) and that class members are not subject to mandatory detention pursuant to INA § 235(b)(2). *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (Nov. 20, 2025 C.D. Cal.) (Order Granting Petitioners' Motion for Partial Summary Judgement). *Maldonado Bautista* rejected the Board's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

37. The U.S. District Court for the Central District of California issued a final judgment on December 18, 2025. *Maldonado Bautista v. Santacruz,* No. 5:25-CV-01873-SSS-BFM (Dec. 18, 2025 C.D. Cal.) (Order of Final Judgment). In its final order, the Court declared the class is detained under INA § 236(a) (8 U.S.C. § 1226(a))—not INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)), and thus, class members are entitled to bond consideration. *See id.* The decision also vacated

DHS's new "policy" as articulated in its July 8, 2025 "Interim Guidance Regarding Detention Authority for Applicants for Admission" as unlawful under the Administrative Procedure Act ("APA"). *Id.*

38. Petitioner asserts his initial detention was accordingly illegal and in violation of his Fifth Amendment right to due process of law as well as the INA and APA, as articulated in *Maldonado Bautista*.

39. On January 8, 2026, Petitioner requested a custody redetermination on this basis. *See* Ex. 7, Request for Custody Redetermination.

40. On January 12, 2026, the Immigration Judge ("IJ") denied his request, holding that the Court lacked jurisdiction to adjudicate a bond motion pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Ex. 8, IJ Order Denying Bond on Jurisdictional Grounds. Specifically, the IJ found that, under *Yajure Hurtado*, Petitioner was not eligible for release on bond because he was subject to mandatory detention under the INA. The IJ acknowledged the ruling in *Maldonado Bautista*, but stated that "the Department of Justice has taken the position that the Bautista declaratory judgement is void with respect to petitioners and custodians outside the Central District of California because it was issued despite a palpable lack of jurisdiction," noting that two other federal courts—one in Texas, and one in Nebraska—have agreed. *See id.* The IJ therefore found that "in the absence of a resolution of this issue by the United States Court of Appeals for

the Eleventh Circuit, the Court respectfully finds that it is bound by Matter of Yajure Hurtado and lacks jurisdiction to deny bond." *Id.*

41. Petitioner thus remains illegally detained without any determination of his individual flight risk or danger to society. Petitioner suffers from acute asthma, requiring ongoing monitoring and treatment, and continued detention places him at heightened risk of serious medical harm, particularly where detention is based solely on a disputed legal theory and not on any finding of dangerousness or flight risk. *See* Ex. 9, Medical Documentation of Asthma.

42. Any appeal to the BIA is futile, given the DOJ's stance. Petitioner is within the 30-day window to file appeal to the BIA but due to DHS's new policy being issued "in coordination with DOJ," which oversees the immigration courts, such appeal will be futile and take months of further detention. Petitioner will be filing an appeal to preserve his rights, but it will not remedy the current harm of unlawful detention.

43. Petitioner's detention on the above basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.

44. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner. Notably, the vast majority of federal courts to consider this issue, including this Court, have agreed. *See, e.g., J.A.M. v. Streeval*, No. 4:25-cv-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025) (finding petitioners' detention governed by 8 U.S.C. § 1226(a)); *P.R.S. v. Streeval*, No. 4:25-cv-343-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025) (same).

45. As such, Petitioner seeks a writ of habeas corpus requiring that he be released immediately, or in the alternative, requiring Respondents to conduct a *constitutionally sufficient* bond hearing within three (3) business days and subsequently file with this Court a status report.

LEGAL FRAMEWORK

46. U.S.C. § 2241(c)(3) authorizes federal courts to grant habeas relief to prisoners or detainees who are "in custody in violation of the Constitution or laws or treaties of the United States." Federal courts retain jurisdiction under § 2241 to review purely legal statutory and constitutional claims regarding the government's detention authority, but jurisdiction does not extend to "discretionary judgment," "action," or "decision" by the Attorney General with respect to either detention or

removal. *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (citing, *inter alia*, *Demore v. Kim*, 538 U.S. 510, 516-17 (2003)).

47. Petitioner asserts that (1) his Fifth Amendment right to due process of law was violated when the Respondents subjected him to mandatory detention with no individualized bond hearing despite his valid pending I-589 with USCIS; (2) the Respondents' actions violated both the INA and the APA when they detained him under 8 U.S.C. § 1225(b)(2)(A), rather than 8 U.S.C. § 1226(a); and (3) the Respondents' actions in denying Petitioner an individualized bond hearing violated the final order in *Maldonado Bautista*. *See Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (Nov. 20, 2025 C.D. Cal.) (vacating the ICE memo and declaring class members are entitled as a matter of law to a bond hearing).

1. Due Process

48. The Due Process Clause of the Fifth Amendment provides Petitioner with important protections regarding his detention. As the Supreme Court has explained, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint— lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

49. The INA envisions three basic forms of detention for noncitizens in removal proceedings. First is detention for noncitizens in regular, non-expedited removal proceedings. *See* 8 U.S.C. § 1226(a), (c). Individuals in § 1226(a)

detention are entitled to a bond hearing at the outset of their detention, while noncitizens who have committed certain crimes are subject to mandatory detention. *See id.* § 1226(c).

50. The INA also provides for mandatory detention for noncitizens in expedited removal proceedings, 8 U.S.C. § 1225(b)(1), and detention for noncitizens whose immigration cases are completed, *id.* § 1231(a)(6). *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111-13 (W.D. Wash. 2019) (providing overview of INA's detention authorities).

51. To guarantee against arbitrary detention and to guarantee the right to liberty, due process requires "adequate procedural protections" that ensure the government's asserted justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

52. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id.; Demore*, 538 U.S. 510, 522, 528 (2003). The government may not detain a noncitizen based on any other justification.

53. To justify immigration detention, this Court has held that the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. *See J.G. v. Warden, Irwin County Detention*

Center, 501 F. Supp. 3d 1331, 1335 (M.D. Ga. 2020) (holding that the Government "must bear the burden of proof to justify a noncitizen's detention pending removal proceedings").

54. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), "the Supreme Court held that [section] 1226(a) does not mandate that a clear and convincing evidence burden be placed on the government in bond hearings, [but] it left open the question of whether the Due Process Clause does." *Darko v. Sessions*, 342 F. Supp. 3d 429, 434–35 (S.D.N.Y. 2018). In considering the question left open by *Jennings*, both the First and Second Circuits, along with several district courts (in addition to this Court), have found that due process requires that the government bear the burden of justifying a noncitizen's § 1226(a) detention. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 39 (1st Cir. 2021) (concluding "that the government must bear the burden of proving dangerousness or flight risk in order to continue detaining a noncitizen under section 1226(a)"); *Velasco Lopez v. Decker*, 978 F.3d 842, 855–57 (2d Cir. 2020) (holding that the government must bear the burden of proving danger and flight risk by clear and convincing evidence if an individual faces prolonged detention); *see, e.g. Molina Ochoa v. Noem*, No. 1:25-cv-00881-JB-LF, 2025 WL 3125846, at *13 (D.N.M. Nov. 7, 2025) (holding that the government must "bear the burden at a § 1226(a) bond hearing of proving by clear and convincing evidence that Petitioner is a flight risk or a danger to the

community"); *Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *8 (N.D. Ill. Oct. 16, 2025) (same).

55. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

56. First, incarceration deprives noncitizens of a "profound" liberty interest—one that always requires some form of procedural protections. *Diouf*, 634 F.3d at 1091- 92; *see also Foucha*, 504 U.S. at 80 ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)).

57. Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and frequently lack English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 762-63 (1982) (requiring clear and convincing evidence at parental termination proceedings because "numerous factors combine to magnify the risk of erroneous factfinding" including that "parents subject to termination proceedings are often poor, uneducated, or members of minority groups" and "[t]he State's attorney usually will be expert on the issues contested"). Moreover, Respondents detain noncitizens in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing.

58. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen's immigration records and other information that it can use to make its case for continued detention.

59. In light of these considerations, "[t]he overwhelming majority of courts to consider the question . . . have concluded that imposing a clear and convincing standard would be most consistent with due process." *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted).

60. Due process also requires that a neutral decisionmaker consider available alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE's alternatives to detention program—the Intensive Supervision Appearance Program (ISAP)—has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings"). It follows that alternatives to detention must be considered in

determining whether further incarceration is warranted, particularly where, as here, the Petitioner was regularly attending ICE check-ins—and in fact was arrested while attending one.

61. Immigration detainees face severe hardships while incarcerated Immigration detainees are held in lock-down facilities, with limited freedom of movement and access to their families: "the circumstances of their detention are similar, so far as we can tell, to those in many prisons and jails." *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); *accord Chavez-Alvarez v. U.S. Att'y Gen* , 783 F.3d 478 (3d Cir. 2015); *Ngo v. INS*, 192 F.3d 390, 397-98 (3d Cir. 1999); *Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1218, 1221 (11th Cir. 2016). "And in some cases[,] the conditions of their confinement are inappropriately poor." *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting) (citing Dept. of Homeland Security (DHS), Office of Inspector General (OIG), DHS OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE Detention Facilities (2017) (reporting instances of invasive procedures, substandard care, and mistreatment, e.g., indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case of one detainee, a multiday lock down for sharing a cup of coffee with another detainee)).

62. These conditions and obstacles only further underscore the serious due process concerns that immigration detention poses for noncitizens like the

Petitioner, who has a documented medical condition, and reflect the need for a decision before a *neutral* decisionmaker regarding further detention.

63. Where detention has been found unlawful, habeas relief must be effective, not merely formal. A bare order for a bond hearing does not necessarily cure a constitutional violation where the adjudicator retains unbounded authority to deny release without meaningful engagement with individualized flight risk or danger.

64. In such circumstances, District Courts have the authority to order release or in the alternative, a bond hearing with appropriate safeguards in place. *See, e g.*, Ex. 10, *Soto-Medina v. Lynch et al.*, No. 1:25-cv-01704-JMB-MV, ECF No. 8 at 22 (W.D. Mich. Jan. 21, 2026) (ordering respondents "to provide Petitioner with an individualized bond hearing before an immigration judge, at which time the government will have the burden to demonstrate dangerousness or flight risk by clear and convincing evidence, or, in the alternative, immediately release Petitioner from custody" as well as "to file a status report within six business days of the date of this Court's Opinion and Judgment to certify compliance with this Opinion and the corresponding Judgment.").

2. INA

65. The Petitioner is not properly detained under 8 U.S.C. § 1225(b)(2)(A), as the immigration judge asserted in the denial of bond, and as

Respondents will now assert, but under 8 U.S.C. § 1226(a). Under 8 U.S.C. § 1225(b)(2)(A):

> in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title [i.e., removal proceedings].

66. Petitioner maintains that he is detained under 8 U.S.C. § 1226(a), which provides that:

> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) [mandating the detention of certain criminal aliens] and pending such decision, the Attorney General -
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> (1) may continue to detain the arrested alien; and
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> (2) may release the alien on -
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> (A) bond of at least $1,500 with security approved by, and containing conditions described by, the Attorney General;
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> or (B) conditional parole; but
>
> (3) may not provide the alien with work authorization ... unless the alien is lawfully admitted for permanent residence or otherwise would ... be provided such authorization.

67. "Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469

U.S. 189, 194 (1985). Thus, the Court's "first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Id.* (citing, *inter alia, Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 477 (1992)).

68. Thus, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), was wrongly decided and should not be given weight. In that case, the Board held that "[b]ased on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission." *Id.*

69. This Court has previously rejected the reasoning and holding of *Yajure Hurtado*. As this Court noted in the recent case *J.A.M. v. Streeval*, No. 4:25-cv-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025), "under no reasonable interpretation is 'alien seeking admission' synonymous with 'any alien present in the United States who has not been admitted.'" *See J.A.M.*, No. 4:25-cv-342-CDL at *5; *see also J.A.M. v. Streeval*, No. 4:25-CV-342 (CDL), 2025 WL 3050094, at *1 (M.D. Ga. Nov. 1, 2025) ("The Court has previously rejected

Respondents' broad interpretation of § 1225(b)(2) that detention is mandatory for any alien who has not been lawfully admitted.").

70. Accordingly, the Petitioner's detention violates the INA, and he is entitled to release, or in the alternative, a constitutionally sufficient bond hearing.

3. Maldonado Bautista

71. Petitioner is clearly a member of the bond eligible class in *Maldonado Bautista*.[2] Specifically, according to his NTA, the Petitioner:

> a. Entered the U.S. through an unknown place at an unknown date, without admission or inspection;
>
> b. Was arrested in the interior of the country, years later; and
>
> c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

See Maldonado Bautista, 2025 WL 3289861, at *11.

72. In rejecting the binding nature of the *Maldonado Bautista* judgment, the IJ here relied not on a court ruling, but on the DOJ's litigation position that *Maldonado Bautista* is "void" outside the Central District of California. But the executive branch's litigation position cannot nullify a federal court's final judgment. *Maldonado Bautista* did not order DHS to do something nationwide, but issued a declaratory judgment as to how §§ 235 and 236 operate, and whether certain noncitizens are subject to mandatory detention.

[2] Additionally, regardless of Petitioner's class membership, the final decision in *Maldonado Bautista* vacating the ICE Memo still applies equally to him.

73. Thus, at a minimum, *Maldonado Bautista* constitutes a considered Article III interpretation of the detention statutes that directly contradicts the agency's reading in *Yajure Hurtado*. This Court cannot ignore that interpretation in favor of an agency decision that lacks the force of law. There is no circuit precedent in the Eleventh Circuit adopting *Yajure Hurtado*.

74. Notably, The IJ denied bond not because Petitioner was dangerous or a flight risk, but because she believed herself bound by an agency decision and a DOJ litigation position—neither of which can authorize discretionary detention under the law.

75. Therefore, even though the IJ believed herself bound by *Matter of Yajure Hurtado*, that belief does not render Petitioner's detention lawful, nor does it constrain this Court's independent obligation to determine whether DHS has statutory authority to detain Petitioner without a constitutionally sufficient bond hearing.

76. For all the reasons argued above, Petitioner is accordingly entitled to release or a constitutionally sufficient bond hearing.

CLAIMS FOR RELIEF

COUNT ONE

Respondents Violated Petitioner's Fifth Amendment Right to Due Process

Procedural Due Process

77. The allegations in the above paragraphs are realleged and incorporated herein.

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

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

80. Here, Petitioner is entitled to due process protections under the Fifth Amendment of the U.S. Constitution. Respondents' refusal to provide Petitioner with an individualized bond hearing—and the IJ's reliance on *Matter of Yajure-Hurtado* to conclude that no jurisdiction exists—violated Petitioner's rights under the Due Process Clause.

81. Under the three-part test of *Mathews*, 424 U.S., the balance overwhelmingly favors Petitioner. His interest in liberty, family unity, and health is paramount; the Government's blanket detention policy under *Yajure Hurtado* creates an extreme risk of erroneous deprivation by denying him any opportunity to

demonstrate eligibility for release; and the Respondent's interest in ensuring appearance can be served by far less restrictive means. Accordingly, due process requires an individualized bond hearing under § 1226(a).

82. The Respondents have shown neither that the continued detention of petitioner following his initial detention is reasonably related to the original purpose nor that the *Mathews* tests are satisfied. And importantly, no procedural safeguards were provided to the Petitioner.

83. Petitioner is a long-term resident of the United States arrested in the interior, yet DHS asserts mandatory detention under INA § 235 without initiating expedited removal or processing him as an actual applicant for admission. Civil detention without an individualized determination of danger or flight risk is unconstitutional. *See Zadvydas*, 533 U.S. 678; *Demore*, 538 U.S. 510 (as limited by subsequent authority); U.S. Const. amend. V.

84. As the Supreme Court noted in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), civil immigration detention is constitutionally permissible only so long as it bears a reasonable relationship to its underlying purpose. Therefore, where detention persists without an effective mechanism for individualized justification, it loses its legal foundation.

85. Should this Court find that Petitioner is owed a bond hearing, there is a real and grave risk that Petitioner will not receive a *constitutionally sufficient*

bond hearing absent further action from this Court to ensure it. And a remedy that exists in name only is no remedy at all.

86. Accordingly, this Court should order Petitioner's immediate release or impose additional safeguards to any ordered bond hearing.

COUNT TWO

Statutory Violation: Petitioner is Detained Under INA § 236, Not § 235

87. The allegations in the above paragraphs are realleged and incorporated herein.

88. Here, the Petitioner is clearly not an "applicant for admission." He was paroled into the country in 2022, and he was not arrested by ICE until 2025. Accordingly, his detention is governed exclusively by INA § 236(a). Respondents did not process the Petitioner as an arriving alien, did not initiate expedited removal, and did not issue or reinstate a removal order. The IJ's reliance on *Hurtado* was thus contrary to the statutory framework, which mandates bond jurisdiction in § 236(a) cases.

89. Further, contrary to the language of § 1225(b), § 1226(a) does not specify a class or classes of aliens who should be detained under the provision, but governs more generally the "apprehension and detention of aliens." As opposed to the inspection regime for aliens entering the United States set forth in § 1225, the

Supreme Court has characterized § 1226(a) as "authoriz[ing] the government to detain certain aliens already in the country pending the outcome of removal proceedings[.]" *Jennings*, 583 U.S. at 289 (emphasis added).

90. Petitioner had appeared for an ICE check-in when he was detained suddenly and without warning. Indeed, he had been at liberty in the interior of the U.S. after being in the country for years. He also has a pending asylum application with USCIS.

91. The IJ's refusal to exercise bond jurisdiction contradicts the plain text of §§ 1225 and 1226, longstanding agency practice, and federal case law holding that DHS's charging decision determines the statutory detention authority. By treating Petitioner as subject to § 1225(b) detention without statutory authorization, Respondents acted *ultra vires* and contrary to law.

92. Further, the IJ's conclusion that *Hurtado* removes all bond jurisdiction whenever DHS claims § 235 authority grants the agency unfettered power to eliminate bond hearings for any noncitizen arrested in the interior, simply by labeling them as an "applicant for admission" without following statutory procedures for expedited removal. Such a reading raises grave Due Process concerns and cannot reflect congressional intent. Because Petitioner is detained under § 236(a), he is entitled to an individualized custody hearing, and the IJ's refusal to consider bond violated the INA.

93. Thus, Petitioner was entitled to a bond hearing "at the outset of detention" as established by existing federal regulations. *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

94. This Court came to the same conclusion in recent habeas decisions regarding the applicability of INA § 236 and § 235 to detained immigrants who had lived in the interior of the country for years before being arrested. *See J.A.M. v. Streeval*, No. 4:25-cv-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *P.R.S. v. Streeval*, No. 4:25-cv-343-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025).

95. Petitioner is therefore entitled immediate release or in the alternative, a constitutionally sufficient bond hearing.

COUNT THREE

Respondents Violated of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)

Not in Accordance with Law
and in Excess of Statutory Authority Unlawful Detention

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

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

98. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

99. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

100. The *Maldonado Bautista* court recently vacated the ICE Memo because it violates the APA. *Maldonado Bautista v. Santacruz,* No. 5:25-CV-01873-SSS-BFM (Dec. 18, 2025 C.D. Cal.) (Order of Final Judgment).

101. Here, by issuing the Petitioner an NTA while his affirmative asylum application remains pending with USCIS and detaining him, without any consideration of his individualized facts and circumstances, Respondents have violated the APA.

102. Respondents have made no finding that Petitioner is a danger to the community.

103. Respondents have made no finding that Petitioner is a flight risk.

104. The IJ's refusal to conduct a bond hearing based on *Matter of Yajure-Hurtado* constitutes final agency action that is contrary to statutory text, unsupported by facts, and irrational. Petitioner is a long-term U.S. resident apprehended at an ICE check-in in the interior, with no prior removal order. Applying *Hurtado* to Petitioner's facts is arbitrary, capricious, and legally erroneous. The resulting deprivation of bond eligibility is therefore unlawful under the APA.

COUNT FOUR

Unlawful Detention in Violation of the Laws of the United States

Petitioner is a Valid Class Member under Maldonado Bautista

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

106. As argued above, Respondents are bound by the final judgment in *Maldonado Bautista*. Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member.

107. The IJ was incorrect in holding that *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

108. Because Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista,* the Court should accordingly order the Petitioner released.

109. Alternatively, this Court should order Respondents to provide Petitioner with a constitutionally sufficient bond hearing under 8 U.S.C. § 1226(a).

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;
2. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
3. Declare that the Petitioner's detention violates the INA;
4 Declare that the Petitioner's detention violates the APA;
5. Declare that the Petitioner is an eligible class member under *Maldonado Bautista*;
6. Issue a Writ of Habeas Corpus ordering Petitioner immediately released, or in the alternative, ordering Respondents to conduct a constitutionally

sufficient bond hearing within three (3) days, with the following safeguards in place:

a. Declare that Respondents bear the burden to show flight risk or danger to society; and

b. Order Respondents to give a status report to this Court within three (3) days showing compliance with this Court's Opinion.

7. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

8. Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Brittany S. Pierce
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Counsel for Petitioner

Dated: 29 January, 2026

EXHIBITS

EX. 1 - **Notice to Appear**

EX. 2 - ***Romero-Nolasco v. McDonald*, No. 25-cv-12492-MJJ, ECF No. 22 at 5n.2 (D. Mass. Jan. 14, 2025)**

EX. 3 - **ICE Memo "Interim Guidance Regarding Detention Authority for Applicants for Admission" dated July 8, 2025**

EX. 4 - **Parole Documentation**

EX. 5 - **Copy of Form I-589, Application for Asylum**

EX. 6 - **Copy of Traffic Violations and Dismissals**

EX. 7 - **Request for Custody Redetermination**

EX. 8 - **Order Denying Bond on Jurisdictional Grounds**

EX. 9 - **Medical Documentation of Asthma**

EX. 10 - ***Soto-Medina v. Lynch et al.*, No. 1:25-cv-01704-JMB-MV, ECF No. 8 at 22 (W.D. Mich. Jan. 21, 2026)**

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

I represent Jorge Alberto Galeano Navarrete and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 29th day of January, 2026.

s/Brittany S. Pierce
Brittany S. Pierce