UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

ARDIT LIKA,

A# [redacted]

Petitioner/Plaintiff,

v.

RAFAEL VERGARA, Warden, Adams County Correctional Center, **TODD LYONS,** Acting Director, Immigration and Customs Enforcement, **KRISTI NOEM,** Secretary of United States Department of Homeland Security, **MELISSA HARPER,** Immigration and Customs Enforcement, New Orleans Field Office Director, **PAMELA BONDI,** United States Attorney General,

Respondents/Defendants

Civil Action No. 5:26-cv-3-DCB-BWR

ORAL ARGUMENT REQUESTED

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

1. Petitioner, Ardit Lika, is in physical custody of Respondents at the Adams County Correctional Center. He faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded that, contrary to the overwhelming weight of authority, he is subject to mandatory detention.

2. Petitioner, Ardit Lika, is a native and citizen of Albania who entered the United States on or about October 16th, 2023, near Sasabe, Arizona. On October 17th, 2023, Petitioner was released on his own recognizance. Petitioner timely filed his application for Asylum, Withholding of Removal and Convention against Torture.

3. Since that time, Petitioner has resided in the United States continuously. On November 19th, 2025, Petitioner testified and presented evidence in support of his application for asylum before the Immigration Judge in New York. At the conclusion of his immigration hearing on the merits, the Immigration Judge scheduled Petitioner for an Oral Decision, which was to be held on February 18th, 2026. However, on December 19th, 2025, during a routine check-in with Immigration and Customs Enforcement (ICE) at 26 Federal Plaza, New York, NY, Petitioner was detained.

4. Petitioners' entire immigration proceedings took place in New York. On November 19th, 2025, the Immigration Judge dedicated four hours to hearing testimony and legal arguments by counsel for the Petitioner and for the Respondent. On the day, Petitioner was taken into custody, he was already awaiting a final decision on his application for asylum. Nonetheless, Petitioner was transferred from New York to Adams County Correctional Center in Natchez, Mississippi. This transfer occurred without a proper filing of a motion to change venue. Petitioner is scheduled for another *(emphasis added)* final hearing on his asylum application for January 12, 2026, at the LaSalle Immigration Court in Jena, LA.

5. Despite not having any criminal history, the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) concluded that Petitioner is subject to mandatory immigration detention because, they submit, he should be deemed to be "seeking admission" to the United States. DHS and EOIR's position in this case is pursuant to a new policy shift, changing the government's decades-long practice. Respondents' insistence that Petitioner is subject to mandatory detention is not only a significant shift from past practice but is contrary to the plain language of the INA and is also in violation of Petitioner's Constitutional rights.

6. Additionally, Petitioner brings this petition for a writ of habeas corpus to seek enforcement of his rights as a member of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) Petitioner is in the physical custody of Respondents at the Adams County Correctional Center. He continues to face unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration, Review (EOIR) have refused to abide by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v. Santacruz.*

7. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

8. The declaratory judgment held that Bond Denial Class members are detained under 8 U.S.C. § 1226(a) and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025). On December 19th, 2025, the district court issued a clarifying order in response to Plaintiffs' motion to clarify. Specifically, the district court: (1) entered a final judgment under Rule 54(b), making clear that all class members are entitled to benefit from the declaratory relief and confirming that class members are subject to detention under

1226(a) and not 1225(b)(2), (2) vacated a July 8th memo issued by DHS, (3) declined to vacate *Yajure Hurtado* but clarified that, " *Yajure Hurtado* is no longer controlling; the legal conclusion underlying the decision is no longer tenable. *Maldonado Bautista*, 2025 WL 3289861, at *11.

9. Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that class members be denied the opportunity to be released on bond.

10. This Court should therefore intervene and grant Petitioner's petition for writs of habeas corpus and either order his release from immigration custody or, in the alternative, require EOIR to conduct a bond hearing under 8 U.S.C. § 1226(a) at which DHS bears the burden of proof that continued detention is required.

JURISDICTION

11. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Adams County Correctional Center in Natchez, Mississippi.

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

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

VENUE

14. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973) and *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), venue lies in the United States District

Court for the Southern District of Mississippi, the judicial district in which Petitioner currently is detained.

15. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District Court of Mississippi.

REQUIREMENTS OF 28 U.S.C. § 2243

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

17. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted). Immediate relief is necessary; particularly within the context of a detained court in the Executive Office of Immigration Review where a person may be ordered removed even where he has not been afforded a meaningful opportunity at a bond hearing. *See ICE Detainee Locator dated 1/7/2026 and Petitioner's Individual Hearing Notice.*

18. Petitioner is currently scheduled for another *(emphasis added)* final individual hearing even though he has presented his case before the Immigration Judge.

PARTIES

19. Petitioner Ardit Lika is a citizen of Albania who has been in immigration detention since December 19th, 2025. He is currently detained at the Adams County Correctional Center. After Petitioner's detention in New York, New York, ICE did not set a bond. *See ICE Detainee Locator dated 01.07.2026.* Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

20. Respondent Mellissa Harper is the Director of the New Orleans Field Office of ICE's Enforcement and Removal Operations division. As such, she is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She is named in his official capacity.

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

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

23. Respondent Rafael Vergara is employed by CoreCivic as a Warden of the Adams County Correctional Center, where Petitioner is detained. He has immediate physical custody of the Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

24. The INA provides for immigration detention under various sections, depending on the procedural circumstances of each case.

25. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are entitled to a bond hearing at which the immigration judge considers whether they are a danger to the community or a flight risk. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). Noncitizens in removal proceedings who have specific criminal histories are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

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

28. This case concerns the detention provisions at 8 U.S.C. §§ 1226(a) and 1225(b)(2).

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

30. Following the enactment of the IIRIRA, EOIR and the former Immigration and Naturalization Service (INS) drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens;

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

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

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

33. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

34. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are considered applicants

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

for admission and, therefore, are subject to detention under § 1225(b)(2)(A) and ineligible for IJ bond hearings.

35. Subsequently, court after court adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g.*, *Kostak v. Trump*, No. 3:25-CV-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV-25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV-25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *1 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-CV-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-CV-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. CV-25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670, at *8 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-CV-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *See also, e.g.*, *Palma Perez v. Berg*, No. 8:25-CV-494, 2025 WL 2531566 at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention"); *Jacinto v. Trump*, No. 4:25-CV-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same);

Anicasio v. Kramer, No. 4:25-CV-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

36. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA and due process. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226 (a), not § 1225(b)(2), applies to people like Petitioner. Since Respondents adopted their new policies, dozens of federal courts—including this one—have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

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

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

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

40. By contrast, § 1225(b)(2) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a [] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

41. Although the Court may impose exhaustion requirements as a prudential matter, it should not do so in this case because further administrative exhaustion would be futile. Petitioners all sought bond before an immigration judge, but each judge ruled that he or she did not have jurisdiction over the request. Critically, as part of the recent policy shift, the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), concluding that noncitizens who entered the United States without inspection at any point are forever after considered to be "arriving aliens" who are "seeking admission" and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Even though, as discussed below, this decision is legally erroneous, all immigration judges—including Appellate Immigration Judges at the Board of Immigration Appeals—are obligated to apply published Board precedent, and thus the result of any attempted bond request is foreclosed. 8 C.F.R. § 103.10(b).

FACTS

42. Petitioner has resided in the United States since October 16th, 2023, and lives in the Bronx, NY. Petitioner was a 33-year-old when he entered in the United States. He was placed in

immigration proceedings and complied with every hearing before the Immigration Court. Petitioners' sister was granted asylum and is now a Legal Permanent Resident. His brother is also a Legal Permanent Resident. The Petitioner himself seeks protection because of persecution he experienced on account of [redacted] Petitioner is neither a flight risk nor a danger to the community.

43. On October 17th, 2023, DHS placed Petitioner in removal proceedings before the New York Immigration Court pursuant to 8 U.S.C. § 1229a. ICE charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection. At this time, Petitioner was released on his recognizance rather than placed in detention. The Petitioner is now detained at the Central Louisiana ICE Processing Center.

44. Following Petitioner's arrest at his routine check-in appointment with ICE, they issued a custody determination to continue Petitioner's detention, without an opportunity to post bond or be released on other conditions.

45. Pursuant to *the Matter of Yajure Hurtado* and in defiance of *Maldonado Bautista v. Santacruz*, the immigration judges continue to hold that they are unable to consider Petitioner's bond request.

46. As a result, Petitioner remains in detention. Without relief from this court, Petitioner faces the prospect of months, or even years, in immigration custody, separated from his family and community.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

47. Petitioner realleges and incorporates the paragraphs described above.

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

49. Section 1225 provides for expedited removal processing and mandatory detention for certain noncitizens seeking admission into the United States. *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). As relevant here, section 1225(b)(2)(A) provides that "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." 8 U.S.C. § 1225(b)(2)(A). "Other than this limited exception [,] . . . detention under § 1225(b)(2) is considered mandatory . . . [and] [i]ndividuals detained under § 1225 are not entitled to a bond hearing." *Lopez Benitez*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *3 (S.D.N.Y. Aug. 13, 2025). Further, under § 1225(b)(2)(A), detention is mandatory "until removal proceedings have concluded."

50. While section 1225 "authorizes the Government to detain certain aliens seeking admission into the country," section 1226 "authorizes the Government to detain certain aliens *already in* the country pending the outcome of removal proceedings." *Jennings*, 583 U.S. at 289 (emphasis added).

51. Separate from § 1225(b)(2), section 1226(a) sets out the "default rule" for noncitizens already present in the country. *Id.* at 288. It provides: 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... [The Attorney General-- (1) may continue to detain the arrested alien; and (2) may release the alien on -- (A) bond....; or (B) conditional parole... 8 U.S.C. § 1226(a). "Section 1226 (a), therefore, establishes a discretionary detention framework." *Lopez Benitez*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *3 (S.D.N.Y. Aug. 13, 2025). (internal citations omitted). An immigration officer makes the initial determination to either detain or

release the noncitizen, but after that decision has been made, the noncitizen may request a bond hearing before an immigration judge. 8 C.F.R. § 1236.1(c)(8), (d)(1). At this bond hearing, "the burden is on the non-citizen to 'establish to the satisfaction of the Immigration Judge . . . that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.'" *Hernandez v. Sessions*, 872 F.3d 976, 982 (9th Cir. 2017) (citing *In re Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006)).

52. The government contends that section 1225(b) applies to all noncitizens living in this country who did not enter lawfully, regardless of how long they have lived here or whether they ever took any affirmative step to seek admission. The government's proposed interpretation of the statute ignores the plain meaning of the phrase "seeking admission." Seeking" means "asking for" or "trying to acquire or gain." *seeking*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/seeking (last visited June 18, 2025) And the use of a present participle, "seeking," implies some sort of present-tense action. The term "admission" is defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). And "entry" has long been understood to mean "a crossing into the territorial limits of the United States." *Hing Sum v. Holder*, 602 F.3d 1092, 1100–01 (9th Cir. 2010) (quoting *Matter of Pierre*, 14 I & N Dec. 467, 468 (1973)).

53. Put together, this would mean that a person "seeking admission" is a person who is actively seeking lawful entry.

54. Other district courts have also reached a similar conclusion. Specifically, this court held that Respondents' position that Section 1225 applies to Petition because he is present in the United States is contrary to the Supreme Court's analysis in *Jennings* of the application of 1225 to arriving alien. *See Kostak*, No. 3:25-CV-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025); *Lopez*

Benitez, No. 25-CIV-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Martinez,* No. CV 25-11613-BEM, 2025 WL 2084238, at *9 (D. Mass. July 24, 2025); *Gomes*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Vasquez Garcia*, No. 25-CV-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); Doc. 11, *Benitez* No. 5:25-CV-02190 (C.D. Cal. Aug. 26, 2025).

55. The district court certified the following Bond Eligible Class: all noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection, (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to mandatory detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *9 (C.D. Cal. Nov. 20, 2025). Under this class definition, there can arguably be two groups of people who have claims to relief. First, there are those who entered the United States, were not apprehended at or near the border or close in time to their entry, and who were later arrested by immigration authorities. Second, there are those who were apprehended at or near the border and close in time to their entry, were released on recognizance, and then were re-detained by immigration authorities after residing in the United States.

56. On December 19th, 2025, the district court issued a clarifying order in response to Plaintiffs' motion to clarify. Specifically, the district court: (1) entered a final judgment under Rule 54(b), making clear that all class members are entitled to benefit from the declaratory relief and confirming that class members are subject to detention under 1226(a) and not 1225(b)(2), (2) vacated a July 8th memo issued by DHS, (3) declined to vacate *Yajure Hurtado* but clarified that,

" *Yajure Hurtado* is no longer controlling; the legal conclusion underlying the decision is no longer tenable. *Id.*

57. In this case, Petitioner would qualify as a member of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.). He would belong to the second group of individuals: those who were apprehended at or near the border and close in time to their entry, were then released on their recognizance but, later re-detained by immigration authorities after residing in the United States. Upon Petitioner's initial entry, he was apprehended by immigration officials at or near the Sasabe, Arizona border. *See* Notice to Appear dated October 17, 2023. That same day, he was released on his own recognizance. *See* Order of Release on Recognizance dated October 17, 2023. Petitioner was re-detained at his routine ICE check in on December 19th, 2025.

58. Therefore, the risk of erroneous deprivation of Petitioner's liberty is high; insofar as, the deprivation of liberty is not based on any individual, factual determination of dangers to the community or flight risks. Rather his deprivation of liberty is based solely on the Government's sudden interpretation that section 1225 mandatary detention provision applies to Petitioner as a matter of law.

59. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner, who were re-detained after their initial entry after residing in the United States for almost three years.

COUNT II

Violation of Procedural Due Process

60. Procedural due process requires the government to provide adequate safeguards to ensure arbitrary deprivation of an individual's liberty interest, including the ability to challenge the basis for detention. *See Lopez-Campos*, 2025 WL 2496379, at *10.

61. To determine whether a civil detention violates a detainee's procedural due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, (1976). Pursuant to *Mathews*, courts weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

62. First, Petitioner has a significant interest at stake. Being free from physical detention by one's own government "is the most elemental of liberty interests. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). And his continued detention, without any ability to articulate that he is neither a flight risk nor a danger to the community, undermines his fundamental liberty interest in being free from restraint.

63. Second, there is a large risk of erroneous deprivation of Petitioner's liberty interest through the procedures used in this case, and there are available alternative procedures which would ameliorate those risks. The Government asserts that Section 1226 does not apply to Petitioner, and it may detain Petitioner under Section 1225(b)(2). This assertion is based on an interpretation of the INA which undermines decades of long judicial practice and the plain meaning of the statute. Since then, several district courts have held that the Government's new, and more expansive interpretation of mandatory detention under the INA is either incorrect or likely

incorrect. *See*, e.g., *Kostak*, No. 3:25-cv-01093-JE, Doc. 20, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Rodriguez Vasquez v. Bostock*, et al. 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025); *Lopez Benitez*, No. 25-CIV- 5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Martinez*, No. CV-25-11613- BEM, — F.Supp.3d ——, ——, 2025 WL 2084238, at *9 (D. Mass. July 24, 2025); *Vasquez Garcia*, No. 25-CV-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos*, No. 2:25-CV-12486, — F.Supp.3d ——, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Arrazola-Gonzalez*, No. 5:25-CV-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025).

64. Therefore, the risk of erroneous deprivation of Petitioner's liberty is high; insofar as, the deprivation of liberty is not based on any individual, factual determination of dangers to the community or flight risks. Rather his deprivation of liberty is based solely on the Government's sudden interpretation that section 1225 mandatary detention provision applies to Petitioner as a matter of law.

65. Lastly, prior to the Government's abrupt change in its interpretation of section 1225 and section 1226, the immigration courts routinely held bond hearings in the detained setting. The detained immigration courts had a procedure in place on how to request bond hearings, and most, if not all, routinely took place through an internet-based hearing. As a result, there would be no additional burdens placed on the government.

COUNT III

Violation of Substantive Due Process

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

67. As described above, freedom from government custody "lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 690. For that reason, nonpunitive government detention violates the Due Process Clause unless the detention is ordered "in certain special and narrow ... circumstances, where a special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint." Id. (citations omitted).

68. In the context of civil immigration detention, the two "regulatory goals" of the Immigration and Nationality Act provisions governing such detention— "ensuring the appearance of aliens at future immigration proceedings" and "preventing danger to the community"—can provide such "special justification." *Id.* (citations omitted). "Civil immigration detention is permissible only to prevent flight or protect against danger to the community." *Zadvydas*, 533 U.S. at 690. Although "[t]he government has legitimate interests in protecting the public and in ensuring that noncitizens in removal proceedings appear for hearings," "the government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions." *Hernandez*, 872 F.3d at 990, 994.

69. After Petitioner's entry, rather than detain him, the Respondents released Petitioner on his own recognizance. Petitioner has not engaged in any behavior that would otherwise cause a change in custody but for a change in the Government's interpretation of the law. Continuing to detain Petitioner solely because this change and not because of anything related to the factors traditionally analyzed for civil immigration detention is fundamentally at odds with the Constitution's due process provisions.

70. Petitioner is neither dangerous nor a flight risk, as he has two immediate family members with Lawful Permanent Resident status. He immediately retained counsel and timely filed his application for relief. Without a doubt, Petitioner has demonstrated he is not a flight risk. He appeared at all his immigration hearings and complied with all the in person reporting requirements with ICE.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter.

b. Order that Petitioner shall not be transferred outside the Southern District of Mississippi while this habeas petition is pending.

c. Issue an Order to Show Cause ordering Respondents to show why this Petition should not be granted immediately.

d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner immediately or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days.

e. Declare that Petitioner's detention is unlawful.

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

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted this the 8th day of January, 2026.

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