

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

H.F.S.R.	)	
	)	
Petitioner,	)	
	)	CASE NO.:
vs.	)	1:26-cv-00238-AT
	)	
LADEON FRANCIS, <i>ICE Atlanta</i>	)	
<i>Field Office Director; and</i>	)	
TODD LYONS, <i>in his official capacity as Acting</i>	)	
<i>Director of Immigration and Customs</i>	)	
<i>Enforcement; and</i>	)	
KRISTI NOEM, <i>Secretary of Homeland Security</i>	)	
And PAMELA BONDI, <i>U.S. Attorney General.</i>	)	
	)	
Respondents.	)	
	)	

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

Petitioner respectfully submits this Amended Habeas Complaint pursuant to Federal Rules of Civil Procedure (FRCP) 15(a), as a matter of course and without leave of court. This amendment is timely, having been filed prior to any Answer or Motion to Dismiss under Rule 12(b) filed by Respondents. Under Rule 15(a)(1)(B), “A party may amend its pleading once as a matter of course within... 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” This Amended Complaint is therefore timely as a matter

of right. The amendment is necessary to remove unredacted section and add a declaratory component that Petitioner is not subject to Expedited Removal.

## I. INTRODUCTION

1. This Petition challenges the imminent detention of Petitioner, H.F.S.R. (“Petitioner”), by U.S. Immigration and Customs Enforcement (ICE) during his next Immigration Court Hearing scheduled for January 21, 2026. Petitioner is neither a flight risk nor a danger to the community. As Petitioner is an asylum applicant with a pending asylum application before the immigration court, Petitioner will be using a pseudonym in these filings, his initials. A motion for leave to proceed under a pseudonym will be shortly filed with the Court.
2. Petitioner’s imminent detention by ICE is unlawful and unconstitutional. The government’s recent policy shift—reclassifying noncitizens who entered without inspection as “arriving aliens” subject to mandatory detention under 8 U.S.C. § 1225(b)—contradicts the statute, decades of established statutory interpretation, agency regulations and practice, and binding precedent. Petitioner, apprehended in the interior years after entry, is entitled to discretionary bond hearings under 8 U.S.C. §

1226(a), not mandatory detention without judicial review. See *ECF 1-2* for a current list of over 300 district courts from around the country agreeing with Petitioner, including several recent cases from this district, NDGA.

3. Despite being apprehended within the interior of the United States long after arrival rather than at the border, Petitioner is currently not being considered for bond due to their entry without inspection. This stems from a controversial policy shift by ICE in July 2025, which aligns with a recent Board of Immigration Appeals (BIA) decision. This decision disrupts decades of established legal precedent by introducing a novel interpretation of the Immigration and Nationality Act (INA). This interpretation, which contradicts both the statute's clear language and constitutional principles, reclassifies all noncitizens who entered without inspection, including the Petitioner, as "arriving aliens" or "applicants for admission." Consequently, they are subject to mandatory detention under 8 U.S.C. § 1225(b), rendering them ineligible for bond hearings by immigration judges.
4. While § 1225 mandates detention without bond for noncitizens apprehended at the border as "seeking admission," it does not apply to those like the Petitioner, who will potentially be detained

within the United States long after arrival here. Therefore, the Petitioner seeks a declaratory judgment from this Court affirming that their detention should be under 8 U.S.C. § 1226(a). The Petitioner requests an order for his immediate release in the event he is arrested. Additionally, Petitioner requests that Respondent be prohibited from re-detaining Petitioner unless there are changed circumstances warranting re-arrest as detailed below.

5. A nationwide class in *Maldonado Bautista v. Santacruz* now has been certified, become final, and granted declaratory relief to all class members—including Petitioner —, holding that they are being detained without a bond hearing unlawfully. The court then granted declaratory relief to members of the Bond Eligible Class and **vacated the DHS policy** under the APA. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3713987, at \*1, \*32 (C.D. Cal. Dec. 18, 2025), judgment entered sub nom. *Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025).
6. Unfortunately, the now-vacated policy, requiring ICE agents to treat every person who entered the United States without inspection as “seeking admission” under 8 U.S.C. § 1225(b)(2) and thereby subject to mandatory detention, is still being followed by

ICE and the immigration judges. ECF 1-7 copy of email obtained by the American Immigration Lawyers Association (AILA) from the Chief Immigration Judge directing judges not to follow the court's **final** and **binding** order for the nationwide class members.

7. Respondents' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution by depriving Petitioner of liberty without individualized assessment or a meaningful opportunity to be heard before a neutral decisionmaker. The agencies' interpretation also contravenes the INA and its implementing regulations, the Administrative Procedure Act (APA), and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions. Numerous federal courts have rejected the government's novel reading of the detention statutes, reaffirming that interior apprehensions are governed by § 1226(a) and entitled to bond review.
8. Petitioner seeks immediate habeas, declaratory, and injunctive relief. A detailed statement of facts and procedural history follows, supporting Petitioner's claims for relief.

## II. JURISDICTION

9. This Court has jurisdiction under several legal provisions, including 28 U.S.C. § 2241, which grants federal courts the authority to issue writs of habeas corpus, and 28 U.S.C. § 1331, which provides for federal question jurisdiction. Jurisdiction over habeas claims is conferred by 28 U.S.C. § 2241, while non-habeas claims for declaratory and injunctive relief arise under 28 U.S.C. § 1331, the APA, and the Declaratory Judgment Act.
10. Additionally, jurisdiction is supported by Article I, § 9, cl. 2 of the Constitution, known as the Suspension Clause, and Article III, Section 2, which addresses the Court's authority to hear constitutional issues raised by the Petitioner. Petitioner seeks immediate judicial intervention to address ongoing violations of constitutional rights by the Respondent. This action is grounded in the United States Constitution, the Immigration & Nationality Act of 1952, as amended (INA), 8 U.S.C. § 1101 et seq., and the APA, 5 U.S.C. § 551 et seq. Furthermore, the Court may also exercise jurisdiction under 28 U.S.C. § 1331, as the action arises under federal law, and may grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

11. The Court has authority to issue a declaratory judgment and to grant temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure (FRCP), as well as 28 U.S.C. §§ 2201-2202. Additionally, the Court can utilize the All Writs Act and its inherent equitable powers to provide such relief. Furthermore, the Court has the authority to issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241.
12. This Court possesses federal question jurisdiction under the APA to “hold unlawful and set aside agency action” deemed “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” as outlined in 5 U.S.C. § 706(2)(A). In the absence of a specific statutory review process, APA review of final agency actions can proceed through “any applicable form of legal action,” which includes actions for declaratory judgments, writs of prohibitory or mandatory injunction, or habeas corpus, in a court of competent jurisdiction, as specified in 5 U.S.C. § 703.
13. In *I.N.S. v. St. Cyr*, the Supreme Court held that federal courts retain *habeas corpus* jurisdiction under 28 USC § 2241, despite restrictions on judicial review enacted under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Antiterrorism and Effective Death Penalty Act of

1996 (AEDPA). 533 U.S. 289 (2001). Consequently, section 2241 habeas review remains available to Petitioners.

14. The U.S. Supreme Court has recognized district courts' jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law. Even though the government may detain individuals during removal proceedings, *Demore v. Kim*, 538 U.S. 510, (2003) (although that case involved detention under §1226(c) of certain criminal aliens), there are limitations to this power of the executive branch. Limitations like the Due Process Clause restrict the Government's power to detain noncitizens. It is well settled that individuals in deportation proceedings are entitled to due process of law under the Fifth Amendment. *Reno v. Flores*, 507 U.S. 292, 306, (1993). Courts must review immigration procedures and ensure that they comport with the Constitution.

15. Federal courts have retained the statutory authority to grant writs of habeas corpus since enactment of the Judiciary Act of 1789. In *Felker v. Turpin*, 518 U.S. 651 (1996), the Supreme Court declined to find a repeal of § 2241 by implication as to its original habeas corpus jurisdiction. See also *Boumediene v. Bush*, 553 U.S. 723

(2008). In addition to the Supreme Court in many cases, all Circuit Courts of Appeals have recognized district courts' jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law.

16. In this case, Petitioner asserts substantial constitutional violations—including potential deprivation of liberty without due process, arbitrary and capricious agency action, violations of the *Accardi* doctrine, and other injuries without notice or opportunity to be heard. These claims fall squarely within the scope of habeas review preserved by statute and recognized by controlling precedent. Accordingly, this Court has both the authority and the obligation to adjudicate the constitutional and statutory claims presented in this Petition and to grant appropriate relief to remedy ongoing violations of Petitioner's rights.

17. Petitioner's claims challenge only his potential civil immigration detention and the procedures used to prolong it—not the merits of removability or any final order of removal—and therefore fall outside 8 U.S.C. § 1252(b)(9)'s channeling provision. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (detention challenges

are not “questions of law or fact arising from” removal proceedings). Consistent with that framing, any injunctive relief sought here is strictly as-applied to Petitioner—for example, directing Petitioner’s release under § 1226(a) or barring application of § 1225 as to Petitioner—and does not “enjoin or restrain the operation” of any statute within § 1252(f)(1)’s bar. In any event, § 1252(f)(1) permits individualized, as-applied relief for a single noncitizen, even while prohibiting class-wide injunctions. *See Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–49 (2022).

18. Section 1252(f)(1) does not bar the individualized injunctive relief sought here. That provision limits lower courts’ authority to “enjoin or restrain the operation” of the INA’s detention and removal provisions on a class-wide or programmatic basis but expressly preserves injunctive relief “with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.” 8 U.S.C. § 1252(f)(1); *Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–50 (2022). Petitioner seeks only as-applied relief tailored to Petitioner—e.g., preserving Petitioner’s liberty and precluding DHS from enforcing the “arriving alien” definition of § 1225 toward Petitioner. That relief neither halts the general operation of any

INA provision nor provides class-wide relief and thus falls squarely within § 1252(f)(1)'s carveout.

19. Section 1252(g) is likewise inapplicable. It is a “narrow” jurisdictional bar that applies only to three discrete decisions or actions: “to commence proceedings, adjudicate cases, or execute removal orders.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Petitioner does not challenge any such decision. Petitioner challenges ongoing civil detention and DHS’s use of an unlawful interpretation to nullify the plain language of the INA and its regulations as applicable to these agencies. Such detention related claims and challenges to custody procedures fall outside § 1252(g). *See id.* at 482–83; cf. *Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (§ 1252(b)(9) does not channel detention claims).

20. Section 1252(e)(3) is likewise inapplicable as it is narrowly tailored to channel systemic or facial challenges to the validity of the expedited removal “system” or its implementing regulations and written policies to the U.S. District Court for the District of Columbia, and only within 60 days of implementation. It does not bar as-applied, individualized habeas challenges to the legality or constitutionality of a particular noncitizen’s detention

under § 1225(b)(2) or whether § 1225 governs Petitioner’s potential detention or § 1226. The text of § 1252(e)(3) is explicit: it covers “[c]hallenges on the validity of the system” and review of “whether such a regulation, or a written policy directive, written policy guideline, or written procedure ... is not consistent with applicable provisions of this title or is otherwise in violation of law.” It does not preclude review of the legality of detention as applied to a specific individual, nor does it bar habeas review of constitutional claims or claims that the government is misapplying the statute in a particular case.

21. To prevent ouster of this Court’s habeas jurisdiction, the Court should, pursuant to 28 U.S.C. § 1651(a) (All Writs Act) and 28 U.S.C. § 2241, issue an immediate limited order prohibiting Respondent from transferring Petitioner outside the court’s District or otherwise changing Petitioner’s immediate custodian without prior leave of Court while this action is pending. Such relief is necessary in aid of jurisdiction because habeas is governed by the district-of-confinement/immediate-custodian rule, and transfer can frustrate effective review. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441–42 (2004); *Ex parte Endo*, 323 U.S. 283, 307 (1944); *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966).

### III. VENUE

22. Venue is proper in the United States District Court for the Northern District of Georgia because Petitioner resides in Duluth, Georgia and his imminent arrest will take place at 180 Ted Turner Drive SW, Atlanta, Georgia. Habeas petitions generally are filed in the district court with jurisdiction over the filer's place of custody, also known as the district of confinement, pursuant to 28 U.S.C. § 2241. Additionally, with respect to Petitioner's non-habeas claims seeking prospective declaratory and injunctive relief against federal officials (agencies and officers of the United States) sued in their official capacities, venue is proper under 28 U.S.C. § 1391(e)(1)(B) because a substantial part of the events or omissions giving rise to these claims, including the potential arrest and continued detention of Petitioner and the enforcement of the mandatory detention agency interpretation, occurred in this District. Furthermore, the Respondent are officers of United States agencies, the Petitioner resides within this District, and there is no real property involved in this action.

#### IV. PARTIES

23. Petitioner H.F.S.R., is a 30-year-old noncitizen who has lived in the United States for many years, over 10 years ago. He entered the country without inspection. He resides in Georgia, where he also holds a regular employment.
24. Respondent Ladeon Francis is the Atlanta Field Office Director (FOD) for ICE. As such, Respondent Francis is responsible for the oversight of ICE operations at the Northern District of Georgia. Respondent Francis is being sued in his official capacity. He is the head of the ICE office that can arrest the Petitioner.
25. Respondent Todd Lyons is the Acting Director of ICE. As such, Respondent Lyons is responsible for the oversight of ICE operations and the head of the federal agency responsible for all immigration enforcement in the United States. Respondent Lyons is being sued in his official capacity.
26. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS). As Secretary of DHS, Secretary Noem is the cabinet-level official responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Secretary Noem is being sued in her official capacity.

27. Respondent Pamela Bondi is the Attorney General of the United States and is sued in her official capacity since U.S. government agencies are Respondents in this complaint. Furthermore, the Immigration Judges who decide removal cases and applications for bond and relief from removal do so as her designees at the Executive Office for Immigration Review (EOIR).
28. Petitioner names certain federal officials in their official capacities solely to preserve alternative, non-habeas avenues for prospective relief—such as as-applied declaratory and injunctive orders under 28 U.S.C. § 1331, the APA’s waiver of sovereign immunity, 5 U.S.C. § 702, the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, and the All Writs Act, 28 U.S.C. § 1651—necessary to enjoin enforcement of DHS regulations and their interpretation as applied to Petitioner, ensure compliance with DHS/EOIR custody regulations, prevent transfer or removal of Petitioner, and effectuate any release the Court orders at the agency level where policy and implementation authority reside. See, e.g., *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949); *Dugan v. Rank*, 372 U.S. 609 (1963).
29. Petitioner acknowledges, consistent with *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that the proper respondent to the habeas claim is

the immediate custodian, and does not rely on the federal officials as “habeas respondents.” Rather, Petitioner name these federal officials in their official capacities solely to ensure that the Court can issue effective relief on non-habeas claims, such as declaratory and injunctive relief, and to direct agency action to those with actual authority to implement it. Should the Court find these officials improper as respondents to the habeas count, Petitioner respectfully request that any dismissal be limited to that claim and without prejudice to their continued status as respondents for the non-habeas claims. Maintaining these officials as parties is necessary to ensure that, if relief is granted, the responsible agency officials cannot simply re-arrest Petitioner or otherwise frustrate the Court’s order by invoking their erroneous interpretation of the INA. This approach is consistent with *Padilla* and ensures that the Court’s orders are both effective and enforceable.

## V. STATEMENT OF FACTS AND PROCEDURAL HISTORY

30. Petitioner H.F.S.R. is a noncitizen who has lived in the United States for several years. He entered the country about a decade ago. He resides in the United States where he maintains steady employment and supports his child. Petitioner leads a stable, work-centered daily life and keeps a low profile, dedicating his time to employment and family responsibilities. He remains in contact with his family in his home country, including his mother, following the violent killing of his father in 2022. His daily routine reflects stability, responsibility, and caution, shaped by his family ties and concern for safety, financial, and emotional support.
31. Petitioner has maintained valid Temporary Protected Status (TPS) to date. Although Respondent Noem terminated TPS status for his country on September 8, 2025, judge Trina L. Thompson in the Northern District of California issued an order vacating the Secretary's TPS termination decision as unlawful under the Administrative Procedures Act (APA) and restoring TPS status. See *National TPS Alliance et. al., v. Noem et al.*, No. 3:25-cv-05687-TLT (N.D. Cal., Dec. 31, 2025). The Court directed entry of a final judgment under Rule 54(b) on the APA claims for which the Court has granted summary judgment in favor of Plaintiffs, which means

TPS beneficiaries like Petitioner can continue to enjoy TPS status and work and stay in the United States lawfully (TPS is considered a valid nonimmigrant status).

32. Based on having valid TPS status, Petitioner should even be in removal proceedings and those should be terminated, for several reasons. First, the TPS statute states that a person granted TPS “shall not be removed from the United States during the period in which such status is in effect.” 8 U.S.C. § 1254a(a)(1)(A). Proceeding toward an order of removal against a person whom Congress has said “shall not be removed” during TPS is inconsistent with the statute’s plain language. Moreover, TPS is a lawful, congressional protected status while removal proceedings are designated to address individuals who lack a lawful right to remain. TPS is a statutory “safe harbor” from removal, even for noncitizens with prior removal orders (which is not the case here).
33. The Executive Office for Immigration Review (EOIR) has issued a Notice of In-Person Hearing scheduling Petitioner for a contested master calendar hearing before the Atlanta Immigration Court on January 21, 2026, at 8:00 a.m. Eastern Time, to be held at 401 W. Peachtree Street, Suite 2600, Atlanta, Georgia. The notice, dated January 7, 2026, advises that failure to appear may result in an in

absentia removal order. See ECF 1-6 (Notice for Hearing).

**A. The Government's Unlawful Courthouse Arrest Policy**

34. There is countless evidence from the past few months in 2025 that ICE agents perform many arrests in immigration courts right before or after noncitizens come to attend their hearings. In *Make The Road New York et. al., v. Noem et al.*, No. 1:25-cv-00190-JMC (D.D.C.), the record contains several Declarations regarding immigration courtroom arrests in ECF 50. Some used herein are included in ECF 1-8.

35. The documents consistently describe a new government strategy that began in May 2025 where the general pattern involves the following steps:

- a. An individual, often unrepresented, appears for a scheduled master calendar hearing in immigration court. ECF 50-4, ECF 50-8. DHS attorney makes an oral motion to dismiss the individual's removal proceedings, frequently citing only "changed circumstances" or the regulation 8 C.F.R. § 239.2(a)(7) without providing case-specific reasoning.
- b. These motions are made without prior written notice to the noncitizen (called respondent). ECF 50-8; ECF 50-24 (collecting articles).

- c. Immediately after the hearing concludes—and sometimes even when the judge has not granted the dismissal but has set it for briefing or a future date—plainclothes or uniformed ICE agents detain the individual. The arrests have been observed in courthouse hallways, lobbies, and waiting rooms. ECF 50-4; ECF 50-5; ECF 50-11; ECF 50-12; ECF 50-24.
  - d. The stated goal of this tactic is to remove the individual from the standard immigration court system and place them into expedited removal, a process that allows for deportation without a hearing before an immigration judge while they are detained throughout the entire time. ECF 50-12; ECF 50-24.
  - e. The declaration from Vanessa Dojaquez-Torres of AILA states that members have reported “widespread instances” of these arrests around the country, and including in Atlanta, GA. News reports corroborate this widespread activity, mentioning courthouse arrests around the country. ECF 50-24.
36. The declarations and reports frame these arrests as raising serious due process concerns. Respondents are not given advance written notice of the motion to dismiss, robbing them of the chance to prepare a response or obtain counsel. Some advisals by immigration judges are misleading, reportedly failing to advise

respondents of the true consequences of dismissal.

37. The arrests do not appear to be based on an individualized assessment that the person is a flight or public safety risk. Many of those targeted are reported to have no criminal history and have been complying with court requirements. ECF 50-12, ECF 50-23.
38. The heavy and intimidating presence of ICE agents—often in plain clothes and masks—is reported to cause fear, panic, and confusion. ECF 50-4, ECF 50-12. Critics, including a former ICE official, argue this practice “subverts the legal process and will make others too scared to show up in the future,” which could lead to more in absentia removal orders. ECF 50-11, ECF 50-23.
39. Petitioner is between a rock and a hard place. If he fails to show for his hearing next week, he will be ordered removed *in absentia*. However, if he does show as he plans to do, he most likely be arrested by ICE officers that have a policy to detain everyone who entered without inspection in the interior of the United States, no matter how many years after their entry. See ECF 1-2 consisting of hundreds of district court decisions finding these detention practices unlawful under 8 U.S.C. § 1225.

**B. The Unlawful Interpretation of Detention Statutes**

40. While the government *may* detain noncitizens it encounters in the interior of the Country under 8 U.S.C. § 1226(a), such arrest must be initiated by a warrant. ICE has systematically failed to obtain warrants for immigration courtroom arrests.
41. Even assuming a noncitizen is properly detained pursuant to a warrant under 8 U.S.C. § 1226(a), they are eligible for a bond hearing before an Immigration Judge (IJ) or release on recognizance.
42. Nevertheless, Respondents' policy is to classify a noncitizen who entered without inspection as an "arriving alien" and detain them under 8 U.S.C. § 1225(b)(2)—rendering them ineligible for bond under their new, unlawful policies.
43. A potential prolonged detention under these circumstances imposes unnecessary hardships on the Petitioner and his family, depriving them of financial and emotional support, and violating Petitioner's right to due process and freedom from arbitrary detention.
44. As of the time of filing of this Writ of Habeas, Petitioner potential confinement at the Northern District of Georgia is imminent solely because of ICE's invocation of its new interpretation that

Petitioner is an “arriving alien” or “applicant for admission” and is therefore subject to mandatory detention. Even if Petitioner was to file for a bond redetermination with the immigration judge, they would deny it pursuant to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. All Respondents consider that all noncitizens who entered without inspection are detained pursuant to 8 U.S.C. § 1225(b)(2). Accordingly, it would be futile for Petitioner to request a bond for release from an IJ. Due to the binding nature of *Matter of Yajure Hurtado*, all immigration courts known to counsel are denying bond requests for similarly situated noncitizens, making habeas the only effective remedy. Similarly, even in cases an IJ would grant bond, ICE would appeal it which would leave Petitioner incarcerated through the appeal, which would take months and end up dismissed based on *Yajure Hurtado*.

45. As evident from the aforementioned, ICE is detaining noncitizens without due process, without just cause, in many immigration courts around the country, including in Atlanta, Georgia. Hundreds of district courts decisions, including decision from this Court, have said *Yajure Hurtado* is wrong and these detentions are not governed by 8 U.S.C. § 1225(b)(2) but by 8 U.S.C. § 1226(a). However, both ICE and EOIR maintain their unlawful positions.

We know, with a degree of certainty that they will detain Petitioner and thereafter refuse to provide bond. Even if this court later on grants the habeas and orders a bond hearing before the immigration judge, that will take time. Petitioner should not have to be detained and wait for months in detention for this court to say the government position is unlawful.

## VI. EXHAUSTION OF REMEDIES

46. **No statutory exhaustion requirement applies to habeas cases**, and the recent interpretations by DHS and EOIR have effectively closed all administrative avenues for securing release for noncitizens, like Petitioner, who entered the U.S. without inspection. ICE's internal policy from July 2025, coupled with the EOIR's Board of Immigration Appeals (BIA) precedent, mandates that immigration judges deny bond to the Petitioner and similarly situated noncitizens, rendering any further administrative steps futile. An administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it as noted in *Gibson v. Berryhill*, 411 U. S. 564, 575, n. 14 (1973). Requiring Petitioner to seek reconsideration with ICE or a bond hearing with an immigration judge "would be to demand a futile act" as no relief

would be granted while Petitioner languish in detention, as highlighted in *Houghton v. Shafer*, 392 U.S. 639, 640 (1968). Moreover, even if any remedies were available, the habeas statute does not require Petitioner to exhaust them.

47. Furthermore, even if applied, the doctrine of exhaustion of administrative remedies would have been futile on claim attacking constitutionality of ICE's actions and ICE's and EOIR's current interpretations of the mandatory detention provisions. Administrative hearings cannot address the constitutional claims at issue, rendering further proceedings ineffective. Moreover, where ICE seeks to quickly remove noncitizens like Petitioner even to third countries, without due process, particularly under the current administration's policies, underscores the inadequacy of administrative remedies. *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992) (futility exception to exhaustion applies where administrative remedies are inadequate or unavailable). Thus, pursuing such remedies would be an exercise in futility, as they fail to provide any meaningful opportunity to address the constitutional violations at hand.

48. Petitioner has exhausted his administrative remedies to the extent required by law, and Petitioner's only remedy is by way of this

judicial action.

## VII. CIRCUIT AUTHORITY ON HABEAS “IN CUSTODY”

49. This Court may grant a writ of habeas corpus only to an individual who is “in custody.” 28 U.S.C. § 2241(c). Whether a person is “in custody” within the meaning of § 2241 is a question of subject-matter jurisdiction. **To satisfy this “in custody” requirements, a petitioner need not be in physically detained.** *Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist., Santa Clara Cnty., California*, 411 U.S. 345, 350 (finding that a petitioner released on his own recognizance satisfied the “in custody” requirement of the federal habeas corpus statute in noting the Supreme Court has “consistently rejected interpretations of the habeas corpus statute that would suffocate the writ in stifling formalisms or hobble its effectiveness with the manacles of arcane and scholastic procedural requirements”); *see also Harris v. Nelson*, 394 U.S. 286, 29 (1969) (“The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.”); *see also Jones v. Cunningham*, 371 U.S. 236, 240 (1963) (“History, usage, and precedent can leave no doubt that, besides physical imprisonment, there are other restraints on a

man’s liberty, restraints not shared by the public generally, which have been thought sufficient in the English-speaking world to support the issuance of habeas corpus.”).

50. Rather, it is sufficient that a petitioner has some other type of **restriction** on their liberty to proceed on a habeas action. See *Rumsfeld v. Padilla*, 542 U.S. 426, 427 (2004) (acknowledging that the Supreme Court has broadened its understanding of custody “to include restraints short of physical liberty”). Federal courts across the country have consistently recognized that significant restraints on liberty—such as those imposed by orders of supervision, electronic monitoring, and frequent reporting—constitute “in custody” for habeas purposes under 28 U.S.C. § 2241. See e.g., *Romero v. Sec’y, U.S. Dep’t of Homeland Sec.*, 20 F.4th 1374, 1379 (11th Cir. 2021) (A non-detained foreign national subject to pre-deportation supervision and removal was “in custody” as described in 28 U.S.C. § 2241); see also *U. S. ex rel. Marcello v. Dist. Dir. of Immigr. & Naturalization Serv., New Orleans, La.*, 634 F.2d 964, 971 n. 11 (5th Cir. 1981) (finding that a noncitizen subject to pre-deportation supervision and a deportation order was “in custody” as required by 28 U.S.C. § 2241).

51. Indeed, Petitioner’s ongoing removal proceedings continue to

burden him with concrete, redressable injuries. Petitioner is seeking an order from this Court that prevents ICE from unlawfully detaining him. This uniformity across various Federal Circuit courts around the country, as well as U.S. Supreme Court, underscores that people like Petitioner are considered “in custody” for the habeas statute even if they are not currently detained.

52. In conclusion, even though Petitioner is not incarcerated, he is still “in custody” for the purposes of the habeas statute at 28 U.S.C. § 2241, because he is subject to conditions and significant constraints on his liberty, which suffices for “in custody” requirement. The “in-custody” requirement is construed “very liberally.” *Clements v. Florida*, 59 F.4th 1204, 1213 (11th Cir. 2023) (quoting *Howard v. Warden*, 776 F.3d 772, 775 (11th Cir. 2015)). There are countless authorities on the matter, including for example, two binding authorities from the 11th circuit, *Romero v. Sec'y, U.S. Dep't of Homeland Sec.*, 20 F.4th 1374, 1379 (11th Cir. 2021) (A non-detained foreign national subject to pre-deportation supervision and removal was “in custody” as described in 28 U.S.C. § 2241); see also *U. S. ex rel. Marcello v. Dist. Dir. of Immigr. & Naturalization Serv., New Orleans, La.*, 634 F.2d 964, 971 n. 11 (5th Cir. 1981) (finding that a noncitizen subject to pre-deportation supervision

and a deportation order was “in custody” as required by 28 U.S.C. § 2241). Therefore, the custody requirement is not only satisfied by showing that a petitioner is in physical custody, but it can also be satisfied where a petitioner identifies “a significant restraint” on individual liberty that is not shared by the general public.” *Whitfield v. United State Secretary of State*, 853 F. App’x 327, at 329 (11th Cir. 2021) (quoting *Howard v. Warden*, 776 F.3d 772, 775 (11th Cir. 2015)).

53. In *Hensley v. Mun. Ct.*, 411 U.S. 345, 351 (1973), the Supreme Court explained that the “custody requirement of the habeas corpus statute is designed to preserve the writ of habeas corpus as a remedy for severe restraints on individual liberty.” 411 U.S. at 351. The Court found that petitioner was in custody because he was subject to restraints on his liberty such that he could not “come and go as he pleas[ed],” and these restraints are not “shared by the general public.” *Whitfield*, 853 F. App’x at 329 (quoting *Howard v. Warden*, 776 F.3d 772, 775 (11th Cir. 2015)).

## VIII. LEGAL AND STATUTORY BACKGROUND

### A. Noncitizens Are Entitled to Due Process

54. The principle that noncitizens present in the United States must be afforded due process is deeply rooted in our legal history for hundreds of years. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (Fourteenth Amendment applies to all persons within the territorial jurisdiction of the United States, regardless of race, color, or nationality); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (“Fifth Amendment . . . protects every person within the jurisdiction of the United States from deprivation of life, liberty, or property without due process of law . . . [i]ncluding those whose presence in this country is unlawful, involuntary, or transitory[.]”) (citation omitted).

55. These landmark Supreme Court cases affirm that due process protections apply to all persons within the U.S., regardless of their immigration status. These foundational principles are not merely historical artifacts but are vital, living tenets that must guide current immigration practices. The Court has consistently recognized that noncitizens facing deportation are entitled to due process under the Fifth Amendment, as seen in *Landon v. Plasencia*, 459 U.S. 21 (1982) (noncitizens facing deportation are

entitled to due process under the Fifth Amendment, which includes a full and fair hearing and notice of that hearing); *Zadvydas v. Davis*, 533 U.S. 678 (2001) (Due Process Clause applies to all “persons” within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent).

**B. The Erosion of Well-Established Immigration Law In 2025**

56. The specific type of liberty deprivation suffered by Petitioner is not unique in 2025. Indeed, the recent, dramatic expansion of civil immigration detention powers by the U.S. government, has quietly eroded over 70 years of immigration law history. This expansion has occurred not through explicit legislative change but via broad agency interpretations, leading to a normalization of widespread, unreviewable detention of noncitizens. Tens of thousands of noncitizens are now subject to automatic, non-reviewable loss of liberty, contravening our immigration laws, Supreme Court precedents, and the U.S. Constitution. The vast majority of ICE detainees are non-criminals, like Petitioner<sup>1</sup>. Many others have minor criminal backgrounds.

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<sup>1</sup> According to the Transactional Records Access Clearinghouse, 71.5% of detainees have no criminal conviction as of September 21, 2025. Immigration Detention Quick Facts, available at: <https://tracreports.org/immigration/quickfacts/>

57. Traditionally, procedural safeguards such as individualized bond hearings and judicial review have served as critical checks against arbitrary detention. Immigration detention decisions involved two procedural layers: an initial custody determination by ICE (or CBP for noncitizens confronted at the border), followed by a custody redetermination (bond hearing) before an IJ, with appellate review by the BIA. **Detention was permitted only upon finding of flight risk or danger to the community**, and noncitizens had the right to challenge their detention before an IJ and seek release on their own recognizance or a bond. With the exception of significant criminal history or extremely negative immigration history, the vast majority of noncitizens in the country were not detained, including those in removal proceedings, who were either released on their own recognizance or ordered to post a bond (most under \$5,000), in order to appease DHS that they will show up for their removal hearings. In most cases, ICE attorneys did not object to bond grants and if the IJ ordered a bond, few appeals were being filed. Most noncitizens show up for their hearings, as they want to plead their case and obtain relief from removal and permanent status in the United States.

58. In the initial months of the second Trump administration, ICE

abruptly shifted its enforcement strategy, initiating widespread arrests of noncitizens without any individualized assessment of flight risk or danger to the community. These detentions were not incidental; they were executed in a targeted and systematic fashion, often in highly visible public spaces—including churches, schools, during their appearance for ICE reporting and even immigration court hearings where noncitizens appeared for scheduled proceedings.<sup>2</sup> This approach enabled ICE to detain large groups of individuals en masse, apparently to satisfy newly imposed detention quotas.<sup>3</sup> Notably, ICE disregarded less restrictive and more cost-effective alternatives for ensuring appearance at immigration hearings, such as reporting requirements and electronic ankle monitoring. While an ankle monitor costs the agency approximately \$5 to \$40 per day, detention costs soar to roughly \$1,000 per day for each individual. This policy not only imposes a substantial financial burden on the government, but also results in unnecessary and punitive

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<sup>2</sup> “ICE detaining immigrants for long periods in Atlanta field office basement”, Atlanta Journal-Constitution, available at: <https://www.ajc.com/news/2025/10/ice-detaining-immigrants-for-long-periods-in-atlanta-field-office-basement/>

<sup>3</sup> “Downtown ATL holds ICE’s newest hellhole. Cruelty is the point” available at: <https://www.ajc.com/opinion/2025/10/downtown-atl-holds-ices-newest-hellhole-cruelty-is-the-point/>

deprivation of liberty for noncitizens who pose no threat to public safety or risk of absconding.

59. While detention of noncitizens is within the purview of the agency, according to 8 C.F.R. 236.1, a noncitizen who is detained is able to appeal their detention to an IJ and request a bond. Many bonds were still being granted by Immigration Judges around the country, notwithstanding ICE's detention, however that has drastically changed in the last two months. Recent administrative expansions have systematically stripped noncitizens of their fundamental rights to challenge detention, thereby undermining the very fabric of due process protections. In July 2025, ICE has issued a memo to all its employees by stealth, without public disclosure, and without public comment and notice period. *See ECF 1-3*. The exhibit was obtained through the American Immigration Lawyers Association website. According to the new ICE "interpretation", any person who entered without inspection, like Petitioner, is now subject to mandatory detention without bond.

60. If Respondent's interpretation of § 1225 were truly grounded in the plain language and longstanding application of the statute—such that every noncitizen who entered without inspection is

categorically subject to mandatory detention—there would have been no need for ICE to issue a stealth, unpublished memo in July 2025, nor to bypass the established regulatory process, including notice-and-comment rulemaking under the APA. The fact that ICE chose to implement this sweeping policy shift through an internal, non-public directive, rather than through transparent rulemaking or publication in the Federal Register, strongly suggests that the agency itself recognized this was a controversial reinterpretation, not a faithful application of existing law. For decades, both agency practice and BIA precedent consistently treated interior apprehensions of long-term residents as subject to discretionary bond under § 1226(a), not mandatory detention under § 1225(b).

61. The abrupt change in July 2025—implemented without public notice, opportunity for comment, or regulatory justification—undermines Respondent’s claim that their reading is compelled by statute. If the law were as clear as Respondent’s now assert, ICE would have had no reason to conceal its policy shift or avoid the procedural safeguards of the NPRM process. Instead, the agency’s actions reflect an attempt to circumvent both statutory requirements and public accountability, further supporting Petitioner’s argument that the new interpretation is not only

unlawful, but also procedurally and substantively deficient under the APA and the *Accardi* doctrine.

62. Then two EOIR cases supporting the same statutory interpretation followed. The first case that was a published decision by the BIA, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), held that an applicant for admission arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings, is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b). This case is inapplicable to Petitioner because it deals with the detention of an “applicant for admission” who is arrested while arriving in the United States. The case is relevant to individuals who are at the border or a port of entry and are seeking admission into the country. It does not apply to those who have already entered the United States and are apprehended within its interior. The second published decision from the BIA, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), significantly expanded the agency’s mandatory detention interpretation to include all noncitizens who enter without inspection, denying them bond hearings under section 236(a) of the INA. The above-mentioned ICE memo, coupled with this decision, which will be

discussed below, prevents Petitioner's release and violates Petitioner's Due Process rights.

63. *Matter of Yajure Hurtado* reclassified all Entrants Without Inspection (EWIs) as "arriving aliens" and denied bond eligibility, overturning decades of precedent and agency guidance that had consistently applied § 1226(a) to interior apprehensions. The sudden change not only contradicts the statutory structure and legislative history, but also renders the separate inadmissibility charges superfluous, demonstrating that Congress never intended § 1225 to govern long-term residents apprehended far from any inspection point. The prior BIA decisions and longstanding EOIR guidance—consistently granted bond to such individuals, confirming that the government's new position is a radical departure from decades of established law and practice. See, for example, *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

64. Complementary to the above, diverse reports underline that hundreds of immigration judges across the country have rejected the federal government's attempt to impose mandatory detention through executive policy, finding that such blanket detention practices conflict with statutory requirements and due process principles. Judges have repeatedly emphasized the necessity of

individualized custody determinations, particularly where detention is prolonged or unsupported by flight-risk or danger findings. This widespread judicial resistance underscores a systemic tension between enforcement-driven detention policies and the constitutional and statutory limits governing civil immigration detention, highlighting the increasing legal instability surrounding custodial decisions in removal proceedings. See ECF 1-4 (article Politico).

65. Likewise, another report details a sharp increase in “no-shows” in immigration courts—particularly in Atlanta—resulting in a surge of in absentia removal orders. This corroborates systemic notice failures, including lost or delayed hearing notices, rapid scheduling, and overwhelmed court dockets, rather than willful noncompliance by noncitizens. These conditions illustrate how procedural deficiencies within the immigration court system can directly lead to detention or removal consequences without meaningful participation by respondents, reinforcing concerns that detention and enforcement outcomes are increasingly driven by administrative breakdowns rather than individualized conduct or intent. See ECF 1-5 (article WABE).

**C. Recent BIA Decision *Matter of Yajure Hurtado***

66. On September 5, 2025, the BIA, which oversees all appeals of IJ decisions including custody redeterminations, upheld ICE’s re-interpretation of §1225(b)(2). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA held that the respondent, who entered without inspection years previously, was an “applicant for admission” within the scope of § 1225(b), and therefore subject to mandatory detention.
67. The BIA characterized the issue before it as “one of statutory construction: Does the INA require that *all* applicants for admission, even those like the respondent who have entered without admission or inspection and have been residing in the United States for years without lawful status, be subject to mandatory detention for the duration of their immigration proceedings, and thus the Immigration Judge lacks authority over a bond request filed by an alien in this category?” [emphasis added]. *Id.* at 220.
68. The BIA reasoned that individuals “who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer.” *Id.* at 228.

69. The BIA acknowledged the decades of precedent preceding its decision that authorized release of individuals present without having been inspected and admitted or paroled under § 1226(a). *Id.* at 225, FN6 (“We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the current issue that is before us. In fact, the supplemental information for the 1997 Interim Rule titled ‘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), reflects that the Immigration and Naturalization Service took the position at that time that ‘[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.’”)
70. Ultimately, the BIA upheld the decision that the IJ lacked jurisdiction under 8 U.S.C. § 1225(b)(2) to consider the respondent for discretionary bond. *Id.* at 229. ***Yajure Hurtado* holds that there is no jurisdiction for the immigration judges to even**

**have a hearing whether the person is eligible for a bond or not. The BIA decision is binding on all immigration judges nationwide.**

71. Respondents' new policy and interpretation of 8 U.S.C. § 1225(b)(2) stand to sweep millions of noncitizens into mandatory detention, without any consideration for release on bond (regardless of their ties to their community or lack of dangerousness or flight risk). *Rosado*, 2025 WL 2337099, at \*11 ("It has been estimated that this novel interpretation would require the detention of millions of immigrants currently residing in the United States.")
72. Many noncitizens in Petitioner's situation who are non-criminals are now being detained for months (and possibly years) without the opportunity to be released on recognizance or bonds.<sup>4</sup>
73. Harsh detention conditions for weeks and possibly months with hardened criminals, with the current immigration system case backlog (estimated at a few million cases) that could take years to resolve, results in mental health issues suffered by detained noncitizens like Petitioner. Unfortunately, they are becoming more

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<sup>4</sup> See New York Times article "Under Trump Policy, Bonds for Immigrants Facing Deportation Are Vanishing".

common as non-criminals like him are put in prolonged detention by ICE.<sup>5</sup>

74. With immigration cases backlogs reaching almost 3.5 million, and many cases taking months or years to resolve, Petitioner's detention is unreasonable and unconstitutional.<sup>6</sup> Even assuming Respondent could conduct a quick removal hearing and get an order of removal against Petitioner in the next several months, if Petitioner exercises the appellate rights to the BIA, their backlog is estimated in over 5 years as they have a considerable amount of cases and only 28 BIA members.

**D. Recent Federal Court Cases Rejecting DHS' and EOIR's New Interpretation**

75. Since Respondents adopted their new policies, dozens of federal courts 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. ECF 1-2.

76. Subsequently, noncitizens who entered without inspection had only one choice to secure their release: by filing habeas petitions. Court after court all over the country that has dealt with this issue

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<sup>5</sup> New York Times article "People Are Losing Hope Inside ICE Detention Centers".

<sup>6</sup> See <https://tracreports.org/phptools/immigration/backlog/>

rejected ICE and EOIR's new interpretation and has adopted the same reading of the INA's detention authorities for individuals who entered without inspection as authorized by 8 U.S.C. § 1226(a), not under § 1225(b)(2).

77. Similar court cases known to undersigned counsel in this district that have dealt with the same issue are as follows:

*Rojano Gonzalez v. Sterling*, No. 1:25-cv-6080, 2025 WL 3145764 (N.D. Ga. Nov. 3, 2025); *Ortega Jimenez v. Warden, FCI Atlanta*, No. 25-cv-5650, (N.D. Ga. Nov. 6, 2025); *Lima v. Warden et al.*, No. 1:25-cv-06304-ELR (N.D. Ga.); *Hernandez v. Udzenski*, No. 2:25-cv-00373-RWS (N.D. Ga. Nov. 24, 2025). Although this is certainly not an exhaustive list, just illustrative of the overwhelming authority around the country that Petitioner's detention under § 1225(b)(2) is unjustified and unlawful. See ECF 1-2.

78. See ECF 1-2 attachment containing approximately 300 recent district court cases from around the country and authorities continue to reaffirm that noncitizens apprehended in the interior are subject to discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b)(2) and that Respondent's interpretation is unlawful.

79. As the *Lopez Benitez* Court poignantly articulated: “This understanding accords with the plain, ordinary meaning of the words “seeking” and “admission.” For example, someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as “seeking admission” to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as “seeking admission” (or “seeking” “lawful entry”) at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there. As § 1225(b)(2)(A) applies only to those noncitizens who are actively “seeking admission” to the United States, it cannot, according to its ordinary meaning, apply to Mr. Lopez Benitez, because he has already been residing in the United States for several years.” *Lopez Benitez v. Francis*, — F.Supp.3d at —, 2025 WL 2371588, at \*7.

80. “Moreover, Respondent’s novel position would expand § 1225(b) far beyond how it has been enforced historically, potentially subjecting millions more undocumented immigrants to mandatory detention, while simultaneously narrowing § 1226(a) such that it would have

extremely limited (if any) application. If, as Respondent contend, anyone who has entered the country unlawfully, regardless of how long they have resided here, is subject to mandatory detention under § 1225(b)(2)(A), see Conf. Tr. 19:9-20:4, then it is not clear under what circumstances § 1226(a)'s authorization of detention on a discretionary basis would ever apply. Perhaps it might still apply to a subset of noncitizens who are lawfully admitted (e.g., on a visa of some sort), and who then remain present unlawfully. But there is no indication that Congress intended § 1226 to be limited only to visa overstays. And there is nothing in the history or application of § 1226 to even remotely suggest that it was intended to have such a narrow reach." *Id.* at \*8.

81. Given that immigration judges are now bound by the *Yajure Hurtado* decision, which deprives them of jurisdiction to grant bond to individuals classified as "arriving aliens," it would be futile for Petitioner to seek an immigration bond hearing at this stage. Any such application would certainly be denied for lack of jurisdiction, resulting only in further unnecessary detention and additional legal expenses, without any prospect of meaningful relief. Under these circumstances, requiring Petitioner to pursue a bond hearing before an immigration judge would serve no

practical purpose and would merely prolong his unlawful detention, contrary to the interests of justice and judicial economy.

82. Courts all over the country have consistently rejected the new interpretation by DHS and EOIR, as it contradicts the INA. These courts have clarified that the plain language of the statutory provisions indicates that § 1226(a), rather than § 1225(b), governs the detention of individuals like the Petitioner who entered without inspection. The challenge lies in the fact that habeas relief is granted on an individual basis, not on a class-wide scale, necessitating that courts tailor their findings to the specific circumstances of each person applying for a writ of habeas corpus.

## **IX. STATUTORY FRAMEWORK OF THE INA**

### **Section 1225 Is Titled “Inspection”**

83. Section 1225 is titled “Inspection of applicants for admission” and is designed to govern the process of inspecting individuals at the border or port of entry. It is not intended to apply to noncitizens who entered unlawfully years ago and have since established residence in the interior. Congress provided a separate detention regime under § 1226(a) for noncitizens apprehended in the interior, which allows for individualized bond hearings and discretionary release. To collapse these regimes and subject all

interior apprehensions to mandatory detention under § 1225(b) would render § 1226(a) superfluous and contradict decades of agency and judicial practice.

84. The Supreme Court has repeatedly recognized that the title of a statute and the heading of a section are “tools available for the resolution of a doubt about the meaning of a statute” and can provide important cues about congressional intent, especially where the operative text is ambiguous or subject to competing interpretations. See *Yates v. United States*, 574 U.S. 528, 539–40 (2015); *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998); *Trainmen v. Baltimore & Ohio R. Co.*, 331 U.S. 519, 528–29 (1947). The heading of INA § 1225—“**Inspection of applicants for admission**”—signals that Congress intended this section to govern the process of inspecting individuals who are seeking entry into the United States **at a designated inspection point**, such as a border crossing or port of entry, not those who entered years ago and are apprehended in the interior. As the Supreme Court explained in *Yates*, statutory headings are not controlling, but they “supply cues” that Congress did not intend the operative provisions to sweep more broadly than their context suggests. If Congress had intended § 1225 to apply to all

noncitizens present in the United States without admission, regardless of where or when they were apprehended, it would have chosen a more expansive heading and provided a clearer indication of that intent in the statutory text. Instead, the heading confines the scope of § 1225 to the inspection process at the threshold of entry, supporting the longstanding interpretation that its mandatory detention provisions are relevant only for aliens caught at an inspection point, not for long-term residents apprehended in the interior.

**8 U.S.C. § 1101’s Definition of “Admission”**

85. 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).

86. “Entry” has long been understood to mean “a crossing into the territorial limits of the United States.” *Matter of Ching and Chen*, 19 I&N Dec. 203, 205 (BIA 1984) (citing *Matter of Pierre*, 14 I & N Dec. 467, 468 (BIA 1973)).

87. The phrase “seeking admission,” accordingly, means that a noncitizen must be actively “seeking” “lawful entry.” See *Lopez Benitez*, 2025 WL 2371588, at \*7.

“[S]eeking admission’ implies action—something that is **currently occurring**, and in this instance, would most logically occur at the border upon inspection.” (emphasis added)

*Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at \*6 (E.D. Mich. Aug. 29, 2025).

As the Court held in another case in which undersigned counsel represented a similarly situated client:

“Here, Mr. Alejandro is not actively “seeking” “lawful entry” because he entered the United States over 20 years ago... Respondents also argue, however, that he is now seeking admission “because he has not agreed to depart, [and] he has not yet conceded his removability or allowed his removal proceedings to play out.” Dkt. 11 at 16. But Respondents do not explain how Mr. Alejandro’s inaction—not agreeing to depart; not conceding removability— shows that he is “seeking admission.”

*Jose Alejandro v. Olson*, No. 1:25-cv-02027-JPH-MKK, 2025 WL 2896348 (S.D. Ind., October 11, 2025).

88. Petitioner is not “seeking an admission” or “seeking lawful entry” because he cannot. The INA bars him from seeking lawful entry because he entered illegally and accrued unlawful presence of over one year. Therefore, he is ineligible to adjust his status in the U.S. or obtain a visa to enter. If he leaves the U.S. he will be subject to a 10-year reentry bar. 8 U.S.C. § 1182(a)(9)(B)(i)(II).

89. Petitioner intends to seek relief from removal called “Cancellation of removal for non-permanent residents.” 8 U.S.C. § 1229b(b). An applicant for cancellation of removal cannot be considered as “seeking an admission” or “seeking lawful entry” because the legal framework and purpose of cancellation of removal are distinct from those of admission or entry into the United States. Cancellation of removal is a form of relief from removal available to certain noncitizens who are already present in the United States and are facing removal proceedings. It is not a mechanism for entering the country or adjusting one’s status to that of a lawful entrant.

**8 U.S.C. § 1101’s Definition of “Application for Admission”**

90. The statutory definition in 8 U.S.C. § 1101(a)(4) makes clear that the term “application for admission” refers **specifically to the act of seeking entry into the United States at a physical border or port of entry, and not to the process of applying for an immigrant or nonimmigrant visa abroad**. The statute provides: “The term ‘application for admission’ has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa.” This language underscores that Congress intended “applicant for admission” to mean individuals who are at the

threshold of entry, **actively seeking to be inspected and admitted by immigration authorities**. It does not encompass those who entered the country unlawfully years ago and have since established residence in the interior. To interpret § 1225 as applying to long-term residents apprehended far from any inspection point would disregard the plain meaning of “application for admission” as defined by Congress, collapse the statutory distinction between border and interior cases, and extend mandatory detention far beyond its intended scope (almost any noncitizen would be subject to mandatory detention other than a small percentage of people who entered on visas and overstayed). The statutory text thus supports the longstanding practice that only those physically present at or near the border, or otherwise in the process of seeking entry, are “applicants for admission” under § 1225—not individuals who entered without inspection long ago and are now subject to removal proceedings in the interior

91. The term “arriving alien” is defined by Respondent’s own regulation as “an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the

United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport” (8 C.F.R. § 1.2).

The use of the present participle “arriving” and the phrase “coming or attempting to come” make clear that the statutory and regulatory focus is on the alien’s status **at the time of entry or attempted entry**—not on individuals who have already entered and established residence in the United States.

92. The statute repeatedly uses the present tense—“arriving,” “seeking admission”—to describe the class of individuals subject to its provisions. This is consistent with the longstanding principle that the “entry fiction” applies only at the border or port of entry, and that once an individual has entered the United States and established presence, they are no longer “arriving” or “seeking admission” in the present sense.

93. The recent attempt to reclassify long-term residents as “arriving aliens” ignores the plain, present-progressive meaning of the term and the statutory context in which it appears. In sum, “arriving alien” is a present-progressive term that applies to those who are in the process of seeking admission at the border or port of entry, not to individuals who entered the United States years ago and have since established residence in the interior. To interpret it

otherwise would distort both the ordinary meaning of the language and the statutory structure Congress enacted.

**“Application for Admission” Is a Discrete, Temporal Event—  
Not a Continuous Status**

94. The Ninth Circuit had a case on point which supports Petitioner’s case. The Ninth Circuit in *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020), held unequivocally that the phrase “application for admission” **refers to a discrete event: an actual attempt to physically enter the United States, not a continuous or indefinite status that persists after entry.** The court explained that **“application for admission” is not a status that attaches to a person indefinitely, but rather describes a specific moment in time when an individual presents themselves at a border or port of entry and seeks to be admitted. The phrase “at the time of application for admission” imposes a temporal requirement, referring to a single point in time, not a continuous period** (*Torres*, 976 F.3d at 926).
95. Torres further clarified that while 8 U.S.C. § 1225(a)(1) may “deem” certain noncitizens present in the United States without admission as “applicants for admission” **for procedural purposes**, this legal fiction does not transform their status for substantive grounds of

inadmissibility or mandatory detention. **The court distinguished between being “deemed” an applicant for admission for the purpose of placing someone in removal proceedings, and actually being an applicant for admission for the purposes of applying the substantive grounds of inadmissibility and mandatory detention under § 1225(b)** (Torres, 976 F.3d at 928).

96. The Fifth Circuit in *Marques v. Lynch*, 834 F.3d 549 (5th Cir. 2016), reached a similar conclusion, holding that provisions like 8 U.S.C. § 1182(a)(7) apply only to applicants for admission who are seeking to enter the country, not to those already present in the United States seeking post-entry adjustment of status. The court reasoned that the statutory scheme distinguishes between those at the border seeking entry and those who have already entered, and that the grounds of inadmissibility and related detention provisions are not meant to apply retroactively to long-term residents apprehended in the interior (*Marques*, 834 F.3d at 553–54; cited in Torres, 976 F.3d at 927). Petitioner, who has lived in the United States for a substantial period and was apprehended far from any border or inspection point, cannot be considered an “applicant for admission” in the substantive sense required by § 1225(b). The government’s reliance on the “deemed” language of § 1225(a)(1)

ignores the temporal and contextual limitations recognized by the Ninth and Fifth Circuits. Petitioner’s detention must be governed by § 1226(a), which provides for discretionary bond hearings, not by the mandatory detention provisions of § 1225(b).

**8 U.S.C. § 1225(b)(2)(A)**

97. It is clear from the plain language of 8 U.S.C. § 1225(b)(2)(A) that it applies to people in the process of entering the country:

“Subject to subparagraphs (B) and (C), 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.”

At no point in time, other than at the border, airport or other port of entry into the country are there immigration officers examining admissions.

**STATUTORY STRUCTURE OF § 1226**

98. Section 1226 is titled “**Apprehension and detention of aliens.**” (plain language argument). Congress’s intent in enacting 8 U.S.C. § 1226(a) was to provide for discretionary detention of noncitizens during removal proceedings, not to impose mandatory detention on all such individuals. Section 1226(a) expressly authorizes the

Attorney General to detain or release an arrested noncitizen on bond or conditional parole, reflecting a deliberate legislative choice to allow individualized custody determinations based on flight risk or danger to the community. Therefore, **for noncitizens subject to § 1226(a), the presumption is that they should not be detained.**

99. In sharp contrast, § 1226(c) mandates **mandatory detention only for a narrowly defined subset of noncitizens—those with certain criminal convictions or security concerns—**demonstrating that Congress knew how to require mandatory detention when it so intended. If Congress had wanted all noncitizens subject to § 1226(a) (including those who entered without inspection) to be mandatorily detained, it would have written § 1226(a) in the same unequivocal terms as § 1226(c). The existence of § 1226(a)'s discretionary framework, and the careful limitation of mandatory detention to specific categories in § 1226(c), make clear that Congress did not intend for all noncitizens apprehended in the interior, including EWIs, to be subject to mandatory detention by default. To read § 1226(a) otherwise would render its discretionary provisions—and the entire structure of individualized bond hearings—superfluous, contrary to basic

principles of statutory interpretation and the longstanding practice recognized by courts and agencies alike.

100. It is therefore both logical and constitutionally sound for the government to bear the burden of proof in demonstrating that a noncitizen detained under 8 U.S.C. § 1226(a) is a flight risk or danger to the community. Section 1226(a) establishes a discretionary detention framework, expressly authorizing release on bond or conditional parole unless the government can show that continued detention is necessary. This structure reflects Congress's intent to protect the fundamental liberty interests at stake in civil immigration detention, which, unlike criminal incarceration, is not punitive and must be justified by legitimate government interests. Placing the burden on the government ensures that detention is not the default (as it has become with this Administration), but rather an **exception** justified by specific, individualized findings. This allocation of burden is consistent with due process principles, which require the government to justify any deprivation of liberty, and aligns with longstanding practice in both immigration and other civil detention contexts. If the government could detain by default and require the noncitizen to prove a negative, the statutory promise of individualized review and the presumption of liberty

would be rendered meaningless. Thus, requiring the government to prove flight risk or dangerousness under § 1226(a) is essential to safeguard due process and effectuate the statute's purpose of individualized, non-punitive detention determinations.

101. The 11th Circuit has not yet addressed this question specifically in relation to noncitizens detained pursuant to § 1226(a), however, the circuits who have addressed it, all stated that the **government bears the burden to prove that detention is warranted, i.e., that the noncitizen is either a danger to the community or a flight risk**. No circuit court known to undersigned counsel put the burden on the noncitizen to prove that he or she is not a flight risk or a danger. The Ninth Circuit has ruled that noncitizens detained under § 1226(a) are “entitled to release on bond unless the government establishes that they are a flight risk or will be a danger to the community,” as seen in *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022), where the court emphasized that they have a right to contest their custody before an immigration judge, at which time the government bears the burden to prove that detention is justified (both require clear and convincing evidence). The Second Circuit in *Velasco Lopez v. Decker*, 978 F.3d 842, 853–56 (2d Cir. 2020), also held that the government must prove a

noncitizen is a danger to the community or a flight risk to deny bond under § 1226(a) (both require clear and convincing evidence). Furthermore, the First Circuit in *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021), stated that a noncitizen must be released under § 1226(a) if the government cannot meet its burden of proving they are a danger or flight risk (the only difference is the standard: clear and convincing evidence for dangerousness or preponderance of the evidence for flight risk determinations). In any event, the government has not claimed that Petitioner is a danger nor a flight risk, let alone proved it. Their only contention is that Petitioner is subject to mandatory detention because he is an “arriving alien” or “applicant for admission.”

**Structure and Amendments of 8 U.S.C. § 1226(c) and the  
Laken Riley Act Affirm Petitioner’s Position**

102. There is no delineation in the INA between noncitizens who arrived on a visa or noncitizens without inspection (EWI) in terms of eligibility for release. They are treated the same in § 1226. If, as Respondents argue, every noncitizen who EWI’d is always an “applicant for admission” subject to mandatory detention under § 1225(b), then the entire structure of § 1226(a) and (c) would be rendered largely superfluous for a vast class of noncitizens—those

who entered without inspection but have been living in the interior for years. This is not how Congress has historically structured the INA, nor is it consistent with decades of agency and judicial practice.

**8 U.S.C. § 1226(c): Targeted Mandatory Detention for Criminals**

103. Section 1226(c) specifically mandates detention for noncitizens who are removable or inadmissible on certain criminal or national security grounds. The statute is detailed and precise, listing the categories of offenses and the circumstances under which mandatory detention applies. Congress's decision to enumerate these categories and to require mandatory detention only for this subset of noncitizens demonstrates a deliberate legislative choice: **If all EWIs were already subject to mandatory detention under § 1225(b), there would be no need for § 1226(c) to exist as a separate, carefully crafted provision.** The existence of § 1226(c) presupposes that there are noncitizens in removal proceedings who are not subject to mandatory detention—i.e., those who are not “arriving aliens” or “applicants for admission” under § 1225(b), but who are EWIs may be subject to mandatory detention if they fall within the criminal or security categories of § 1226(c).

**Laken Riley Amendments Expanded Not Duplicated Detention**

104. The Laken Riley Act, enacted in 2025, amended § 1226(c) to further expand the categories of noncitizens subject to mandatory detention, including certain additional criminal offenses and public safety risks. The legislative history and statutory text make clear that Congress intended to **expand** the reach of mandatory detention for specific, **high-priority categories**—not to restate or duplicate a rule that, under Respondents’ theory, would already apply to all EWIs.

105. **If Respondents’ interpretation were correct, the Laken Riley Act’s amendments to § 1226(c) would be unnecessary and redundant.** Congress would not have needed to specify new categories of mandatory detention if all EWIs were already mandatorily detained under § 1225(b). The careful drafting and expansion of § 1226(c) by Congress, including the Laken Riley Act amendments, only make sense if there is a significant population of noncitizens in removal proceedings who are not otherwise subject to mandatory detention—i.e., those detained under § 1226(a), including many EWIs apprehended in the interior.

**Avoiding Surplusage and Giving Effect to All Provisions**

106. The Supreme Court has repeatedly held that statutes must be interpreted to give effect to all provisions and to avoid rendering any part superfluous or redundant. See *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (“It is our duty to give effect, if possible, to every clause and word of a statute.”). **If every EWI is always an “applicant for admission” subject to § 1225(b) mandatory detention, then the entire framework of § 1226(a) and (c) for noncitizens apprehended in the interior would be largely meaningless for a vast class of cases.**

107. The government’s reading would collapse the careful distinctions Congress drew between different categories of noncitizens (such as criminal noncitizens subject to mandatory detention under § 1226(c)), their procedural rights, and the availability of bond or release.

**U.S.C. § 1182(a)(6) and § 1182(a)(7) Would Be Rendered Superfluous**

108. The statutory distinction between 8 U.S.C. § 1225 and § 1226 is also underscored by the separate grounds of inadmissibility set forth in 8 U.S.C. § 1182(a)(6) (entry without inspection) and § 1182(a)(7) (lack of valid documentation). If all noncitizens who entered

without inspection (“EWIs”) were truly “arriving aliens” subject to § 1225, there would be no need for the INA to maintain different inadmissibility charges for those seeking entry at a port of entry versus those apprehended in the interior. The existence of these distinct statutory grounds reflects Congress’s intent to treat border cases and interior apprehensions differently in removal proceedings. For decades, the Board of Immigration Appeals (BIA) and agency practice recognized this distinction: noncitizens apprehended in the interior after years of residence—regardless of their manner of entry—were routinely charged under § 1182(a)(6)(A)(i) and afforded bond hearings under § 1226(a), with immigration judges empowered to grant release if the individual was not a danger or flight risk. This practice persisted until the abrupt policy shift in July–September 2025.

**UNTENABLE CONSEQUENCES FROM RESPONDENT’S  
ACTIONS**

**Even if § 1225(b) were applicable, under the government’s interpretation it would follow that all noncitizens would be detained for years without bond**

109. Even if § 1225(b) were applicable, the government’s interpretation that it mandates indefinite detention without any individualized bond hearing raises serious constitutional due process concerns.

The Supreme Court in *Jennings* addressed the statutory interpretation of § 1225(b) and § 1226(a), clarifying that § 1225(b) mandates detention for certain “applicants for admission.” However, *Jennings* did not address the constitutional limits on such mandatory detention, particularly when it becomes prolonged.

110. The Supreme Court in *Demore v. Kim* held that due process requires an individualized bond hearing for aliens detained for a prolonged period under § 1226(c). 538 U.S. 510 (2003). While it specifically addressed § 1226(c) which involves mandatory detention of criminal aliens (which is not alleged against Petitioner), its underlying principle—that prolonged detention without individualized review violates due process—is equally applicable to detention under § 1225(b). There are several district court decisions from around the country releasing noncitizens who have been detained under § 1225(b) for prolonged periods. The Fifth Amendment’s Due Process Clause protects all persons within the United States, including noncitizens, from arbitrary governmental action. Prolonged detention, especially for an individual deemed neither a flight risk nor a danger, without a meaningful opportunity for release, constitutes such arbitrary action.

111. Even if the government's position were correct—that noncitizens who entered without inspection long ago are “arriving aliens”—the result would be that such individuals could be detained for years without any possibility of bond. Given the current immigration court backlog, which numbers in the millions of cases<sup>7</sup>, it is simply not feasible for all such cases to be resolved quickly. Removal proceedings, followed by appeals to the Board of Immigration Appeals (BIA), and potentially Petitions for Review in the federal circuit courts, routinely take several years to reach finality, even for detained clients. This problem is only exacerbated by the recent reduction of approximately 20% of immigration judges nationwide<sup>8</sup> and the fact that there are only 28 BIA members to handle immigration appeals. Under the government's theory, countless long-term residents in the country would face mandatory, unreviewable detention for the entire duration of these protracted proceedings—an outcome that is both unworkable as a matter of statutory interpretation and constitutionally suspect given the fundamental liberty interests at stake. This is especially true as the

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<sup>7</sup> <https://tracreports.org/phptools/immigration/backlog/>

<sup>8</sup> <https://www.npr.org/2025/09/23/nx-s1-5550915/trump-immigration-judges>

vast majority of these detained noncitizens are non-criminals<sup>9</sup> (over 71% based on [tracreports.org](https://tracreports.org)).

**PETITIONER IS NOT LAWFULLY SUBJECT TO EXPEDITED  
REMOVAL**

112. Expedited removal under 8 U.S.C. § 1225(b)(1) is a narrow, statutorily cabined procedure. By its terms, it may be applied only to **noncitizens whom an immigration officer determines to be inadmissible under 8 U.S.C. § 1182(a)(6)(C) (fraud or misrepresentation) or § 1182(a)(7) (lack of valid entry documents), and who are either “arriving in the United States” or, if already present in the country without admission or parole, cannot affirmatively demonstrate two years of continuous physical presence and have been designated for expedited removal by the Secretary. 8 U.S.C. § 1225(b)(1)(A)(i), (iii); 8 C.F.R. § 235.3(b)(1)–(2).**

113. DHS’s implementing regulations confirm these limits. For “other aliens” encountered in the interior, expedited removal applies only to those who “have entered the United States without having been admitted or paroled” and “have not established to the satisfaction

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<sup>9</sup> Over 71% of current detainees have no criminal convictions and many others have minor convictions  
[https://tracreports.org/immigration/quickfacts/detention.html#detention\\_numatd](https://tracreports.org/immigration/quickfacts/detention.html#detention_numatd)

of the immigration officer that they have been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility,” and even then only if the class has been specifically designated by the agency. 8 C.F.R. § 235.3(b)(1)(ii). Aliens who establish two years of continuous presence “shall be detained in accordance with section 235(b)(2) of the Act for a proceeding under section 240 of the Act.” 8 C.F.R. § 235.3(b)(1)(ii).

114. Petitioner falls outside these statutory and regulatory categories.

He has resided in the United States for more than a decade, lives in the interior of the country in Duluth, Georgia, and is already in removal proceedings under 8 U.S.C. § 1229a before the Atlanta Immigration Court. He is not an “arriving” alien at a port of entry, has long since passed the two-year continuous-presence threshold, and is not within any interior class properly designated by DHS for expedited removal. See 8 U.S.C. § 1225(b)(1)(A)(iii); 8 C.F.R. § 235.3(b)(1)(ii).

115. Federal appellate and district courts interpreting § 1225 confirm that expedited removal does not reach individuals in Petitioner’s posture. The Ninth Circuit has held that § 1225(b)(1) “applies” only to applicants who are actually processed under its provisions, and

that § 1225(b)(2) serves as a catchall for all other applicants for admission who are placed into full removal proceedings under § 1229a. *Innovation Law Lab v. McAleenan*, 924 F.3d 503, 516–18 (9th Cir. 2019). Likewise, courts construing § 1225 and its implementing regulations have recognized that “other aliens” apprehended in the interior who can show two years of continuous presence must be placed in § 240 proceedings rather than expedited removal. See, e.g., *Vasquez v. Mayorkas*, 520 F. Supp. 3d 94, 116–19 (D. Mass. 2021).

116. Recent litigation challenging DHS’s expansion of expedited removal further underscores that the agency may not lawfully re-designate long-present individuals for this summary process. In cases like *Make the Road New York v. Noem*, the U.S. District Court for the District of Columbia stayed DHS actions that attempted to subject previously paroled noncitizens and individuals already in § 240 proceedings to expedited removal, finding such actions likely exceeded DHS’s statutory authority and were arbitrary and capricious. More recently, in *Chirla v. Noem*, the D.C. Circuit denied the government’s request for a stay pending appeal of a similar order, doing so on narrow procedural grounds without reaching the merits of the district court’s powerful statutory

analysis, which therefore remains undisturbed and highly persuasive.

117. Furthermore, in *Coalition for Humane Immigration Rights et. al., v. Noem*, --- F.Supp.3d ----, 2025 WL 2192986 (D.D.C., 2025) (*Chirla*), federal judge Jia M. Cobb has stayed the government's policies subjecting noncitizens paroled into the United States to expedited removal. The government's emergency motion for a stay of that decision was denied by the appellate court. *Coalition for Humane Immigration Rights et. al., v. Noem*, No. 25-5289, 2025 WL 2649100 (D.C. Cir., Sep. 12, 2025).

118. The district court in *Chirla* conducted a thorough analysis of the term "arriving" in 8 U.S.C. § 1225(b)(1)(A)(i). It concluded that the term's plain meaning refers to the physical process of reaching a destination, not a perpetual legal status that follows a person for years. This reasoning is directly applicable to Petitioner who, having resided in the U.S. for over a decade with valid TPS, cannot logically be considered to be perpetually "arriving." Adopting the government's contrary view would create the absurd result of placing individuals who follow U.S. laws and procedures in a worse position than those who evade inspection entirely—an outcome that contradicts IIRAIRA's legislative history.

119. The *Chirla* court rejected the government's reliance on the "entry fiction" to argue that paroled noncitizens remain perpetually "arriving". This reasoning applies equally to any attempt by the government to argue that Petitioner, despite his decade-long presence and valid TPS status, is still legally "arriving" for the purposes of expedited removal.

120. The court in *Chirla* recognized that being subjected to expedited removal causes irreparable harm by stripping individuals of the robust procedural protections of a Section 240 hearing, including the ability to pursue other forms of relief like adjustment of status. This directly applies to Petitioner, who would lose the ability to seek Cancellation of Removal if placed in expedited removal.

121. Petitioner stands in the same essential posture as the parolees and § 240 respondents protected in *Make the Road New York*: he has been in the United States for years, is already in § 1229a proceedings, and faces an imminent attempt by DHS to terminate those proceedings and re-process him through expedited removal solely to avoid the procedural protections of a full hearing.

122. Accordingly, under the text and structure of § 1225(b)(1), DHS's own regulations at 8 C.F.R. § 235.3(b), and the persuasive reasoning of *Chirla*, *Innovation Law Lab*, *Vasquez*, and *Make the*

*Road New York*, Petitioner is not lawfully subject to expedited removal. Any effort by Respondents to place him into expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or to execute an expedited removal order against him would be ultra vires and “not in accordance with law” within the meaning of 5 U.S.C. § 706(2)(A), and his removal proceedings and custody must instead proceed, if at all, under 8 U.S.C. §§ 1229a and 1226(a).

## **X. LEGAL FRAMEWORK FOR THE RELIEF SOUGHT**

### **A. Habeas Jurisdiction**

123. Habeas corpus relief extends to a person “in custody under or by color of the authority of the United States” if the person can show they are “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241 (c)(1), (c)(3); *I.N.S. v. St. Cyr*, 533 U.S. 289, 314 (2001). See also *Antonelli v. Warden, U.S.P. Atlanta*, 542 F.3d 1348, 1352 (11th Cir. 2008) (holding a Petitioner’s claims are proper under 28 U.S.C. section 2241 if they concern the continuation or execution of confinement). The U.S. Constitution guarantees that the writ of habeas corpus is “available to every individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004), (citing U.S. Const., Art. I, § 9, cl. 2). This includes immigration-related detention.

*Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (addressing post final-removal order detention under § 1231). *Jennings v. Rodriguez*, 583 U.S. 281, 285–86 (2018) (addressing § 1226 detention, which is more applicable to this instant case as Petitioner does not have a final order of removal).

124. “[H]abeas corpus is, at its core, an equitable remedy,” *Schlup v. Delo*, 513 U.S. 298, 319 (1995), that “[t]he court shall ... dispose of [] as law and justice require,” 28 U.S.C. § 2243. “[T]he court’s role was most extensive in cases of pretrial and noncriminal detention.” *Boumediene v. Bush*, 553 U.S. 723, 779– 80 (2008) (citations omitted). “[W]hen the judicial power to issue habeas corpus properly is invoked the judicial officer must have adequate authority to make a determination in light of the relevant law and facts and to formulate and issue appropriate orders for relief, including, if necessary, an order directing the prisoner’s release.” *Id.* at 787. The Petitioner seeking habeas relief must demonstrate he is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

125. Even if Petitioner was to be released prior to this Court granting relief, “in custody” would still be satisfied because significant restraints short of jail, which include removal proceedings and the

continuous threat of re-detention, satisfy § 2241. See *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).

126. The Court must grant the petition for writ of habeas corpus or order Respondent 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, Respondent must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

127. 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).

#### **B. The Administrative Procedure Act (APA)**

128. The APA authorizes judicial review of final agency action. 5 U.S.C. § 704. The APA sets minimum standards for final agency action.

129. Final agency actions are those (1) that “mark the consummation of the agency’s decisionmaking process” and (2) “by which rights or

obligations have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).

130. ICE’s “Interim Guidance Regarding Detention Authority for Applications for Admission” constitutes a final agency action, making it subject to this Court’s review in the Petitioner’s case. Under this new interpretation, the agency asserts that the Petitioner is subject to mandatory detention without bond. This guidance represents the culmination of ICE’s decision-making process concerning the Petitioner’s custody and is an unlawful interpretation of the INA, contrary to its plain language.

131. Likewise, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is a final agency action subject to this Court’s review in Petitioner’s case.

132. Both the ICE memo referenced herein and *Matter of Yajure Hurtado* led ICE to detain Petitioner in violation of due process rights under the Constitution, statutes, and regulations.

**C. The Accardi Doctrine Requires Agencies to Follow Internal Rules**

133. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. See *United States ex rel. Accardi v.*

*Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); see also *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.”).

134. *Accardi* is not “limited to rules attaining the status of formal regulations.” *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. See *Morton v. Ruiz*, 415 U.S. 199, 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

## XI. CAUSES OF ACTION AND CLAIMS FOR RELIEF

### COUNT ONE

#### Unlawful Detention in Violation of a Binding Federal Court Judgment

135. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

136. Respondents' threatened detention of Petitioner is unlawful because it is predicated on an agency policy that has already been declared illegal and vacated by a federal court in a nationwide class action of which Petitioner is a member. Respondents' continued enforcement of this void policy constitutes a direct violation of a binding federal court judgment.

137. Petitioner is a member of the nationwide "Bond Eligible Class" certified and granted a final judgment *in Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). On December 18, 2025, the U.S. District Court for the Central District of California entered a Final Judgment under Federal Rule of Civil Procedure 54(b) which: a. **DECLARED** that all class members, including Petitioner, are subject to discretionary detention under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b); and b. **VACATED** the underlying ICE policy—the July 8, 2025 "Interim

Guidance Regarding Detention Authority for Applicants for Admission”—finding it unlawful and “not in accordance with law” under the Administrative Procedure Act.

138. A vacated agency policy is a legal nullity. Respondents cannot lawfully threaten to arrest and detain Petitioner based on a policy that a federal court has already rendered void. The *Maldonado Bautista* court entered this final judgment precisely because it was presented with evidence that Respondents were refusing to comply with prior orders, thereby creating a binding and dispositive adjudication of Petitioner’s rights.

139. The doctrine of issue preclusion prevents Respondents—the same government agencies bound by that judgment—from re-litigating the statute’s meaning against Petitioner. Respondents’ threat to detain Petitioner based on this vacated policy is, by definition, an act without legal basis and in defiance of a federal court order. A subsequent bond hearing is an inadequate remedy for a detention that is unlawful from its inception. The only appropriate remedy for a seizure premised on a void policy is an order enjoining it.

**COUNT TWO**

**Statutory Violation of the Immigration and Nationality Act:  
No-Bond Detention in Violation of 8 U.S.C. § 1226(a) and  
Unlawful Detention Under Improper Statutory  
Classification (INA §§ 1225 vs. 1226)**

140. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

141. Since Petitioner is not an applicant for admission “seeking admission” or an “arriving alien” subject to 8 U.S.C. §§ 1225(b)(1) or (b)(2) and has no disqualifying criminal arrests or convictions subject to 8 U.S.C. § 1226(c), Petitioner is entitled to a bond redetermination hearing by an immigration judge pursuant to 8 U.S.C. § 1226(a).

142. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231 (which is not the case with Petitioner).

143. Respondents’ actions, as detailed herein, infringe upon the

Petitioner's statutory right to a bond redetermination hearing before an immigration judge. Additionally, the Respondents' application of § 1225(b)(2) to the Petitioner unlawfully enforces continued detention, contravening both the Immigration and Nationality Act (INA) and the Petitioner's constitutional rights, which will be further addressed below.

144. Petitioner's continued detention under § 1225(b)(2) is therefore unauthorized by statute, contrary to longstanding agency practice, and in violation of the INA and APA.

145. Even if Petitioner was to have a bond hearing before an immigration judge, the judge would likely deny bond based on the same unlawful and novel statutory interpretation outlined in the *Matter of Yajure Hurtado*, as previously discussed. Consequently, even if such a hearing were granted, Respondents would still infringe upon Petitioner's constitutional rights to a full and fair hearing (as immigration judges are no longer neutral arbitrators), thereby violating his lawful right to bond consideration.

**COUNT THREE**  
**Violation of the Fifth Amendment of the U.S. Constitution**  
**Substantive and Procedural Due Process**

**A. Substantive Due Process**

146. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

147. All persons residing in the United States are protected by the Due Process Clause of the Fifth Amendment.

148. The Due Process Clause of the Fifth Amendment provides that “[n]o person shall be ... deprived 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 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). This vital liberty interest is at stake when an individual is subject to detention by the federal government.

149. Under the civil-detention framework set out in *Zadvydas* and its progeny, the Government may deprive a non-citizen of physical liberty only when the confinement serves a legitimate purpose—such as ensuring appearance or protecting the community—and is reasonably related to, and not excessive in relation to, that purpose. Nonpunitive purpose such as preventing danger or flight

and may not be excessive in relation to that purpose. See *Jennings*, 583 U.S. at 300–01; *Demore v. Kim*, 538 U.S. 510, 523 (2003).

150. Immigration detention is civil, not criminal, in nature, and therefore cannot be punitive. There are only two permissible reasons for immigration detention: to avoid flight risk, and to avoid danger to the community. Petitioner’s detention therefore does not bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal.

151. After entering the United States unlawfully, Petitioner went on to develop ties to the community over the course of a long period of time. Petitioner is therefore a “person” within the meaning of the Due Process Clause of the Fifth Amendment to the U.S. Constitution and has a fundamental liberty interest in freedom from physical restraint.

152. Respondents’ actions in detaining Petitioner without a bond hearing before a neutral and detached magistrate deprives Petitioner of various rights and liberty interest without due process of law.

153. Because Respondents had no legitimate, non-punitive objective in detaining Petitioner without bond, Petitioner’s detention violates

substantive due process under the Fifth Amendment to the U.S. Constitution. Continued confinement therefore bears no reasonable, non-punitive relationship to any legitimate aim and is unconstitutionally arbitrary under *Zadvydas*.

**B. Procedural Due Process**

154. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

155. The Fifth Amendment forbids deprivation of liberty without notice and a meaningful opportunity to be heard before a **neutral** decision-maker. The Supreme Court and several circuit courts of appeal have repeatedly affirmed that procedural due process applies to all persons within the United States, including noncitizens, and that civil detention must be accompanied by robust procedural safeguards.

156. In addition to being ultra vires, the novel interpretation of DHS and EOIR of Petitioner's detention under § 1225(b)(2) violates the due process rights of noncitizens like Petitioner by subjecting them to continued mandatory detention solely on the basis of these agencies' wrongful interpretations, without any individualized assessment of flight risk or danger. This automatic and prolonged detention deprives noncitizens of their liberty without adequate

procedural safeguards, contravening the fundamental requirements of due process under the Fifth Amendment.

157. The Supreme Court has repeatedly recognized that civil detention must be accompanied by meaningful process and individualized findings; yet, Respondents are now permitted prolonged detention based on agency **interpretation** rather than judicial determination and legal basis. As a result, noncitizens are forced to remain in custody for an extended period, suffering significant harm and disruption to their lives, without any statutory, regulatory or constitutional justification. This scheme is not only beyond the authority granted by Congress, but also fundamentally unfair and unconstitutional.

158. The Supreme Court states in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976): “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Noncitizens are entitled to due process protections in removal proceedings, including notice and a hearing. *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Due process applies

to all persons within the United States, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

159. To determine whether a civil detention violates a detainee's 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.

160. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976), test to Petitioner's case:

- a. Petitioner's liberty interest is paramount; the risk of erroneous deprivation is extreme considering that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c), is not a flight risk, and does not pose a danger to the community. 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). The right to be free of detention of indefinite duration pending a bail determination, is “without question, a weighty one.” *Landon v. Plasencia*, 459 U.S. at 34, 103 S.Ct. 321. Petitioner is being held at a county jail in the same conditions as criminal inmates, unable to work and is far from his family. At minimum, the government must come forward with concrete, case-specific reasons that outweigh Petitioner’s substantial liberty interest in continued release.

- b. The risk of erroneous deprivation of liberty is significant due to the absence of an independent adjudicator, as highlighted in *Marcello v. Bonds*, 349 U.S. 302, 305-306 (1955). This risk is exacerbated by the coordinated actions of both DHS and EOIR, which operate under a unified approach that effectively denies bond to noncitizens in Petitioner’s situation, thereby unilaterally depriving them of their liberty.

ICE is acting as both the prosecutor as well as the adjudicator. ICE can effectuate long detention periods for Petitioner and others in his situation just because they now interpret Petitioner as being subject to mandatory detention as an “arriving alien” and immigration judges at EOIR are prevented from considering bonds under the same circumstances.

c. Lastly, the interest of the government in being able to invoke the challenged ICE memorandum and novel interpretation and EOIR's *Matter of Yajure Hurtado* is minimal. This is primarily because the interpretation is not supported by the plain reading of the INA, which clearly delineates the circumstances under which noncitizens are subject to mandatory detention. The interpretation also conflicts with existing DHS and EOIR regulations that have historically distinguished between arriving aliens and those apprehended in the interior, providing the latter with the opportunity for bond hearings under 8 U.S.C. § 1226(a). When the government ignores law (and agency breaks its own regulations, policies and procedures), it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law, requiring Respondents to instead follow the law and their regulations reduces fiscal and administrative burdens on the government. Furthermore, the government's interest is further

diminished by the potential constitutional violations that arise from denying noncitizens their due process rights, as the interpretation effectively eliminates the procedural safeguards intended to prevent erroneous deprivation of liberty.

In conclusion, all three *Mathews* factors favor Petitioner's position. The novel DHS and EOIR interpretations violate Petitioner's procedural due process rights under the Fifth Amendment. Collateral harms from detention—including separation from Petitioner's family and friends and Petitioner's ability to maintain employment—further underscore the weight of the private interest and the risk of erroneous deprivation. These are collateral consequences of continued confinement that amplify the ongoing liberty deprivation, are not compensable by money damages, and therefore weigh heavily in the *Mathews* balance and the equitable analysis, without expanding the scope of relief requested.

#### **COUNT FOUR**

#### **Violation of Administrative Procedure Act, 5 U.S.C. § 706**

161. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

162. Respondents' policy and practice of subjecting Petitioner to

mandatory detention under 8 U.S.C. § 1225(b) is a final agency action that is arbitrary, capricious, contrary to constitutional right, and in excess of statutory authority. The Administrative Procedure Act (APA) requires this Court to “hold unlawful and set aside” such agency action. 5 U.S.C. § 706(2). Respondents’ actions violate the APA for several independent reasons.

**A. Agency Action That Is Arbitrary, Capricious, and an Abuse of Discretion (5 U.S.C. § 706(2)(A))**

163. An agency acts in an arbitrary and capricious manner when it departs from its own prior policies without a reasoned explanation, fails to consider important aspects of the problem, or offers an explanation for its decision that runs counter to the evidence before it. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

164. Respondents’ new detention policy is a quintessential arbitrary and capricious action. For decades, Respondents’ own regulations and binding precedent treated noncitizens apprehended in the interior, like Petitioner, as eligible for bond hearings under 8 U.S.C. § 1226(a). See 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). The sudden reversal of this longstanding practice, effected through an internal ICE memo and the BIA’s decision in *Matter of Yajure*

*Hurtado*, was implemented without a reasoned analysis or public justification.

165. In adopting this policy, Respondents failed to consider crucial aspects of the problem, including the significant reliance interests of noncitizens who have lived and worked in the United States for years and the severe hardship that prolonged, mandatory detention imposes on them and their families. *See Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1913-15 (2020) (holding that failure to consider reliance interests renders agency action arbitrary and capricious). Respondents also failed to consider less restrictive and more cost-effective alternatives to detention, such as release on recognizance or electronic monitoring, for a non-dangerous individual like Petitioner.

**B. Agency Action Contrary to Constitutional Right (5 U.S.C. § 706(2)(B))**

166. The APA directs courts to set aside agency action that is “contrary to constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(B).

167. As detailed more fully in Petitioner’s Due Process claims, subjecting Petitioner to mandatory, prolonged detention without

any individualized assessment of his flight risk or potential danger to the community violates his fundamental rights under the Due Process Clause of the Fifth Amendment. Because Respondents' detention policy directly results in an unconstitutional deprivation of liberty, it is "contrary to constitutional right" and must be held unlawful under the APA.

**C. Agency Action in Excess of Statutory Jurisdiction or Authority / Ultra Vires (5 U.S.C. § 706(2)(C))**

168. An agency action is unlawful if it is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right."

5 U.S.C. § 706(2)(C). An agency has no power to act unless and until Congress confers such authority by statute. *FEC v. Cruz*, 596 U.S. 289, 301 (2022).

169. Respondents' re-interpretation of the INA is an *ultra vires* act that exceeds the authority delegated to them by Congress. As established in the Statutory Framework section, 8 U.S.C. § 1225 governs the inspection of "applicants for admission" at the border, while 8 U.S.C. § 1226 governs the detention of noncitizens apprehended in the interior. By misclassifying Petitioner as an "arriving alien" subject to § 1225(b), Respondents have ignored this clear statutory distinction and effectively rewritten the law.

170. Furthermore, Respondents implemented this sweeping policy change through an unpublished internal memorandum, bypassing the notice-and-comment rulemaking requirements of the APA. This attempt to create a binding, substantive rule without following statutory procedures is itself an act in excess of statutory authority.

171. Because Respondents' threatened detention of Petitioner is premised on this unlawful and *ultra vires* interpretation of the INA, the action is "not in accordance with law" and "in excess of statutory jurisdiction." 5 U.S.C. § 706(2)(A), (C). It must be held unlawful and set aside, entitling Petitioner to relief.

**COUNT FIVE**  
**Violation of the *Accardi* Doctrine**

172. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

173. The *Accardi* doctrine mandates that federal agencies must adhere to their own established regulations and policies. This principle ensures that agency actions are consistent, fair, and predictable, thereby safeguarding individual rights. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated agency procedures, rules, or instructions. *See United*

*States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (“If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing”).

174. “[The ambit of the *Accardi* doctrine] is not limited to rules attaining the status of formal regulations.” *Montilla v. Immigr. & Naturalization Serv.*, 926 F. 2d 162, 167 (2d Cir. 1991). Agency rules, whether codified or issued through internal guidance, are binding where they implicate important substantive and procedural rights. See, e.g., *Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 521, 538 (1970) (*Accardi* applies most forcefully where agency rules are “intended primarily to confer important procedural benefits upon individuals in the face of otherwise unfettered discretion”); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 336 (D.D.C. 2018) (ICE bound by internal directive intended to protect noncitizens’ procedural rights). Where these criteria are satisfied, the reviewing court must invalidate agency action or policy violating the agency’s own rules.

175. The recent policy shifts by ICE and EOIR, as outlined in ICE’s July 2025 memorandum and EOIR’s *Yajure Hurtado* decision, violate the *Accardi* doctrine by failing to adhere to established agency regulations and procedures. The *Accardi* doctrine mandates that

federal agencies must follow their own rules and regulations, particularly when these rules are designed to protect individual rights.

176. By reclassifying individuals who entered without inspection apprehended in the interior of the United States as “applicants for admission” or as “arriving aliens” subject to mandatory detention under § 1225(b)(2), ICE and EOIR have disregarded the procedural safeguards and discretionary bond provisions outlined in § 1226(a). ICE’s and EOIR’s reclassification policy effectively nullifies § 1226(a)’s statutory provision by subjecting all noncitizens to mandatory detention, regardless of their actual circumstances. This interpretation is contrary to the plain language of the INA and disrupts decades of settled law, which recognized the distinct legal status and rights of noncitizens apprehended in the interior. This departure from established regulations and legal standards not only contravenes the statutory framework of the INA but also undermines the procedural rights and protections intended to ensure fair and consistent treatment of noncitizens, warranting immediate judicial intervention.
177. The issuance of the ICE memorandum without public notice or comment further exemplifies a breach of procedural norms, as it

was implemented in a manner that bypassed the transparency and accountability required by the APA. Consequently, these actions represent an arbitrary and capricious exercise of agency power, infringing upon the rights of noncitizens and violating the principles enshrined in the *Accardi* doctrine.

178. The policy's blanket application denies noncitizens the due process rights afforded under the Fifth Amendment, which guarantees fair procedures before depriving individuals of their liberty. By eliminating bond eligibility, ICE's policy strips noncitizens of the opportunity to meaningfully contest their detention. This issue is further exacerbated by EOIR's decision in *Yajure Hurtado*, which entrenches this denial of due process by reclassifying noncitizens who entered without inspection as "arriving aliens," thereby subjecting them to mandatory detention without the possibility of bond from immigration judges. Together, these agency actions undermine the statutory and constitutional protections afforded to noncitizens, and therefore, this Court should declare these actions unlawful and set them aside.

**COUNT SIX**  
**Unlawful Arrest**

179. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

180. Petitioner's impending arrest and detention by Respondents constitutes unlawful detention in violation of the Fourth and Fifth Amendments to the United States Constitution, the Immigration and Nationality Act (INA), and applicable regulations.

181. Petitioner would be arrested in the interior of the United States without a warrant, without probable cause, and without exigent circumstances, in violation of the Fourth Amendment and 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(b)(2).

182. The government's threatened warrantless arrest of Petitioner is part of a documented, unlawful pattern of courthouse arrests, as detailed in paragraphs 34-39 of this Petition, designed to circumvent ordinary legal process. This policy of targeting noncitizens for seizure when they appear for their scheduled hearings not only violates the Fourth Amendment's warrant requirement but also separately violates the Due Process Clause of the Fifth Amendment. It functions as a penalty on individuals for accessing the courts and chills their fundamental right to be

heard, creating an unconstitutional choice between appearing in court as required and risking immediate, unlawful seizure. There was no individualized finding or justification to arrest Petitioner in this setting.

### COUNT SEVEN

183. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

184. The Immigration and Nationality Act provides a direct and unambiguous statutory “safe harbor” for individuals with valid Temporary Protected Status (TPS). The statute commands that a person granted TPS “**shall not be removed** from the United States during the period in which such status is in effect.” 8 U.S.C. § 1254a(a)(1)(A) (emphasis added). TPS is a lawful status granted by Congress that insulates its holders from removal.

185. As set forth in paragraphs 31-32, Petitioner has valid TPS. Although Respondent Noem purported to terminate TPS for Petitioner’s country, that termination was vacated as unlawful by the U.S. District Court for the Northern District of California in *National TPS Alliance v. Noem*, No. 3:25-cv-05687-TLT (N.D. Cal. Dec. 31, 2025). As a result, Petitioner’s TPS and his lawful right to remain in the United States are in full effect.

186. Despite this clear congressional mandate, Respondents are actively prosecuting removal proceedings against Petitioner, requiring his appearance at a hearing on January 21, 2026, with the ultimate goal of securing an order of removal against him. Prosecuting removal proceedings against an individual whom Congress has decreed “shall not be removed” is a direct contradiction of the statute’s plain language and defeats its protective purpose.

187. Respondents’ action in prosecuting these removal proceedings against Petitioner is therefore arbitrary, capricious, an abuse of discretion, in excess of statutory jurisdiction and authority, and otherwise not in accordance with law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2). An agency has no authority to pursue the removal of an individual whom Congress has expressly shielded from that very process.

188. Accordingly, Petitioner is entitled to declaratory and injunctive relief terminating the unlawful removal proceedings currently pending against him.

**COUNT EIGHT**

**Declaratory and Injunctive Relief Sought to Prevent Unlawful Application of Expedited Removal Procedures (Violation of INA, 8 U.S.C. § 1225(b)(1), and APA, 5 U.S.C. § 706)**

189. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

190. Respondents threaten to subject Petitioner to expedited removal under 8 U.S.C. § 1225(b)(1) by terminating his pending Section 240 removal proceedings. This threatened action is part of a broader, recently implemented policy of targeting long-present noncitizens for summary removal, a policy that is unlawful as applied to Petitioner.

191. Expedited removal under 8 U.S.C. § 1225(b)(1) is a statutorily limited process that does not apply to Petitioner. By its plain terms, expedited removal applies only to certain “arriving” noncitizens or to designated noncitizens who cannot prove they have been continuously present in the U.S. for two years. Petitioner is not subject to expedited removal for several reasons:

- (a) Having entered the United States over a decade ago and established deep roots in his community, Petitioner is not an “arriving alien” within the plain, temporal meaning of the statute.
- (b) Petitioner is statutorily ineligible for designation under the

“other aliens” provision because he has “affirmatively shown... that the alien has been physically present in the United States continuously for the 2-year period” required by 8 U.S.C. § 1225(b)(1)(A)(iii)(II). (c) Petitioner currently has valid Temporary Protected Status (TPS), a lawful status granted by Congress, which places him far outside the category of individuals for whom the summary process of expedited removal was designed.

192. In *Chirla*, the U.S. District Court for the District of Columbia recently stayed DHS policies that sought to subject paroled noncitizens to expedited removal, finding such actions were likely *ultra vires* and arbitrary and capricious. The court’s statutory analysis is directly applicable here: (a) The court reasoned that the term “arriving” in the expedited removal statute, 8 U.S.C. § 1225(b)(1)(A)(i), refers to the physical act of entry and does not create a perpetual legal status that follows a noncitizen for years after their entry; (b) The court also held that subjecting noncitizens already in the U.S. to expedited removal—thereby stripping them of the procedural protections of a full Section 240 hearing under 8 U.S.C. § 1229a and foreclosing other avenues of relief—causes irreparable harm.

193. The government’s threatened action is identical in substance to the

policies recently stayed in *Chirla* and previously challenged in *Make the Road New York*. It is an attempt to unlawfully re-designate a long-present individual who is already in Section 240 proceedings and subject him to a summary process to which he is not statutorily eligible. This action would strip Petitioner of his right to a full hearing before an immigration judge and his ability to present his claim for Cancellation of Removal.

194. Although the D.C. Circuit denied the government's request for a stay pending appeal in *Chirla*, it did so on the narrow procedural ground that the government had failed to demonstrate irreparable harm from the district court's order. Specifically, the government did not assert that the order precluded it from acting under its purported pre-existing authority in 8 C.F.R. § 1.2 and § 235.3(b)(1)(i). Critically, the appellate court did not reach or disturb the merits of the district court's core statutory analysis. That analysis—that subjecting long-present individuals to expedited removal is likely unlawful—thus remains undisturbed and highly persuasive authority.

195. Accordingly, any attempt by Respondents to terminate Petitioner's Section 240 proceedings and subject him to expedited removal under 8 U.S.C. § 1225(b)(1) would be in excess of statutory

authority, contrary to constitutional right, arbitrary and capricious, and not in accordance with law, in violation of the INA and the APA, 5 U.S.C. § 706(2).

196. Petitioner is therefore entitled to a declaratory judgment that he is not subject to expedited removal and a permanent injunction enjoining Respondents from placing him in such proceedings.

## **XII. APPROPRIATE REMEDY**

197. Given the egregious constitutional and statutory violations underlying Petitioner's impending arrest and detention, the only effective and constitutionally sufficient remedy is an injunction preventing such arrest; and if he is to be detained, immediate and unconditional release. Federal courts possess broad authority under 28 U.S.C. § 2243 to "dispose of the matter as law and justice require," which includes ordering immediate release when detention is found to be unlawful. See *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987); *Rosado v. Figueroa*, 2025 WL 2337099, at \*19 (D. Ariz. Aug. 11, 2025).

198. Even though some cases cited in the ECF 1-2 of the favorable Federal Court cases granted bond hearings to noncitizens who won TROs, PIs and habeas relief, many of those cases and a growing number of decisions granted straight release relief to petitioner in

similar circumstances. In addition, there are several important reasons that include new developments since those cases were decided that warrant a different relief now in this case.

**Bond Hearing Will Require More Detention Time**

199. If the Court orders a bond hearing before an immigration judge, it will take several more days or weeks to schedule a bond hearing, at additional costs to Petitioner, while he remains detained, in a situation where Respondents have not even alleged, yet alone proven, that he is a danger or flight risk. Respondents have not produced a single shred of evidence why he should not be released.

**Bond Hearing Cannot Cure Unlawful Arrest**

200. Petitioner's arrest and continued detention are unlawful from the outset because he was not arrested pursuant to a warrant under § U.S.C. § 1226, as required for interior apprehensions, but was instead detained as a purported "applicant for admission" under § 1225(b)—a provision that, by its terms and longstanding practice, applies only to individuals encountered at the border or a port of entry, not to long-term residents apprehended in the interior. This is not a mere technicality; it is a fundamental statutory violation.

201. In analogous contexts, such as an unlawful arrest without probable cause or a search conducted without a warrant, courts

have consistently held that the only effective remedy is suppression of evidence or outright release from custody. The government cannot retroactively cure an unlawful deprivation of liberty by later manufacturing a post hoc justification or issuing a belated warrant.

### **XIII. CONCLUSION AND PRAYER FOR RELIEF**

Given that Petitioner's threatened detention is unlawful *ab initio*—premised on a misapplication of statute, in defiance of a binding federal court order, and in violation of his constitutional rights—the only effective and constitutionally sufficient remedy is an order enjoining his arrest or, if he is detained, mandating his immediate and unconditional release. A subsequent bond hearing cannot cure an arrest that is illegal from the moment it occurs. Federal courts possess broad authority under 28 U.S.C. § 2243 to “dispose of the matter as law and justice require,” which in this case compels the preservation of Petitioner's liberty. See *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987).

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

- (1) GRANT the Petition for Writ of Habeas Corpus;
- (2) ENJOIN Respondents from detaining Petitioner in his upcoming hearing on January 21, 2026 and throughout the course of this litigation;
- (3) DECLARE that any arrest under 8 U.S.C. § 1225(b)(2) is unlawful;
- (4) If he is to be detained, ORDER Petitioner's immediate and unconditional release from custody;
- (5) ENJOIN Respondents from re-detaining Petitioner unless he has committed a new violation of any federal, state, or local law, or have failed to attend any properly noticed immigration or court hearing or are subject to detention pursuant to a final order of removal;
- (6) DECLARE that Petitioner is not an "arriving alien" or "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b), and that their detention is governed by 8 U.S.C. § 1226(a);
- (7) DECLARE that Respondents lack statutory authority to subject Petitioner to expedited removal under 8 U.S.C. § 1225(b)(1), and ENJOIN Respondents from placing Petitioner into, re-processing him through, or executing any order of

removal against him pursuant to the expedited removal procedures of 8 U.S.C. § 1225(b)(1);

- (8) AWARD Petitioner reasonable attorneys' fees and costs incurred in this action; and
- (9) GRANT such other and further relief as this Court deems just, proper or equitable under the circumstances.

Respectfully Submitted,

This 15<sup>th</sup> day of January, 2026.

/s/ Karen Weinstock  
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**28 U.S.C. § 2242 VERIFICATION STATEMENT**

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with Petitioners and have reviewed various documents for Petitioner. On the basis of those discussions, I hereby verify that I have reviewed the foregoing Petition and that the facts and statements made in this Petition and Complaint are true and correct to the best of my knowledge or belief pursuant to 28 USC § 2242.

This 15<sup>th</sup> day of January, 2026.

/s/ Karen Weinstock  
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