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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

Luis NAVA ORDUNO, Petitioner, v. Jason STREEVAL, *in official capacity* as Warden of Stewart Detention Center; George STERLING, *in his official capacity* as Deputy Field Office Director of the Atlanta Field Office, U.S. Immigration and Customs Enforcement; Todd LYONS, *in his official capacity* as Acting Director of U.S. Immigration and Customs Enforcement; Kristi NOEM, *in her official capacity* as Secretary of U.S. Department of Homeland Security; Pamela BONDI, *in her official capacity* as Attorney General of the United States; and Daren MARGOLIN, Director for Executive Office for Immigration Review, Respondents.	C/A No. PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF **HEARING REQUESTED** **A #** [redacted]

INTRODUCTION

1. Petitioner-Plaintiff ("Petitioner") ([redacted]) is a native and citizen of Mexico who entered the United States without inspection in about 2000 when he was only 11 years old and has not departed the country since then.
2. Petitioner previously was granted Deferred Action for Childhood Arrivals (DACA) but was unable to renew I-821D application in addition to the expenses of caring for his six United States-citizen children. He prioritized his children and delayed his own application. When he finally had the money to pay the filing fee to renew his DACA, the United States Citizenship and Immigration Service (USCIS) stopped processing initial DACA requests (which is what his late filing would fall under).
3. Petitioner is seeking relief in Immigration Court under an I-589 asylum application and an EOIR 42-B application for cancellation of removal as someone in the United States for more than the past ten years whose six United States-citizen children would suffer exceptional and extremely unusual hardship if he is unable to remain in the United States.
4. On information and belief, U.S. Immigration and Customs Enforcement agents apprehended Petitioner when they raided his workplace at Sherman Williams in Loganville, Georgia. On about December 3, 2025, the U.S. Department of Homeland Security (DHS) issued a Notice to Appear (NTA) charging Petitioner as removable under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA) as noncitizen present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, and under section 212(a)(7)(A)(i)(I), as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or

other suitable travel document. *See* Exhibit C, Notice to Appear.

5. Petitioner is currently detained at the Stewart Detention Center, 146 CCA Road, Lumpkin, Georgia 31815. *See* ICE Detainee Locator Results, Exhibit A.

6. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision that unlawfully reinterpreted the Immigration and Nationality Act (' INA"). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Prior to this decision, noncitizens like Petitioner who had lived in the U.S. for many years and were apprehended by ICE in the interior of the country were detained pursuant to 8 U.S.C. § 1226(a) and eligible to seek bond hearings before Immigration Judges ("IJs"). Instead, in conflict with nearly thirty years of legal precedent, Petitioner is now considered subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and has no opportunity for release on bond while his removal proceedings are pending.

7. Petitioner has already slogged through a mess of government disorganization and mismanagement to get to the point of obtaining a denial of bond hearing under the *Yajure Hurtado* Board of Immigration Appeals (BIA) case. On December 3, 2025, Petitioner's immigration counsel requested that he be released on bond through a custody redetermination under 8 C.F.R. § 1236. The Immigration Court dismissed the action on December 9, 2025, when DHS failed to produce Petitioner for the bond proceedings and order DHS to produce respond at a new hearing to be scheduled upon Petitioner re-filing the request for bond hearing. On December 12, 2025, Petitioner again requested a bond hearing. The Immigration Court again dismissed the action on December 16, 2025, when DHS for the second time failed to produce Petition for the bond hearing before the Immigration Court that day. On December 18, 2025, Petitioner again requested a bond

hearing. On December 23, 2025, the Immigration Court was unable to connect to the detention center due to a technical problem and Counsel opted to waive Petitioner's presence for this third failure by the United States government to have the Petitioner who was in their custody present at his own hearing.

8. On December 23, 2025, the Immigration Judge denied the request for bond, holding he lacked jurisdiction under the BIA case of *Yajure Hurtado*.

9. On December 24, 2025, Petitioner appealed the Immigration Judge's decision to the Board of Immigration Appeals.

10. Petitioner's detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who has resided in the U.S. for more than 25 years and who was apprehended in the interior of the U.S., should not be considered an "applicant for admission" who is "seeking admission." Rather, he should be detained pursuant 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond.

11. Petitioner seeks declaratory relief that he is subject to detention under § 1226(a) and its implementing regulations and asks that this Court either order Respondents to release Petitioner from custody or provide him with a bond hearing.

12. Importantly, this Court has already found that individuals like Petitioner are eligible for bond because they are detained pursuant to § 236(a), and thus it ordered immigration courts subject to this court's jurisdiction to hold bond hearings to determine whether such individuals are eligible for discretionary bond. *J.A.M. v. Streeval*, No. 4:25- CV-342 (CDL), 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025).

13. In a familiar and frankly disturbing pattern, DHS again failed to produce Petitioner for his hearing, this time on his removal proceedings, before the Immigration Court on January 8,

2026. Petitioner's wife has also been unable to reach her husband in detention this past week, receiving a message that he is not in the system for calls despite the ICE Detainee Locator showing him to be located at Stewart.

CUSTODY

14. Petitioner is currently in the custody of Immigration and Customs Enforcement ("ICE") at the Steward Detention Center in Lumpkin, Georgia. *See* ICE Detainee Locator Results, Exhibit A. He is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

15. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.*

16. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

17. Petitioner is presently in custody under color of the authority of the United States and challenges his custody as in violation of the Constitution, laws, or treaties of the United States.

18. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

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

20. Petitioner is "in custody" for the purpose of § 2241 because Petitioner was arrested and detained by Respondents.

VENUE

21. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because Petitioner is currently detained in Lumpkin, Georgia, at the Stewart Detention Center. *See* Exhibit A.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

22. Administrative exhaustion is unnecessary as it would be futile. *See, e.g., Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999).

23. It would be futile for Petitioner to seek a custody redetermination hearing before an IJ because of the BIA recent decision holding that anyone who has entered the U.S. without inspection is now considered an "applicant for admission" who is "seeking admission" and therefore subject to mandatory detention under § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *see also Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in *Yajure Hurtado* renders exhaustion futile). Petitioner sought a bond determination and Immigration Judge

Attila Bogdan refused him bond on November 20, 2025, finding that he lacked jurisdiction to review the issue of bond eligibility. *See* Decision of Immigration Judge, Exhibit E. Petitioner has appealed the Immigration Judge's decision to the Board of Immigration Appeals.

24. Additionally, the agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

PARTIES

25. Petitioner is a citizen and national of Mexico and has resided in the U.S. since 2000. He is currently detained at the Stewart Detention Center in Lumpkin, Georgia. ICE has held him in custody since the beginning of December 2025. He is not subject to a final order of removal. He has been categorically denied access to a bond hearing under the DHS July 2025 policty and BIA decision in *Yajure Hurtado* that immigration judges no longer have jurisdiction to redetermine custody for individuals like Petitioner.

26. Respondent Jason Streeval is the warden of the Stewart Detention Center and controls the detention center where Petitioner is confined under the authority of ICE. Mr. Streeval has direct physical custody of Petitioner and is his immediate custodian. Mr. Streeval is sued in his official capacity.

27. Respondent George Sterling is the Acting Director of ICE's Atlanta Field Office, which has jurisdiction over ICE detention facilities in Georgia, including the Stewart Detention Center. He exercises authority over Petitioner's detention and is sued in his official

capacity.

28. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

29. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.

30. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

31. Respondent Daren Margolin is the Director of the Executive Office for Immigration Review (EOIR). He has ultimate responsibility for overseeing the operation of the immigration courts and the BIA, including the conduct of bond hearings. Director Margolin is sued in his official capacity.

FACTS

32. Petitioner is a native and citizen of Mexico who entered the United States without inspection more than 25 years ago. Since that time, he has made his life in this country. He is the father of six U.S. citizen children.

33. On or about December 3, 2025, immigration officials detained Petitioner. He was transferred to the Irwin County Detention Center and has remained in custody since that date. He was recently transferred to the Stewart Detention Center where he currently remains.

34 Petitioner has no criminal convictions that render him ineligible for bond. He has never been convicted of any crime that would subject him to mandatory detention under INA §

236(c). He is not subject to a final order of removal.

35. Historically, individuals like Petitioner, long-time residents apprehended in the interior of the United States and charged as inadmissible for entering without inspection—were detained under INA § 236(a), 8 U.S.C. § 1226(a), which provides for release on bond or conditional parole.

36. In July 2025, however, DHS adopted a new policy instructing that all noncitizens inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) are to be detained under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), and deemed ineligible for bond.

37. On September 5, 2025, the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting DHS's position and holding that noncitizens present in the United States without inspection are "applicants for admission" subject to mandatory detention under § 235(b)(2)(A).

38. As a result of this policy and decision, Immigration Judges lack jurisdiction to conduct custody redeterminations for individuals like Mr. He has been categorically denied the opportunity to seek bond, despite his long residence in the United States, his strong family ties, and his minimal record.

39. Federal district courts across the country, including this Court, have rejected DHS's new interpretation of § 235(b)(2), finding instead that detention of long-time residents like Mr. must proceed under § 236(a). Nonetheless, ICE continues to hold him without access to a bond hearing.

LEGAL BACKGROUND AND ARGUMENT

40. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.

41. First, individuals detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a bond

hearing, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (immigration judges may review custody determinations made by DHS), 1236.1(d) (same).

42. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) as well as other recent arrivals deemed to be "seeking admission" under § 1225(b)(2).

43. Third, the INA authorizes detention of noncitizens who have received a final order of removal, including those in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

44. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208. Div. C, §§ 302-03, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

45 Following the enactment of the IIRIRA, the U.S. Department of Justice's Executive Office of Immigration Review ("EOIR") drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite 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").

46. Thus, in the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an Immigration Judge ("IJ"), unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

47. For decades, long-term residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.

48. In July 2025, however, ICE began asserting that all individuals who entered without inspection should be considered "seeking admission" and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

49. On September 5, 2025, the BIA issued a precedential decision adopting this interpretation, departing from the INA's text, federal precedent, and existing regulations. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

50. Defendants' new legal interpretation is plainly contrary to the statutory framework and its implementing regulations. Indeed, for decades, Defendants had applied § 1226(a) to people like the Petitioner. Defendants' new policies are thus not only contrary to law, but are also arbitrary and capricious in violation of the Administrative Procedure Act ("APA"). They

were also adopted without complying with the procedural requirements of the APA.

51. This Court has already determined that individuals like Petitioner were detained pursuant to § 1226(a) and therefore eligible for bond, thus ordering bond hearings in those cases. *See J.A.M. v. Streeval,* No. 4:25- CV-342 (CDL), 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025).

52. Numerous other federal courts have also rejected DHS's interpretation and instead have consistently found that § 1226, not § 1225(b)(2), authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country. *See e.g.*, *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court's disagreement with BIA's analysis in *Yajure Hurtado*); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025); *see also Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC) (E.D. Cal. Sept. 23, 2025), attached hereto as Exhibit F, *Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM (M.D. Fla. Sept. 25, 2025), attached hereto as Exhibit G, and *Chafla v. Scott*, No. 2:25-cv-00437-SDN (D. Maine Sept. 21, 2025), attached hereto as Exhibit H.

53. Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, this Court should independently interpret the statute and give the BIA's expansive interpretation of § 1225(b)(2) no weight, as it conflicts with the statute, regulations, and precedent. 603 U.S. 369 (2024).

54. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal

Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Following IIRIRA, the Executive Office for Immigration Review ("EOIR") issued regulations clarifying that individuals who entered the country without inspection were not considered detained under § 1225, but rather under § 1226(a). *See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite 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").

55. The statutory context and structure also make clear that § 1226 applies to individuals who have not been admitted and entered without inspection. In 2025, Congress added new mandatory detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted. *See* The Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025) (8 U.S.C. § 1226(c)(1)(E)).

56. By specifically referencing inadmissibility for entry without inspection under 8 U.S.C. § 1182(6)(A), Congress made clear that such individuals are otherwise covered by § 1226(a). Thus, § 1226 plainly applies to noncitizens charged as inadmissible, including those present without admission or parole.

57. The Supreme Court has explained that § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 297, 2987 (2018). In contrast, Section

1226 "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Id.* at 289 (emphases added).

58. Furthermore, § 1225(b)(2) specifically applies only to those "seeking admission," and the implementing regulations at 8 C.F.R. § 1.2 address noncitizens who are "coming or attempting to come into the United States." The use of the present progressive tense would exclude noncitizens like Petitioner who are apprehended in the interior years after they entered, as they are no longer "seeking admission" or "coming [...] into the United States." *See Martinez v. Hyde*, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); *see also Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing "is arriving" in INA § 235(b)(1)(A)(i) and observing that "[t]he use of the present progressive, like use of the present participle, denotes an ongoing process").

59. This approach is consistent with Eleventh Circuit precedent. In *Ortiz-Bouchet v. U.S. Att'y General*, 714 F.3d 1353 (11th Cir. 2013), the court held that noncitizens already present in the United States seeking to adjust status were not "applicants for admission." The Supreme Court has likewise recognized that mandatory detention under § 1225(b) applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is inadmissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner, who had entered the U.S. more than six years ago.

COUNT I
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

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

61. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

62. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

63. Petitioner has not been, and will not be, provided with a bond hearing as required by law.

64. Petitioner's continuing detention is therefore unlawful.

COUNT II
Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19 Unlawful Denial of Release on Bond

65. Petitioner restates and realleges paragraphs 1 to 64 as if fully set forth here.

66. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service ("INS") issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

67. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III
Violation of the Administrative Procedure Act Contrary to Law and Arbitrary and Capricious Agency Policy

68. Petitioner restates and realleges paragraphs 1 to 67 as if fully set forth here.

69. Mandatory detention under § 1225(b)(2) does not apply to long-time residents apprehended in the interior of the United States. Such noncitizens, including Petitioner are detained under § 1226(a) and eligible for release on bond.

70. Respondents' application of § 1225(b)(2) to Petitioner contradicts the statutory scheme and departs from decades of consistent agency interpretation. This policy is arbitrary, capricious, and not in accordance with law, in violation of the APA, 5 U.S.C. § 706(2)(A).

COUNT IV
Violation of the Administrative Procedure Act
Failure to Observe Required Procedures

71. Petitioner restates and realleges paragraphs 1 to 70 as if fully set forth here.

72. Under the APA, a reviewing court must set aside agency action "without observance of procedure required by law." 5 U.S.C. § 706(2)(D). The APA requires agencies to engage in public notice-and-comment rulemaking before promulgating new rules or amending existing ones. 5 U.S.C. § 553(b), (c).

73. Respondents failed to comply with the APA by adopting and enforcing a new policy that reclassified individuals like Petitioner as subject to mandatory detention under § 1225(b)(2), without any rulemaking, notice, or opportunity to comment. This unlawful departure from prior regulations violates the APA..

COUNT V
Violation of the Fifth Amendment
Due Process

74. Petitioner restates and realleges paragraphs 1 to 73 as if fully set forth here.

75. Under the Fifth Amendment of the Constitution, no person shall be deprived of liberty without due process of law. Freedom from imprisonment and government custody lies at the core of the liberty protected by the Due Process Clause. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The protections of the Due Process Clause extend to all persons within the United States, regardless of immigration status. *Id.* at 693.

76. Respondents' detention of Mr. under § 1225(b)(2), without the possibility of release on bond or a meaningful custody redetermination, violates his right to due process under the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

1. Assume jurisdiction over this matter;

2. Order Respondents to show cause why the writ should not be granted within **three days**, pursuant to 28 U.S.C. § 2243;

3. Grant a writ of habeas corpus declaring that Petitioner's detention is governed by INA § 236(a), 8 U.S.C. § 1226(a), and ordering Respondents to provide him with an immediate bond hearing before an Immigration Judge applying § 236(a);

4. In the alternative, order Petitioner's immediate release from custody under reasonable conditions of supervision if Respondents fail to provide such a bond hearing within a reasonable period of time;

5. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under chapter 153 (habeas corpus) of Title 28;

6. In the event the Court determines a genuine dispute of material fact exists regarding Petitioner's entitlement to habeas relief, schedule an evidentiary hearing pursuant to 28 U.S.C. § 2243;

7. Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Petitioner;

8. Declare that Petitioner's detention violates the INA;

9. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

10. Declare that Petitioner's detention is arbitrary, capricious, and in violation of the Administrative Procedure Act;

11. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

12. Grant such further relief as this Court deems just and proper.

Dated: January 15, 2026

Respectfully submitted,

/s/ Danielle M. Claffey

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

I represent the Petitioner, Luis Nava Orduno, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Dated this 15th day of January, 2026.

/s/ Danielle M. Claffey