

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT ALABAMA

MARIA ESTELA TETLA MARTINEZ)
)
 Petitioner,)
)
 vs.)
)
 SCOTT BYRD, *Sheriff, Coffee County*)
Detention Center;)
 MELLISSA HARPER, *ICE New Orleans*)
Field Office Director;)
 TODD LYONS, *in his official capacity as Acting*)
Director of Immigration and Customs)
Enforcement; and)
 KRISTI NOEM, *Secretary of Homeland Security*)
 And PAMELA BONDI, *U.S. Attorney General.*)
)
 Respondent.)

CASE NO.:
1:26-cv-00045-BL

PETITIONER’S RESPONSE TO THE GOVERNMENT’S OPPOSITION TO THE TRO

I. PRELIMINARY STATEMENT

Petitioner Maria Estela Tetla Martinez respectfully submits this reply to Respondents’ Opposition (Doc. 16) to her Petition for a Writ of Habeas Corpus and Emergency Motion for a Temporary Restraining Order. Respondents’ opposition rests on factual misstatements, overbroad readings of 8 U.S.C. § 1252(a)(5), (b)(9), and (g), and a detention theory—treating long-term interior residents as § 1225 “arriving aliens” subject to mandatory detention—that has been rejected by courts across the country and that has been VACATED under the Administrative Procedure Act in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). Petitioner’s confinement is unlawful at every stage: it began with a statutorily non-compliant warrantless arrest that violated the Fourth Amendment and the

Immigration and Nationality Act (INA), and it is now perpetuated under the wrong statute—8 U.S.C. § 1225, a border-inspection provision that does not apply to a noncitizen apprehended in the interior after nearly twenty-four years of residence.

As a preliminary matter, the Respondents utterly failed to comply with the Court’s order to show cause as to why the Petitioner’s writ should not be granted as specified in Section 5 of the Court’s Order from January 26th, 2026. ECF 10. Therefore, Petitioner must be released from her unlawful detention.

Respondents’ jurisdictional challenges are equally unfounded. Once Petitioner’s state charges were dismissed on January 22, 2026, the Coffee County Sheriff held her solely on ICE’s detainer, acting as ICE’s agent; she was in constructive federal immigration custody, and the immediate-custodian rule is therefore satisfied. The INA’s channeling provisions do not strip this Court of its core habeas authority under 28 U.S.C. § 2241 to review the legality of detention: 8 U.S.C. § 1252(g) is a “narrow” bar limited to the three discrete actions identified in *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999), and §§ 1252(a)(5) and (b)(9) channel review of final removal orders to the courts of appeals but, as construed in *Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018), *I.N.S. v. St. Cyr*, 533 U.S. 289, 314 (2001) as will be explained herein.

Reading § 1252 to foreclose any forum for pre-order detention claims like Petitioner’s would raise serious Suspension Clause concerns, which this Court must avoid where a “fairly possible” alternative construction preserves habeas review. *See St. Cyr*, 533 U.S. at 299–300. Nor should the Court require exhaustion: under 28 U.S.C. § 2241 exhaustion is prudential, not jurisdictional, and is excused where, as here, binding BIA precedent (*Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025)) and ICE’s own classification of Petitioner under § 1225 make

any request for bond a futile gesture, and where the agency lacks authority to resolve Petitioner's constitutional claims.

Because Petitioner's seizure and ongoing confinement violate the INA, the APA, the *Accardi* doctrine, and the Fourth and Fifth Amendments, she is likely to succeed on the merits; her continuing loss of physical liberty and separation from her three U.S.-citizen children constitute classic irreparable harm; and both the balance of equities and the public interest strongly favor enforcing statutory and constitutional limits on immigration detention. Under 28 U.S.C. § 2243, this Court should therefore order her immediate and unconditional release. In the alternative, at a minimum, the Court should require an expedited bond hearing under 8 U.S.C. § 1226(a), to be held within forty-eight hours, at which the **government bears the burden of proving by clear and convincing evidence** that any continued detention is necessary based on individualized findings of flight risk or danger.

II. STANDARD OF REVIEW

This Court has fundamental authority to review the legality of Petitioner's detention under the federal habeas corpus statute, 28 U.S.C. § 2241. Federal courts have a virtually unflagging obligation to exercise the jurisdiction granted to them, and habeas corpus is the primary instrument for challenging unlawful civil detention. In adjudicating a § 2241 petition, the Court reviews questions of law and statutory interpretation *de novo*. Exhaustion of administrative remedies in § 2241 immigration detention cases is a **prudential** doctrine rather than a **jurisdictional** bar, and may be excused where remedies are inadequate or futile. The Court is empowered to "dispose of the matter as law and justice require," which includes the authority to order a petitioner's immediate release.

To obtain a temporary restraining order or preliminary injunction, Petitioner must establish: (1) a substantial likelihood of success on the merits; (2) that she will suffer irreparable

injury if the injunction is not granted; (3) that the threatened injury to her outweighs whatever damage the proposed injunction may cause Respondents; and (4) that, if issued, the injunction would not be adverse to the public interest. Given that this action involves the deprivation of physical liberty, the irreparable harm is manifest. Deprivations of bodily liberty and ongoing constitutional violations are routinely treated as irreparable injuries in the preliminary-injunction context.

III. STATEMENT OF RELEVANT FACTS

Respondents' opposition brief misstates and omits critical facts. Petitioner is a 47-year-old mother of three U.S. citizen children who has resided in Enterprise, Alabama, for nearly 24 years. **She has no criminal history.** Her adult child, a member of the U.S. Marines, has filed a family-based petition and a Parole-in-Place application on her behalf. Petitioner has lived continuously in Enterprise, Alabama, supporting and caring for her U.S. citizen children.

On October 25, 2025, local police arrested Petitioner for an alleged domestic violence incident, and she was detained at the Coffee County Jail. That same day, ICE lodged an immigration detainer against her. This habeas petition was filed on January 21, 2026, while Petitioner was held at the **Coffee County Jail** and before she had ever been placed in removal proceedings or subjected to any removal order.

The most critical event, which Respondents' jurisdictional argument obscures, occurred on **January 22, 2026, when the state charges against Petitioner were dismissed.** From that moment forward, the State of Alabama had no legal basis to hold her, and the sole cause of her continued imprisonment at the Coffee County Jail was the federal ICE detainer. As of that date, Coffee County Sherriff or Jailer was holding Petitioner exclusively at ICE's behest—functioning as an agent of ICE for immigration purposes—which is central to the custody and immediate-custodian analysis under 28 U.S.C. § 2241.

Two days later, on January 24, 2026, ICE officers took physical custody of Petitioner from the Coffee County Jail. She was processed at the Montgomery ERO suboffice, transferred to the Pickens County Jail, and served with a Notice to Appear (NTA) charging her as removable under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) and directing her to appear before an Immigration Judge in Basile, Louisiana, on February 5, 2026. ICE intends to transfer Petitioner out of Alabama to Louisiana for those proceedings, physically removing her from her community and from the district where this habeas action was filed.

Since her arrest on October 25, 2025, Petitioner has been separated from her three U.S. citizen children, including her Marine child who depends on her emotional and practical support. Her detention has caused severe emotional and financial strain on the family and has disrupted the stability of a household that had been rooted in Enterprise, Alabama, for nearly 24 years. Petitioner has no criminal convictions and strong community ties, and absent injunctive relief she will be transferred far from her home, her children, and her retained counsel to a remote detention facility in Louisiana, significantly impairing her ability to participate meaningfully in her immigration proceedings and to pursue this habeas action.

Respondents' counsel incorrectly asserts that ICE is "not treating Ms. Martinez as an 'arriving alien.'" This claim is directly contradicted by the sworn declaration of Assistant Field Office Director Francisco J. Ayala, which Respondents submitted as evidence. ECF 16-1. AFOD Ayala declares under penalty of perjury that "Petitioner was detained pursuant to Section 235 of the INA [8 U.S.C. § 1225], under which aliens who are present in the United States who have not been admitted are considered applicants for admission." This admission confirms that Respondents are, in fact, applying the § 1225 mandatory-detention framework for "applicants for admission" and "arriving aliens" to Petitioner, an individual apprehended in the **interior** of the United States,

and it is precisely this § 1225 classification that forecloses bond jurisdiction before an Immigration Judge under *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and drives both the futility of administrative exhaustion and the core statutory dispute in this case.

IV. THE COURT HAS HABEAS JURISDICTION

Respondents' primary argument—that this Court lacks jurisdiction because ICE was not Petitioner's "immediate custodian" at the moment of filing—disintegrates upon contact with the facts and the equitable principles governing habeas corpus. While Respondents correctly cite the general rule from *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that a "core" habeas petition ordinarily names the jailer who holds the petitioner, and Eleventh Circuit precedent holding that an ICE detainer alone does not establish custody over a prisoner serving an **independent criminal sentence**, their application of these authorities to this case is fatally flawed. The cases they rely on, such as *Orozco v. United States INS*, 911 F.2d 539 (11th Cir. 1990), and *Louis v. Sec'y, Fla. Dep't of Corrs.*, 524 F. App'x 583 (11th Cir. 2013), involved petitioners indisputably "in custody" **on underlying state sentences**, where the detainer operated only as a notice of **future** interest, not as the **present basis for confinement**. Here, by contrast, the State's authority to detain Petitioner evaporated entirely the day after this Petition was filed, on January 22, 2025, when all charges against her were dismissed and she was free from state custody. At that point in time, Coffee County thereafter held her solely because ICE required it. Once jurisdiction attached in this District while Petitioner was confined here, subsequent transfer to ICE custody in Pickens County cannot retroactively defeat that jurisdiction.

A. Petitioner Was in Constructive Federal Custody After Her State Charges Were Dismissed

On January 21, 2026, when this Petition was filed, Petitioner was held in the Coffee County Jail. On January 22, 2026, the state charges against her were dismissed. From that moment forward, the State of Alabama had no legal basis to continue her confinement; the sole and exclusive reason

for her continued imprisonment by the Coffee County Sheriff was the federal immigration detainer lodged by ICE, and she was being held so that ICE could assume and exercise immigration custody over her.

At that point, the Sheriff's legal role transformed. He was no longer a **state** custodian enforcing state criminal law; he became, in practical effect, a jailer holding Petitioner for ICE pursuant to **federal** immigration authority. Her custody was, in substance and effect, federal immigration custody, even though she remained housed in a county facility. To argue otherwise is to ignore reality. The federal government, acting through its state agent, became Petitioner's functional custodian, ordering Coffee County Sheriff not to release her, rendering Respondents' jurisdictional challenge baseless. Under *Padilla*, the Coffee County Sheriff was an appropriate immediate custodian when this action was filed because he was the official with day-to-day control over Petitioner's body in this District, and once ICE assumed physical custody on January 24, 2026, any arguable defect was cured while the case was pending; later transfer to Pickens County does not strip this Court of jurisdiction to adjudicate a petition properly filed while Petitioner was confined within its territorial reach. In any event, DHS Secretary Noem is Petitioner's **ultimate custodian**, and she is also a named Respondent in this Petition.

B. The Government's Precedent is Inapplicable to a Detention Based Solely on an ICE Hold

The government's reliance on *Orozco v. United States INS*, 911 F.2d 539 (11th Cir. 1990), and *Louis v. Sec'y, Fla. Dep't of Corrs.*, 524 F. App'x 583 (11th Cir. 2013), is misplaced. In those cases, the petitioners were serving independent, valid criminal sentences when the immigration detainer was lodged for the future, and the Eleventh Circuit held that the detainer did not itself place them "in custody" of the immigration agency for habeas purposes because it functioned only as a notice of future interest; their confinement rested entirely on their criminal judgments. In that

context, the detainer was *contingent*. Here, by contrast, once the state charges were fully dismissed on January 22, 2026, the ICE detainer was no longer contingent—it became the direct and immediate cause of Petitioner’s continued confinement in the Coffee County Jail, because there was no longer any independent state basis to hold her. Nothing in *Orozco* or *Louis* suggests that a person with no pending criminal charges, held solely under an ICE detainer, is beyond the reach of habeas review; those decisions simply recognize that a detainer does not alter a prisoner’s pre-existing criminal sentence.

This exact scenario—local confinement based solely on immigration authority—has been addressed by numerous federal courts, which have consistently exercised habeas jurisdiction. In the recent and factually analogous case decided this week, *Javier Gimenez Rivero v. Sheriff John Mina*, No. 6:26-cv-66-RBD-NWH, 2026 WL 199319 (M.D. Fla. Jan. 26, 2026), the petitioner was arrested by local officers and held for days in a county jail solely on an ICE detainer without any state charges. See Exhibit 1. The court soundly rejected the government’s jurisdictional arguments, holding that the detention claim was not barred by 8 U.S.C. § 1252(g) and affirming that it is “well-settled that courts have habeas jurisdiction to consider ‘challenges to the lawfulness of immigration-related detention.’” *Id.* at 2 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001)). The Eleventh Circuit has likewise explained that § 1252(g) “does not proscribe substantive review of the underlying legal bases” for an alien’s detention. *Madu v. U.S. Att’y Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006). After January 22, 2026, Petitioner’s situation—detained in a county jail solely because of ICE’s actions, with no pending state charges—was materially identical to that of *Gimenez Rivero*.

To accept Respondents’ argument would be to endorse a legal fiction that creates an unconstitutional black hole. An individual with no pending state charges could be held indefinitely

in a local jail at ICE's behest, yet be unable to challenge that federal detention in federal court because her immediate jailer is a county sheriff. Nothing in *Orozco* or *Louis* supports such a jurisdictional vacuum; those cases turned on the fact that the petitioners remained in custody on their criminal sentences and were not yet in immigration custody at all. Such a result here would effectively nullify the Great Writ in the very context where it is most needed and cannot be what Congress or the Supreme Court intended. The brief, one-day period between the filing of the petition and the dismissal of state charges is a technicality that cannot defeat this Court's fundamental jurisdiction to remedy an ongoing unlawful detention. Law and justice require the Court to look at the substance of the detention, which became purely federal on January 22, 2026—when the ICE detainer became the sole basis for confinement and ICE assumed full control over Petitioner's custody—thereby perfecting jurisdiction while this action was pending, and subsequent transfer to ICE custody in Pickens County confirms rather than defeats that jurisdiction.

V. THE GOVERNMENT'S §1252/CHANNELING ARGUMENTS FAIL

Respondents' attempt to shield their unlawful actions from judicial review by invoking the INA's jurisdiction-stripping provisions is unavailing. These provisions, found in 8 U.S.C. § 1252, are narrowly tailored to channel judicial review of final removal orders to the courts of appeals; they do not divest this Court of its core habeas jurisdiction under 28 U.S.C. § 2241 to adjudicate the lawfulness of pre-order detention. As courts have recognized, § 1252 speaks in terms of "judicial review" of removal orders and related discretionary decisions, a term historically associated with petition-for-review, non-habeas review under the Hobbs Act, and Congress did not "speak with sufficient clarity to bar jurisdiction pursuant to the general habeas statute." See *I.N.S. v. St. Cyr*, 533 U.S. 289, 312–14 (2001). As the Supreme Court also held in *Jennings v.*

Rodriguez, 583 U.S. 281 (2018), these provisions do not bar statutory and constitutional challenges to the framework of immigration detention itself.

First, the government’s argument that 8 U.S.C. § 1252(g) strips this Court of jurisdiction is misplaced. Both the Supreme Court and numerous circuit courts have consistently rejected such an overly broad interpretation. In *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999), the Supreme Court clarified that § 1252(g) is a “narrow” provision, not a “zipper” clause, and applies only to “three discrete actions” of the Attorney General: the decision “to commence proceedings, adjudicate cases, or execute removal orders,” which are **discretionary**. This interpretation was emphatically reaffirmed in *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018), which held that § 1252(g) “refers only to the three specific actions themselves, not to any claim that can technically be said to ‘arise from’ those actions.”

Petitioner’s claim falls squarely outside this narrow bar. He does not challenge the discretionary decision to commence proceedings or execute a removal order; rather, he challenges the legality of his present physical confinement. Such a challenge is considered a collateral matter, independent of the three enumerated actions.

The circuit courts are in wide agreement on this point. The Second Circuit, for example, has held that the government “dramatically overstates the reach of § 1252(g)” and that habeas petitions challenging unlawful detention are “independent of, and collateral to, the removal process.” *Mahdawi v. Trump*, 136 F.4th 443, 450 (2nd Cir. 2025); *see also Ozturk v. Hyde*, 136 F.4th 382, 397 (2nd Cir. 2025). Similarly, the First Circuit has explained that § 1252(g) is “directed against attempts to impose judicial constraints upon prosecutorial discretion” and does not reach detention claims, noting that a broader interpretation would raise “serious constitutional concerns under the Suspension Clause.” *Kong v. United States*, 62 F.4th 608, 612 (1st Cir. 2023).

The Sixth Circuit agrees, emphasizing that Congress must provide a “clear and convincing” statement to restrict habeas jurisdiction over detention claims, which § 1252(g) fails to do. *Karki v. Jones*, 2025 U.S. App. LEXIS 20660, at *8–9 (6th Cir. Aug. 13, 2025).

Because Petitioner’s claim is a collateral challenge to the legality of his custody, it does not “arise from” one of the three discrete actions covered by § 1252(g). Traditional habeas relief targeting unlawful executive detention—seeking release from custody—remains outside § 1252(g)’s reach, as the Sixth Circuit recognized in distinguishing between removal-based claims and detention-based habeas in *Hamama v. Homan*, 912 F.3d 869, 876–83 (6th Cir. 2018). Consistent with this, the court in *Javier Gimenez Rivero v. Sheriff John Mina*, No. 6:26-cv-66-RBD-NWH, 2026 WL 199319, at *2 (M.D. Fla. Jan. 26, 2026), recently clarified when rejecting this exact argument that it is “well-settled that courts have habeas jurisdiction to consider ‘challenges to the lawfulness of immigration-related detention.’” Accordingly, the statute does not bar this Court’s jurisdiction.

Second, Respondents’ argument that § 1252(b)(9) channels this claim to the court of appeals is contrary to controlling Supreme Court precedent. Section 1252(b)(9) consolidates for judicial review “all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States.” In *Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018), the Supreme Court held that challenges to the authority to detain under §§ 1225 and 1226 are distinct from challenges to removal proceedings and do not “arise from” them in the manner contemplated by this channeling provision. Petitioner’s claim—that Respondents are detaining her under the wrong statute—is a pure question of law about the legality of her present confinement, not a challenge to the merits of any removal order (none exists) or to the conduct of her removal hearing, and thus is

not “inextricably intertwined” with review of a final order of removal. This is precisely the type of legal question for which habeas review in the district court remains available. See *I.N.S. v. St. Cyr*, 533 U.S. 289, 314 (2001) (holding that habeas jurisdiction under § 2241 is preserved for review of “pure question[s] of law”).

Third, other channeling provisions are equally inapplicable. Section 1252(a)(5) makes a petition for review in the court of appeals the “sole and exclusive means” to obtain judicial review of an “**order of removal**,” a term that refers to the non-habeas review mechanism created by the Hobbs Act and is historically distinct from habeas corpus under 28 U.S.C. § 2241. See *I.N.S. v. St. Cyr*, 533 U.S. 289, 312–14 (2001) (holding that provisions of § 1252 speaking in terms of “judicial review” did not clearly repeal § 2241 habeas jurisdiction). Petitioner is not challenging a removal order, she does not have one and is in the beginning of the removal process; she is challenging her **detention** before such an order has been issued, and nothing in § 1252(a)(5) speaks with the clarity required to extinguish § 2241 jurisdiction over such detention-only claims.

Likewise, § 1252(f)(1), which limits the authority of lower courts to “enjoin or restrain the operation” of certain INA provisions on a *programmatic* basis, expressly preserves the court’s power to grant *individualized*, as-applied 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). The Supreme Court confirmed in *Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–49 (2022), that this carveout allows courts to grant **injunctive relief in individual cases** notwithstanding § 1252(f)(1). Petitioner seeks only such individualized relief. Construing § 1252 to bar all habeas review of pre-order detention, while providing no adequate and effective alternative forum, would also raise serious Suspension Clause concerns that the Court must avoid

where a “fairly possible” construction preserves habeas jurisdiction. See *St. Cyr*, 533 U.S. at 299–300; *Luna v. Holder*, 637 F.3d 85, 100–06 (2d Cir. 2011).

Ultimately, Respondents’ jurisdictional arguments have been tried and rejected in **hundreds** of recent district court cases nationwide involving the same unlawful § 1225 detention policy, including the nationwide class judgment in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025), and individual habeas decisions such as *Javier Gimenez Rivero v. Sheriff John Mina*, No. 6:26-cv-66-RBD-NWH, 2026 WL 199319 (M.D. Fla. Jan. 26, 2026). This Court should join that consensus and hold that the INA does not strip it of its fundamental authority—and duty—to adjudicate the legality of Petitioner’s detention under 28 U.S.C. § 2241.

VI. ADMINISTRATIVE EXHAUSTION IS UNNECESSARY AND EXCUSED

Respondents’ insistence that this Court should require Petitioner to exhaust administrative remedies is a classic delaying tactic that ignores the law and the facts. For habeas petitions filed under 28 U.S.C. § 2241, the exhaustion requirement is not a rigid jurisdictional bar, but a prudential doctrine subject to the Court’s sound discretion. See *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). A court need not require exhaustion where administrative remedies are inadequate, where pursuing them would be a futile gesture, or where the individual’s interest in immediate judicial review outweighs the government’s institutional interests. *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992). Congress has not mandated exhaustion for § 2241 immigration detention challenges, and courts have repeatedly recognized that the statutory exhaustion requirement in 8 U.S.C. § 1252(d) applies only **to judicial review of final orders of removal**, not to habeas challenges to pre-order detention. All of these prudential exceptions apply with full force here.

First, 28 U.S.C. § 2241 contains no statutory exhaustion requirement for immigration

detention challenges. Any exhaustion doctrine in this context is prudential, not jurisdictional, and may be excused where (1) administrative remedies offer no genuine opportunity for adequate relief; (2) requiring exhaustion would cause irreparable injury from ongoing unlawful detention; (3) administrative appeal would be futile because the agency has predetermined the issue; or (4) the petitioner raises substantial constitutional questions that the agency lacks authority to resolve. Courts in immigration habeas cases routinely recognize and apply these exceptions. Courts routinely excuse prudential exhaustion when administrative remedies offer no genuine opportunity for adequate relief, irreparable injury would occur without immediate judicial intervention, administrative appeal would be futile, or the petitioner raises a substantial constitutional question. See, e.g., *Salad v. Alaska Dep't of Corr.*, 769 F.Supp.3d 913, 921 (D. Alaska 2025); *Cortez v. Sessions*, 318 F.Supp.3d 1134, 1138 (N.D. Cal. 2018), *Rodriguez v. Bostock*, 779 F.Supp.3d 1239, 1250 (W.D. Wash. 2025). This distinction is critical because prudential exhaustion is subject to waiver under certain circumstances.

All of those circumstances are present here. DHS has affirmatively classified Petitioner as detained under 8 U.S.C. § 1225(b)(2)(A) as an “applicant for admission.” Under binding BIA precedent in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), an Immigration Judge “lacks jurisdiction to consider a custody redetermination” for an alien detained under § 1225(b)(1) or (b)(2); those individuals are ineligible for bond under § 1226(a) based on BIA precedent that is binding on all immigration judges, who in fact, continue to deny bonds to this day citing they lack jurisdiction under *Q. Li* or *Yajure Hurtado*. The government’s Return affirmatively relies on this framework to argue that Petitioner is subject to mandatory detention without bond. Respondents cannot, on the one hand, insist that § 1225(b) and *Q. Li* categorically foreclose bond hearings for “arriving” applicants for

admission like Petitioner, and on the other hand fault him for not requesting a bond hearing that, by their own account, immigration judges lack power to grant. See Exhibit 2 for a sample.

Because the administrative scheme does not provide any meaningful bond remedy to someone DHS treats as a § 1225 detainee, there is nothing for Petitioner to “exhaust” with respect to custody review. Requiring Petitioner to ask an Immigration Judge for bond would be a futile exercise preordained to fail under existing BIA precedent and DHS policy. Prudential exhaustion does not demand such empty gestures, particularly where liberty is at stake.

Moreover, the core claims in this habeas petition are constitutional and statutory in nature: that Petitioner’s arrest violated the Fourth Amendment and the INA’s warrant requirements; that his continued detention, whether nominally under § 1225 or § 1226, violates the Fifth Amendment’s Due Process Clause; and that DHS’s and the BIA’s current interpretation and application of the detention statutes contravene the INA, the APA, and the *Accardi* doctrine. Immigration Judges and the BIA lack authority to invalidate or decline to follow binding statutes, regulations, or precedential BIA decisions on constitutional grounds. They likewise cannot suppress evidence or order release on the theory that a warrantless ICE arrest violated the Fourth Amendment or 8 U.S.C. § 1357(a)(2). Administrative proceedings therefore cannot provide the relief Petitioner seeks or resolve the dispositive legal questions in this case, rendering administrative exhaustion inadequate for these claims.

Respondents’ reliance on a general exhaustion principle ignores the specific context of habeas challenges to detention and the well-established exceptions to prudential exhaustion. To require Petitioner to pursue administrative remedies that are unlikely to provide adequate relief for his constitutional claims, while he remains detained, would be to impose a futile and harmful delay. Therefore, dismissal for failure to exhaust administrative remedies is unwarranted. The futility

exception is particularly relevant when the agency lacks the authority to resolve the constitutional claims presented. *Rafeedie v. I.N.S.*, 880 F.2d 506, 516-517 (D.C. Cir. 1989); *Xiao v. Barr*, 979 F.2d 151, 153 (9th Cir. 1992). Furthermore, federal courts considering materially similar detention-only habeas challenges have made clear that mandatory civil detention without a bond hearing, constitutes irreparable harm. In *Miranda v. Garland*, 34 F.4th 338, 365 (4th Cir. 2022), the court emphasized that the erroneous deprivation of an alien’s liberty, “for even minimal periods of time, unquestionably constitutes irreparable injury,” quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Likewise, in *S.D.B.B. v. Johnson*, No. 1:25-cv-882, 2025 WL 2845170, at *10 (M.D.N.C. Oct. 7, 2025), the court held that where a petitioner “is separated from his wife and family” while detained, “[t]his loss of liberty in the absence of a TRO would constitute irreparable harm.” These decisions confirm that Petitioner’s continued mandatory detention without a bond hearing, while separated from his family, causes irreparable-injury.

Second, the administrative process is wholly inadequate to remedy Petitioner’s constitutional claims. Petitioner challenges her detention on Fourth and Fifth Amendment grounds, arguing that her warrantless arrest was an unreasonable seizure and that her indefinite mandatory detention without an individualized hearing violates due process. It is black-letter law that administrative agencies like the BIA lack the authority to adjudicate the constitutionality of the statutes and regulations they enforce. See, e.g., *Danesh v. Jenifer*, Case No. 00-CV-74409-DT, 2001 WL 558233 at 6–8 (E.D. Mich. Mar. 27, 2001) (recognizing that “the BIA lacks jurisdiction to decide questions of the constitutionality of governing statutes or regulations” and excusing exhaustion for a constitutional challenge to mandatory detention); Other courts have reached the same conclusion and have declined to require exhaustion where, as here, the petitioner raises constitutional claims that the BIA is powerless to resolve. Because the administrative forum cannot grant the relief

Petitioner seeks—a ruling that her detention is unconstitutional—the remedy is inadequate and exhaustion is not required. Moreover, the statutory exhaustion requirement in 8 U.S.C. § 1252(d) applies only to “review of a final order of removal” in a petition for review, not to habeas challenges to pre-order detention under § 2241, and courts have accordingly held that the failure to exhaust under § 1252(d) is not a jurisdictional bar to federal habeas review of immigration detention. Detention is separate than the removal process and in fact, prior to 2025, the vast majority of noncitizens in removal proceedings were not detained.

Finally, the balance of interests weighs decisively against requiring exhaustion. The institutional interests favoring exhaustion—allowing the agency to apply its expertise and develop a factual record—are not present here. *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). Prudential exhaustion may be excused where administrative remedies are inadequate, where pursuit of those remedies would be futile, or where the individual’s interest in prompt access to a judicial forum outweighs institutional concerns. The core issue in this case is a pure question of law: which detention statute—8 U.S.C. § 1225 or § 1226—governs Petitioner’s confinement. The material facts are undisputed, and the agency’s “expertise” amounts to applying a legally erroneous and now-vacated policy under which noncitizens apprehended in the interior are classified as § 1225 “applicants for admission” and categorically denied bond pursuant to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). In Petitioner’s case, ICE has already determined that she is detained “pursuant to Section 235 of the INA,” and under *Yajure* both the IJ and BIA would be compelled to deny any bond request for lack of jurisdiction, underscoring the futility of further administrative proceedings. Against these negligible institutional interests is Petitioner’s fundamental right to be free from unlawful government confinement. Each day she is detained constitutes irreparable harm. Forcing her to endure a futile administrative process that would take

months to complete would mock the “great object” of the writ of habeas corpus: providing a “swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963). For these reasons, and consistent with other court decisions, this Court should exercise its discretion, excuse the prudential exhaustion requirement, and proceed to the merits of Petitioner’s claims.

VII. STATUTORY INTERPRETATION: § 1225 VS. § 1226 MANDATORY DETENTION MISAPPLIED

Petitioner’s detention is unlawful because it is predicated on a demonstrably false legal premise: that she is an “arriving alien” or “applicant for admission” subject to mandatory detention under 8 U.S.C. § 1225. This interpretation tortures the plain language of the Immigration and Nationality Act (INA), contradicts the Supreme Court’s framework distinguishing “aliens seeking entry” from “aliens already present,” and has been rejected by a growing consensus of federal courts—including in litigation that VACATED the July 2025 ICE policy adopting this theory. As a long-term resident apprehended in the interior of the United States, Petitioner is unambiguously governed by 8 U.S.C. § 1226, which authorizes arrest “on a warrant issued by the Attorney General” and permits release on bond or conditional parole following an individualized assessment.

A. The INA’S Plain Text and Structure Distinguish Border and Interior Detention

The INA establishes two distinct statutory schemes for detention. Section 1225, titled “Inspection of applicants for admission,” governs the inspection process at the border and certain closely related contexts. It first defines who is treated as an “applicant for admission,” providing that “[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival ...) shall be deemed for purposes of this chapter an applicant for admission.” 8 U.S.C. § 1225(a)(1). It then mandates detention for a subset

of such applicants: “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 [removal] proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). Thus, the operative detention command applies where two conditions are met: (1) the alien is an “applicant for admission,” and (2) the alien is “seeking admission” and is not clearly and beyond a doubt entitled to be admitted.

In stark contrast, 8 U.S.C. § 1226, titled “Apprehension and detention of aliens,” governs the arrest and detention of noncitizens, like Petitioner, who are already present within the United States. Section 1226(a) provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed,” and, except for certain criminal cases covered by § 1226(c), the Attorney General “may continue to detain the arrested alien” or “may release the alien” on bond or conditional parole. 8 U.S.C. § 1226(a). The Supreme Court has described § 1225 as governing “certain aliens seeking admission into the country,” and § 1226 as governing “certain aliens already in the country pending the outcome of removal proceedings.” *Jennings v. Rodriguez*, 583 U.S. 281, 289, 296–303 (2018).

Respondents’ entire case rests on conflating these two distinct categories. They seize upon the definitional phrase in § 1225(a)(1), which deems an alien “present in the United States who has not been admitted” to be an “applicant for admission,” and wrongly conclude that this alone subjects all such individuals—no matter how long they have resided in the interior—to mandatory detention under § 1225(b)(2)(A). This reading is fatally flawed because it ignores the critical, operative language in the mandatory-detention provision itself. Section 1225(b)(2)(A) applies only “in the case of an alien who is an applicant for admission” where “the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be

admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The phrase “seeking admission” describes the active, ongoing process of presenting oneself for inspection at or near the border; it does not describe the static condition of being physically present in the interior months or years after an entry, as the Supreme Court’s description of § 1225 as governing “aliens seeking admission into the country” and § 1226 as governing “aliens already in the country” confirms. *Jennings*, 583 U.S. at 289, 296–303. Mandatory detention under § 1225(b) is therefore triggered only for that subset of “applicants for admission” who are actively “seeking admission” at the threshold; it does not convert every interior apprehension of a long-term resident into an “arriving alien” case and thereby erase the distinct § 1226 regime Congress enacted for “apprehension and detention of aliens” already present in the United States.

The phrase “seeking admission” is not surplusage; it is the operative trigger for detention under 8 U.S.C. § 1225(b)(2)(A), which applies only “in the case of an alien who is an applicant for admission” where “the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” It describes the active, ongoing process of presenting oneself for inspection at or near a port of entry, not the static condition of having been present in the interior for years. As the court in *Javier Gimenez Rivero v. Sheriff John Mina*, No. 6:26-cv-66-RBD-NWH, 2026 WL 199319, at 3 (M.D. Fla. Jan. 26, 2026), recently explained, actively “seeking admission” at the border is fundamentally different from the “static condition” of merely being present in the country. Petitioner, a resident of Alabama for nearly 24 years, was apprehended in her community, not at a port of entry. She applied for “Parole in Place” based on her son’s military status, and parole is not an admission under the INA. She is not “seeking admission”; she is already here. Respondents’ interpretation effectively reads the phrase “seeking admission” out of § 1225(b)(2)(A), violating the cardinal rule that every word Congress enacted

must be given meaning and collapsing the distinct statutory regimes that *Jennings* and decades of Supreme Court precedent have recognized.

B. Supreme Court Precedent Jennings Confirms § 1226 Governs Interior Apprehensions

Respondents' statutory interpretation is not just textually unsound; it is directly contrary to the Supreme Court's framework in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). In *Jennings*, the Court meticulously laid out the INA's separate detention schemes, explaining that 8 U.S.C. §§ 1225(b)(1) and (b)(2) authorize detention of "certain aliens seeking admission into the country," while 8 U.S.C. § 1226(a) and (c) authorize detention of "certain aliens already in the country pending the outcome of removal proceedings." *Id.* at 289, 296–303. The Supreme Court thus confirmed what the statutory text already indicates: § 1225(b) governs applicants "seeking admission" at the threshold, and § 1226 governs "apprehension and detention of aliens" who are already present in the United States, irrespective of how they first entered.

The government's brief conveniently ignores this foundational distinction, treating the definitional clause in § 1225(a)(1) as if it automatically pulled all "present but not admitted" noncitizens into the border-focused detention scheme of § 1225(b), and in the process erasing § 1226's separate role for interior arrests. As the *Gimenez Rivero* court rightly observed in rejecting the same argument, this reading of *Jennings* is "incoherent" and "insupportable on all fronts," because it disregards both the operative "seeking admission" language in § 1225(b)(2)(A) and the Supreme Court's express recognition that § 1226 applies to "aliens already in the country." 2026 WL 199319, at 3–4. The government's position also disregards a half-century of precedent enshrining the distinction between noncitizens who have effected an entry and those at the border seeking admission. Petitioner falls squarely into the latter category: she has long since effected an entry and has lived in Enterprise, Alabama, for nearly 24 years. Under *Jennings*, she is an "alien[]

already in the country,” governed by § 1226’s warrant-and-bond framework, not an alien “seeking admission” at the border subject to mandatory detention under § 1225(b).

C. Respondents’ Detention Policy is an Unlawful Agency Interpretation

Respondents’ detention of Petitioner is based on a recent and radical “about-face” from their own long-standing practice. This shift is animated by an internal ICE “Interim Guidance” memo from July 2025 and the BIA’s legally erroneous decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which for the first time direct that long-term interior apprehensions of noncitizens who entered without inspection be treated as § 1225 “applicants for admission” subject to mandatory detention, rather than as § 1226 detainees entitled to bond. These agency actions are not entitled to any deference: the statutory text of 8 U.S.C. §§ 1225 and 1226 is unambiguous, and as the Supreme Court recently affirmed, it is the role of courts, not agencies, to resolve statutory ambiguities and “say what the law is.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400–03 (2024); see also *Javier Gimenez Rivero v. Sheriff John Mina*, No. 6:26-cv-66-RBD-NWH, 2026 WL 199319, at 4 (M.D. Fla. Jan. 26, 2026) (declining to defer to *Yajure** and holding that § 1226 governs interior apprehensions). Under the Administrative Procedure Act, agency action that is “not in accordance with law” or that rests on an impermissible construction of an unambiguous statute must be “set aside.” 5 U.S.C. § 706(2)(A). Here, ICE’s July 2025 policy and *Yajure’s* reading of § 1225(b) to reach interior apprehensions squarely contradict the INA’s text and structure and therefore provide no lawful basis for Petitioner’s continued detention.

More importantly, the policy Respondents rely on to detain Petitioner is a legal nullity. In *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025), the court certified a nationwide “Bond Eligible Class” of noncitizens apprehended in the interior who entered without inspection and were being detained under 8 U.S.C. § 1225(b)

without access to bond hearings, and entered a Final Judgment under Federal Rule of Civil Procedure 54(b) that (1) DECLARED the July 2025 ICE “Interim Guidance” policy unlawful under the INA and APA insofar as it treated such interior apprehensions as § 1225 cases, and (2) VACATED that policy under 5 U.S.C. § 706(2)(A). A vacated rule is a legal nullity: it may not be applied to any member of the certified class, and agencies remain bound by their own regulations and controlling court orders under the *Accardi* doctrine. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Respondents’ continued detention of Petitioner—who squarely fits the Bond Eligible Class description—as a § 1225 detainee is therefore not just a misreading of the INA; it is an act of open defiance of that binding Final Judgment and of the APA’s vacatur remedy. Their own evidence proves they are doing exactly what they were ordered not to do: AFOD Ayala’s sworn declaration confirms that Petitioner “was detained pursuant to Section 235 of the INA [§ 1225], under which aliens who are present in the United States who have not been admitted are considered applicants for admission.” Because *Maldonado Bautista* has already determined that detainees like Petitioner must be treated as § 1226(a) bond-eligible noncitizens and has vacated the contrary July 2025 guidance, Respondents are collaterally estopped from relitigating the legality of this detention policy as applied to her, and this Court should enforce that judgment by refusing to give effect to a vacated, unlawful policy.

D. An Overwhelming Judicial Consensus Rejects Respondents’ Position

This Court need not write on a blank slate. As Petitioner’s complaint notes, and as Respondents themselves acknowledge by attaching a list of dozens of adverse decisions to their own opposition, federal district courts across the nation have repeatedly rejected the government’s attempt to rewrite the INA by treating long-term interior apprehensions as § 1225 “arriving alien” cases. These courts have uniformly concluded that noncitizens apprehended in the interior are governed

by § 1226 and are entitled to an individualized bond hearing, not mandatory detention under § 1225(b). See, e.g., *Javier Gimenez Rivero v. Sheriff John Mina*, No. 6:26-cv-66-RBD-NWH, 2026 WL 199319, at 3–4 (M.D. Fla. Jan. 26, 2026) (holding that § 1226 applies to an interior detainee and rejecting the Government’s § 1225 theory, while collecting similar cases from around the country). Petitioner brought hundreds of decisions in ECF 1-1 supporting her claim and rejection Respondents’ claims. Respondents’ own string-cite of recent decisions—nearly all rejecting their position—only underscores the weakness of their legal theory. In effect, Respondents are asking this Court to stand alone against a nationwide judicial consensus, a final judgment vacating their July 2025 policy in *Maldonado Bautista*, and the plain text and structure of §§ 1225 and 1226. The Court should decline this invitation and, consistent with that consensus, with the vacatur in *Maldonado Bautista*, and with the clear statutory framework described in *Jennings**, hold that Petitioner’s detention is governed by § 1226, entitling her to an individualized bond hearing as a matter of law.

VIII. CONSTITUTIONAL CLAIMS: FOURTH AND FIFTH AMENDMENT VIOLATIONS

Even if this Court were to look past Respondents’ flagrant statutory violations, Petitioner’s detention is independently unconstitutional, violating the Fourth and Fifth Amendments. Respondents’ actions—a warrantless seizure followed by mandatory detention without any individualized assessment—offend bedrock principles of American constitutional law. These are not mere procedural errors; they are fundamental deprivations of liberty that this Court must remedy through the Great Writ, and ongoing unconstitutional physical confinement constitutes a paradigmatic form of irreparable injury for purposes of temporary injunctive relief.

A. The Warrantless Seizure Violated the Fourth Amendment, Rendering the Detention Unlawful Ab Initio

Petitioner's detention is the direct "fruit of the poisonous tree"—the poisonous tree being her illegal, warrantless arrest by ICE. See *Wong Sun v. United States*, 371 U.S. 471, 484–88 (1963) (holding that confinement flowing from an unlawful arrest must be remedied by excluding the fruits of that arrest and requiring release from illegal custody). An arrest conducted without any statutory authority is an unreasonable seizure that violates the Fourth Amendment. Because the initial seizure was void ab initio, the only appropriate and constitutionally sufficient remedy is immediate and unconditional release from the resulting civil immigration detention, rather than a post-hoc bond hearing that presupposes a lawful arrest.

The INA provides only two potential authorities for a civil immigration arrest in the interior of the United States. The primary authority, 8 U.S.C. § 1226(a), provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." ICE did not obtain, and has never produced, any such warrant for Petitioner's arrest; AFOD Ayala's declaration confirms only that ERO "arrested Petitioner" on January 24, 2026, without identifying any underlying warrant authority. The statute's narrow exception for a warrantless civil immigration arrest, 8 U.S.C. § 1357(a)(2), is available only where an immigration officer has reason to believe the individual is unlawfully present and is "likely to escape before a warrant can be obtained." Courts construing § 1357(a)(2) have emphasized that the "likely to escape" determination is a mandatory, substantive prerequisite to a warrantless arrest, not mere surplusage. See *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 878 (S.D. Ohio 2016) (holding that "likely to escape" is an essential element of § 1357(a)(2) authority and may not be read out of the statute).

Here, it was a factual impossibility for Petitioner to pose a risk of escape justifying a warrantless arrest under § 1357(a)(2). At all relevant times before ICE took custody, she was already securely confined in the Coffee County Jail on the domestic-violence charge, and after January 22, 2026, she remained confined there solely because of ICE's detainer. An individual who is locked in a county jail, in the physical control of local corrections officers, cannot plausibly be deemed "likely to escape before a warrant can be obtained" within the meaning of § 1357(a)(2). Because the exigency requirement was not and could not be satisfied on these facts, the warrantless-arrest exception was unavailable, and Respondents' only lawful path to arrest Petitioner was to obtain a warrant under § 1226(a), which they failed to do. Their seizure of Petitioner therefore violated both the INA's carefully drawn warrant/exigency framework and the Fourth Amendment's prohibition on unreasonable seizures.

Since the arrest was fundamentally unlawful, all subsequent civil immigration detention flowing from that seizure is tainted as the "fruit of the poisonous tree." See *Wong Sun*, 371 U.S. at 484–88. A later administrative custody proceeding cannot retroactively legitimize an arrest that Congress and the Fourth Amendment render unauthorized, and a bond hearing under § 1226(a) cannot cure the original constitutional violation because it assumes the very fact that is missing here—a lawful arrest on a warrant or under a valid exigency exception. Under 28 U.S.C. § 2243, the only constitutionally sufficient remedy for a detention that is unlawful from its inception is to restore Petitioner's liberty through immediate and unconditional release, not to provide additional procedures built atop an invalid seizure.

Here, it was a factual impossibility for Petitioner to pose a risk of escape justifying a warrantless arrest. She was already securely confined in the Coffee County Jail when ICE lodged its detainer, and remained in secure custody until ICE physically assumed control. The exigency

requirement of § 1357(a)(2)—that the alien be “likely to escape before a warrant can be obtained”—is a mandatory prerequisite to warrantless civil immigration arrest authority, not an afterthought or surplusage. See *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 878 (S.D. Ohio 2016) (holding that the “likely to escape” language in § 1357(a)(2) is an essential element that may not be ignored). Since that exception is inapplicable on these facts, Respondents’ only lawful path to arrest Petitioner was to obtain a warrant under 8 U.S.C. § 1226(a), which they failed to do.

Because the arrest was fundamentally unlawful, any subsequent proceedings stemming from it, including her civil immigration detention, are tainted as the “fruit of the poisonous tree.” See *Wong Sun v. United States*, 371 U.S. 471, 484–88 (1963). A bond hearing under § 1226(a) is an inadequate remedy because it presupposes a lawful arrest under that same statute—a condition that does not exist here. Allowing a bond hearing to “cure” a Fourth Amendment violation would reward Respondents for bypassing the INA’s explicit warrant requirement and would render that requirement meaningless. Law and justice demand restoring the liberty that was unlawfully taken from its inception, and the ongoing unconstitutional confinement itself is precisely the kind of irreparable harm that warrants immediate habeas and injunctive relief.

B. Mandatory Detention Violates Petitioner’s Fifth Amendment Right to Due Process

The Fifth Amendment’s Due Process Clause protects all “persons” within the United States from deprivation of liberty without due process of law, a protection that extends to all noncitizens, regardless of their immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Reno v. Flores*, 507 U.S. 292, 306 (1993). The protections of the Fifth Amendment apply to all persons within the territory of the United States. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause

protects.” *Zadvydas*, 533 U.S. at 690. By subjecting Petitioner, a non-criminal, long-term resident with deep community ties and three U.S.-citizen children, to mandatory detention under § 1225 without any individualized assessment of her flight risk or danger, Respondents have violated her right to substantive due process, and the ongoing loss of physical liberty and forced separation from her children constitutes classic irreparable harm for purposes of temporary injunctive relief. Respondents’ reliance on *Demore v. Kim*, 538 U.S. 510 (2003), is misplaced. In *Demore*, the Supreme Court upheld mandatory detention under 8 U.S.C. § 1226(c) for a lawful permanent resident criminal alien who conceded deportability, but it did so on the critical assumption—supported by record evidence—that such detention would be for a “limited period” of roughly a month and a half in the vast majority of cases, and only about five months in the minority of cases involving an administrative appeal, during “expedited removal” proceedings. *Id.* at 526, 529–31. The Court emphasized that detention under § 1226(c) must remain reasonably related to its regulatory purposes and described it as a brief and finite incident of the removal process, not an open-ended, potentially years-long confinement. *Id.* at 526, 531. Post-*Demore* decisions have accordingly construed that case to authorize only “expeditious” removal-related detention and have held that multi-year mandatory detention without a bond hearing is unreasonable and raises serious due-process concerns. The rationale of *Demore* thus does not extend to the prolonged, potentially indefinite detention of a non-criminal, long-term resident like Petitioner, who is being held under a novel, now-vacated theory that treats her as a § 1225 “applicant for admission” rather than as a § 1226 detainee. Applying *Demore* to justify mandatory detention here would stretch that precedent far beyond its narrow facts and its repeated emphasis on brief, finite detention of criminal aliens pending swift resolution of removal proceedings, and would sanction a form of

immigration imprisonment that is neither expeditious nor reasonably related to any legitimate regulatory purpose as applied to Petitioner.

The principles of *Demore* establish that while immigration detention is a permissible part of the removal process, it cannot be prolonged or arbitrary. The government's interest in ensuring appearance at removal proceedings diminishes as detention lengthens and must be weighed against the individual's profound interest in liberty. For a 24-year resident with U.S. citizen children, a pending family-based petition, and no criminal record, mandatory detention without a hearing serves no legitimate regulatory purpose and functions as unconstitutional punishment, and the ongoing deprivation of physical liberty and family unity is precisely the kind of irreparable harm that warrants immediate habeas and injunctive relief.

C. The Government's Jurisdictional Arguments Would Create an Unconstitutional Suspension of the Writ

Finally, Respondents' jurisdictional arguments, if accepted, would raise grave constitutional problems under the Suspension Clause. U.S. Const. art. I, § 9, cl. 2. The Supreme Court has repeatedly instructed that where a statute is open to two interpretations, courts must choose the one that avoids "serious constitutional questions." *I.N.S. v. St. Cyr*, 533 U.S. 289, 299–300 (2001). That canon has particular force where, as here, the alternative construction would effectively strip all courts of power to hear core habeas challenges to the legality of executive detention.

If, as Respondents argue, 8 U.S.C. § 1252—including §§ 1252(a)(5), 1252(b)(9), and 1252(g)—were read to strip the district courts of all habeas jurisdiction over detention-only challenges like Petitioner's, leaving her with no judicial forum to contest the legality of her confinement until after a final order of removal and subject to the strict jurisdictional limits and short filing periods governing petitions for review, it would effectively suspend the writ of habeas

corpus as to pre-order immigration detention. A post-removal-order petition for review in the court of appeals is not an “adequate and effective” substitute for immediate habeas review of illegal pre-order detention where the claim could not have been raised in a timely petition for review or where the government can, by its own actions, render that review unavailable. Because Petitioner challenges the fundamental legality of her confinement—a claim at the historical core of the writ, which “served as a means of reviewing the legality of Executive detention,” *St. Cyr*, 533 U.S. at 301—the Suspension Clause requires that some judicial forum be available to adjudicate that challenge. See *Boumediene v. Bush*, 553 U.S. 723, 783–85 (2008) (holding that the writ, or an adequate and effective substitute, must be available for core detention challenges). Construing § 1252 to leave no such forum for pre-order detention claims would therefore raise serious constitutional doubts. The better, and constitutionally required, reading is that § 1252’s channeling provisions govern “judicial review” of removal orders and related discretionary decisions, but do not repeal or displace this Court’s habeas jurisdiction under 28 U.S.C. § 2241 to hear Petitioner’s core challenge to the lawfulness of her present confinement. Accordingly, this Court’s § 2241 jurisdiction supplies the constitutionally necessary forum for Petitioner’s claim.

IX. APA AND ACCARDI CLAIMS

Beyond the clear statutory and constitutional violations, Petitioner’s detention is unlawful for a more fundamental reason: it is the product of agency actions that are themselves illegal under bedrock principles of administrative law. Both the Administrative Procedure Act (APA), including 5 U.S.C. §§ 703 and 706, and the *Accardi* doctrine provide independent grounds for this Court to grant relief.

First, Respondents’ actions are reviewable and must be set aside under the APA. The July 2025 ICE “Interim Guidance” memo and the BIA’s legally erroneous decision in *Matter of Yajure*

Hurtado, represent the “consummation of the agency’s decisionmaking process” and are the direct cause of Petitioner’s confinement, qualifying them as reviewable “final agency action.” As established previously, these policies are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” because they contradict the unambiguous text and structure of the INA by treating long-term interior apprehensions as governed by 8 U.S.C. § 1225(b) rather than by 8 U.S.C. § 1226. Under 5 U.S.C. § 706(2)(A), this Court has the authority and obligation to “hold unlawful and set aside” such agency action. Moreover, in *Maldonado Bautista v. Santacruz*, the U.S. District Court for the Central District of California entered a nationwide Final Judgment under Rule 54(b) that DECLARED the July 2025 ICE “Interim Guidance” unlawful under the APA and VACATED that policy. No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). A vacated rule is a legal nullity and cannot lawfully serve as the basis for continued detention of any member of the certified class, including Petitioner. Even if the INA were deemed ambiguous (it is not), the July 2025 guidance and Yajure would still fail under APA arbitrary-and-capricious review because they offer no reasoned explanation for abandoning the longstanding § 1226 framework for interior apprehensions and are contrary to the statutory factors Congress enacted.

Second, Respondents’ conduct violates the well-established *Accardi* doctrine, which commands that federal agencies are bound by their own rules and procedures. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). This principle extends beyond formal regulations to internal procedures and settled practices that affect individual rights. See *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (holding that an agency may not depart from established eligibility criteria and internal procedures without appropriate notice and explanation). For decades, Respondents’ own regulations and practices afforded bond hearings to noncitizens apprehended in

the interior by treating them as detained under 8 U.S.C. § 1226(a), with access to custody redetermination before an Immigration Judge under 8 C.F.R. § 1003.19. By abruptly abandoning this settled framework through a novel reinterpretation that classified interior detainees like Petitioner as § 1225 “applicants for admission” and categorically denied them bond hearings—without engaging in notice-and-comment rulemaking, without reconciling this shift with their own regulations, and in defiance of a federal court judgment vacating the July 2025 guidance—Respondents have acted unlawfully, and their actions must be set aside under *Accardi*, *Morton*, and the APA. Nothing in the REAL ID Act’s channeling of certain facial or systemic challenges to expedited-removal procedures to the District of Columbia under 8 U.S.C. § 1252(e)(3) precludes this Court from adjudicating Petitioner’s individualized APA/*Accardi* challenge to her detention classification; she does not seek to litigate the “validity of the system” of expedited removal, but rather challenges, as applied to her, the legality of Respondents’ reliance on a vacated policy and departure from their own rules to justify her continued confinement.

Most dispositively, Petitioner’s detention is predicated on a policy that a federal court has already declared illegal and vacated. In *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025), the court entered a binding, nationwide Final Judgment that (1) DECLARED that noncitizens apprehended in the interior are subject to discretionary bond hearings under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b); and (2) VACATED the July 2025 ICE policy as “unlawful under the APA” pursuant to 5 U.S.C. § 706(2).

A vacated agency policy is a legal nullity. It is void. See 5 U.S.C. §§ 703, 706(2)(A). Respondents cannot lawfully detain Petitioner based on authority that a federal court has already nullified. Their continued detention of Petitioner is not just an unlawful interpretation of the INA;

it is an act of open defiance against a binding Final Judgment. Indeed, their own evidence from AFOD Ayala proves they are doing exactly what they were ordered not to do—detaining Petitioner “pursuant to Section 235 of the INA [8 U.S.C. § 1225].” As a member of the certified nationwide class in *Maldonado Bautista*, Petitioner’s rights have already been adjudicated, and Respondents are collaterally estopped from relitigating the illegality of their detention policy against her. Under the post-REAL ID framework, where class-wide declaratory and vacatur relief under the APA is enforced through individual habeas and related actions seeking release, this § 2241 petition is the proper vehicle for giving operative effect to that Final Judgment in Petitioner’s case. Because the detention itself is based on a void policy, it is unlawful at its core. This provides yet another independent ground for this Court to grant relief and order Petitioner’s immediate release from this illegal confinement.

X. RESPONSE TO AYALA AFFIDAVIT

Respondents’ opposition is built on a foundation of shifting factual assertions and improper legal conclusions, best exemplified by the sworn declaration of Assistant Field Office Director (AFOD) Francisco J. Ayala. This affidavit, rather than clarifying the facts, directly contradicts Respondents’ own legal brief and demonstrates a deliberate effort to obscure the unlawful basis for Petitioner’s detention. To the extent it offers legal characterizations—such as labeling Petitioner an “applicant for admission” under § 1225—rather than concrete historical facts, it is not competent evidence and should be disregarded; only its factual admissions may properly be credited in resolving this habeas petition.

The most glaring issue is the direct contradiction between Respondents’ brief and AFOD Ayala’s sworn testimony. In their brief, Respondents’ counsel unequivocally states, “the United States is not treating Ms. Martinez as an ‘arriving alien.’” Yet, AFOD Ayala declares under penalty

of perjury the exact opposite: “Petitioner was detained pursuant to Section 235 of the INA [8 U.S.C. § 1225], under which aliens who are present in the United States who have not been admitted are considered applicants for admission.” This is not a minor inconsistency; it is a fatal contradiction that goes to the heart of the case. The sworn statement of the officer responsible for Petitioner’s detention is the controlling evidence of how ICE has actually classified and treated her, and it proves that Respondents are, in fact, applying the unlawful § 1225 “arriving alien” theory to a long-term resident apprehended in the interior. This admission validates Petitioner’s claims, confirms the futility of exhaustion, and exposes the disingenuousness of Respondents’ legal position. It also corroborates Petitioner’s statutory and APA/Accardi arguments that Respondents are detaining her under an unlawful § 1225 “arriving alien” policy rather than the proper § 1226 warrant-and-bond framework Congress enacted for interior apprehensions.

Furthermore, the affidavit is riddled with improper legal conclusions that must be stricken or disregarded. AFOD Ayala’s assertion that Petitioner is an “applicant for admission” under § 1225 is not a statement of fact; it is a legal conclusion that usurps the function of this Court. Courts routinely disregard such attorney-like legal conclusions in affidavits and limit their consideration to competent factual testimony. An affiant may testify as to what actions they took, what forms were served, where and when custody transfers occurred, and what directives they believed governed their conduct, but they may not declare the legal status of an individual or the correct construction of a statute—those are ultimate questions of law reserved to the judiciary.

The affidavit also strategically omits critical timeline facts. It states only that ERO arrested Petitioner on January 24, 2026, “following her release from Coffee County Jail.” This phrasing deliberately masks the crucial two-day period after her state charges were dismissed on January 22, 2026, during which she was held in the county jail with no state legal basis and solely at ICE’s

behest—facts central to determining when constructive federal custody began and whether the Coffee County Sheriff was acting as ICE’s agent for habeas purposes. This omission is a transparent attempt to evade this Court’s habeas jurisdiction by creating the false impression that federal custody only began on January 24.

Given these contradictions and omissions, the Court cannot rely on this affidavit as a credible source of facts. Petitioner respectfully requests that the Court strike the improper legal conclusions from the Ayala declaration—particularly the characterizations that Petitioner is an “applicant for admission” detained “pursuant to Section 235 of the INA,” which are legal opinions rather than factual testimony—and, in light of the factual discrepancies, grant leave for limited, expedited discovery into the timeline of Petitioner’s custody and the specific directives governing her detention classification. An evidentiary hearing may be necessary to resolve the timeline of her custody and to assess the credibility of Respondents’ conflicting assertions.

XI. REMEDY AND PRAYER FOR RELIEF

Given that Petitioner’s seizure was unlawful from its inception and her ongoing detention violates the INA, the APA, and the Constitution, this Court should exercise its broad equitable power under 28 U.S.C. § 2243 to “dispose of the matter as law and justice require.” Law and justice demand, first and foremost, Petitioner’s immediate and unconditional release. Because her arrest was conducted without statutory authority in violation of the Fourth Amendment, her entire detention is the fruit of a poisonous tree. A subsequent bond hearing cannot cure this fundamental constitutional violation. The only constitutionally sufficient remedy is to restore the liberty that was illegally taken, and Petitioner has separately satisfied the requirements for temporary injunctive relief by showing a substantial likelihood of success on the merits, ongoing irreparable

harm from continued unlawful confinement, and that both the balance of equities and the public interest favor immediate restoration of her freedom.

For all the foregoing reasons, Respondents' arguments fail as a matter of fact and law. Their jurisdictional challenges are contrary to established precedent, their demand for exhaustion is a request for a futile act, and their defense of Petitioner's detention relies on a statutory interpretation that is textually incoherent, constitutionally infirm, and has been vacated by a federal court under the APA and in violation of the *Accardi* doctrine. Petitioner's seizure and continued confinement are unlawful at every turn, and her ongoing loss of physical liberty and separation from her U.S.-citizen children constitute irreparable harm that this Court should remedy under 28 U.S.C. § 2243.

WHEREFORE, Petitioner respectfully prays that this Court:

1. GRANT the Petition for a Writ of Habeas Corpus;
2. Order Petitioner's IMMEDIATE AND UNCONDITIONAL RELEASE from custody;
3. In the alternative to paragraph 2, order Respondents to provide Petitioner with an individualized bond hearing before an Immigration Judge within forty-eight (48) hours pursuant to 8 U.S.C. § 1226(a), at which the **Government** must bear the burden of proving, by clear and convincing evidence, that Petitioner is either a flight risk or a danger to the community and that no combination of less-restrictive conditions of release can reasonably assure her appearance and the safety of the community;
4. ENJOIN Respondents from removing Petitioner from the United States while this action is pending so that she may pursue her statutory and constitutional claims within this Court's jurisdiction;

5. ENJOIN Respondents from re-detaining Petitioner in the future absent a lawful, non-pretextual basis for arrest and detention consistent with the INA and the Constitution, and specifically from re-detaining her under the unlawful legal theory that she is an “arriving alien” subject to mandatory detention under 8 U.S.C. § 1225(b) pursuant to the vacated July 2025 ICE policy or *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025);
6. STAY any transfer of Petitioner outside this District and any action to execute her removal while this action is pending, in aid of this Court’s habeas jurisdiction and to prevent Respondents from defeating effective judicial review through transfer or removal;
7. ENJOIN Respondents, upon Petitioner’s release, from subjecting her to any form of electronic monitoring, GPS ankle bracelet, ISAP enrollment, or other alternative-to-detention program that functions as a custody-like restraint, absent prior leave of this Court, granted only upon at least five (5) days’ advance notice and a particularized, evidence-based showing of significantly changed circumstances and a concrete, non-speculative risk of flight or danger necessitating such conditions;
8. AWARD Petitioner her reasonable attorney’s fees and costs, including under the Equal Access to Justice Act, 28 U.S.C. § 2412, as Respondents’ position is not substantially justified; and
9. GRANT such other and further relief as law and justice require.

Respectfully Submitted,

This 29th day of January, 2026.

/s/ Karen Weinstock

Karen Weinstock

Attorney for Petitioner (admitted pro hac vice)

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of January, 2026, this Foregoing Document was served, via electronic delivery to Respondents' counsel via the CM/ECF system, which will forward copies to Counsel of Record.

/s/ Karen Weinstock

Karen Weinstock

Attorney for Petitioner (admitted pro hac vice)

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