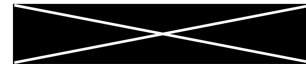
THOMAS EVANS (GA 305649)
KUCK BAXTER LLC
365 NORTHRIDGE ROAD, SUITE 300
ATLANTA, GA 30350
Tel. (404) 720-8300
tevans@immigration.net

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

PABLO DE OLIVEIRA CAMPOS Petitioner, v. Facility Administrator Folkston ICE Processing Center, (Geo Group), George STERLING, Atlanta Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement (ICE); Todd LYONS, Acting Director of ICE; Kristi NOEM, Secretary of Homeland Security; UNITED STATES DEPARTMENT OF HOMELAND SECURITY (DHS); Pamela BONDI, General of the United States; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR); DAREN K. MARGOLIS, Director, EOIR; in their official capacities. Respondents.	No. **PETITION FOR WRIT OF HABEAS CORPUS** **(IMMIGRATION DETENTION)** **(Challenge to *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), *Matter of Q. Li.*, 29 I&N Dec. 66 (BIA 2025))** Agency No. 

INTRODUCTION

1. The Petitioner, Pablo De Oliveira Campos ("Mr. De Oliveira"), has been detained under the purported authority of the United States at the Folkston ICE Processing Center in Folkston, Georgia since June 30, 2025. He twice requested the status of his custody be redetermined. However, he was denied both times on jurisdictional grounds. Exh. 1. He has received no review of his custody status by an independent and neutral factfinder—because he is alleged to be present without admission or parole. *See Matter of Q. Li* 29 I&N Dec. 66 (BIA 2025), *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).

2. Mr. De Oliveira has now been in the custody of the Department for over six months. Mr. De Oliveira complains of Respondents as follows, requests the Court issue an order to show cause, and is seeking a Temporary Restraining Order. Specifically, the TRO and Motion for Preliminary Injunction should require immediate release or alternatively that Respondents provide an Immigration Judge bond hearing where the government bears the responsibility of establishing by clear and convincing evidence that Mr. De Oliveira is either a danger to the public or a flight risk.

3. There is nothing suggesting Mr. De Oliveira is currently a flight risk. He fears for his life should he be forced to return to Brazil and has timely filed an appeal of the denial of his applications for asylum, withholding of removal, and withholding of removal under the Convention Against Torture with the Board of Immigration Appeals (BIA). Exh. 2. He is also a derivative on his wife's pending application for T nonimmigrant status. According to the public facing U.S. Citizenship and Immigration Services website, 80% of the adjudications of T Nonimmigrant status are completed within 26.5 months[1]. The family's applications have been pending since on or around January 16, 2025. Exh. 3. Thus, he has every reason not to abscond and to actively participate in his removal proceedings.

4. Mr. De Oliveira does not deny he has had contact with the criminal legal system. He has been cited for traffic violations on two separate occasions. On August 18, 2022, Mr. De Oliveira was cited for driving without a license, giving false information to law enforcement, fire department, or rescue department, and the unlawful operation of unsafe or improperly equipped vehicle. All three of these charges were disposed of on September 14, 2022, with the payment of a fine. On or around the same time, Mr. De Oliveira was arrested for criminal sexual conduct with a minor, second degree. This charge was dismissed. On April 2, 2025, Mr. De Oliveira was charged with operating a vehicle in unsafe mechanical condition and driving without a license. These charges were disposed of on May 8, 2025, with a fine. Mr. De Oliveira was also arrested on April 29, 2025, for a domestic violence charge. This charge was dismissed on June 26, 2025. On or around June 30, 2025, Mr. De Oliveira was

1 https://egov.uscis.gov/processing-times/imes

transferred to the custody of DHS. He was transferred to DHS custody despite already being in non-detained removal proceedings and no criminal convictions, which require his mandatory detention.

5. Mr. De Oliveira's now over six-month, prolonged continued, civil detention without access to a hearing to redetermine his custody before a neutral fact finder is unlawful and unconstitutional because it violates his core right to physical liberty under the Due Process clause. To vindicate his constitutional rights, Mr. De Oliveira should be afforded a custody redetermination hearing where the government demonstrates by clear and convincing evidence that he presents a risk of flight or danger, after consideration of alternatives to detention that could mitigate any risk, his release may present.

6. Accordingly, the Court should grant the accompanying application for TRO and issue the writ of habeas corpus.

JURISDICTION AND VENUE

7. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101–1538, and its implementing regulations; the Administrative Procedure Act (APA), 5 U.S.C. §§ 500–596, 701–706; and the U.S. Constitution.

8. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as this is a civil action arising under the laws of the United States, and under 28 U.S.C. § 2241, as the case challenges Mr. De Oliveira's unlawful detention.

9. The Court may grant relief pursuant to 28 U.S.C. § 2241 *et seq*; the Declaratory Judgment Act, 28 U.S.C. § 2201; the APA, 5 U.S.C. §§ 702, 706; the All Writs Act, 28 U.S.C. § 1651; Federal Rule of Civil Procedure 65; and the Court's inherent equitable powers.

10. Venue is proper in this judicial district because this is a core habeas challenge and Mr. De Oliveira is detained at the Folkston ICE Processing Center in Folkston, Georgia, which is in the Southern District of Georgia.

REQUIREMENTS OF 28 U.S.C. § 2243

11. The Court must grant the petition for writ of habeas corpus or issue an order to show

cause (OSC) to the Respondents "forthwith," unless the petition 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.* (emphasis added)

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

PARTIES

13. Mr. De Oliviera is a 35-year-old citizen and national of Brazil, who first arrived in the United States on or around December 16, 2021, with his wife and their two children, also citizens and nationals of Brazil, also in removal proceedings. The family traveled to the United States from Brazil after having suffered persecution in their home country and in search of asylum. On July 2, 2025, he filed his application for T Nonimmigrant Status as the derivative applicant on his wife's application for victims of human trafficking in the United States.

14. Until his detention, Mr. De Oliviera was working as a carpenter in Myrtle Beach, South Carolina. He is currently detained at the Folkston ICE Processing Center in Folkston, Georgia. He is in the legal custody and direct control of Respondents and their agents.

15. Respondent George Sterling is the Field Office Director for ICE Enforcement and Removal Operations (ERO) in Atlanta Georgia. In this capacity he is Mr. De Oliveira's immediate legal custodian, responsible for his detention at Folkston ICE Processing Center, and the person with the authority to authorize his detention or release. Respondent Sterling is sued in his official capacity.

16. Respondent Facility Administrator is the Facility Administrator of the Folkston ICE Processing Center. The Facility Administrator oversees the day-to-day functioning of the facility and has immediate physical custody of Mr. De Oliveira pursuant to a contract with ICE to detain noncitizens. The Facility Administrator is sued in their official capacity as the Facility Administrator of a federal detention facility. *See Castaneda Juarez v. Asher*, No. C20-700 JLR-MLP, 2021 WL

1946222, at *3–5 (W.D. Wash. May 14, 2021).

17. Respondent Todd Lyons, is the Acting Director of ICE. In this capacity, he oversees ICE Enforcement and Removal Operations. Respondent Lyons is sued in his official capacity

18. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. As Secretary, she oversees the federal agency responsible for implementing and enforcing the INA, including the detention of noncitizens. She is sued in her official capacity.

19. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention of noncitizens.

20. Respondent Pamela Bondi is the Attorney General of the United States and head of the U.S. Department of Justice. In that capacity, she oversees EOIR and the immigration court system the agency administers. She is ultimately responsible for the agency's operation. She is sued in her official capacity.

21. Respondent EOIR is a component agency of the Department of Justice responsible for conducting removal and bond hearings of noncitizens. IJs issue initial decisions in bond hearings, which are then subject to appeal to the BIA.

22. Respondent Daren K. Margolis is the Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the Board of Immigration Appeals, including bond hearings. He is sued in his official capacity.

FACTS AND PROCEDURAL HISTORY

23. Mr. De Oliveira and his family fled Brazil entering the United States on or around December 16, 2021. The family turned themselves into Border Patrol Agents. The Border Patrol agents detained the family for approximately four days prior to releasing them from custody with Notices to Appear (NTA).

24. On or around June 30, 2025, Mr. De Oliveira was transferred from local county detention and taken into DHS custody pursuant to a local 287(g) agreement. His contacts with the criminal legal system did not result in any offenses, which would make him inadmissible or

deportable. His charges of removability according to his NTA were INA 212(a)(6)(A)(i); 212(a)(7)(A)(i)(I) related to being present without being admitted or paroled and lack of proper documentation. On August 7, 2025, Mr. De Oliveira's request for a custody redetermination before the Stewart Immigration Court was denied citing a lack of jurisdiction. On August 21, 2025, the same Court denied his motion for a custody redetermination citing no material changes since his first custody redetermination. On November 6, 2025, the Stewart Immigration Court ordered his applications for asylum, withholding of removal, and withholding of removal under the Convention Against Torture be denied and issued him an order of removal. He timely filed an appeal with the BIA on December 5, 2025. His appeal is currently pending before the BIA.

REQUEST FOR WAIVER OF PRUDENTIAL EXHAUSTION

25. Mr. De Oliveira did not seek appeals of the denials of his custody redetermination, although he does seek BIA review of his removal order. The Court should waive prudential exhaustion because (1) administrative review of custody redetermination would be futile—as DOJ/EOIR precedent, and recent actions, apparently continues to compel an Immigration Judge to unlawfully find that Mr. De Oliveira is subject to mandatory detention without the right to an Immigration Judge bond hearing. *See Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) and (2) there is no statutory requirement of administrative exhaustion in the immigration detention context.

LEGAL FRAMEWORK

Detention under 8 U.S.C. § 1226(a) and § 1225(b)(2)

26. The INA prescribes three basic forms of detention for noncitizens in removal proceedings. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an Immigration Judge. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention or upon a material change of circumstances, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c). Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under

§ 1225(b)(2). Third, the Act also provides for detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings, *See* 8 U.S.C. § 1231(a)–(b).

27. Respondents EOIR and DHS have recently taken the position that all noncitizens charged as removable under INA 212(a)(6)(A)(i) are detained under 8 U.S.C. § 1225(b)(2) and therefore subject to mandatory detention as applicants for admission. *See Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). This is a stark departure from past interpretation and nearly every Article III court to address this extremist interpretation has ruled is unlawful—often entering TROs. In fact, on December 18, 2025, the Central District of California issued a final declaratory judgment and class certification finding that bond class members, are detained under 8 U.S.C. § 1226(a) and not 8 U.S.C. § 1225(b)(2). *See Maldonado-Bautista v. Santa Cruz*, 5:25-cv-ol873-SSS-BFM WL 3289861 (C.D. Cal. Nov. 20, 2025). On September 30, 2025, the Western District of Washington issued an order in which it stated, "Every district court to address this question has concluded that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice." *See Rodriguez Vasquez v. Bostock*, et. al 25-cv-05240-TMC (W.D. Wash. September 30, 2025).

28. EOIR and DHS' new interpretations are premised on a reinterpretation of the relevant immigration detention statutes, 8 U.S.C. §§ 1225(b)(1) and (a)(b) (requiring mandatory detention of noncitizens arriving in the United States and 1226(a) (governing detention of persons unlawfully present generally including those who are present without admission or parole (PWAP), who overstay a temporary period of stay, or who violate the terms of their status in some way). Under the new interpretation, those PWAP must be detained under 8 U.S.C. §§ 1225 pending a decision on their removability, with the one exception being if Immigration and Customs Enforcement ("ICE") exercises authority under 8 U.S.C. 1182(d)(5) to grant immigration "parole" into the United States for humanitarian of public benefit reasons. This discretionary authority is held only by the DHS Secretary and not the Attorney General. And, Executive Office of Immigration Review ("EOIR") regulations also proscribe Immigration Judge jurisdiction, while initially delegating the Attorney General's broad authority to determine custody for an individual charged with removability. *See* INA § 212(d)(5)(A), 8

U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(a) (2025).

29. The legislative history of the 8 U.S.C. §§ 1225(b) and 1226(a) statute expressly states that the general detention statute was merely a restatement of existing immigration detention law—that had been interpreted for decades more to allow discretionary release. H.R. Rep. No. 104-469, pt. 1, at 229 ("Section 236(a) restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." And even if this was not the meaning of the text at the time of adoption in 1996, Congress last year amended the detention statues in a way that reflects it was aware of this interpretation and enacted provisions that would have been superfluous had Congress not understood the statute as meaning what Mr. De Oliveira does. That is, the Laken Riley amended INA § 236(c); 8 U.S.C. § 1226(c) to require that persons present without admission and parole and who are arrested for or charged with certain crimes be mandatorily detained. But if § 1225(b) really meant what Respondents say, then the group identified would all already be subject to mandatory detention. Congress ratified the more favorable, historically accepted interpretation.

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

> Apprehension, Custody, and Detention of Aliens the IIRIRA extended the mandatory detention provisions to additional classes of inadmissible and deportable aliens but provided an exception for certain witnesses. It also allowed the Attorney General the option of a transition period for implementation of mandatory detention. The Service exercised this discretion and implemented the transition period custody rules on October 9, 1996, effective for 1 year. This interim rule amends the regulations to comply with the amended Act by removing the release from custody provisions for aliens who may no longer be released. These amendments to the regulations will take effect upon the termination of the transition period. As for noncriminal aliens, the rule reflects the new $1,500

> minimum bond amount specified by IIRIRA. 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.

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

31. Tellingly, the regulatory comments make absolutely no reference to any public commentor pointing out that the regulations would nullify what would have been one of the broadest and most transformative policy shifts in the field of immigration regulation. In the decades that followed, most people who entered without inspection— unless they were subject to some other detention authority—received bond hearings. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

32. Immigration Judges only recently began departing from the policy of holding bond hearings for individuals who entered the United States without inspection. Immigration Judges reasoned the mandatory detention provision of 8 § 1225(b)(2)(A) applies to people who enter without inspection because that subparagraph of the statute references "applicant[s] for admission." According to these IJs, the paragraph therefore applies to all individuals who are subject to the grounds of inadmissibility at § 1182, including § 1182(a)(6)(A) and (a)(7). Those two provisions make inadmissible people who entered the United States without inspection or who do not have adequate documentation to allow them to enter or remain in the United States.

33. And in *Matter of Yajure-Hurtado*, the BIA adopted this interpretation in a precedential decision. As a result, all detained noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including those who have resided in the U.S. for a long time, are now considered to be subject to mandatory detention under § 1225(b)(2) and ineligible for bond. This interpretation defies the INA. The plain text of the statutory provisions demonstrates

that § 1226(a), not § 1225(b), applies to noncitizens like Mr. De Oliveira.

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

35. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to those inadmissible for presence without admission or parole and who have certain criminal history makes clear that Congress understood Section 1226 to apply to both those who are PWAP and those who are inadmissible/deportable for some reason. Because of this broad understanding, when it chose to pass the strict detention rules of Laken Riley, it was careful to specify that the strict new rules applied if the person was inadmissible for being PWAP. This reasonably indicates that Congress saw § 1226(a) as relating to people PWAP and deportable people (overstaying a visa, etc). The reference to PWAP is to clarify that only that portion of the people regulated by § 1226(a) would be mandatorily detained—i.e. mandatory detention does not apply to tourist visa overstays who are arrested for shoplifting. Congress knew § 1226(a) was being interpreted and had been interpreted to authorize detention and release of persons present without admission or parole. If it agreed with Respondents' interpretation, then Section 236(c)(1)(E) is completely pointless— since the law already required detention of 100% those who are PWAP. It is much more reasonable to assume Congress put this limiting language in the new subsection because it wanted to apply the stricter new rule to only a portion of the people regulated by § 1226 (PWAP and admitted but removable people), than to assume Congress intended to exempt admitted but removable noncitizens from mandatory detention for shoplifting and chose to express that desire by establishing the mandatory detention obligation in the section of law that applies (in Respondents' theory) only to the group of people excluded from the rule. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

36. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently

entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Federal district courts around the country have had the opportunity to weigh in on this statutory question. The Central District of California held:

> the Bond Eligible Class members are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b)(2).
>
> pursuant to Defendants' regulations, *see* 8 C.F.R.§§236.1, 1236.1, and 1003.19, the Bond Eligible Class members are detained under 8 U.S.C. § 1226(a), are not subject to mandatory detention under § 1225(b)(2), and are entitled to consideration for release on bond by immigration officers and, if not released, a custody redetermination hearing before an immigration judge.
>
> the Department of Homeland Security policy described in the July 8, 2025, "Interim Guidance Regarding Detention Authority for Applicants for Admission" under the Administrative Procedure Act is vacated as not in accordance with law. 5 U.S.C. § 706(2)(A).
>
> and grants final judgment as to Claims I, II, and III of the Amended Class Complaint, and certifies those claims for appeal pursuant to Federal Rule of Civil Procedure 54(b).
>
> *See Maldonado-Bautista v. Santa Cruz*, 5:25-cv-ol873-SSS-BFM WL 3289861 (C.D Cal. Dec. 18, 2025).

37. In further support of Mr. De Oliveira's position and in demonstrating an overall national trend, on September 30, 2025, the Western District of Washington issued an order in which it concluded,

> "Unless "seeking admission" is subsumed entirely by "applicant for admission," Defendants' interpretation of section 1225(b)(2) could only make sense if the Court presumed that the Bond Denial Class Members—many of whom have lived in the country for years and made no attempts to be admitted—were in a perpetual state of 'seeking admission.' But such an interpretation defies the rule against surplusage, the everyday meaning of 'seeking' and 'admitted.' *See Lopez Benitez*, 2025 WL 2371588, at *7 ("someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as 'seeking admission' to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as 'seeking admission' (or 'seeking lawful entry') at that point—one would say that they had entered unlawfully but now seek a lawful means of

remaining there.).

See Ramon Rodriguez v. Bostock, et. al 25-cv-05240-TMC (W.D. Wash September 30, 2025).

38. A noncitizen with a pending appeal before the BIA does not have a final removal order and their detention is generally governed under 8 U.S.C. § 1226(a). However, given the Respondents' new interpretation of the detention authorities, the Respondents apparently intend to hold noncitizens charged as inadmissible pursuant to INA 212(a)(6)(A)(i) with appeals pending before the BIA as mandatorily detained under 8 U.S.C. § 1225(b)(2). Those so charged have, under this new detention scheme, been unable to request a custody redetermination hearing before the immigration court at the onset of their removal proceedings and upon material changes of circumstances because Respondents have consistently found they lack jurisdiction to hear these requests. *See Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). It is reasonable to surmise then that a noncitizen with a pending appeal will be unable to request that the immigration court redetermine their custody during the pendency of their appeal.

39. The duration of an appeal to the BIA is governed under 8 C.F.R. § 1003.1(e)(8). Per the regulations,

> Except in exigent circumstances as determined by the Chief Appellate Immigration Judge, or as provided in paragraph (d)(6) of this section, the Board *shall* dispose of all cases assigned to a single Board member within 90 days of completion of the record, or within 180 days after a case is assigned to a three-member panel (including any additional opinion by a member of the panel).
>
> *Id.* (emphasis added)

Unfortunately, the BIA has been unable to adhere to these perhaps aspirational deadlines. The Plaintiffs in *Rodriguez Vasquez v. Bostock* allege that the BIA's own Fiscal Year 2024 data indicated the BIA averaged approximately 204 days, or seven months, in reviewing appeals of bond decisions. *See* 25-cv-05240-TMC (W.D. Wash. March 20, 2025) (ECF. No. 1 at ¶ 57-58) It is not uncommon to hear immigration practitioners lament of appeals taking longer than six months. Pro se detained applicants are warned, "the BIA may take longer in some cases to make decisions than in others, so there is no

standard time for a BIA appeal to be completed. However, the BIA is supposed to make a decision within six months if you are detained."[2]

Prolonged Detention

40. "'It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.'" *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) ("Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention."). This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) ("[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious").

41. Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

42. Due process requires that the government provide bond hearings to noncitizens facing prolonged detention. "The Due Process Clause foresees eligibility for bail as part of due process" because "[b]ail is basic to our system of law." *Jennings*, 138 S. Ct. at 862 (Breyer, J., dissenting) (internal quotation marks omitted). While the Supreme Court upheld the mandatory detention of a noncitizen under Section 1226(c) in *Demore*, it did so based on the petitioner's concession of deportability and the Court's understanding at the time that such detentions are typically "brief." *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has been detained for a prolonged period or is

---

2 American Bar Association, Commission on Immigration, A Legal Guide for ICE Detainees: Appealing to the Board of Immigration Appeals, March 2020, ABA BIA-Appeals-Guide-English.pdf

pursuing a substantial defense to removal or claim to relief, due process requires an individualized determination that such a significant deprivation of liberty is warranted. *Id.* at 532 (Kennedy, J., concurring) ("[I]ndividualized determination as to his risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); *see also Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (holding that detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) (holding that "lesser safeguards may be appropriate" for "short-term confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (holding that, in the Eighth Amendment context, "the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards"); *Reid v. Donelan,* 17 F.4th 1, 7 (1st Cir. 2021) (holding that "the Due Process Clause imposes some form of reasonableness limitation upon the duration of detention" under section 1226(c)) (internal quotation marks omitted).

Case by Case Application of Whether Detention is Unreasonably Prolonged in Relation to its Purpose under 8 U.S.C. § 1226(c)

43. While the instant case does not involve mandatory detention pursuant to 8 U.S.C. § 1226(c), it is helpful to consider how prolonged detention questions are analyzed in the case of mandatory detention under this statute. The Eleventh Circuit has taken the position that noncitizens mandatorily detained pursuant to 8 U.S.C. § 1226(c) should benefit from a case-by-case inquiry using a reasonableness test to determine whether detention has become prolonged. *See e.g. Sopo v. Att'y Gen.* 825 F.3d 1199 (11th Cir. 2016), *vacated as moot,* 890 F.3d 952 (11th Cir. 2018). While the list is not exhaustive, factors to be considered are 1) the time the noncitizen has been in detention without a bond hearing; 2) why the removal proceedings have become protracted; 3) whether it will be possible to remove the criminal noncitizen once a final order of removal has been entered; 4) whether the noncitizen's detention has exceeded the time of criminal custody and 5) whether the civil immigration detention facility is meaningfully different from a penal institution. *See id.*

Prolonged Detention Under 8 U.S.C. § 1226(a)

1 44. In the Ninth Circuit, the Court considered prolonged detention under 8 U.S.C. § 1226(a)
2 by looking to the factors enunciated in *Mathews v. Eldridge*. *See Rodriguez Diaz v. Garland*, 53 F.4th
3 1189 (9th Cir. 2022). The Court found that prolonged detention under 8 U.S.C. § 1226(a) did not
4 violate due process because a noncitizen had the opportunity to seek custody redetermination at the
5 outset of the removal proceedings and upon material changes of circumstances. *See Id.* at 1202.
6 However, the Court did not have the opportunity to contemplate the Respondents new interpretation of
7 the detention authorities in that case. Because of that, an individual ostensibly detained under 8 U.S.C.
8 § 1226(a) may never have had the opportunity to receive a review of their custody. Thus, while not
9 identical situations, it may be instructive to analyze prolonged detention under 8 U.S.C. § 1226(a) by
10 looking to 8 U.S.C. § 1226(c) for guidance or by returning to the factors described in the *Mathews* test.
11 45. Relevant to the adequacy of procedure are: "the private interest that will be affected by
12 the official action," "the risk of an erroneous deprivation . . . and the probable value, if any, of
13 additional or substitute procedural safeguards," and "the Government's interest, including the function
14 involved and the fiscal and administrative burdens that the additional or substitute procedural
15 requirement would entail," *See Mathews v. Eldridge*, 424 U.S. 319, 355 (1976).

16 **FIRST CAUSE OF ACTION**
VIOLATION OF THE IMMIGRATION AND NATIONALTY ACT (DETENTION UNDER 8
17 **U.S.C. § 1225(b)(2) EXCEEDS STATUTORY AUTHORITY**

18
46. The foregoing allegations are incorporated as though fully set forth herein.
19
47. The mandatory detention provision at 8 U.S.C. §1225(b)(2) does not apply to noncitizens
20
residing in the United States who are inadmissible because they entered the United States without
21
being admitted. Such noncitizens may only be detained under § 1226(a), unless their detention is
22
mandated due to being an arriving "alien", conviction of certain criminal offenses, or being subject to
23
a final order of removal under Sections 1225(b)(1), 1226(c), or 1231. This is because Section
24
1225(b)(1)'s plain text states that it applies where (1) the subject is an applicant for admission, (2) the
25
subject is seeking admission, and (3) the officer is conducting an examination of the subject:
26 (2) Inspection of other aliens
(A) In general
27

28

> Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

U.S.C. § 1225(b)(2)(A).

48. Section 235(a)(2) was adopted in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Pub. L. No. 104-208, div. C, 110 Stat. 3009-546 (1996) ("IIRIRA"), along with a few others. IIRIRA is widely seen as one of the harshest immigration enactments of the last 100 years— both by those who view it as the just imposition of consequences on those who broke the law, and those who view it as draconian. This is important because the words of this statute are not an example of legislative subtlety, diplomatic finesse, or cautious reliance on implicit preference. *See* IIRIRA §, 8 U.S.C. § 1182(a)(9)(B)(noncitizen who is unlawfully present for one year or more is ineligible to be admitted to the United States for 10 years, excluding days while under 18, and providing for discretionary extreme hardship waiver during 10 years); 8 U.S.C. § 1182(a)(9)(C)(i)(I) (noncitizen who is unlawfully present for one year or more and who re-enters the United States without inspection in ineligible to be admitted to the United States for life—including if such time and re-entry occurred while a minor, and permitting a discretionary waiver only after the person is physically abroad for 10 years). If IIRIRA meant what Respondents say it meant, it is hard to understand why the text does not simply provide that those who are inadmissible under 8 U.S.C. § 1182(a)(6) shall be detained pending a decision on removal.

49. Counsel also respectfully observes that the Board's opinion materially misrepresents the text of the Supreme Court's opinion in *Jennings*, while relying upon it heavily to reach the result it does. The Board asserts that the Court interpreted Section 1225(b)(2) in an absolute fashion, but it cherry-picks the one exception to the Court's mandatory detention holding that emphasizes limitations on the IJ's authority. It then ignores any other indication the holding was constrained. The Board held, regarding the group defined by Section § 1225(b)(2)(A):

> This category is a "catchall provision that applies to all applicants for admission not covered by [section 235(b)(1); 8 U.S.C. § 1225(b)(1)]." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Like with the first two categories of

> applicants for admission, the INA explicitly requires that this third "catchall" category of applicants for admission be mandatorily detained for the duration of their immigration proceedings. See INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A); see also *Jennings*, 583 U.S. at 299 (interpreting the "plain meaning" of sections 235(b)(1) and (2) to mean that applicants for admission be mandatorily detained for the duration of their immigration proceedings) [FN4]; 8 C.F.R. § 235.3(b)(1)(ii).
>
> [FN4] While these aliens might be subject to parole by the Attorney General or DHS, that is not an issue that the Immigration Judge has authority to consider. See INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. 212.5(a) (2025) (designating who may exercise authority to grant parole); see also *Jennings*, 583 U.S. at 300 (noting that the Attorney General may grant aliens detained under sections 235(b)(1) and (b)(2) temporary parole into the United States "for urgent humanitarian reasons or significant public benefit" (quoting INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A)).

Matter of Yajure Hurtado, 29 I&N Dec. at 281-282.

In contrast, what the Court actually held was:

> **As relevant here**, applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2). Section 1225(b)(1) applies to aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. See § 1225(b)(1)(A)(i) (citing §§ 1182(a)(6)(C), (a)(7)). Section 1225(b)(1) also applies to certain other aliens designated by the Attorney General in his discretion. See § 1225(b)(1)(A)(iii). Section 1225(b)(2) is broader. It serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) **(with specific exceptions not relevant here**). See §§ 1225(b)(2)(A), (B).

Jennings v. Rodriguez, 583 U.S. 281 at 287 (emphasis added).

50. The Court's holding is hedged and acknowledges exceptions but does not state what they are—just that they are not relevant to the matter before the Court and then cites the sections broadly. Those exceptions include, presumably, Cubans arriving by air under 8 U.S.C. § 1225(b)(1)(F); noncitizen crewmen under 8 U.S.C. § 1225(b)(2)((B)(i); and persons entering the U.S. by land from a contiguous country (who can be returned there to await a hearing under 8 U.S.C. § 1225(b)(2)(C) (the legal basis of the "Remain in Mexico" policy). The other exception is those who are not seeking admission and/or not being examined, under the reasoning Mr. De Oliveira advances here. It is

dubious that the Court intended *sub silientio* to render all persons present without inspection who have affected an entry to become subject to mandatory detention—through a case where the question was not presented at all and in which the Court strongly suggested that class action habeas suits were beyond the jurisdiction of the federal courts. In any event, the Court lacked subject matter jurisdiction over that issue.

51. What the Court did decide was only (1) people charged with removability for fraud or lack of documents at a port of entry are subject to mandatory detention under § 1225(b)(1); (2) people subject to expedited removal outside a port of entry and are also subject to mandatory detention under § 1225(b)(1); and (3) those who come within the parameters of § 1225(b)(2) are subject to mandatory detention.

52. It did not decide who comes within the parameters of §1225(b) at the point of initial detention. The focus was on these questions because the Court was addressing the Ninth Circuit's application of the doctrine of constitutional avoidance to imply a right to a custody hearing at the six-month mark of detention. It found that this was too much of a linguistic stretch and remanded the matter in part for courts below to address the actual constitutional question which undoubtedly would be pressed further by the litigants. None of the *Rodriguez* class challenged an initial determination of what statute authorized their detention. The subclass of those detained under § 1225(b)(1) conceded that their detention had been pursuant to this provision at least at the point of apprehension, but argued it then shifted to § 1226(a) once proceedings commenced. The court rejected this reasoning, but it did not address a case where apprehension under § 1225(b)(1) was not authorized in the first place. *See Jennings*, 583 U.S. at 301.

53. Even if there are some limits to the canon against surplusage, the use of these two formulations: "an alien applying for admission" and "an alien seeking admission", in the very same sentence, must be given some effect. This is especially so where other parts of the statute demonstrate Congress understood someone can be one but not the other at the same time.

54. In other parts of this statute Congress provided that "[a]n alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the

application for admission and depart immediately from the United States". So, a person can be an "alien applying for admission" and at the same time not be seeking admission. They are nevertheless an applicant for admission until receiving favorable consent by the Attorney General (DHS Secretary) to withdraw the application.

55. The ordinary usage of being an applicant and seeking something supports this interpretation. More broadly, when a person is under consideration for any status or thing and the matter will be decided by another party (a candidate, nominee, contestant, etc.), they can be a person under consideration due to their expression of desire yet cease to seek the object of that desire. A person can be an applicant for admission to a particular university and yet also be, or not be, a person seeking admission. Presumably most applicants will always be seeking admission until a decision but, like many things in life, things change. A person may be a nominee for a particular executive branch position, and yet no longer be seeking the nomination. A contestant for the gold medal can be a contestant but no longer seeking it due to injury. When used *in juxtaposition* with the words "seeks" or "seeking", one's status as an applicant, candidate, and nominee, are historical facts that cannot be changed by that applicant, candidate, etc. Their current subjective intent matters when the idea is described in this way (even if a person could also state they are "no longer a candidate" to express their subjective intent has changed). Interpreted this way, the purpose of the statutory provision defining those present without admission as "applicants for admission" is merely to define that such presence implicitly constitutes a declaration of a desire to be admitted to the United States, which then could subject the person to potential examination by an immigration officer even if they effected an entry. In summary, the plain language of the statute does not permit detention of those who are present without admission of parole, who are not seeking admission and have not sought it, and/or who have never been examined by an immigration officer. Mr. De Oliveira's construction of the statue explains why Congress could have believed that it was simply re-enacting the same statutory authority for discretionary bond for those in the interior that existed under prior law, and why for nearly 30 years this interpretation has prevailed without any dispute (so far as counsel has uncovered) by the proponents of IIRIRA. In the alternative, the statutory text, when considered within the context of the

entire statute, legislative history, and the Congressional purposes underlying IIRIRA, is not reasonably construed to require or permit mandatory detention without bond for this group of people

SECOND CAUSE OF ACTION
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT – UNLAWFUL DENIAL OF BOND

56. The foregoing allegations are incorporated as though fully set forth herein.

57. The mandatory detention provision at 8 U.S.C. §1225(b)(2) does not apply to noncitizens residing in the United States who are subject to grounds of inadmissibility because they entered the United States without being admitted. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as §1225(b)(1), § 1226(c), or § 1231.

58. Denying Mr. De Oliveira a bond pursuant to an improper reading of the INA is arbitrary, capricious, and not in accordance with the law. As such, it violates the APA. See Sec. 5 U.S.C. § 706(2).

THIRD CAUSE OF ACTION
VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

59. The foregoing allegations are incorporated as though fully set forth herein.

60. If Respondents are correct that Mr. De Oliveira is properly detained pursuant to 8 U.S.C. § 1225(b)(2) and that his detention is mandatory without the right to demonstrate he is not dangerous and not a flight risk in a neutral forum, the statute violates the Fifth Amendment Due Process Clause. The essence of procedural due process is that a person risking a serious loss be given notice and an opportunity to be heard in a meaningful manner and at a meaningful time. *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976). Permitting detention where the jailer is the only forum for release and has essentially unfettered discretion fails to meet the most basic expectation of a process. Furthermore, his detention has now crossed into the realm of prolonged.

61. Mr. De Oliveira has now been detained for more than six months. His continued detention without an adequate custody redetermination hearing violates his right to be free of prolonged non-criminal detention without adequate justification and sufficient procedural safeguards, as

guaranteed by the Due Process Clause of the Fifth Amendment of the United States Constitution. *See Demore v. Kim*, 538 U.S. 510, 523 (2003), *Zadvydas v. Davis*, 533 U.S. 678 (2001). Immigration detention is civil and should not be punitive in nature. It must bear a reasonable relationship to its stated purposes of ensuring compliance with removal proceedings and ensuring public safety is maintained. *Zadvydas*, 533 U.S. at 690.

62. Mr. De Oliveira does not suggest he is statutorily entitled to a custody redetermination at the six-month mark, as the Court in *Jennings* clearly found that the statute did not require it. *See Jennings v. Rodriguez* 83 U.S. 281 (2018). Mr. De Oliveira suggests, and the Court in *Jennings* permits, a constitutional challenge to his continued detention. Whether applying the reasonableness test articulated in *Sopo* or applying the *Mathews* factors, Mr. De Oliveira's detention without neutral review has violated his due process rights.

63. Mr. De Oliveira has now been in custody for over six months without a bond hearing. The *Sopo* test would support his release from custody. His removal proceedings are protracted because he has exercised his right to appeal a denial of his applications for relief and USCIS has not adjudicated his application for T nonimmigrant status. Mr. De Oliveira has no criminal convictions. The cases of domestic violence and criminal sexual misconduct were dismissed. His only other contacts with the criminal legal system are traffic citations which do not make him removable or inadmissible. Mr. De Oliveira is from Brazil and there are no diplomatic impediments to his removal should that time become necessary. He has every reason to actively participate in his removal proceedings because he has multiple avenues of potential relief available to him.

64. Additionally, Mr. De Oliveira's detention without any individualized review is unreasonable under the *Mathews* due process test. *See Mathews* 424 U.S. at 335. The relevant *Mathews* factors include: 1) the private interest affected by the official action; 2) the risk of an erroneous deprivation of that interest; and 3) the government's interest in limiting the procedural burdens. *See id* at 335. The factors weigh in Mr. De Oliveira's favor.

65. Mr. De Oliveira has a significant interest in his own liberty, and he faces severe hardships while detained in the custody of the Respondents. Petitioner has a substantial private interest in

remaining out of custody, which would allow [them] to live at home, work, obtain necessary medical care, and continue to provide for her family." *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). He is detained without freedom of movement and access to his family. He is unable to work to support his family or participate in their lives. Mr. De Oliveira's risk of erroneous deprivation of his liberty interest is high. He has now been detained for over six months without access to a review by a neutral arbiter. Finally, the government's interest in continuing to detain Mr. De Oliveira without neutral review is low. The specific interest at stake here is not the government's ability to continue to detain Petitioner, but rather the government's ability to continue to detain them for months on end without any individualized review. Because the *Mathews* factors weigh heavily in favor of Mr. De Oliveira, this Court should so hold as well.

66. To justify prolonged immigration detention, the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. Where the Supreme Court has permitted civil detention in other contexts, it has relied on the fact that the Government bore the burden of proof by at least clear and convincing evidence. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention after a "full-blown adversary hearing" requiring "clear and convincing evidence" and a "neutral decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody review procedures deficient because, *inter alia*, they placed burden on detainee). It is therefore appropriate to require the Respondents to establish by clear and convincing evidence that Mr. De Oliveira is either a flight risk or a danger to the public.

67. Due Process also requires consideration of alternatives to detention and the individual's ability to pay bond. The primary purpose of immigration detention is to ensure a noncitizen's appearance during civil removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538–39 (1979) (civil pretrial detention may be unconstitutionally

punitive if it is excessive in relation to its legitimate purpose). Detention of an indigent noncitizen 'for inability to post money bail' is impermissible if the individual's 'appearance at trial could reasonably be assured by one of the alternate forms of release.'" *See Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)). Respondents can easily ensure Mr. De Oliveira participates in his removal proceedings and does not endanger society by placing him on their intensive supervision appearance programs, which may include an ankle monitor.

CONCLUSION AND REQUEST FOR RELIEF

Mr. De Oliveira requests that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) Declare that Mr. De Oliveira's detention violates the INA, the APA, and the Due Process Clause of the Fifth Amendment;

(4) Issue a Writ of Habeas Corpus ordering Respondents to release Mr. De Oliveira immediately, and alternately an IJ bond hearing pursuant to 8 U.S.C. § 1226(a) where the government must establish by clear and convincing evidence that he is a flight risk or danger to society;

(5) Award Mr. De Oliveira attorney's fees and costs under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law;

and

(6) Grant such other and further relief that the Court deems just and proper.

Dated: January 21, 2026

Respectfully submitted,

/S/

THOMAS EVANS (GA 305649)
KUCK BAXTER LLC
365 NORTHRIDGE ROAD, SUITE 300
ATLANTA, GA 30350
Tel. (404) 720-8300
tevans@immigration.net

Attorney for Plaintiff
Pablo De Oliveira Campos

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

I represent Pablo De Oliveira Campos, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: January 21, 2026

Respectfully submitted,

/S/

THOMAS EVANS (GA 305649)
KUCK BAXTER LLC
365 NORTHRIDGE ROAD, SUITE 300
ATLANTA, GA 30350
Tel. (404) 720-8300
tevans@immigration.net

Attorney for Plaintiff