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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA**

ARGELIA GARCIA VILLATORO,

Petitioner,

v.

JASON STREEVAL, Warden of Stewart
Detention Center;

SEAN ERVIN, Field Office Director of
Enforcement and Removal Operations, Atlanta
Field Office (ERO Atlanta);

TODD M. LYONS, Senior Official Performing
the Duties of Director, Immigration and
Customs Enforcement;

DAREN K. MARGOLIN, Director, Executive
Office For Immigration Review (EOIR);

KRISTI NOEM, Secretary, U.S. Department
of Homeland Security(DHS); and

PAMELA BONDI, U.S. Attorney General; in
their official capacities,

Respondents.

Case No. 4:26-CV-172

**PETITION FOR WRIT OF
HABEAS CORPUS**

1 INTRODUCTION

2 1. Petitioner, Mrs. Argelia Garcia Villatoro is a Cancellation of Removal candidate
3 from Mexico who entered the United States with a visa (admitted) over 23 years ago and was not
4 apprehended upon arrival. Mrs. Argelia Garcia Villatoro was apprehended by immigration
5 authorities on November 18, 2025. The Respondents keep Mrs. Garcia Villatoro detained at the
6 Stewart Detention Center in Lumpkin, Georgia.

7 2. Mrs. Garcia Villatoro is a member of a nationwide class of noncitizens who are in
8 immigration detention and being denied access to a bond hearing based on the government's
9 allegation that they entered the United States without admission or inspection (colloquially
0 referred to as "entered without inspection" or "EWI").

1 3. On November 25, 2025, the U.S. District Court for the Central District of
2 California granted declaratory relief to the entire class in *Maldonado Bautista v. Santacruz*, No.
3 5:25-CV-01873-SSS-BFM (C.D. Cal.), ¹ (*See, Exhibit. 1*) holding that the government is
4 unlawfully subjecting them to mandatory (meaning no-bond) detention and that class members
5 are eligible for release on bond under the immigration laws. Under the Court's order, class

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¹ On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs holding that the government's policy is inconsistent with the plain language of the *Immigration and Nationality Act* ("INA"), and that petitioners are properly subject to § 1226(a); and on November 25, 2025, , the Court certified a nationwide class and expressly "extend[ed] the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861, at *9, 11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment). The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a) and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

1 members should be able to request a bond hearing in immigration court before an immigration
2 judge (IJ) who must consider whether they are suitable for release on bond while their removal
3 proceedings are pending.

4 4. Because the Department of Homeland Security (DHS) and the Executive Office
5 for Immigration Review (EOIR) have refused to abide by the declaratory judgment issued on
6 behalf of the certified class in *Maldonado Bautista v. Santacruz*, Mrs. Garcia Villatoro is likely
7 to face many additional months in detention. Mrs. Garcia Villatoro has no other option but to
8 bring this petition for a writ of habeas corpus to enforce her rights as a member of the Bond
9 Eligible Class certified in *Maldonado Bautista v. Santacruz, id.*

10 5. Mrs. Garcia Villatoro also seeks relief from this Court, as a detainee under INA §
11 1226(a), independent of any claim to class membership, because her continued, lengthy
12 immigration related detention is anyhow unconstitutional due to the violation of her
13 constitutional right to due process under the Fifth Amendment, the violation of the
14 *Administrative Procedure Act* (APA) unlawful denial of bond, and the violation of statutory
15 rights under the INA for unlawful denial of bond hearings

16 6. Accordingly, to vindicate Mrs. Garcia Villatoro's rights, as a member of the Bond
17 Eligible Class in *Maldonado Bautista*, as well as under the Constitution of the United States, and
18 her statutory rights under INA, this Court should grant the instant petition for a writ of habeas
19 corpus.

20 7. Therefore, the Court should order Petitioner's release unless Respondents provide
21 a bond hearing under 8 U.S.C. § 1226(a) within seven days.

22 **JURISDICTION**

1 8. This action arises under the Constitution and the *Immigration and Nationality Act*,
2 8 U.S.C. § 1101 *et seq*

3 9. This Court has jurisdiction under 28 U.S.C. § 2241 (the general grant of habeas
4 authority to the district court); 28 U.S.C. § 1331 (federal question), and Article I, section 9,
5 clause 2 of the United States Constitution (the Suspension Clause) as Mrs. Argelia Garcia
6 Villatoro is presently in custody at the Stewart Detention Center under or by color of the
7 authority of the United States, and such custody is in violation of the U.S. Constitution, laws, or
8 treaties of the United States.

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

11 11. Federal district courts have jurisdiction to hear habeas claims by non-citizens
12 challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678 (2001).

13 12. Federal courts also have federal question jurisdiction, through the *Administrative*
14 *Procedure Act* (APA), to “hold unlawful and set aside agency action” that is “arbitrary,
15 capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. 706(2)(A).

16 VENUE

17 13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
18 500 (1973), venue lies in the United States District Court for the Middle District of Georgia, the
19 judicial district in which Petitioner currently is detained.

20 14. Venue is also properly in this Court pursuant to 228 U.S.C. § 2241(c)(3) and 8
21 U.S.C. § 1391(b)(2) and 1391(e) because the Petitioner is in the physical custody of Respondents
22 and Immigration and Customs Enforcement, an agency within the Department of Homeland
23

1 Security Petitioner. Mrs. Garcia Villatoro is detained at the Stewart Detention Center in
2 Lumpkin, Georgia and is under the direct control of Respondents and their agents.

3 15. Furthermore, Respondents are employees, officers, and agencies of the United
4 States, and because a substantial part of the events or omissions giving rise to the claims
5 occurred and continue to occur at the Atlanta Field Office of ICE's Enforcement and Removal
6 Operations division (ERO Atlanta) within the Middle District of Georgia's District and Division.

6 **REQUIREMENTS OF 28 U.S.C. § 2243**

7 16. The federal habeas corpus statute provides that “[a] court, justice or judge
8 entering a writ of habeas corpus shall forthwith award the writ or issue an order directing the
9 respondent to show cause why the writ should not be granted, unless it appears from the
10 application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

1 17. Courts have long recognized the significance of the habeas statute in protecting
0 individuals from unlawful detention. Habeas corpus is “perhaps the most important writ known
1 to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of
1 illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The
1 application for the writ usurps the attention and displaces the calendar of the judge or justice who
2 entertains it and receives prompt action from him within the four corners of the application.”
3 *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

1 18. Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests, and this Court
3 should grant the petition for writ of habeas corpus “forthwith,” as the legal issues have already
1 been resolved for class members in *Maldonado Bautista*.

1 19. However, if pursuant to Section 2243, this Court issues an order to show cause
2 (OSC), it must direct the respondents to file a return showing why the petition for a writ of
3 habeas corpus filed by Mrs. Garcia Villatoro pursuant to 28 U.S.C. § 2241 should not be granted.

4 20. As provided by Section 2243, the writ or order to show cause must be returned by
5 the respondents “within *three days* unless for good cause additional time, not exceeding twenty
6 days, is allowed.” 28 U.S.C. § 2243 (emphasis added).

7 21. Nonetheless, giving the Respondents additional time to respond is inappropriate
8 in this case because Mrs. Garcia Villatoro faces unjustified detention for an extended period of
9 time without being able to challenge her detention at a bond hearing in immigration court while
10 the immigration proceedings are pending. It is important to note, that should Mrs. Garcia
11 Villatoro continue to fight her case, Respondents will not offer the opportunity for pre-removal
12 release.

13 22. Thus, Mrs. Garcia Villatoro’s period of detention is uncertain and can also
14 increase because of the backlog in the immigration courts. Mrs. Garcia Villatoro’s ongoing, and
15 prolonged detention carries the separation from her 2 minor United States citizen daughters and
16 other close family members. Additionally, the harshness of detention could not only affect her
17 physical health or expose her to psychological trauma, but it could also be used to pressure her to
18 accept abandonment of any claims of immigration relief and accept deportation.

19 23. Absent a grant of this petition for writ of habeas corpus or an issuance of an Order
20 to show cause, the respondents will cause irreparable harm to Mrs. Garcia Villatoro by
21 subjecting her to an indefinite deprivation of her liberty and other fundamental rights.

22 **PARTIES**

1 24. Mrs. **ARGELIA GARCIA VILLATORO** is a citizen of Mexico that has
2 resided in the United States since 2003. Mrs. Garcia Villatoro was arrested while a passenger in a
3 vehicle. She has been in immigration detention since November 18, 2025.

4 25. Respondent, Mr. **SEAN ERVIN**, Field Office Director of Enforcement and
5 Removal Operations, is the Director of the, Atlanta Field Office of ICE's Enforcement and
6 Removal Operations division (ERO Atlanta). As such, Mr. **Ervin**, Field Office Director of
7 Enforcement and Removal Operations, is Petitioner's immediate custodian and is responsible for
8 Petitioner's detention and removal. He is named in his official capacity.

9 26. Respondent, **TODD M. LYONS**, is the Senior Official Performing the Duties of
10 Director of the U.S. Immigration Customs Enforcement, is the federal agency responsible for
11 custody decisions relating to non-citizens charged with being removable from the United States,
12 including the arrest, detention, and custody status of non-citizens. Mr. Lyons has responsibility
13 for the administration of the immigration laws pursuant to 8 U.S.C. § 1103 and is a legal
14 custodian of Mr. Nolasco Gomez. He is sued in his official capacity.

15 27. Respondent, **JASON STREEVAL**, is on information and belief, an employee of
16 CoreCivic the private corporation which runs the Stewart Detention Center in Lumpkin, Georgia.
17 contract facility where Petitioner is detained. On information and belief, Mr. Streeval's job title
18 is Warden of the Stewart Detention Center. He has immediate physical custody of Mrs. Garcia
19 Villatoro. He is sued in his official capacity.

20 28. Respondent, **DAREN K. MARGOLIN**, is the Director of the Executive Office
21 for Immigration Review (EOIR), is the federal agency responsible for implementing and
22 enforcing the INA in removal proceedings, including for custody redeterminations in bond
23 hearings.

1 29. Respondent, **KRISTI NOEM**, is the Secretary of the Department of Homeland
2 Security. She is responsible for the implementation and enforcement of the Immigration and
3 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms.
4 **Noem** has ultimate custodial authority over Petitioner and is sued in her official capacity.

5 30. Respondent, **PAMELA BONDI**, is the Attorney General of the United States.
6 She is responsible for the Department of Justice, of which the Executive Office for Immigration
7 Review and the immigration court system it operates is a component agency. She is sued in her
8 official capacity.

8 **STATEMENT OF FACTS**

9 31. Mrs. Garcia Villatoro Arcos is a 50-year-old woman who was born in Mexico.

10 32. Mrs. Garcia Villatoro entered the United States with a tourist visa (admitted) back
11 in 2003.

12 33. Mrs. Garcia Villatoro is an employee of a printing press and has no criminal
13 history.

14 34. Mrs. Garcia Villatoro has 2 minor daughters that were born in the United States.

15 35. Mrs. Garcia Villatoro has other family members (an adult daughter with Deferred
16 Action for Childhood Arrivals- DACA) living in the United States.

17 36. On November 18, 2026 Mrs. Garcia Villatoro was wrongfully detained by ICE
18 agents while a passenger in a vehicle.

19 37. Mrs. Garcia Villatoro is in the physical custody of Respondents at the Stewart
20 Detention Center in Lumpkin Georgia.

21 38. Mrs. Garcia Villatoro is a member of the Bond Eligible Class, as she:

- 1 a. **Does not have lawful status in the United States** and is currently detained at the
Stewart Detention Center.
- 2 b. Mrs. Garcia Villatoro is purported to have **entered the United States without**
3 **inspection** over 23 years ago and **was not apprehended upon arrival, cf. id.;**
and
- 4 c. **is not subject nor detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.**

5 39. After apprehending Petitioner on November 18, 2026, the DHS placed her in
6 removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being
7 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States
without inspection.

8 40. On December 16, 2025, Immigration Judge Brown at the Stewart Detention
9 Center denied Petitioner's Bond Request stating that despite proof of lawful entry, it cannot be
1 proven that her last entry was lawful and found to have no jurisdiction pursuant to Matter of
0 Yahure-Hurtado.

1 41. This order came despite proof of Petitioner's evidence of having a valid visa and
also despite the binding precedent of Matter of Quilantan, 25 I&N Dec. 285 (BIA 2010) which is
1 directly on point in determining that immigrants with a valid visa are presumed to have been
1 admitted into the country as they have no reason to enter unlawfully or without inspection.

2 42. On December 23, 2025, Immigration Judge Brown again ignored the proof of
1 valid legal entry and the binding precedent that is directly on point in this case and sustained
3 DHS charges stating Petitioner entered illegally into the United States.

1 43. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full
4 "force and effect of a final judgment." 28 U.S.C. § 2201(a). Nevertheless, Respondents continue
1 to flagrantly defy the judgment in that case and continue to subject Mrs. Garcia Villatoro to

1 unlawful detention despite her clear entitlement to consideration for release on bond as a Bond
2 Eligible Class member.

3 44. Mrs. Garcia Villatoro is scheduled to have an Individual Hearing, which is the
4 final step of the removal proceedings, on February 6, 2026, at 1:00 p.m. It is important to note
5 that the Executive Office for Immigration Review and its subagency the Immigration Court and
6 the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory
7 relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on
8 bond.

9 45. With this in mind, it is of extreme urgency that this Court issue a decision as early
10 as practicable. This will allow the undersigned attorney to effectively argue for Mrs. Garcia
11 Villatoro's release and ensure that the Immigration Judge affords Mrs. Garcia Villatoro a bond
12 hearing as ordered in the judgment in *Maldonado Bautista* and in accordance with her due
13 process right. Therefore, the Court should expeditiously grant this petition.

14 LEGAL FRAMEWORK

15 A. HABEAS CORPUS

16 46. "Habeas relief is available when a person is 'in custody in violation of the
17 Constitution or laws or treaties of the United States.'" *Lopez-Campos v. Raycraft*, No. 2:25-cv-
18 12486, 2025 WL 2496379, at *3 (E.D. Mich. Aug. 29, 2025) (quoting 28 U.S.C. § 2241(c)(3)).

19 47. The right to file a petition for a writ of habeas corpus is intended to, at a
20 minimum, provide "a means of reviewing the legality of Executive detention." *Rasul v. Bush*,
21 542 U.S. 466, 474 (2004) (quoting *INS v. St. Cyr*, 533 U.S. 289, 301 (2001)).

1 48. In the context of immigration, there are two main sources of authority for habeas
2 corpus petition. The first, is the civil habeas statute, 28 U.S.C. § 2241. It provides that:

3 (a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof,
4 the district courts and any circuit judge within their respective jurisdictions. The order
of a circuit judge shall be entered in the records of the district court of the district
wherein the restraint complained of is had.

5 (c) The writ of habeas corpus shall not extend to a prisoner unless—

6 (1) He is in custody under or by color of the authority of the United States
or is committed for trial before some court thereof; or

7 . . .

(3) He is in custody in violation of the Constitution or laws or treaties of
the United States . . . 28 U.S. Code § 2241 - Power to grant writ.

8 49. The second basis of jurisdiction, is the Suspension Clause of the U.S. Constitution,
9 also known as the Great Writ. *See* U.S. Const. art. I, § 9, cl. 2 (“The Privilege of the Writ of
1 Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public
0 Safety may require it.”).

1 **B. DUE PROCESS CLAUSE, US CONSTITUTION**

1 50. The Fifth Amendment of the U.S. Constitution protects every person from being
“deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V § 2.

1 51. In the immigration context, the Supreme Court extended these constitutional
2 protections to all noncitizens within the United States, including those who entered unlawfully,
1 declaring that “[noncitizens] who have once passed through our gates, even illegally, may be
3 expelled only after proceedings conforming to traditional standards of fairness encompassed in
1 due process of law.” *See, Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953);
4 *see also Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (There are literally millions of aliens within
1 the jurisdiction of the United States. The Fifth Amendment, as well as the Fourteenth

1 Amendment, protects every one of these persons from deprivation of life, liberty, or property
2 without due process of law.); *Plyler v. Doe*, 457 U.S. 202, 215 (1982) (holding that unlawfully
3 present aliens were entitled to both due process and equal protection under the Fourteenth
4 Amendment).

5 52. The Court reasoned that noncitizens physically present in the United States,
6 regardless of their legal status, are recognized as persons guaranteed due process of law by the
7 Fifth and Fourteenth Amendments. *Plyler*, 457 U.S. at 210 (citing *Mezei*, 345 U.S. at 212; *Wong*
8 *Wing v. United States*, 163 U.S. 228, 238 (1896); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886)).
9 Thus, the Court determined, [e]ven one whose presence in this country is unlawful, involuntary,
10 or transitory is entitled to that constitutional protection. *Mathews*, 426 U.S. at 77; see also
11 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (explaining that the Due Process Clause applies to
12 all ‘persons’ within the United States, including aliens, whether their presence here is lawful,
13 unlawful, temporary, or permanent). “The Due Process Clause extends to all ‘persons’ regardless
14 of status, including non-citizens (whether here lawfully, unlawfully, temporarily, or
15 permanently).” *Lopez-Campos*, 2025 WL 2496379, at *9 (citing *Zadvydas v. Davis*, 533 U.S.
16 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S.
17 292, 306 (1993)).

18 53. Accordingly, notwithstanding Congress’s indisputably broad power to regulate
19 immigration, fundamental due process requirements notably constrained that power with respect
20 to aliens within the territorial jurisdiction of the United States. See *Kwong Hai Chew*, 344 U.S.
21 590, 596–97 (1953) (explaining that a lawful permanent resident may not be deprived of his life,
22 liberty or property without due process of law, and thus cannot be deported without notice of the
23 nature of the charge and a hearing at least before an executive or administrative tribunal).

1 54. This fundamental due process protection applies to all noncitizens, including both
2 removable and inadmissible noncitizens. *See Zadvydas v. Davis*, 533 U.S. 678, 721 (2001)
3 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be
4 free from detention that is arbitrary or capricious”). It also protects noncitizens who have been
5 ordered removed from the United States and who face continuing detention, *Diouf v. Napolitano*,
6 634 F.3d 1081, 1086-87 (9th Cir. 2011), as well as those noncitizens deemed “arriving” under
7 the INA, *Jennings v. Rodriguez*, 138 S.Ct. 830, 862 (2018). (Breyer, J., dissenting) (stating that
8 “arriving” noncitizens enjoy due process protections against prolonged detention because they
9 are “are held within the territory of the United States at an immigration detention facility” (citing
10 *Wong Wing v. United States*, 163 U.S. 228, 238 (1896)); *see also Kwai Fun Wong v. United*
11 *States*, 373 F.3d 952, 973-74 (9th Cir. 2004) (concluding that the “entry fiction” does not
12 preclude substantive constitutional protection for noncitizens considered “arriving”).

1 55. As a matter of context, in the last two decades, the Supreme Court has addressed
2 several challenges to the immigration detention scheme. For instance, in *Zadvydas v. Davis*, 533
3 U.S. 678, 721 (2001), the Supreme Court explained that “Freedom from imprisonment—from
4 government custody, detention, or other forms of physical restraint—lies at the heart of the
5 liberty” that the Due Process Clause protects. *Id.* at 690. The Supreme Court then held that the
6 government must demonstrate that a noncitizen’s removal is reasonably likely to occur if the
7 noncitizen remains detained for six months after the removal period specified in 8 U.S.C. §
8 1231(a)(6). 533 U.S. at 701. In doing so, the Court recognized a presumption that detention
9 longer than six months following a noncitizen’s removal period violates that noncitizen’s due
10 process right to liberty. *Id.*

1 56. In *Demore v. Kim*, 538 U.S. 510, 523 (2003), the Supreme Court upheld the
2 mandatory detention of a noncitizen under 8 U.S.C. § 1226(c) based on the petitioner's
3 concession of deportability and the Court's understanding that detention under § 1226(c) is
4 typically "brief." *Demore*, 538 U.S. at 522 n.6, 528. Nevertheless, the Supreme Court's decision
5 in *Demore* did not foreclose a noncitizen's right to challenge prolonged detention that does not
6 provide protections that permit a noncitizen to challenge continued confinement.

7 57. To guarantee against such arbitrary detention and to guarantee the right to liberty,
8 due process requires "adequate procedural protections" that ensure the government's asserted
9 justification for a noncitizen's physical confinement "outweighs the individual's constitutionally
10 protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation
11 marks omitted).

12 58. Following *Zadvydas* and *Demore*, circuit court of appeals that confronted the
13 issue found either that the INA or due process require a bond hearing or release for noncitizens
14 subject to unreasonably prolonged detention pending removal proceedings. *See, e.g., Sopo v.*
15 *U.S. Attorney Gen.*, 825 F.3d 1199 (11th Cir. 2016), *vacated as moot*, 890 F.3d 952 (11th Cir.
16 2018); *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016); *Lora v. Shanahan*, 804 F.3d 601 (2d Cir.
17 2015); *Rodriguez v. Robbins (Rodriguez III)*, 804 F.3d 1060 (9th Cir. 2015); *Diop v.*
18 *ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. 2011); *Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003).

19 59. Later, in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court held that
20 the Ninth Circuit erred by interpreting 8 U.S.C. §§ 1226(c) and 1225(b) to require bond hearings
21 as a matter of statutory construction. The Supreme Court concluded that §§ 1225(b), 1226(a), and
22 1226(c) do not give detained [noncitizens] the right to periodic bond hearings during the course
23 of their detention. Because the Ninth Circuit had not decided whether the Constitution itself

1 requires bond hearings in cases of prolonged detention, the Court remanded for the Ninth Circuit
2 to address the issue. *Id.* at 851. The Court’s majority opinion did not express any views on the
3 constitutional question and left it to the lower courts to address the issue in the first instance.

4 60. In his dissent, Justice Breyer expressed that “to hold a [person] without bail is to
5 deprive him of bodily “liberty...” “...where there is no bail proceeding, there has been no bail-
6 related “process” at all.” citing *United States v. Salerno*, 481 U. S. 739–751 (1987). Justice
7 Breyer also mentioned that “[f]reedom from bodily restraint has always been at the core of the
8 liberty protected by the Due Process Clause from arbitrary governmental action.”
9 citing *Foucha v. Louisiana*, 504 U. S. 71, 80 (1992); *Demore v. Kim*, 538 U. S. 510, 532 (2003)
10 (Kennedy, J., concurring); *Zadvydas*, 533 U. S., at 718 (Kennedy, J., dissenting). To Justice
11 Breyer “[t]he Due Process Clause foresees eligibility for bail as part of due process” because
12 “[b]ail is basic to our system of law.” *Jennings*, at 862, (citing *Salerno, supra*, at 748–
13 751; *Schilb v. Kuebel*, 404 U. S. 357, 365 (1971); *Stack v. Boyle*, 342 U. S. 1, 4 (1951)).

14 61. Since the Supreme Court’s *Jennings* decision, lower courts have expressed that
15 “...any statute that allows for arbitrary prolonged detention without any process is
16 unconstitutional or that those who founded our democracy precisely to protect against the
17 government’s arbitrary deprivation of liberty would have thought so.” *See. e.g., Rodriguez v.*
18 *Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

19 62. In immigration cases, civil detention has been found to only permissible where it
20 bears a “reasonable relation to the purpose for which the individual was committed.” *Jackson v.*
21 *Indiana*, 406 U.S. 715, 738 (1972). As concluded in *Zadvydas v. Davis*, 533 U.S. at 690, due
22 process thus requires “adequate procedural protections” to ensure that the government’s asserted
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1 justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally
2 protected interest in avoiding physical restraint.” *Id.* at 690 (internal quotation marks omitted).

3 63. Also, and relevant here, in the immigration context, the Supreme Court has
4 recognized only two valid purposes for civil detention: to mitigate the risks of danger to the
5 community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528. The government may not detain a
6 noncitizen based on any other justification.

7 64. Thus, where the government detains a noncitizen for a prolonged period or where
8 the noncitizen pursues a substantial defense to removal or claim to relief, due process requires an
9 individualized hearing before a neutral decisionmaker to determine whether such a significant
10 deprivation of liberty is reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy, J.,
11 concurring) (stating that an “individualized determination as to [a noncitizen’s] risk of flight and
12 dangerousness” may be warranted “if the continued detention became unreasonable or
13 unjustified”); *cf. Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the “initial
14 commitment” requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-
15 50 (1972) (noting that “lesser safeguards may be appropriate” for “short-term confinement”);
16 *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment context, that
17 “the length of confinement cannot be ignored in deciding whether [a] confinement meets
18 constitutional standards”).

19 65. To determine if the prolonged detention of a noncitizen is reasonable, Courts have
20 applied a reasonableness test, which involves three main factors. First, courts have evaluated
21 whether the noncitizen has raised a “good faith” challenge to removal—that is, the challenge is
22 “legitimately raised” and presents “real issues.” *Chavez-Alvarez v. Warden York Cty. Prison*, 783
23 F.3d 469, 476 (3d Cir. 2015). Second, reasonableness is a “function of the length of the

1 detention,” with detention presumptively unreasonable if it lasts six months to a year. *Id.* at 477-
2 78; *accord Sopo*, 825 F.3d at 1217-18. In assessing the length of detention, delay attributable to
3 the government weighs against finding the detention reasonable. *Sopo*, 825 F.3d at 1218. Third,
4 courts consider the likelihood that detention will continue pending future proceedings. *Chavez-*
5 *Alvarez*, 783 F.3d at 478 (finding detention unreasonable after ninth months of detention, when
6 the parties could “have reasonably predicted that Chavez-Alvarez’s appeal would take a
7 substantial amount of time, making his already lengthy detention considerably longer”); *Sopo*,
825 F.3d at 128; *Reid*, 819 F.3d at 500.

8 66. Due process also requires certain minimal bond hearing procedures. First, the
9 government must bear the burden of proof by clear and convincing evidence to justify continued
10 detention. Second, the decisionmaker must consider available alternatives to detention. Finally, if
11 the government cannot meet its burden, a decisionmaker must assess a noncitizen’s ability to pay
12 a bond must when determining the appropriate conditions of release.

1 67. The requirement that the government bear the burden of proof by clear and
2 convincing evidence is also supported by application of the three-factor balancing test from
3 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Under the *Mathews* test, Courts consider (1)
4 “the private interest that will be affected by the official action.” (2) “the risk of an erroneous
5 deprivation of such interest,” and (3) “the Government’s interest, including the function involved
6 and the fiscal and administrative burdens that the additional or substitute procedural requirement
7 would entail.” *Mathews v. Eldridge*, 424 U.S. at 335.

1 68. Due process also requires that a neutral decisionmaker consider alternatives to
2 detention. A primary purpose of immigration detention is to ensure a noncitizen’s appearance
3 during removal proceedings. Detention is not reasonably related to this purpose if there are

1 alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S.
2 520, 538 (1979).

3 69. Courts have ruled that automatically stayed release from detention is a violation of
4 the Fifth Amendment. *See, e.g., Mohammed H. v. Trump*, 781 F. Supp. 3d 886, 895 (D. Minn.
5 2025) (finding that it “does not require any showing of dangerousness or flight risk. Nor is it
6 subject to immediate review by an immigration judge. It operates by fiat and has the effect of
7 prolonging detention even after a judicial officer has determined that release on bond is
8 appropriate. That mechanism's operation here—in the absence of any individualized
9 justification—renders the continued detention arbitrary as applied. *Cf. Zadvydas*, 533 U.S. at
699–700, 121 S.Ct. 2491.

1 70. The “recent shift to use the mandatory detention framework under Section
2 1225(b)(2)(A) is not only wrong but also fundamentally unfair. In a nation of laws vetted and
3 implemented by Congress, we don't get to arbitrarily choose which laws we feel like following
4 when they best suit our interests.” *Lopez-Campos*, 2025 WL 2496379, at *10.

1 71. It is important to consider that detention is often lengthy and that immigration
2 detainees face severe hardships while incarcerated. Immigration detainees are held in lock-down
3 facilities, with limited freedom of movement and access to their families: “the circumstances of
4 their detention are similar, so far as we can tell, to those in many prisons and jails.” *Jennings*,
5 138 S. Ct. at 861 (Breyer, J., dissenting); *accord Chavez-Alvarez*, 783 F.3d at 478; *Ngo v. INS*,
6 192 F.3d 390, 397-98 (3d Cir. 1999); *Sopo*, 825 F.3d at 1218, 1221. “And in some cases[,] the
7 conditions of their confinement are inappropriately poor.” *Jennings*, 138 S. Ct. at 861 (Breyer, J.,
8 dissenting) (citing Dept. of Homeland Security (DHS), Office of Inspector General (OIG), *DHS*
9 *OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE Detention Facilities*

1 (2017) (reporting instances of invasive procedures, substandard care, and mistreatment, *e.g.*,
2 indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case
3 of one detainee, a multiday lock down for sharing a cup of coffee with another detainee)).

4 72. These conditions and obstacles only further underscore the serious due process
5 concerns that prolonged immigration detention entails for Mrs. Garcia Villatoro. While in
6 detention Mrs. Garcia Villatoro is separated from her United States Citizen children, who will
7 also endure hardship as Mrs. Garcia Villatoro is unable to help provide for them.

8 73. Upon weighing the *Mathews* factors this Court should find that the Government's
9 interest in fewer bond hearings (the efficient processing on noncitizens for removal) is
10 diminished. Additionally, since Mrs. Garcia Villatoro's detention will continue pending future
11 immigration proceedings, this Court should find that the Government's interest in denying her
12 the opportunity for a bond hearing does not outweigh Mrs. Garcia Villatoro's liberty interest and
13 it will also create a high risk of erroneous deprivation to said right.

14 74. The government's decision that all noncitizens, like Mrs. Garcia Villatoro, are to be
15 mandatorily detained is arbitrary and affords to individuals like him no process, let alone due
16 process. Therefore, it should be unconstitutional. *See Mathews v. Eldridge*, 424 U.S. 319 (1976).

17 **C. The Immigration and Nationality Act of 1952 ("INA")**

18 75. The Immigration and Nationality Act of 1952 ("INA"), codified in Chapter 12 of
19 Title 8 of the United States Code, governs all aspects of immigration law. *See* 8 U.S.C. §§ 1101
20 *et seq.* Forming the basis of current immigration laws of the United States, the INA addresses
21 issues of admission qualifications for noncitizens, naturalization and loss of nationality, refugee
22 assistance, and removal procedures for noncitizen terrorists. *Id.* *See also* Margaret C. Jasper,
23 *The Immigration and Nationality Act of 1952*, Legal Almanac: The Law of Immigration (2012).

1 76. Sections 8 U.S.C. §§ 1225, 1226 of the *Immigration and Nationality Act* (“INA”)
2 govern how the executive branch evaluates inadmissible noncitizens. Logically speaking,
3 inspection or apprehension of the noncitizen is a necessary precondition of removal. Only after
4 a noncitizen is identified as inadmissible can removal proceedings happen.² The Supreme Court
5 has already distinguished these two provisions in *Jennings v. Rodriguez*. See 583 U.S. 281, 289
6 (2018). The *Jennings* Court determined that the government may “detain certain aliens seeking
7 admission into the country” under § 1225(b) while § 1226 “authorizes the Government to detain
8 certain aliens *already in the country* pending the outcome of removal proceedings.” *Id.*
9 (emphasis added).

10 77. Under § 1225, an “applicant for admission” is a noncitizen “present in the United
11 States who has not been admitted or who arrives in the United States.” 8 U.S.C. § 1225(a)(1).
12 “[A]dmission” and “admitted” are defined as “the lawful entry of the alien into the United States
13 after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A).

14 78. Section 1225(b)(1) of INA authorizes expedited removal for certain “applicants
15 for admission” in two categories. First, noncitizens “arriving in the United States” that are
16 determined by an immigration officer to be inadmissible due to misrepresentation or failure to
17 meet documents requirements. *Id.* at § 1225(b)(1)(A)(i); see also *id.* at § 1182(a)(6)(C), (a)(7).

18 79. Second, noncitizens that (a) are inadmissible because of misrepresentation or
19 failure to meet documents requirements; (b) have not “been admitted or paroled into the United
20 States”; (c) have not “affirmatively shown, to the satisfaction of an immigration officer, that

21 ² See also, *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr et al.* 5:25-cv-01873-SSS-BFM, ---
22 *F. Supp. 3d* ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). Amended Order Consolidating The
23 Court’s Orders On Motion For Partial Summary Judgment, Class Certification, And Application For
24 Reconsideration Or Clarification.

1 [they have] been physically present in the United States continuously for the 2-year period
2 immediately prior to the date of the determination of inadmissibility”; and (d) have been
3 designated by the Attorney General for expedited removal. *Id.* at § 1225(b)(1)(A)(iii).

4 80. These two categories of noncitizens subject to § 1225(b)(1) are subject to
5 mandatory detention “until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297.
6 Individuals that fall into § 1225(b)(1) are “normally ordered removed ‘without further hearing or
7 review’ pursuant to an expedited removal process” unless claiming asylum or a fear of
8 persecution. *Jennings*, 53 U.S. at 287 (first quoting § 1225(b)(1)(A)(i); then citing §
9 1225(b)(1)(A)(ii)).

10 81. Noncitizens who are “seeking admission” and not covered by the expedited
11 removal provisions in § 1225(b)(1) are subject to Section 1225(b)(2). *See id.* at 287. This
12 category would include, for example, noncitizens who are arriving in the United States, seek
13 admission, and are inadmissible for some reason other than misrepresentation or failure to meet
14 documents requirements. *See* 8 U.S.C. § 1182(a)(2)–(3).

15 82. Section 1225(b)(2)(A) governs mandatory detention of applicants for admission.
16 Subject to limited exceptions, Section 1225(b)(2) provides that such noncitizens “shall be
17 detained” for full removal proceedings under § 1229a “if the examining immigration officer
18 determines” that the noncitizen “is not clearly and beyond a doubt entitled to be admitted.” *Id.* at
19 § 1225(b)(2)(A).³

20 ³ (b) Inspection of applicants for admission

21 (2) Inspection of other aliens
22 (A) In general

23 Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the
24 examining immigration officer determines that an alien seeking admission is not clearly and beyond a

1 83. On the other hand, Section 1226(a) “provides the general process for arresting and
2 detaining aliens who are present in the United States and eligible for removal.” This Section
3 provides for discretionary detention. 8 U.S.C. §1226(a). *See, e.g., Rodriguez Diaz v. Garland*, 53
4 F.4th 1189, 1196 (9th Cir. 2022).

5 84. Under § 1226(a), a noncitizen “may be arrested and detained” “[o]n a warrant
6 issued by the Attorney General” if their removal proceedings are pending, 8 U.S.C. § 1226(a).⁴
7 Detention pursuant to § 1226(a) is not mandatory. If the noncitizen was not charged with,
8 arrested for, or convicted of certain criminal offenses enumerated in § 1226(c),⁵ the government
9 has discretion to release them on “bond of at least \$1,500 with security approved by, and
10 containing conditions prescribed by, the Attorney General; or ... conditional parole.” *Id.* at §
11 1226(a)(2)(A)–(B).

12 _____
13 doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.
14 8 U.S.C. § 1225(b)(2)(A).

15 ⁴ (a) Arrest, detention, and release

16 On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision
17 on whether the alien is to be removed from the United States. Except as provided in subsection (c) and
18 pending such decision, the Attorney General—

- 19 (1) may continue to detain the arrested alien; and
20 (2) may release the alien on—

21 (A) bond of at least \$1,500 with security approved by, an containing conditions
22 prescribed by, the Attorney General... 8 U.S.C. § 1226(a).

23 ⁵ Known as the *Laken Riley Act*, subsection (c) of § 1226, provides for mandatory detention of
24 noncitizens found inadmissible or deportable under certain provisions and who have been “charged with,”
25 “arrested for,” “convicted of,” or admit “having committed” certain listed crimes. 8 U.S.C. § 1226(c).
26 “[N]oncitizens arrested and detained under § 1226 have a right to request a custody redetermination (i.e.,
27 a bond hearing) before an Immigration Judge.” *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL
28 2496379, at *4 (citing 8 C.F.R. 1236.1(c)(8), (d)(1)). “The IJ evaluates whether there is a risk of
29 nonappearance or danger to the community.” *Id.* (citing *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA
30 2006)).

1 85. Beyond how noncitizens are identified as inadmissible, the one key distinction
2 between these two Sections is that noncitizens detained under § 1226(a) are entitled to receive
3 bond hearings at the outset of detention. 8 C.F.R. §§ 236.1(d)(1). *See also Jennings v. Rodriguez*,
4 583 U.S. 281, 306 (2018).

5 86. Not only does § 1226(a) provide several layers of review of the agency’s initial
6 custody determination, but it also confers “an initial bond hearing before a neutral
7 decisionmaker, the opportunity to be represented by counsel and to present evidence, the right to
8 appeal, and the right to seek a new hearing when circumstances materially change.” *See, e.g.,*
9 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022) (observing that § 1226(a) and its
10 implementing regulations “provide extensive procedural protections that are unavailable under
11 other detention provision”).

1 87. For decades the DHS had applied § 1226(a) and its discretionary release and
2 review of detention “to the vast majority of noncitizens allegedly in this country without valid
3 documentation”—a practice codified by regulation. *See, e.g., Salcedo Aceros*, 2025 WL
4 2737503, at *3. However, last year the Government upended this long-held understanding of the
5 law.

6 88. First, on July 8, 2025, U.S. Immigration and Customs Enforcement (“ICE”) issued
7 an interim guidance memo stating that anyone who entered without inspection was ineligible for
8 release on bond and could not challenge their detention at a bond hearing in immigration court,
9 regardless of how long an individual has lived in the United States. ⁶ As result, DHS attorneys
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⁶ *See*, AILA Doc. No. 25071607, accessible through <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (last accessed on Friday, January 16, 2026 at 6:27 pm.)

1 started arguing, and some IJs started finding, that such individuals were not eligible for bond
2 hearings in immigration court.

3 89. Then, on September 5, 2025, the Board of Immigration Appeals (“BIA”) issued a
4 precedential decision binding on all IJs, holding that an IJ had no authority to consider bond
5 requests for any person who entered the United States without inspection. *See Matter of Yajure*
6 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The BIA determined that such individuals are subject
7 to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible for release on
8 bond. In practice, DHS is not exercising this authority. As a result, thousands of people are
9 facing months or years in detention without any individualized consideration for whether they
10 should be detained.

1 90. As discussed above, mandatory detention of applicants for admission applies after
2 an immigration officer has determined that they will not be entitled to admission if the
3 examining immigration officer determines that [a noncitizen] seeking admission is not clearly
4 and beyond a doubt entitled to be admitted. 8 U.S.C. § 1225(b)(2)(A). But the Government is
5 now contending that anyone who entered without inspection remains an “applicant for
6 admission” who is “seeking admission” and thus subject to mandatory detention under Section
7 1225(b)(2). *See e.g., Rodriguez Vasquez v. Bostock, et al.* 3:25-CV-05240-TMC, 2025 WL
8 2782499 (W.D. Wash. Sept. 30, 2025) (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)).

9 91. However, it is important to note, that individuals who have been deemed to not
10 been inspected and authorized by an immigration officer lack the trait to be categorized as
1 “applicants for admission” since statutory language of § 1225(b)(2) contemplates a
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1 determination by an “examining immigration officer” regarding a noncitizen’s admissibility. *See*
 2 § 1225(b)(2).⁷

3 92. In regard to this new interpretation, as of late 2025, several district courts have
 4 held that the Government’s new, and more expansive interpretation of mandatory detention
 5 under the INA is either incorrect or likely incorrect on the basis that this reading of the statute
 6 would render 1226(c) inoperable or moot. Several Courts have then rejected the government’s
 7 position and have held that such individuals are subject to § 1226(a) and thus eligible for a bond
 8 hearing. *See also e.g., Rodriguez Vasquez v. Bostock, et al.* 3:25-CV-05240-TMC, 2025 WL
 9 2782499 (W.D. Wash. Sept. 30, 2025); *See e.g., Aguilar Merino v. Ripa*, 25-23845-CIV, 2025
 10 WL 2941609 (S.D. Fla. Oct. 15, 2025), and *J.Y.L.C., v. Bostock, et al.*, 3:25-cv-02083-AB, (D.
 11 Or. Nov. 12, 2025) (collecting cases rejecting *Matter of Yajure Hurtado*).

12 93. One of those recent cases where the Court rejected the government’s position, and
 13 relevant here, is *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- *F. Supp.*
 14 3d ----, 2025 WL 3289861 (*C.D. Cal. Nov. 20, 2025*). On November 20, 2025, the District
 15 Court granted partial summary judgment for the four petitioners, holding that the government’s
 16 policy is inconsistent with the plain language of the *Immigration and Nationality Act* (“INA”),
 17 and that petitioners are properly subject to § 1226(a). *See e.g., J.A.M. v. Streeval*, No. 4:25-CV-

18 ⁷ “...based on a plain reading of the language and aided by these standard canons of statutory
 19 construction, § 1225(b)(2)(A) applies to aliens in the United States who have not been admitted
 20 (“applicants for admission” definition) AND who are attempting to obtain lawful admission to the United
 21 States. This interpretation is also consistent with the framework of § 1225, which focuses on the
 22 admission of aliens upon their arrival to the United States or upon an attempt to obtain admission after
 23 arrival...” *See J.A.M. v. Streeval*, No. 4:25-CV-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025)
 24 citing *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (Kennedy, J.) (“In ascertaining the
 25 plain meaning of the statute, the court must look to the particular statutory language at issue, *as well as*
 26 *the language and design of the statute as a whole.*”) (emphasis added).

1 342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025) and *P.R.S. v. Streeval*, No. 4:25-cv-330-
2 CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025).

3 94. Then, on November 25, 2025, the Court certified all noncitizens in the United
4 States without lawful status who (1) have entered or will enter the United States without
5 inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be
6 subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department
7 of Homeland Security makes an initial custody determination as “the Bond Eligible Class.” and
8 expressly “extend[ed] the same declaratory relief granted to Petitioners to the Bond Eligible
9 Class as a whole.” *Id.*, at *9 (emphasis added).

10 95. As expressed above, Mrs. Garcia Villatoro is a member of the *Maldonado*
11 *Bautista* Bond Eligible Class given the government's contention that she entered without
12 inspection.

13 **D. THE ADMINISTRATIVE PROCEDURE ACT (APA), 5 U.S.C. § 706(2)(A)**

14 96. Section 706(2)(A) of the APA commands a reviewing court to “hold unlawful *and*
15 *set aside* agency action, findings, and conclusions” that are found to be “arbitrary, capricious, . . .
16 or otherwise not in accordance with law.” § 706(2)(A) (emphasis added).

17 97. APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial
18 review of agency action under the APA may proceed by “any applicable form of legal action,
19 including actions for declaratory judgments or writs of prohibitory or mandatory injunction or
20 habeas corpus”). The APA affords a right of review to a person who is “adversely affected or
21 aggrieved by agency action.” 5 U.S.C. § 702.

1 98. Respondents' continued detention of Mrs. Garcia Villatoro for a prolonged or
2 otherwise indefinite period of time without a review of her custody or a bond hearing is
3 adversely and severely affecting her liberty and freedom.

4 **E. EXHAUSTION**

5 99. Section 706(2)(A) of the APA commands a reviewing court to "hold unlawful *and*
6 *set aside* agency action, findings, and conclusions" that are found to be "arbitrary, capricious, . . .
7 or otherwise not in accordance with law." § 706(2)(A) (emphasis added).

8 100. Under the doctrine of exhaustion of administrative remedies, 'a party may
9 not seek federal judicial review of an adverse administrative determination until the party has
1 first sought all possible relief within the agency itself.'" *Howell v. INS*, 72 F.3d 288, 291 (2d Cir.
1995) (quoting *Guitard v. U.S. Sec'y of Navy*, 967 F.2d 737, 740 (2d Cir. 1992)).

1 101. However, a party need not exhaust administrative remedies, however, when
0 the available remedies would "provide no genuine opportunity for adequate relief" or when
1 "administrative appeal would be futile." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003)
1 (Sotomayor, J.) (quoting *Able v. United States*, 88 F.3d 1280, 1288 (2d Cir. 1996)). *See also*
1 *McCarthy v. Madigan*, 503 U.S. 140, 146-49 (1992), *superseded by statute on other grounds as*
2 *stated in Booth v. Churner*, 532 U.S. 731 (2001) (noting that traditional exceptions include where
1 exhaustion would cause "undue prejudice to subsequent assertion of a court action" or
3 "irreparable harm" to the petitioner, where there is "some doubt as to whether the agency was
1 empowered to grant effective relief," or where it would be futile because "the administrative
1 body is shown to be biased or has otherwise predetermined the issue before it") (internal
4 quotation marks omitted).

1 102. In the context of immigration, Congress has not explicitly mandated exhaustion.
2 Where Congress has not explicitly spoken, requiring the exhaustion of administrative remedies
3 lies within “sound judicial discretion.” *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). In
4 exercising that discretion, the Supreme Court has stated that “federal courts must balance the
5 interest of the individual in retaining prompt access to a federal judicial forum against
6 countervailing institutional interests favoring exhaustion.” *Id.* at 146. Those institutional interests
7 are “protecting administrative agency authority and promoting judicial efficiency.” *Id.* at 145.

8 103. The *McCarthy* Court also identified situations in which the interest of the
9 individual weighs heavily against the institutional interests. *See id.* at 146–49. Relevant here, “an
10 administrative remedy may be inadequate where the administrative body . . . has otherwise
11 predetermined the issue before it.” *Id.* at 148 (citing *Gibson v. Berryhill*, 411 U.S. 564, 575, n.14
12 (1973)).

13 104. Further, constitutional challenges have been found exempt from administrative
14 exhaustion requirements. *See Khan v. Atty. Gen. of U.S.*, 448 F.3d 226, 236 n.8 (3d Cir. 2006)
15 (internal alterations and quotations omitted) (“[D]ue process claims generally are exempt from
16 the exhaustion requirement because the BIA does not have jurisdiction to adjudicate
17 constitutional issues.”); *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002)
18 (“[T]he BIA does not have jurisdiction to adjudicate constitutional issues” (quoting
19 *Vargas v. U.S. Dep’t of Immigration & Naturalization*, 831 F.2d 906, 908 (9th Cir. 1987))).

20 105. As mentioned above, on July 8, 2025, the U.S. Immigration and Customs
21 Enforcement (“ICE”) was instructed, via an interim guidance memo, that anyone deemed to have
22 entered without inspection (EWIs) is ineligible for release on bond. Then, on September 5, 2025,
23 the Board of Immigration Appeals (“BIA”) held that “[b]ased on the plain language of section

1 235(b)(2)(A) of the [INA], Immigration Judges lack authority to hear bond requests or to grant
2 bond to aliens who are present in the United States without admission.” See *Matter of Yajure*
3 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

4 106. In accordance with the July 8, 2025 interim guidance memo and the Board of
5 Immigration Appeals (BIA) decision in *Matter of Yajure Hurtado*, DHS’ attorneys have the
6 practice of arguing, and Immigration Court IJs throughout the country, including those stationed
7 at Stewart Detention Center, have started finding that individuals, such as Mrs. Garcia Villatoro,
8 could not challenge their detention at a bond hearing in immigration court, regardless of how
9 long an individual has lived in the United States. As result, individuals, such as Mrs. Garcia
10 Villatoro, are denied bond hearings in immigration court.

1 107. Since the Board of Immigration Appeals (BIA) is an administrative body located
2 in the DOJ, which, of course, is part of the executive branch of the government. Its members are
3 appointed by the Attorney General, and its decisions are binding on all immigration judges,
4 *Yajure Hurtado* thus precludes an IJ from finding jurisdiction over noncitizens like Mrs. Garcia
5 Villatoro, to hold a custody redetermination hearing. As such, this Court should find that the
6 agency's position is already set and recourse to administrative remedies is very likely futile.

7 108. Additionally, Immigration judges have informed class members in bond hearings
8 that they have been instructed by “leadership” that the declaratory judgment in *Maldonado*
9 *Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound
10 to follow the agency’s prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA
1 2025).

2 109. Since the government has already predetermined that anyone who they
3 determined entered without inspection (EWIs) is ineligible for release on bond, established a no-

1 bond for EWIs policy, and has resorted to an across-the-board application of § 1225(b)(2), Mrs.
2 Garcia Villatoro had to proceed directly to filing this petition for writ of habeas corpus based on
3 *Maldonado Bautista* class membership and for the violation to her statutory and constitutional
4 rights.

5 110. Requiring exhaustion, in this case, would not further the ends of judicial
6 efficiency and protecting administrative authority because it would simply delay the resolution of
7 Mrs. Garcia Villatoro's legal questions. It is important to consider that in detention cases,
8 appeals to the Board of Immigration Appeals (BIA) can take months or years. Thus, requiring
9 habeas petitioners, such as Mrs. Garcia Villatoro, to appeal to the BIA to prudentially exhaust is
not efficient, would cause irreparable harm by continuing to deprive her of her liberty.

10 Additionally, while in detention Mrs. Garcia Villatoro is separated from her United States
11 Citizen daughters, who will also endure hardship as Mrs. Garcia Villatoro is unable to help
12 provide or care for them.

1 111. Thus, Mrs. Garcia Villatoro's individual interest in having prompt access to this
2 forum outweighs any institutional interests at stake.

3 112. Therefore, the Court should consider the merits of the Petition. This Court
4 intervention, to enjoin the Respondents from preventing Mrs. Garcia Villatoro from having a
5 bond hearing pursuant to the holding in *Hurtado*, is necessary to enable her to avail herself of her
6 administrative remedies.

7 **CLAIM FOR RELIEF**

8 **COUNT 1: REQUEST FOR RELIEF PURSUANT**
9 **TO MALDONADO BAUTISTA**

1 120. “Freedom from imprisonment—from government custody, detention, or other
2 forms of physical restraint—lies at the heart of the liberty that [the] Clause protects.” *Zadvydas*
3 *v. Davis*, 533 U.S. 678, 690 (2001).

4 121. Civil immigration detention is only permissible where it bears a “reasonable
5 relation to the purpose for which the individual was committed.” *Jackson v. Indiana*, 406 U.S.
6 715, 738 (1972); *Zadvydas*, 533 U.S. at 690. Those purposes are limited: preventing flight and
protecting the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

7 122. Mrs. Garcia Villatoro’s immigration proceedings are at a late stage, and she could
8 be faced with removal. Although there is no removal order, her removal is imminent and
9 reasonably foreseeable.

1 123. Mrs. Garcia Villatoro continued and prolonged detention does not bear a
2 reasonable relation to the purpose for which it was committed until the government satisfies its
3 burden of proof to show by clear and convincing evidence that community protection or flight
4 risk concerns apply to her. This can only happen in a bond hearing, which the Respondents are
5 not affording to Mrs. Garcia Villatoro. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972);
6 *Zadvydas*, 533 U.S. at 690.

7 124. Furthermore, the mandatory detention provision at 8 U.S.C. § 1225(b)(2) does
8 not apply to noncitizens, such as Mrs. Garcia Villatoro, residing in the United States who are
9 subject to the grounds of inadmissibility only because the government purports they previously
10 entered the country without being admitted.

1 125. Petitioner is detained under § 1226(a) and is not subject to another detention
2 provision, such as 1225(b)(1), § 1226(c), or § 1231.

1 126. However, in accordance with the BIA decision in *Matter of Yajure Hurtado*, DHS
2 attorneys have the practice of arguing and IJs throughout the country, including those stationed
3 the Stewart Detention Center, have started finding that individuals, such as Mrs. Garcia
4 Villatoro, could not challenge their detention at a bond hearing in immigration court, regardless
5 of how long an individual has lived in the United States. As result, individuals such as, Mrs.
6 Garcia Villatoro, are denied bond hearings in immigration court.

7 127. These cumulative actions render his detention even more constitutionally suspect,
8 as they reflect punitive conduct rather than civil processing.

9 128. Respondents lack statutory authority to detain Mrs. Garcia Villatoro under
10 Section 1225(b)(2) because that statute does not apply to noncitizens in her circumstances.
11 Accordingly, Mrs. Garcia Villatoro's continued detention constitutes a deprivation of liberty
12 without due process of law. The Court should order her release.

13 **COUNT 3: VIOLATION OF INA AND ITS
14 IMPLEMENTING REGULATIONS; 8 U.S.C. § 1226(A)
15 UNLAWFUL DENIAL OF BOND HEARINGS**

16 129. Petitioner, Mrs. Garcia Villatoro, herein incorporates all allegations and facts set
17 forth in the paragraphs above.

18 130. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to
19 noncitizens, such as Mrs. Garcia Villatoro, residing in the United States who are only subject to
20 the grounds of inadmissibility because the government purports they previously entered the
21 country without being admitted.

22 131. It is important to note that, individuals who the government contends have not
23 been inspected and authorized by an immigration officer lack the trait to be categorized as
24 "applicants for admission" since statutory language of § 1225(b)(2) contemplates a

1 determination by an “examining immigration officer” regarding a noncitizen’s admissibility. *See*
2 § 1225(b)(2). Such noncitizens are detained under § 1226(a), unless they are subject to another
3 detention provision, such as 1225(b)(1), § 1226(c), or § 1231.

4 132. That Mrs. Garcia Villatoro is detained under § 1226(a) and is not subject to the
5 detention provisions proscribed in 1225(b)(1), § 1226(c), or § 1231.

6 133. The government’s no-bond for purported EWIs policy and the incorrect, willful,
7 and capricious application of § 1225(b)(2) to Mrs. Garcia Villatoro violates the *Immigration and*
8 *Nationality Act*.

9 **COUNT 4: UNLAWFUL DENIAL OF BOND HEARING IN**
10 **VIOLATION OF EIGHTH AMENDMENT RIGHT TO BAIL**

11 134. Petitioner, Mrs. Garcia Villatoro, re-alleges and incorporates by reference the
12 paragraphs above.

13 135. The Eighth Amendment of the United States Constitution prohibits “cruel and
14 unusual punishments.” U.S. Const. amend. VIII cl. 4.2.

15 136. Bail is “basic to our system of law.” It not only “permits the unhampered
16 preparation of a defense,” but also “prevent[s] the infliction of punishment prior to
17 conviction.” *Jennings*, at 862, (Breyer, J., dissenting) citing *Salerno, supra*, at 748–
18 751; *Schilb v. Kuebel*, 404 U. S. 357, 365 (1971); *Stack v. Boyle*, 342 U. S. 1, 4 (1951).

19 137. The government’s categorical, incorrect, willful, and capricious application of §
20 1225(b)(2) to Mrs. Garcia Villatoro and continued detention without a bond hearing results in
21 indefinite and unconstitutional imprisonment which surmounts to a cruel and unusual
22 punishment in violation of the Eighth Amendment

1 138. For these reasons, Mrs. Garcia Villatoro's ongoing and prolonged detention
2 without a bond hearing violates the Eighth Amendment.

3 **COUNT 5: CONTINUED DETENTION WITHOUT BOND**
4 **HEARING IN VIOLATION OF THE ADMINISTRATIVE**
5 **PROCEDURE ACT, 5 U.S.C. § 706(2)(A)**

6 139. Petitioner, Mrs. Garcia Villatoro, herein incorporates all allegations and facts set
7 forth in the paragraphs above.

8 140. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to
9 noncitizens, such as Mrs. Garcia Villatoro, residing in the United States who are only subject to
10 the grounds of inadmissibility because they are purported to have originally entered the United
11 States without inspection. Such noncitizens are detained under § 1226(a), unless they are subject
12 to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

13 141. That Mrs. Garcia Villatoro is detained under § 1226(a) and is not subject to any
14 detention provisions proscribed in 1225(b)(1), § 1226(c), or § 1231.

15 142. Nonetheless, IJs stationed at Stewart Detention Center have a policy and practice
16 of applying § 1225(b)(2) and denying bond hearings to detainees, such as Mrs. Garcia Villatoro.

17 143. Respondents continue to keep Mrs. Garcia Villatoro detained under the wrong
18 provision of INA. Such action against Mrs. Garcia Villatoro is arbitrary, capricious, and not in
19 accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Petitioner, Argelia Garcia Villatoro, prays that this Court grant the following
22 relief:

- 23 a. Assume jurisdiction over this matter;

- 1 b. Issue an Order prohibiting the Respondents from transferring Petitioner from the
- 2 district without the court's approval;
- 3 c. Issue a declaration that Respondents are detaining Petitioner in violation of the
- 4 declaratory judgment issued in *Maldonado Bautista*;
- 5 d. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an
- 6 action brought under chapter 153 (habeas corpus) of Title 28;
- 7 e. Issue a Writ of Habeas Corpus requiring that within one day, Respondents release
- 8 Petitioner; on her own recognizance, under parole, or on low bond or any other
- 9 reasonable conditions of supervision;
- 1 f. Issue a Writ of Habeas Corpus requiring that DHS amend the Notice to Appear to
- 0 establish that Petitioner did in fact enter the United States legally and require the
- 1 Immigration Judge to rule on this amendment pursuant to the binding precedent of
- 1 Matter of Quilantan.
- 1 g. Alternatively, issue a Writ of Habeas Corpus, hold a hearing before this Court if
- 1 warranted to determine if the Petitioner should be subject to mandatory detention
- 1 under 8 U.S.C. § 1225(b)(2); require Respondents to release Petitioner unless they
- 2 provide a bond hearing under 8 U.S.C. § 1226(a) within two days;
- 1 h. Issue a declaration that Petitioner's ongoing prolonged detention violates the Due
- 3 Process Clause of the Fifth Amendment and the Eighth Amendment.
- 1 i. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
- 1 (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under
- 4 law; and
- 1 j. Grant any other and further relief that this Court deems just and proper.

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Respectfully submitted,

/s/ Michael Urbina

Michael Urbina

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Counsel for Petitioner

Dated: 28th day of January, 2026

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

I represent Petitioner, Argelia Garcia Villatoro, and submit this verification on her 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 this 28th day of January, 2026.

/s/Michael Urbina
Michael Urbina
michael@urbina.law