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

4 **ABELARDO NAVA JAIMES**

5 Petitioner,

6 v.

7 **JASON STREEVAL**, Warden of Stewart
8 Detention Center;

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

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

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

17 **KRISTI NOEM**, Secretary, U.S. Department
18 of Homeland Security(DHS);

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

21 Respondents.
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Case No. 4:26-CV-196

**PETITION FOR WRIT OF
HABEAS CORPUS**

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1 INTRODUCTION

2 1. Petitioner, Mr. Abelardo Nava Jaimes is a male from Mexico who entered the
3 United States without inspection (EWI) over 20 years ago and was not apprehended upon arrival.
4 Mr. Nava Jaimes was apprehended by immigration authorities on or around August 25, 2025.
5 The Respondents keep Mr. Nava Jaimes detained at the Stewart Detention Center in Lumpkin,
6 Georgia.

7 2. Mr. Nava Jaimes 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
10 referred to as “entered without inspection” or “EWI”).

11 3. On November 25, 2025, the U.S. District Court for the Central District of
12 California granted declaratory relief to the entire class in *Maldonado Bautista v. Santacruz*, No.
13 5:25-CV-01873-SSS-BFM (C.D. Cal.), ¹ (*See, Exhibit. 1*) holding that the government is
14 unlawfully subjecting them to mandatory (meaning no-bond) detention and that class members
15 are eligible for release on bond under the immigration laws. Under the Court’s order, class
16 members should be able to request a bond hearing in immigration court before an immigration

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18 ¹ On November 20, 2025, the district court granted partial summary judgment on behalf of
19 individual plaintiffs holding that the government’s policy is inconsistent with the plain language of
20 the *Immigration and Nationality Act* (“INA”), and that petitioners are properly subject to § 1226(a);
21 and on November 25, 2025, , the Court certified a nationwide class and expressly “extend[ed] the
22 same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.” *Maldonado*
23 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *9,
24 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 judge (IJ) who must consider whether they are suitable for release on bond while their removal
2 proceedings are pending.

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

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

15 6. Accordingly, to vindicate Mr. Nava Jaimes' rights, as a member of the Bond
16 Eligible Class in *Maldonado Bautista*, as well as under the Constitution of the United States, and
17 his statutory rights under INA, this Court should grant the instant petition for a writ of habeas
18 corpus.

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

21 **JURISDICTION**

22 8. This action arises under the Constitution and the *Immigration and Nationality Act*,
23 8 U.S.C. § 1101 *et seq*

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

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

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

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

14 VENUE

15 13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
16 500 (1973), venue lies in the United States District Court for the Middle District of Georgia, the
17 judicial district in which Mr. Nava Jaimes, currently is detained.

18 14. Venue is also properly in this Court pursuant to 228 U.S.C. § 2241(c)(3) and 8
19 U.S.C. § 1391(b)(2) and 1391(e) because the Petitioner is in the physical custody of Respondents
20 and Immigration and Customs Enforcement, an agency within the Department of Homeland
21 Security. Mr. Nava Jaimes is detained at the Stewart Detention Center in Lumpkin, Georgia and
22 is under the direct control of Respondents and their agents.

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

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

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

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

17 18. Pursuant to 28 U.S.C. § 2243, Mr. Nava Jaimes, respectfully requests, and this
18 Court should grant the petition for writ of habeas corpus "forthwith," as the legal issues have
19 already been resolved for class members in *Maldonado Bautista*.

20 19. However, if pursuant to Section 2243, this Court issues an order to show cause
21 (OSC), it must direct the respondents to file a return showing why the petition for a writ of
22 habeas corpus filed by Mr. Nava Jaimes pursuant to 28 U.S.C. § 2241 should not be granted.

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

4 21. Nonetheless, giving the Respondents additional time to respond is inappropriate
5 in this case because Mr. Nava Jaimes faces unjustified detention for an extended period of time
6 without being able to challenge his detention at a bond hearing in immigration court while the
7 immigration proceedings are pending. It is important to note, that should Mr. Nava Jaimes
8 continue to fight his case, respondents will not offer the opportunity for pre-removal release.

9 22. Thus, Mr. Nava Jaimes’ period of detention is uncertain because of the backlog in
10 the immigration courts. Mr. Nava Jaimes’ ongoing, and prolonged detention carries the
11 separation from his common law partner, his stepchildren, and other close family members. The
12 harshness of detention could not only affect his physical health or expose him to psychological
13 trauma, but it could also hinder communications with the undersigned attorney in preparation for
14 his defense. Additionally, it could also be used to pressure him to accept abandon any claims of
15 immigration relief and accept deportation.

16 23. Absent a grant of this petition for writ of habeas corpus or an issuance of an Order
17 to show cause, the respondents will cause irreparable harm to Mr. Nava Jaimes by subjecting
18 him to an indefinite deprivation of his liberty and other fundamental rights.

19 **PARTIES**

20 24. Mr. **ABELARDO NAVA JAIMES** is a citizen of Mexico that has resided in the
21 United States since on or about 2005. He was detained by ICE after completing a criminal
22 proceeding in North Carolina. He has been in immigration detention since around August 25,
23 2025.

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

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

12 26. Respondent, **JASON STREEVAL**, is on information and belief, an employee of
13 Core Civic, the private corporation which runs the Stewart Detention Center in Lumpkin,
14 Georgia. contract facility where Petitioner is detained. On information and belief, Mr. Streeval's
15 job title is Warden of the Stewart Detention Center. He has immediate physical custody of Mr.
16 Nava Jaimes. He is sued in his official capacity.

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

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

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

7 **STATEMENT OF FACTS**

8 30. Mr. Abelardo Nava Jaimes is a 32-year-old man who was born in Mexico.

9 31. Mr. Nava Jaimes entered the United States without inspection (EWI) back in
10 2005.

11 32. Mr. Nava Jaimes is a general construction worker and has no criminal history.

12 33. Mr. Nava Jaimes is married and has a three (3) year old United States citizen child
13 and other close friends living in the United States.

14 34. While in the United States, Mr. Nava Jaimes has been involved in his community
15 and a providing father for his child who suffer from severe medical conditions.

16 35. On or around August 25, 2025 Mr. Nava Jaimes was detained by ICE agents after
17 he had a criminal case dismissed against him in North Carolina.

18 36. Mr. Nava Jaimes is in the physical custody of Respondents at the Stewart
19 Detention Center in Lumpkin Georgia.

20 37. Mr. Nava Jaimes is a member of the Bond Eligible Class, as he:

21 a. **Does not have lawful status in the United States** and is currently detained at the
22 Stewart Detention Center.

23 b. **entered the United States without inspection** over 20 years ago and **was not**
apprehended upon arrival, *cf. id.*; and

24 c. **is not subject nor detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.**

1 38. After apprehending Mr. Nava Jaimes, DHS placed him in removal proceedings
2 pursuant to 8 U.S.C. § 1229a. DHS issued a “Notice To Appear” (NTA) charging him as being
3 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States
4 without inspection, and under 8 U.S.C. § 212(a)(7)(A)(i)(I) as not in possession of a valid
5 unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document
6 required by the Act (INA).

7 39. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full
8 “force and effect of a final judgment.” 28 U.S.C. § 2201(a). Nevertheless, Respondents continue
9 to flagrantly defy the judgment in that case and continue to subject Mr. Nava Jaimes to unlawful
10 detention despite his clear entitlement to consideration for release on bond as a Bond Eligible
11 Class member.

12 40. Mr. Nava Jaimes is scheduled to have a Master Hearing, which is merely the
13 commencement of the removal proceedings, on February 3, 2026, at 10:00 a.m. It is important
14 to note that the Executive Office for Immigration Review and its subagency the Immigration
15 Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the
16 declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be
17 released on bond.

18 41. With this in mind, it is of extreme urgency that this Court issue a decision as early
19 as practicable. This will allow the undersigned attorney to effectively argue for Mr. Nava Jaimes’
20 release and ensure that the Immigration Judge afford Mr. Nava Jaimes a bond hearing as ordered
21 in the judgment in *Maldonado Bautista* and in accordance with his due process right.

22 42. Therefore, the Court should expeditiously grant this petition.
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LEGAL FRAMEWORK

A. HABEAS CORPUS

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

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

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

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, 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.

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

(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

...

(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.

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

B. DUE PROCESS CLAUSE, US CONSTITUTION

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

3 48. In the immigration context, the Supreme Court extended these constitutional
4 protections to all noncitizens within the United States, including those who entered unlawfully,
5 declaring that “[noncitizens] who have once passed through our gates, even illegally, may be
6 expelled only after proceedings conforming to traditional standards of fairness encompassed in
7 due process of law.” *See, Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953);
8 *see also Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (There are literally millions of aliens within
9 the jurisdiction of the United States. The Fifth Amendment, as well as the Fourteenth
10 Amendment, protects every one of these persons from deprivation of life, liberty, or property
11 without due process of law.); *Plyler v. Doe*, 457 U.S. 202, 215 (1982) (holding that unlawfully
12 present aliens were entitled to both due process and equal protection under the Fourteenth
13 Amendment).

14 49. The Court reasoned that noncitizens physically present in the United States,
15 regardless of their legal status, are recognized as persons guaranteed due process of law by the
16 Fifth and Fourteenth Amendments. *Plyler*, 457 U.S. at 210 (citing *Mezei*, 345 U.S. at 212; *Wong*
17 *Wing v. United States*, 163 U.S. 228, 238 (1896); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886)).
18 Thus, the Court determined, [e]ven one whose presence in this country is unlawful, involuntary,
19 or transitory is entitled to that constitutional protection. *Mathews*, 426 U.S. at 77; *see also*
20 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (explaining that the Due Process Clause applies to
21 all ‘persons’ within the United States, including aliens, whether their presence here is lawful,
22 unlawful, temporary, or permanent). “The Due Process Clause extends to all ‘persons’ regardless
23 of status, including non-citizens (whether here lawfully, unlawfully, temporarily, or
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1 permanently.” *Lopez-Campos*, 2025 WL 2496379, at *9 (citing *Zadvydas v. Davis*, 533 U.S.
2 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S.
3 292, 306 (1993)).

4 50. Accordingly, notwithstanding Congress’s indisputably broad power to regulate
5 immigration, fundamental due process requirements notably constrained that power with respect
6 to aliens within the territorial jurisdiction of the United States. *See Kwong Hai Chew*, 344 U.S.
7 590, 596–97 (1953) (explaining that a lawful permanent resident may not be deprived of his life,
8 liberty or property without due process of law, and thus cannot be deported without notice of the
9 nature of the charge and a hearing at least before an executive or administrative tribunal).

10 51. This fundamental due process protection applies to all noncitizens, including both
11 removable and inadmissible noncitizens. *See Zadvydas v. Davis*, 533 U.S. 678, 721 (2001)
12 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be
13 free from detention that is arbitrary or capricious”). It also protects noncitizens who have been
14 ordered removed from the United States and who face continuing detention, *Diouf v. Napolitano*,
15 634 F.3d 1081, 1086-87 (9th Cir. 2011), as well as those noncitizens deemed “arriving” under
16 the INA, *Jennings v. Rodriguez*, 138 S.Ct. 830, 862 (2018). (Breyer, J., dissenting) (stating that
17 “arriving” noncitizens enjoy due process protections against prolonged detention because they
18 are “are held within the territory of the United States at an immigration detention facility” (citing
19 *Wong Wing v. United States*, 163 U.S. 228, 238 (1896)); *see also Kwai Fun Wong v. United*
20 *States*, 373 F.3d 952, 973-74 (9th Cir. 2004) (concluding that the “entry fiction” does not
21 preclude substantive constitutional protection for noncitizens considered “arriving”).

22 52. As a matter of context, in the last two decades, the Supreme Court has addressed
23 several challenges to the immigration detention scheme. For instance, in *Zadvydas v. Davis*, 533

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

9 53. In *Demore v. Kim*, 538 U.S. 510, 523 (2003), the Supreme Court upheld the
10 mandatory detention of a noncitizen under 8 U.S.C. § 1226(c) based on the petitioner’s
11 concession of deportability and the Court’s understanding that detention under § 1226(c) is
12 typically “brief.” *Demore*, 538 U.S. at 522 n.6, 528. Nevertheless, the Supreme Court’s decision
13 in *Demore* did not foreclose a noncitizen’s right to challenge prolonged detention that does not
14 provide protections that permit a noncitizen to challenge continued confinement.

15 54. To guarantee against such arbitrary detention and to guarantee the right to liberty,
16 due process requires “adequate procedural protections” that ensure the government’s asserted
17 justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally
18 protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation
19 marks omitted).

20 55. Following *Zadvydas* and *Demore*, circuit court of appeals that confronted the
21 issue found either that the INA or due process require a bond hearing or release for noncitizens
22 subject to unreasonably prolonged detention pending removal proceedings. *See, e.g., Sopo v.*
23 *U.S. Attorney Gen.*, 825 F.3d 1199 (11th Cir. 2016), *vacated as moot*, 890 F.3d 952 (11th Cir.

1 2018); *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016); *Lora v. Shanahan*, 804 F.3d 601 (2d Cir.
2 2015); *Rodriguez v. Robbins (Rodriguez III)*, 804 F.3d 1060 (9th Cir. 2015); *Diop v.*
3 *ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. 2011); *Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003).

4 56. Later, in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court held that
5 the Ninth Circuit erred by interpreting 8 U.S.C. §§ 1226(c) and 1225(b) to require bond hearings
6 as a matter of statutory construction. The Supreme Court concluded that §§1225(b), 1226(a), and
7 1226(c) do not give detained [noncitizens] the right to periodic bond hearings during the course
8 of their detention. Because the Ninth Circuit had not decided whether the Constitution itself
9 requires bond hearings in cases of prolonged detention, the Court remanded for the Ninth Circuit
10 to address the issue. *Id.* at 851. The Court’s majority opinion did not express any views on the
11 constitutional question and left it to the lower courts to address the issue in the first instance.

12 57. In his dissent, Justice Breyer expressed that “to hold a [person] without bail is to
13 deprive him of bodily “liberty...” “...where there is no bail proceeding, there has been no bail-
14 related “process” at all.” citing *United States v. Salerno*, 481 U. S. 739–751 (1987). Justice
15 Breyer also mentioned that “[f]reedom from bodily restraint has always been at the core of the
16 liberty protected by the Due Process Clause from arbitrary governmental action.”
17 citing *Foucha v. Louisiana*, 504 U. S. 71, 80 (1992); *Demore v. Kim*, 538 U. S. 510, 532 (2003)
18 (Kennedy, J., concurring); *Zadvydas*, 533 U. S., at 718 (Kennedy, J., dissenting). To Justice
19 Breyer “[t]he Due Process Clause foresees eligibility for bail as part of due process” because
20 “[b]ail is basic to our system of law.” *Jennings*, at 862, (citing *Salerno, supra*, at 748–
21 751; *Schilb v. Kuebel*, 404 U. S. 357, 365 (1971); *Stack v. Boyle*, 342 U. S. 1, 4 (1951)).

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

4 59. In immigration cases, civil detention has been found to only permissible where it
5 bears a "reasonable relation to the purpose for which the individual was committed." *Jackson v.*
6 *Indiana*, 406 U.S. 715, 738 (1972). As concluded in *Zachrydas v. Davis*, 533 U.S. at 690, due
7 process thus requires "adequate procedural protections" to ensure that the government's asserted
8 justification for a noncitizen's physical confinement "outweighs the individual's constitutionally
9 protected interest in avoiding physical restraint." *Id.* at 690 (internal quotation marks omitted).

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

14 61. Thus, where the government detains a noncitizen for a prolonged period or where
15 the noncitizen pursues a substantial defense to removal or claim to relief, due process requires an
16 individualized hearing before a neutral decisionmaker to determine whether such a significant
17 deprivation of liberty is reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy, J.,
18 concurring) (stating that an "individualized determination as to [a noncitizen's] risk of flight and
19 dangerousness" may be warranted "if the continued detention became unreasonable or
20 unjustified"); *cf. Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the "initial
21 commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-
22 50 (1972) (noting that "lesser safeguards may be appropriate" for "short-term confinement");
23 *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment context, that

1 “the length of confinement cannot be ignored in deciding whether [a] confinement meets
2 constitutional standards”).

3 62. To determine if the prolonged detention of a noncitizen is reasonable, Courts have
4 applied a reasonableness test, which involves three main factors. First, courts have evaluated
5 whether the noncitizen has raised a “good faith” challenge to removal—that is, the challenge is
6 “legitimately raised” and presents “real issues.” *Chavez-Alvarez v. Warden York Cty. Prison*, 783
7 F.3d 469, 476 (3d Cir. 2015). Second, reasonableness is a “function of the length of the
8 detention,” with detention presumptively unreasonable if it lasts six months to a year. *Id.* at 477-
9 78; *accord Sopo*, 825 F.3d at 1217-18. In assessing the length of detention, delay attributable to
10 the government weighs against finding the detention reasonable. *Sopo*, 825 F.3d at 1218. Third,
11 courts consider the likelihood that detention will continue pending future proceedings. *Chavez-*
12 *Alvarez*, 783 F.3d at 478 (finding detention unreasonable after ninth months of detention, when
13 the parties could “have reasonably predicted that Chavez-Alvarez’s appeal would take a
14 substantial amount of time, making his already lengthy detention considerably longer”); *Sopo*,
15 825 F.3d at 128; *Reid*, 819 F.3d at 500.

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

21 64. The requirement that the government bear the burden of proof by clear and
22 convincing evidence is also supported by application of the three-factor balancing test from
23 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Under the *Mathews* test, Courts consider (1)

1 “the private interest that will be affected by the official action.” (2) “the risk of an erroneous
2 deprivation of such interest,” and (3) “the Government’s interest, including the function involved
3 and the fiscal and administrative burdens that the additional or substitute procedural requirement
4 would entail.” *Matthews v. Eldridge*, 424 U.S. at 335.

5 65. Due process also requires that a neutral decisionmaker consider alternatives to
6 detention. A primary purpose of immigration detention is to ensure a noncitizen’s appearance
7 during removal proceedings. Detention is not reasonably related to this purpose if there are
8 alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S.
9 520, 538 (1979).

10 66. Courts have ruled that automatically stayed release from detention is a violation of
11 the Fifth Amendment. *See, e.g., Mohammed H. v. Trump*, 781 F. Supp. 3d 886, 895 (D. Minn.
12 2025) (finding that it “does not require any showing of dangerousness or flight risk. Nor is it
13 subject to immediate review by an immigration judge. It operates by fiat and has the effect of
14 prolonging detention even after a judicial officer has determined that release on bond is
15 appropriate. That mechanism’s operation here—in the absence of any individualized
16 justification—renders the continued detention arbitrary as applied. *Cf. Zadvydas*, 533 U.S. at
17 699–700, 121 S.Ct. 2491.

18 67. The “recent shift to use the mandatory detention framework under Section
19 1225(b)(2)(A) is not only wrong but also fundamentally unfair. In a nation of laws vetted and
20 implemented by Congress, we don’t get to arbitrarily choose which laws we feel like following
21 when they best suit our interests.” *Lopez-Campos*, 2025 WL 2496379, at *10.

22 68. It is important to consider for asylum seekers detention is often lengthy and that
23 immigration detainees face severe hardships while incarcerated. Immigration detainees are held
24

1 in lock-down facilities, with limited freedom of movement and access to their families: “the
2 circumstances of their detention are similar, so far as we can tell, to those in many prisons and
3 jails.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); *accord Chavez-Alvarez*, 783 F.3d at
4 478; *Ngo v. INS*, 192 F.3d 390, 397-98 (3d Cir. 1999); *Sopo*, 825 F.3d at 1218, 1221. “And in
5 some cases[,] the conditions of their confinement are inappropriately poor.” *Jennings*, 138 S. Ct.
6 at 861 (Breyer, J., dissenting) (citing Dept. of Homeland Security (DHS), Office of Inspector
7 General (OIG), *DHS OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE*
8 *Detention Facilities* (2017) (reporting instances of invasive procedures, substandard care, and
9 mistreatment, *e.g.*, indiscriminate strip searches, long waits for medical care and hygiene
10 products, and, in the case of one detainee, a multiday lock down for sharing a cup of coffee with
11 another detainee)).

12 69. The above, is also a reality in Mr. Nava Jaimes’ case. While in detention his
13 freedom of movement is completely limited, he is unable to earn a living, is separated from his
14 partner, stepchildren and other close friends. These conditions and obstacles only further
15 underscore the serious due process concerns that prolonged immigration detention entails for Mr.
16 Nava Jaimes

17 70. Upon weighing the *Matthews* factors this Court should find that the Government’s
18 interest in fewer bond hearings (the efficient processing on noncitizens for removal) is
19 diminished. Additionally, since Mr. Nava Jaimes’ detention will continue pending future
20 immigration proceedings, this Court should find that the Government’s interest in denying him
21 the opportunity for a bond hearing does not outweigh Mr. Nava Jaimes’ liberty interest and it
22 will also create a high risk of erroneous deprivation to said right.

1 71. The government’s decision that all noncitizens, like Mr. Nava Jaimes, are to be
2 mandatorily detained is arbitrary and affords to individuals like him no process, let alone due
3 process. Therefore, it should be unconstitutional. *See Mathews v. Eldridge*, 424 U.S. 319 (1976).

4 **C. The Immigration and Nationality Act of 1952 (“INA”)**

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

11 73. Sections 8 U.S.C. §§ 1225, 1226 of the *Immigration and Nationality Act* (“INA”)
12 govern how the executive branch evaluates inadmissible noncitizens. Logically speaking,
13 inspection or apprehension of the noncitizen is a necessary precondition of removal. Only after
14 a noncitizen is identified as inadmissible can removal proceedings happen.² The Supreme Court
15 has already distinguished these two provisions in *Jennings v. Rodriguez*. *See* 583 U.S. 281, 289
16 (2018). The *Jennings* Court determined that the government may “detain certain aliens seeking
17 admission into the country” under § 1225(b) while § 1226 “authorizes the Government to detain
18 certain aliens *already in the country* pending the outcome of removal proceedings.” *Id.*
19 (emphasis added).

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

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

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

9 76. Second, noncitizens that (a) are inadmissible because of misrepresentation or
10 failure to meet documents requirements; (b) have not “been admitted or paroled into the United
11 States”; (c) have not “affirmatively shown, to the satisfaction of an immigration officer, that
12 [they have] been physically present in the United States continuously for the 2-year period
13 immediately prior to the date of the determination of inadmissibility”; and (d) have been
14 designated by the Attorney General for expedited removal. *Id.* at § 1225(b)(1)(A)(iii).

15 77. These two categories of noncitizens subject to § 1225(b)(1) are subject to
16 mandatory detention “until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297.
17 Individuals that fall into § 1225(b)(1) are “normally ordered removed ‘without further hearing or
18 review’ pursuant to an expedited removal process” unless claiming asylum or a fear of
19 persecution. *Jennings*, 53 U.S. at 287 (first quoting § 1225(b)(1)(A)(i); then citing §
20 1225(b)(1)(A)(ii)).

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

3 79. Section 1225(b)(2)(A) governs mandatory detention of applicants for admission.
4 Subject to limited exceptions, Section 1225(b)(2) provides that such noncitizens “shall be
5 detained” for full removal proceedings under § 1229a “if the examining immigration officer
6 determines” that the noncitizen “is not clearly and beyond a doubt entitled to be admitted.” *Id.* at
7 § 1225(b)(2)(A).³

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

12 81. Under § 1226(a), a noncitizen “may be arrested and detained” “[o]n a warrant
13 issued by the Attorney General” if their removal proceedings are pending, 8 U.S.C. § 1226(a).⁴
14 Detention pursuant to § 1226(a) is not mandatory. If the noncitizen was not charged with,
15

16 ³ (b) Inspection of applicants for admission

17 ..
18 (2) Inspection of other aliens
19 (A) In general

20 Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the
21 examining immigration officer determines that an alien seeking admission is not clearly and beyond a
22 doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.
23 8 U.S.C. § 1225(b)(2)(A).

24 ⁴ (a) Arrest, detention, and release

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

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

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

1 arrested for, or convicted of certain criminal offenses enumerated in § 1226(c),⁵ the government
2 has discretion to release them on “bond of at least \$1,500 with security approved by, and
3 containing conditions prescribed by, the Attorney General; or ... conditional parole.” *Id.* at §
4 1226(a)(2)(A)–(B).

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

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

16 84. For decades the DHS had applied § 1226(a) and its discretionary release and
17 review of detention “to the vast majority of noncitizens allegedly in this country without valid
18 documentation”—a practice codified by regulation. *See, e.g., Salcedo Aceros*, 2025 WL

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

1 2737503, at *3. However, last year the Government upended this long-held understanding of the
2 law.

3 85. First, on July 8, 2025, U.S. Immigration and Customs Enforcement (“ICE”) issued
4 an interim guidance memo stating that anyone who entered without inspection was ineligible for
5 release on bond and could not challenge their detention at a bond hearing in immigration court,
6 regardless of how long an individual has lived in the United States.⁶ As result, DHS attorneys
7 started arguing, and some IJs started finding, that such individuals were not eligible for bond
8 hearings in immigration court.

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

17 87. But, as discussed above, the mandatory detention of applicants for admission
18 applies after an examining immigration officer determines that [a noncitizen] seeking admission
19 is not clearly and beyond a doubt entitled to be admitted. 8 U.S.C. § 1225(b)(2)(A). Additionally,
20 it is important to note, that individuals who have not been inspected and authorized by an
21 immigration officer lack the trait to be categorized as “applicants for admission” since statutory
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23 ⁶ See, AILA Doc. No. 25071607, accessible through [https://www.aila.org/library/ice-memo-interim-](https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission)
24 [guidance-regarding-detention-authority-for-applications-for-admission](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 language of § 1225(b)(2) contemplates a determination by an “examining immigration officer”
2 regarding a noncitizen’s admissibility. *See* § 1225(b)(2).⁷

3 88. However, the Government is now contending that anyone who entered without
4 inspection remains an “applicant for admission” who is “seeking admission” and thus subject to
5 mandatory detention under Section 1225(b)(2). *See e.g., Rodriguez Vasquez v. Bostock, et al.*
6 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025) (citing *Torres v. Barr*,
7 976 F.3d 918, 928 (9th Cir. 2020)).

8 89. In regard to this new interpretation, as of late 2025, several district courts have
9 held that the Government’s new, and more expansive interpretation of mandatory detention
10 under the INA is either incorrect or likely incorrect on the basis that this reading of the statute
11 would render 1226(c) inoperable or moot. Several Courts have then rejected the government’s
12 position and have held that such individuals are subject to § 1226(a) and thus eligible for a bond
13 hearing. *See also e.g., Rodriguez Vasquez v. Bostock, et al.* 3:25-CV-05240-TMC, 2025 WL
14 2782499 (W.D. Wash. Sept. 30, 2025); *See e.g., Aguilar Merino v. Ripa*, 25-23845-CIV, 2025
15 WL 2941609 (S.D. Fla. Oct. 15, 2025), and *J.Y.L.C., v. Bostock, et al.*, 3:25-cv-02083-AB, (D.
16 Or. Nov. 12, 2025) (collecting cases rejecting *Matter of Yajure Hurtado*).

17 90. One of those recent cases where the Court rejected the government’s position, and
18 relevant here, is *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp.

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

1 *3d* ----, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). On November 20, 2025, the District
2 Court granted partial summary judgment for the four petitioners, holding that the government’s
3 policy is inconsistent with the plain language of the *Immigration and Nationality Act* (“INA”),
4 and that petitioners are properly subject to § 1226(a). *See e.g., J.A.M. v. Streeval*, No. 4:25-CV-
5 342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025) and *P.R.S. v. Streeval*, No. 4:25-cv-330-
6 CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025).

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

14 92. As expressed above, Mr. Nava Jaimes is a member of the *Maldonado Bautista*
15 Bond Eligible Class.

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

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

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

3 95. Respondents’ continued detention of Mr. Nava Jaimes for a prolonged or
4 otherwise indefinite period of time without a bond hearing is adversely and severely affecting his
5 liberty and freedom.

6 **E. EXHAUSTION**

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

10 97. Under the doctrine of exhaustion of administrative remedies, ‘a party may not
11 seek federal judicial review of an adverse administrative determination until the party has first
12 sought all possible relief within the agency itself.’” *Howell v. INS*, 72 F.3d 288, 291 (2d Cir.
13 1995) (quoting *Guitard v. U.S. Sec’y of Navy*, 967 F.2d 737, 740 (2d Cir. 1992)).

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

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

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

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

22 102. As mentioned above, on July 8, 2025, the U.S. Immigration and Customs
23 Enforcement (“ICE”) was instructed, via an interim guidance memo, that anyone who entered
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1 without inspection (EWIs) is ineligible for release on bond. Then, on September 5, 2025, the
2 Board of Immigration Appeals (“BIA”) held that “[b]ased on the plain language of section
3 235(b)(2)(A) of the [INA], Immigration Judges lack authority to hear bond requests or to grant
4 bond to aliens who are present in the United States without admission.” *See Matter of Yajure*
5 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

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

13 104. Since the Board of Immigration Appeals (BIA) is an administrative body located
14 in the DOJ, which, of course, is part of the executive branch of the government. Its members are
15 appointed by the Attorney General, and its decisions are binding on all immigration judges,
16 *Yajure Hurtado* thus precludes an IJ from finding jurisdiction over noncitizens, like Mr. Nava
17 Jaimes, to hold a bond hearing. As such, this Court should find that the agency’s position is
18 already set and recourse to administrative remedies is very likely futile.

19 105. Additionally, Immigration judges have informed class members in bond hearings
20 that they have been instructed by “leadership” that the declaratory judgment in *Maldonado*
21 *Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound
22 to follow the agency’s prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA
23 2025).

1 106. Since the government has already predetermined that anyone who entered without
2 inspection (EWIs) is ineligible for release on bond, established a no-bond for EWIs policy, and
3 has resorted to an across-the-board application of § 1225(b)(2), Mr. Nava Jaimes had to proceed
4 directly to filing this petition for writ of habeas corpus based on *Maldonado Bautista* class
5 membership and for the violation to his statutory and constitutional rights.

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

12 108. Thus, Mr. Nava Jaimes' individual interest in having prompt access to this forum
13 outweighs any institutional interests at stake.

14 109. Therefore, the Court should consider the merits of the Petition. This Court
15 intervention, to enjoin the Respondents from preventing Mr. Nava Jaimes from having a bond
16 hearing pursuant to the holding in *Hurtado*, is necessary to enable him to avail himself of his
17 administrative remedies.

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CLAIM FOR RELIEF

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

110. Petitioner, Mr. Nava Jaimes, repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

111. As a member of the Bond Eligible Class, Mr. Nava Jaimes is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

112. The Order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.

113. The Order granting class certification in *Maldonado Bautista* further orders that “[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.”

114. Respondents are parties to *Maldonado Bautista* and bound by the Court’s declaratory judgment, which has the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a).

115. By denying Mr. Nava Jaimes a bond hearing under § 1226(a) and wrongly asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Mr. Cruz Arcos’ statutory rights under the INA and the Court’s judgment in *Maldonado Bautista*.

**COUNT 2: UNCONSTITUTIONAL DETENTION IN
VIOLATION OF THE FIFTH AMENDMENT**

116. Petitioner, Mr. Nava Jaimes, repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

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

1 118. Civil immigration detention is only permissible where it bears a “reasonable
2 relation to the purpose for which the individual was committed.” *Jackson v. Indiana*, 406 U.S.
3 715, 738 (1972); *Zadvydas*, 533 U.S. at 690. Those purposes are limited: preventing flight and
4 protecting the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

5 119. Mr. Nava Jaimes’ immigration proceedings are at an early stage, and he could
6 raise a “good faith” challenge to removal.

7 120. Additionally, there is no removal order. His removal is not imminent or
8 reasonably foreseeable. Therefore, Mr. Nava Jaimes’ continued and prolonged detention does not
9 bear a reasonable relation to the purpose for which it was committed. It is important to note that
10 the reasonableness of his detention can only be established once the government satisfies its
11 burden of proof to show by clear and convincing evidence that community protection or flight
12 risk concerns apply to him. This can only happen in a bond hearing, which the Respondents are
13 not affording to Mr. Nava Jaimes. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Zadvydas*,
14 533 U.S. at 690.

15 121. Furthermore, the mandatory detention provision at 8 U.S.C. § 1225(b)(2) does
16 not apply to noncitizens, such as Mr. Nava Jaimes, residing in the United States who are subject
17 to the grounds of inadmissibility only because they previously entered the country without being
18 admitted.

19 122. Mr. Nava Jaimes is detained under § 1226(a) and is not subject to another
20 detention provision, such as 1225(b)(1), § 1226(c), or § 1231.

21 123. However, in accordance with the BIA decision in *Matter of Yajure Hurtado*, DHS
22 attorneys have the practice of arguing and IJs throughout the country, including those stationed
23 the Stewart Detention Center, have started finding that individuals, such as Mr. Nava Jaimes,

1 could not challenge their detention at a bond hearing in immigration court, regardless of how
2 long an individual has lived in the United States. As result, individuals such as, Mr. Nava Jaimes,
3 are denied bond hearings in immigration court.

4 124. These cumulative actions render his detention even more constitutionally suspect,
5 as they reflect punitive conduct rather than civil processing.

6 125. Respondents lack statutory authority to detain Mr. Nava Jaimes under Section
7 1225(b)(2) because that statute does not apply to noncitizens in his circumstances. Accordingly,
8 Mr. Nava Jaimes' continued detention constitutes a deprivation of liberty without due process of
9 law. The Court should order his release.

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

13 126. Petitioner, Mr. Nava Jaimes, herein incorporates all allegations and facts set forth
14 in the paragraphs above.

15 127. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to
16 noncitizens, such as Mr. Nava Jaimes, residing in the United States who are only subject to the
17 grounds of inadmissibility because they previously entered the country without being admitted.

18 128. Mr. Nava Jaimes is detained under § 1226(a) and is not subject to the any
19 detention provisions proscribed in 1225(b)(1), § 1226(c), or § 1231.

20 129. The government's no-bond for EWIs policy and the incorrect, willful, and
21 capricious application of § 1225(b)(2) to Mr. Nava Jaimes violates the *Immigration and*
22 *Nationality Act*.

1
2 **COUNT 4: UNLAWFUL DENIAL OF BOND HEARING IN**
3 **VIOLATION OF EIGHTH AMENDMENT RIGHT TO BAIL**

4 130. Petitioner, Mr. Nava Jaimes, re-alleges and incorporates by reference the
5 paragraphs above.

6 131. The Eighth Amendment of the United States Constitution prohibits “cruel and
7 unusual punishments.” U.S. Const. amend. VIII cl. 4.2.

8 132. Bail is “basic to our system of law.” It not only “permits the unhampered
9 preparation of a defense,” but also “prevent[s] the infliction of punishment prior to
10 conviction.” *Jennings*, at 862, (Breyer, J., dissenting) citing *Salerno, supra*, at 748–
11 751; *Schilb v. Kuebel*, 404 U. S. 357, 365 (1971); *Stack v. Boyle*, 342 U. S. 1, 4 (1951).

12 133. The government’s categorical, incorrect, willful, and capricious application of §
13 1225(b)(2) to Mr. Nava Jaimes and continued detention without a bond hearing results in
14 indefinite and unconstitutional imprisonment which surmounts to a cruel and unusual
15 punishment in violation of the Eighth Amendment

16 134. For these reasons, Mr. Nava Jaimes’ ongoing and prolonged detention without a
17 bond hearing violates the Eighth Amendment.

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

21 135. Petitioner, Mr. Nava Jaimes, herein incorporates all allegations and facts set forth
22 in the paragraphs above.

23 136. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to
24 noncitizens, such as Mr. Nava Jaimes, residing in the United States who are only subject to the

1 grounds of inadmissibility because they originally entered the United States without inspection.
2 Such noncitizens are detained under § 1226(a), unless they are subject to another detention
3 provision, such as § 1225(b)(1), § 1226(c) or § 1231.

4 137. The Mr. Nava Jaimes is detained under § 1226(a) and is not subject to the any
5 detention provisions proscribed in 1225(b)(1), § 1226(c), or § 1231.

6 138. Nonetheless, IJs stationed at Stewart Detention Center have a policy and practice
7 of applying § 1225(b)(2) and denying bond hearings to detainees, such as Mr. Nava Jaimes.

8 139. Respondents continue to keep Mr. Nava Jaimes detained under the wrong
9 provision of INA. Such action against Mr. Nava Jaimes is arbitrary, capricious, and not in
10 accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Petitioner, Abelardo Nava Jaimes, prays that this Court grant the following
13 relief:

- 14 a. Assume jurisdiction over this matter;
- 15 b. Issue an Order prohibiting the Respondents from transferring Petitioner from the
16 district without the court's approval;
- 17 c. Issue a declaration that Respondents are detaining Petitioner in violation of the
18 declaratory judgment issued in *Maldonado Bautista*;
- 19 d. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an
20 action brought under chapter 153 (habeas corpus) of Title 28;
- 21 e. Issue a Writ of Habeas Corpus requiring that within one day, Respondents release
22 Petitioner; on his own recognizance, under parole, or on low bond or any other
reasonable conditions of supervision;
- 23 f. Alternatively, issue a Writ of Habeas Corpus, hold a hearing before this Court if
24 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 seven days;

3 a. Issue a declaration that Petitioner's ongoing prolonged detention violates the Due
4 Process Clause of the Fifth Amendment and the Eighth Amendment.

5 a. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
6 (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under
7 law; and

8 b. Grant any other and further relief that this Court deems just and proper.

9 Respectfully submitted,

10 /s/ Michael Urbina

11 Michael Urbina

12 michael@urbina.law

13 *Counsel for Petitioner*

14 Dated: February 3, 2026

