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9 UNITED STATES DISTRICT COURT  
10 FOR THE DISTRICT OF NEVADA

11 Bryan Vladimir OSORIO SERMENO,

12 Petitioner-Plaintiff,

13 v.

14 Kristi NOEM, in his Official Capacity, Secretary,  
15 U.S. Department of Homeland Security;

16 Pam BONDI, in his Official Capacity, Attorney  
17 General of the United States;

18 Todd M. LYONS, Acting Director, Immigration and  
19 Customs Enforcement, U.S. Department of Homeland  
20 Security;

21 Jason KNIGHT, Salt Lake City Field Office Director  
22 for Detention and Removal, U.S. Immigration and  
23 Customs Enforcement, Department of Homeland  
24 Security; and

25 Darin BALAAM, Sherriff, Washoe County Detention  
26 Center.

27 Respondents-Defendants.

Agency No.



**PETITION FOR WRIT OF  
HABEAS CORPUS AND  
COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

Challenge to Unlawful  
Incarceration Under Color of  
Immigration Detention Statutes;  
Request for Declaratory and  
Injunctive Relief

**INTRODUCTION**

1. Petitioner Bryan Vladimir Osorio Sermeno (“Mr. Osorio Sermeno”), Agency Number



, by and through his undersigned counsel, respectfully submits this petition for a Writ

1 of Habeas Corpus and a Complaint for Declaratory and Injunctive Relief to stop the U.S.  
2 Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE)  
3 from unlawfully detaining him in immigration custody while his removal proceedings are  
4 pending.

5 2. Petitioner requests his immediate release from custody at the Washoe County Detention  
6 Center, where ICE is unlawfully detaining him without providing clear and convincing evidence  
7 that he poses a flight risk or danger to the community, as required by the Due Process Clause of  
8 the Fifth Amendment. Alternatively, he seeks a constitutionally compliant bond hearing wherein  
9 the government bears the burden of justifying his continued detention.

10 3. By way of background, Mr. Osorio Sermeno entered the United States on or around  
11 December 2003 without inspection and admission or parole. He has remained in immigration  
12 custody since December 19, 2025. Mr. Osorio Sermeno first came to the attention of Immigration  
13 and Customs Enforcement (“ICE”) following his arrest on September 25, 2025. He was arrested  
14 for violating the conditions of a previously imposed suspended sentence, specifically for failing  
15 to pay ordered restitution. That suspended sentence stemmed from a charge of making, uttering,  
16 or attempting to utter, or possessing with intent to utter, a fictitious bill, note, or check.

17 4. Following his arrest, Mr. Osorio Sermeno served ninety-two days in custody. On  
18 December 17, 2025, his suspended sentence was reinstated. On December 19, 2025, after the  
19 completion of his criminal custody, ICE assumed custody of Mr. Osorio Sermeno and initiated  
20 removal proceedings. He has remained in immigration detention in the Washoe County Jail since  
21 that time.

22 5. The current position of EOIR as it relates to bond for individuals who entered the United  
23 States without inspection and admission or parole is as follows: “The official position of EOIR is  
24 that *Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay, or  
25 enjoin *Yajure Hurtado*. Therefore, *Yajure Hurtado* remains binding precedent on agency  
26 adjudicators. For clarification, declaratory judgments differ from injunctions in that the former  
27 clarifies parties’ legal rights and relationships without ordering specific action, while the latter is  
28 a court order compelling a party to do or stop doing a specific act. A declaratory judgment is not

1 an equitable remedy and does not, by itself, have the effect of compelling a specific action by a  
2 party. Pursuant to official agency policy, immigration courts no longer have the authority to issue  
3 bonds to any individual falling under *Matter of Yajure Hurtado* (namely any individual who has  
4 not been admitted to the United States). Because this court lacks the delegated authority to  
5 consider bond for individuals who have not been admitted to the United States, this Court must  
6 find that the respondent is not eligible for release on bond<sup>1</sup>.

7 6. Accordingly, under this position, Mr. Osorio Sermeno has not sought a bond hearing, as  
8 he would not be eligible for one due to his entry without inspection and lack of admission or  
9 parole. As a result, any request for a bond hearing would be futile absent intervention by this  
10 Court.

11 7. Mr. Osorio Sermeno's prolonged detention violates the Due Process Clause of the  
12 Fifth Amendment, as DHS has failed to establish, by clear and convincing evidence, that Mr.  
13 Osorio Sermeno is either a danger to the community or a flight risk. Furthermore, Mr. Osorio  
14 Sermeno is not subject to mandatory detention and therefore entitled to a bond hearing.

15 8. Mr. Osorio Sermeno respectfully seeks immediate release from detention, or in the  
16 alternative, a constitutionally adequate bond hearing at which the government bears the burden to  
17 justify detention.

### 18 CUSTODY

19 9. Mr. Osorio Sermeno is currently in custody of ICE at the Washoe County Detention  
20 Center in Reno, Nevada. Mr. Osorio Sermeno is therefore in "'custody' of [the DHS] within the  
21 meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

### 22 JURISDICTION

23 10. This action arises under the Constitution of the United States and the Immigration and  
24 Nationality Act (INA), 8 U.S.C. § 1101 et seq.

25 11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 2241  
26

27 \_\_\_\_\_  
28 <sup>1</sup> This is an excerpt taken directly from an immigration judge's bond decision in a different  
matter.

1 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. §§ 2201 *et seq.*  
2 (Declaratory Judgment Act), the All Writs Act, 28 U.S.C. § 1651, Article I, Section 9, Clause 2  
3 of the U.S. Constitution (the Suspension Clause), Article III of the U.S. Constitution, and under  
4 the common law.

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

6 12. The Court must grant the petition for writ of habeas corpus or issue an order to show  
7 cause (OSC) to Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C.  
8 § 2243. If an order to show cause is issued, the Court must require Respondents to file a return  
9 “within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed.”  
10 *Id.* (emphasis added).

11 13. Courts have long recognized the significance of the habeas statute in protecting  
12 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most  
13 important writ known to the constitutional law of England, affording as it does a *swift* and  
14 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391,  
15 400 (1963) (emphasis added).

16 14. Habeas Corpus must remain a swift remedy. Importantly, “the statute itself directs  
17 courts to give petitions for habeas corpus ‘special, preferential consideration to insure expeditious  
18 hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations  
19 omitted). The Ninth Circuit warned against any action creating the perception “that courts are  
20 more concerned with efficient trial management than with the vindication of constitutional  
21 rights.” *Id.*

22 **VENUE**

23 15. Venue is proper in this Court under 28 U.S.C. § 1391(e) because the Respondents are  
24 officers or employees of the United States acting in their official capacities.

25 16. Mr. Osorio Sermeno is currently under the supervision of the ERO Salt Lake City –  
26 Reno Sub Office, which falls within the jurisdiction of this District. This action does not involve  
27 any real property.

28 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

1  
2 17. In the context of habeas corpus claims, exhaustion of administrative remedies is a  
3 *prudential* requirement rather than a *jurisdictional* one, as it is not explicitly required by statute.  
4 *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Courts have discretion to waive  
5 prudential exhaustion where administrative remedies are inadequate or ineffective, when  
6 pursuing them would be futile, when irreparable harm would result, or where the administrative  
7 process would be void. *Id.* (citing *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). The  
8 burden is on the party seeking waiver of prudential exhaustion to demonstrate that at least one of  
9 the *Laing* factors applies. *Aden v. Nielsen*, 2019 WL 5802013, at 2 (W.D. Wash. Nov. 7, 2019).

11 18. Although Mr. Osorio Sermeno has not yet requested a bond hearing, a bond hearing  
12 request would be futile due to EOIR's current position. The Ninth Circuit has made clear that  
13 exhaustion is not required where administrative recourse would be futile—such as when the  
14 agency's position on the relevant issue is already established and the outcome of the appeal is  
15 certain. *El Rescate Legal Servs., Inc. v. Exec. Off. of Imm. Rev.*, 959 F.2d 742, 747 (9th Cir.  
16 1992).

18 19. The *Matter of Yajure Hurtado* was issued as a precedential decision by the BIA. Under 8  
20 C.F.R. § 1003.1(g)(1), such decisions are binding in all cases involving the same issue(s); see  
21 also 8 C.F.R. § 1003.1(d)(1)(i). Because the BIA has already exercised its expertise and reached  
22 a conclusive determination in *Yajure Hurtado*, and EOIR has adopted that decision, further  
23 exhaustion is unnecessary. The decision establishes that individuals found inadmissible under 8  
24 U.S.C. § 1182(a)(6)(A)(i)—that is, those present in the U.S. without being admitted or paroled—  
25 are subject to mandatory detention without bond under 8 U.S.C. § 1225(b)(2).

27 20. Therefore, Mr. Osorio Sermeno respectfully requests that the Court waive the  
28

1 prudential exhaustion requirement on grounds of futility. As established in *Aden*, 2019 WL  
2 5802013, at 2, satisfying just one of the *Laing* factors is sufficient; therefore, analysis of the  
3 remaining factors is unnecessary.

4 **PARTIES**

5  
6 21. Mr. Osorio Sermeno is a citizen and national of El Salvador who last entered the United  
7 States on December 2003, as a minor with his mother, without inspection and without being  
8 admitted or paroled. He has continuously resided in the United States since that date and is  
9 currently detained under the direct custody and control of the Respondents and their agents.

10 22. Respondent Darin Balaam is the Sherriff of the Washoe County Detention Center,  
11 where Petitioner is currently held. He has immediate physical custody of Petitioner pursuant to  
12 the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and,  
13 as such, serves as one of Petitioner's legal custodians.

14 23. Respondent Jason KNIGHT is sued in his official capacity as the Acting Director of the  
15 Salt Lake City Field Office of U.S. Immigration and Customs Enforcement. Respondent  
16 KNIGHT is a legal custodian of Petition and has authority to release his.

17 24. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official  
18 capacity. Among other things, ICE is responsible for the administration and enforcement of the  
19 immigration laws, including the removal of noncitizens. In his official capacity as head of ICE,  
20 he is the legal custodian of Mr. Osorio Sermeno.

21 25. Respondent Kristi NOEM is the Secretary of DHS and is named in his official capacity.  
22 DHS is the federal agency encompassing ICE, which is responsible for the administration and  
23 enforcement of the INA and all other laws relating to the immigration of noncitizens. In his  
24 capacity as Secretary, Respondent Noem has responsibility for the administration and  
25 enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland  
26 Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. §  
27 1103(a). Respondent Noem is the ultimate legal custodian of Mr. Osorio Sermeno.

28 26. Respondent Pam BONDI is the Attorney General of the United States and the most senior

1 official in the U.S. Department of Justice (DOJ) and is named in his official capacity. He has the  
2 authority to interpret immigration laws and adjudicate removal cases. The Attorney General  
3 delegates this responsibility to the Executive Office for Immigration Review (EOIR), which  
4 administers the immigration courts and the BIA.

### 5 STATEMENT OF FACTS

#### 6 **Background and Personal History**

7 Mr. Osorio Sermeno was born on [REDACTED], in El Salvador. He entered the United  
8 States in December 2003 without inspection, accompanying his mother, and has resided in the  
9 United States continuously since that time. He has spent the majority of his life in this country  
10 and has established deep family ties within the United States.

#### 11 **Family Relationships and Dependents**

12 Mr. Osorio Sermeno is the father of one child, [REDACTED], who was born on [REDACTED]  
13 [REDACTED], and is a United States citizen. Mr. Osorio Sermeno maintains a close and meaningful  
14 relationship with his son.

15 In addition, Mr. Osorio Sermeno has three siblings who are United States citizens and  
16 are currently 24, 20, and 17 years old. His mother is a lawful permanent resident of the United  
17 States. These family relationships further confirm Mr. Osorio Sermeno's significant ties to the  
18 United States and the hardship imposed by his continued detention.

#### 19 **Circumstances Leading to Detention**

20 Mr. Osorio Sermeno first came to the attention of ICE following his arrest on September  
21 25, 2025. He was arrested for violating the conditions of a previously imposed suspended  
22 sentence, specifically for failing to pay ordered restitution. That suspended sentence stemmed  
23 from a prior charge of making, uttering, or attempting to utter, or possessing with intent to utter,  
24 a fictitious bill, note, or check.

25 Following his arrest, Mr. Osorio Sermeno served ninety-two days in custody. On  
26 December 17, 2025, his suspended sentence was reinstated.

#### 27 **Immigration Proceedings and Current Custody**

1 On December 19, 2025, after the completion of his criminal custody, ICE assumed  
2 custody of Mr. Osorio Sermeno and initiated removal proceedings. He has remained in  
3 immigration detention since that date and is currently under the custody and control of the  
4 Department of Homeland Security.

5 Mr. Osorio Sermeno's continued detention has resulted in prolonged separation from his  
6 United States citizen child, siblings, and his lawful permanent resident mother, causing  
7 significant hardship to his family while his immigration case remains pending.

### 8 LEGAL BACKGROUND

#### 9 **A. Habeas Corpus Under 28 U.S.C. § 2241**

10 The Constitution ensures that the writ of habeas corpus is available to any person detained  
11 within the United States. *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const. art. I,  
12 § 9, cl. 2). Habeas corpus permits an individual in custody to challenge the lawfulness of that  
13 detention, and its traditional purpose is to obtain release from custody that is not legally  
14 authorized. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

15 Federal courts are authorized to grant habeas relief under 28 U.S.C. § 2241(c)(3) where a  
16 petitioner establishes that their detention violates the Constitution or federal law. Historically,  
17 habeas corpus has been used to review the legality of detention by the Executive Branch, and  
18 courts have recognized that its protections are at their strongest in that context. *INS v. St. Cyr*,  
19 533 U.S. 289, 301 (2001).

20 Accordingly, district courts have habeas jurisdiction to consider challenges to  
21 immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Demore v. Kim*, 538 U.S.  
22 510, 517 (2003).

#### 23 **Right to Liberty and Due Process**

24 The Fifth Amendment of the U.S. Constitution guarantees that “[no] person shall... be  
25 deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V.  
26 Importantly, the supreme court has clarified that this protection extends to noncitizens, stating:  
27 “Once an alien enters the country, the legal circumstances changes, for the Due Process clause  
28

1 applies to all ‘persons’ within the United States. *Zadvydas v. Davis*, 533 U.S. 678, 699–701  
2 (2001).

3 Civil immigration detention is meant to serve limited regulatory purposes: ensuring  
4 appearance at proceedings and protecting the community. The Supreme Court in *Demore v. Kim*,  
5 538 U.S. 510 (2003), emphasized that detention may only last for the “brief period necessary  
6 for... removal proceedings” and cannot be punitive.

7 Where detention extends beyond those limited purposes or rests on mere allegations, it  
8 violates due process. As the Court stressed in *Zadvydas*: “freedom from imprisonment – from  
9 government custody, detention, or other forms of physical restraint – lies at the heart of the liberty  
10 that the Clause protects.” 533 U.S. at 690.

### 11 **Civil Nature of Immigration Detention**

12 The Supreme Court has repeatedly held that immigration detention is civil, not punitive. In  
13 *Bell v. Wolfish*, 441 U.S. 520, 535 (1979), the Court explained: “If a restriction or condition is not  
14 reasonably related to a legitimate governmental objective, it amounts to punishment.”

## 15 **FIRST CAUSE OF ACTION**

### 16 **I. Procedural Due Process**

17 Under the Due Process Clause of the Fifth Amendment to the United States Constitution,  
18 no person shall be “deprived of life, liberty, or property, without due process of law.” U.S. Const.  
19 amend. V. That interest is particularly weighty when government detention is at issue. “Freedom  
20 from imprisonment—from government custody, detention, or other forms of physical restraint—  
21 lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533  
22 U.S. 678, 690, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001).  
23

24 These due process rights apply to noncitizens residing in the United States. The Supreme  
25 Court has firmly established that “the Due Process Clause applies to all ‘persons’ within the  
26 United States, including aliens, whether their presence here is lawful, unlawful, temporary, or  
27 permanent.” *Zadvydas*, 533 U.S. at 693; *see also Trump v. J.G.G.*, 604 U.S. 670, 673, 145 S. Ct.  
28 1003, 221 L. Ed. 2d 529 (2025) (“It is well established that the Fifth Amendment entitles aliens

1 to due process of law in the context of removal proceedings." (*citation omitted*). Indeed, once a  
2 noncitizen is present in the United States, they have a "weighty" liberty interest in remaining in  
3 the United States, as they stand to lose rights to "stay and live and work" in the country and "to  
4 rejoin [their] immediate family." *Landon v. Plasencia*, 459 U.S. 21, 34, 103 S. Ct. 321, 74 L. Ed.  
5 2d 21 (1982) (*citation omitted*). This is true "regardless of how someone entered the country:  
6 '[O]nce passed through our gates, even illegally,' noncitizens 'may be expelled only after  
7 proceedings conforming to traditional standards of fairness encompassed in due process of law.'" *Make the Rd.*, 2025 WL 2494908, at 10 (*quoting Shaughnessy v. United States ex rel. Mezei*, 345  
8 U.S. 206, 212, 73 S. Ct. 625, 97 L. Ed. 956 (1953)).

10 **a. Mr. Osorio Sermeno Is Not Subject to Mandatory Detention Under 8 U.S.C.**

11 **§ 1225.**

12 Respondents contend that Mr. Osorio Sermeno is subject to mandatory detention under 8  
13 U.S.C. § 1225 on the theory that he qualifies as an "applicant for admission" because he entered  
14 the United States without inspection. That interpretation is inconsistent with the statutory  
15 framework and with controlling and persuasive authority interpreting § 1225.

16 Mr. Osorio Sermeno last entered the United States on December 2003 and has remained  
17 continuously present in this country since that time. Mr. Osorio Sermeno's detention did not  
18 stem from an attempt to enter the United States or from any recent arrival at the border. Rather, it  
19 followed his arrest on a state matter more than two decades after his entry into the country.  
20 Accordingly, 8 U.S.C. § 1225 does not govern his detention.

21 The threshold issue is whether § 1225 applies to all noncitizens who entered without  
22 inspection, regardless of the length of time they have lived in the United States, or whether its  
23 reach is limited to those who are arriving or have recently arrived. The statute's ordinary  
24 meaning, its structure when read together with § 1226, and the interpretation of Article III  
25 courts—including the Supreme Court and the Ninth Circuit—demonstrate that § 1225 has a  
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27  
28

1 limited temporal scope and applies only to individuals at or near the point of entry. *Maldonado*  
2 *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at \*11–16 (D. Nev. Sept.  
3 17, 2025).

4 As the Supreme Court explained in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), § 1225  
5 governs detention during the inspection and admission process at the border, while § 1226  
6 governs detention of noncitizens who are already present in the United States. Section 1225’s  
7 mandatory detention provisions are part of a statutory scheme that “generally begins at the  
8 Nation’s borders and ports of entry,” where the government determines whether a noncitizen  
9 seeking entry is admissible. *Id.* at 287, 289. By contrast, § 1226 addresses the “apprehension and  
10 detention of aliens” who have already entered the country. 8 U.S.C. § 1226. The Supreme Court  
11 has described § 1226(a) as the default detention authority applicable to noncitizens who are  
12 “already present in the United States.” *Jennings*, 583 U.S. at 289, 303; *see also Nielsen v. Preap*,  
13 586 U.S. 392, 396–97 (2019).

14 Section 1225 applies only to a subset of noncitizens—those who qualify as “applicants  
15 for admission.” Courts have consistently held that long-term residents of the United States are  
16 not applicants for admission within the meaning of the statute. The Ninth Circuit has emphasized  
17 that an “application for admission” occurs at a discrete moment in time, and that extending that  
18 concept to cover individuals years or decades after entry would exceed the statutory text. *United*  
19 *States v. Gambino-Ruiz*, 91 F.4th 981, 988–89 (9th Cir. 2024) (citing *Torres v. Barr*, 976 F.3d  
20 918, 922–26 (9th Cir. 2020) (en banc)).

21 District courts across the country have reached the same conclusion, holding that  
22 individuals who have lived in the United States for many years after entering without inspection  
23 are not “applicants for admission” subject to § 1225. *See, e.g., Lopez Benitez v. Francis*, 795 F.  
24  
25  
26  
27  
28

1 Supp. 3d 475, 489 (S.D.N.Y. 2025); *Escobar Salgado v. Mattos*, No. 2:25-CV-01872-RFB-EJY,  
2 2025 WL 3205356, at \*15 (D. Nev. Nov. 17, 2025); *Maldonado Vazquez*, 2025 WL 2676082, at  
3 \*13; *Rusu v. Noem*, No. 25 C 13819, 2025 WL 3240911, at \*5 (N.D. Ill. Nov. 20, 2025);  
4 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861, at \*9 (C.D. Cal. Nov.  
5 20, 2025).

6  
7 Adopting Respondents' interpretation would improperly collapse § 1226 into § 1225 and  
8 render large portions of the statutory detention scheme superfluous, including discretionary  
9 detention under § 1226(a). Courts have repeatedly rejected constructions that violate the canon  
10 against surplusage. *See Hasan v. Crawford*, 800 F. Supp. 3d 641, 656 (E.D. Va. 2025) (*citing*  
11 *Corley v. United States*, 556 U.S. 303, 314 (2009)); *see also Lopez Benitez*, 795 F. Supp. 3d at  
12 490; *Bautista*, 2025 WL 3289861, at \*11; *Rusu*, 2025 WL 3240911, at \*5; *Helbrum v. Williams*  
13 *Olson*, No. 4:25-CV-00349-SHL-SBJ, 2025 WL 2840273, at \*4 (S.D. Iowa Sept. 30, 2025).

14  
15 Respondents' position—that all noncitizens who entered without inspection are  
16 indefinitely subject to § 1225 regardless of how long they have lived in the United States—has  
17 been overwhelmingly rejected by federal courts as inconsistent with the statutory text. Courts  
18 have likewise declined to follow *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025),  
19 concluding that it conflicts with the plain language and structure of the INA. *See, e.g.,*  
20 *Hernandez-Luna v. Noem*, No. 2:25-CV-01818-GMN-EJY, 2025 WL 3102039, at \*4 (D. Nev.  
21 Nov. 6, 2025); *Veletanga v. Noem*, No. 25-CV-9211 (NSR), 2025 WL 3751865, at \*3 (S.D.N.Y.  
22 Dec. 26, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025); *Patel v.*  
23 *Almodovar*, No. 25-CV-15345, 2025 WL 3012323, at \*3 (D.N.J. Oct. 28, 2025).

24  
25 Because Mr. Osorio Sermeno has been continuously present in the United States since  
26 2003 and was not apprehended at or near the border, he does not fall within the limited class of  
27  
28

1 individuals subject to mandatory detention under § 1225. His detention must therefore be  
2 governed, if at all, by § 1226.

## 3 SECOND CAUSE OF ACTION

### 4 **II. Substantive Due Process**

5 Substantive due process forbids arbitrary or punitive detention. As the Supreme Court has  
6 emphasized, “Freedom from imprisonment—from government custody, detention, or other forms  
7 of physical restraint—lies at the heart of the liberty that the Due Process Clause protects.”  
8 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In the context of civil immigration proceedings,  
9 the government's authority to detain is limited to two legitimate purposes: (1) protecting the public  
10 from danger, and (2) ensuring the individual's appearance at future proceedings. *Demore v. Kim*,  
11 538 U.S. 510, 518–19 (2003). Detention that does not serve either purpose amounts to  
12 unconstitutional punishment.

13 Here, Mr. Osorio Sermeno was taken into immigration custody following the completion of  
14 state criminal custody, not as a result of any attempt to enter the United States or any recent border  
15 encounter. His immigration detention arose after ICE assumed custody on December 19, 2025,  
16 following his arrest for a violation of the conditions of a suspended sentence. The record does not  
17 reflect any individualized determination that Mr. Osorio Sermeno poses a danger to the  
18 community or a risk of flight. As the Supreme Court explained in *Bell v. Wolfish*, 441 U.S. 520,  
19 535 (1979), “if a restriction or condition is not reasonably related to a legitimate governmental  
20 objective, it amounts to punishment.” Mr. Osorio Sermeno's continued detention—absent  
21 individualized findings and unsupported by evidence—bears no reasonable relationship to a  
22 legitimate governmental purpose and therefore constitutes impermissible and unconstitutional  
23 punishment.

#### 24 **a. Application of the *Mathews v. Eldridge* Balancing Test**

25 To determine whether a civil detention violates a detainee's due process rights, courts apply  
26 the three-part balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L.  
27  
28

1 Ed. 2d 18 (1976). The Court must weigh: (1) the private interest that will be affected by the official  
2 action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and  
3 the probable value, if any, of additional or substitute procedural safeguards; and (3) the United  
4 States' interest, including the function involved and the fiscal and administrative burdens that the  
5 additional or substitute procedural requirement would entail. *Id.* at 335.

6 ***Private Interest***

7 It is beyond dispute that Mr. Osorio Sermeno has a compelling and constitutionally protected  
8 interest in avoiding continued detention. The right to be free from government-imposed  
9 confinement is among the most fundamental of all liberty interests. As the Supreme Court held  
10 in *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004), “[l]iberty is the most elemental of liberty  
11 interests.” Similarly, in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), the Court reaffirmed that  
12 “[f]reedom from imprisonment—from government custody, detention, or other forms of physical  
13 restraint—lies at the heart of the liberty the Due Process Clause protects.”

14 In assessing due process violations, courts may also examine the conditions of confinement  
15 to determine whether civil detention is effectively indistinguishable from criminal incarceration.  
16 *Martinez v. Noem*, 2025 U.S. Dist. LEXIS 174415, 2025 WL 2598379, at 2 (W.D. Tex. Sep. 8,  
17 2025). Mr. Osorio Sermeno is currently confined at the Washoe County Detention Center under  
18 conditions that mirror those of penal detention and is unjustly separated from his children. Such  
19 confinement, absent a lawful and individualized justification, is a grave intrusion on his liberty  
20 and runs afoul of due process protections.

21 ***Risk of Erroneous Deprivation***

22 The second *Mathews* factor considers “the risk of an erroneous deprivation of [Petitioner’s]  
23 interest through the procedures used, and the probable value, if any, of additional or substitute  
24 procedural safeguards.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). In this case, that risk is  
25 substantial.

26 Federal Respondents have failed to provide any evidence that Mr. Osorio Sermeno poses a  
27 danger to the community or is a flight risk. Without such a showing, the likelihood of an  
28 unjustified deprivation of his fundamental liberty interest is unacceptably high. The absence of

1 meaningful procedural safeguards—such as a constitutionally adequate bond hearing—only  
2 amplifies the risk of error and underscores the urgent need for judicial intervention.

### 3 ***Government’s Interest***

4 The third and final *Mathews* factor examines “the Government’s interest, including the  
5 function involved and the fiscal and administrative burdens that the additional or substitute  
6 procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

7 While the government’s interests in protecting the public from dangerous noncitizens and  
8 ensuring an individual’s eventual removal are undeniably important, *Rodriguez Diaz*, 53 F.4th  
9 1189–90, those interests are fully addressed through an individualized bond determination by an  
10 Immigration Judge under § 1226. As the Ninth Circuit has made clear, “the government has no  
11 legitimate interest in detaining individuals who have been determined not to be a danger to the  
12 community and whose appearance at future immigration proceedings can be reasonably ensured  
13 by a lesser bond or alternative conditions.” *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir.  
14 2017).

15 Where the government cannot articulate any specific justification for continuing to detain a  
16 noncitizen who has already prevailed—or would prevail—at a proper bond hearing, the  
17 detention ceases to serve a lawful immigration purpose. As Justice Kennedy warned in *Demore*  
18 *v. Kim*, such circumstances raise serious constitutional concerns: “[w]hether the detention is not  
19 to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate  
20 for other reasons.” *Demore*, 538 U.S. 510, 532–33 (Kennedy, J., concurring).

### 21 **Conclusion on Causes of Action**

22 Mr. Osorio Sermeno’s continued detention violates both procedural and substantive due  
23 process. Accordingly, the Constitution requires either Petitioner’s immediate release or, at  
24 minimum, a custody redetermination hearing that fully complies with due process.

### 25 **PRAYER FOR RELIEF**

26 WHEREFORE, Mr. Osorio Sermeno prays that this Court grant the following relief:

- 27 (1) Assume jurisdiction over this matter;  
28 (2) Order ICE to immediately release Mr. Osorio Sermeno from his unlawful

1 detention;

2 (3) Declare that a hearing may be conducted before a neutral adjudicator  
3 to determine whether his continued detention is lawful, based on whether the government can  
4 establish, by clear and convincing evidence, that he poses a danger to the community or a risk of  
5 flight.;

6 (4) Award reasonable costs and attorney fees; and

7 (5) Grant such further relief as the Court deems just and proper.

8  
9 Dated this 4<sup>th</sup> day of February 2026

Respectfully submitted,

10 *Karen Monrreal*

11 Karen S. Monrreal, Esq.  
12 Attorney for Mr. Osorio Sermeno  
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**VERIFICATION PURSUANT TO 28 U.S.C. 2242**

I am submitting this verification on behalf of the Petitioner because I am one of  
Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition.  
Based on those discussions, I hereby verify that the factual statements made in the attached  
Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this 4<sup>th</sup> day of February 2026 in Reno, NV.

*Karen Monrreal*

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Karen S. Monrreal, Esq.  
Attorney for Mr. Osorio Sermeno

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