

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

C.A.P.R.,)
)
Petitioner,)
) CASE NO.:
vs.)
)
JOHN MATTOS, *in his official capacity as*)
Warden of Nevada Southern Detention Center; and)
BRIAN HENKEY, *Field Office Director for ICE*)
Salt Lake City Field Office, and)
TODD LYONS, *in his official capacity as Acting*)
Director of Immigration and Customs Enforcement; and)
KRISTI NOEM, *Secretary of Homeland Security;* and)
PAMELA BONDI, *U.S. Attorney General.*)
)
Respondents.)
_____)

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
AND COMPLAINT FOR DECLARATIVE AND INJUNCTIVE RELIEF**

I. INTRODUCTION

1. This Petition for a Writ of Habeas Corpus challenges the unlawful re-arrest and ongoing detention of Petitioner C.A.P.R., by U.S. Immigration and Customs Enforcement (ICE) at the Nevada Southern Detention Center, Nevada. For years, ICE deemed Petitioner safe to remain in the community on supervised release on his own recognizance. Yet, on January 26, 2026, Petitioner was detained during a routine check-in while reporting to ICE as ordered. ICE summarily arrested and incarcerated him without a warrant, without notice, without any violation of his release conditions, and without an opportunity to be heard. This detention is unlawful from its inception. *See* Exhibit 1 ICE Locator. As Petitioner has a pending

application for Asylum and Withholding of Removal, he will be filing forthwith a motion for leave to use a pseudonym based on the enhanced privacy protections afforded to asylum applicants.

2. Respondents' actions are a flagrant violation of the Constitution and federal law, carried out under a legal theory that is baseless and rests on an agency policy that has been judicially vacated. Petitioner, who has resided in the United States for years, was previously released on an Order of Release on Recognizance (OREC) and has a long history of perfect compliance with all conditions of supervision. His summary re-arrest was executed in direct violation of the Fifth Amendment's Due Process Clause and the mandatory federal regulations that strictly govern the revocation of supervised release. District courts within the Ninth Circuit have repeatedly held that once DHS allows a noncitizen to live in the community on bond or parole, the Due Process Clause forbids re-detention absent a pre-deprivation hearing before an immigration judge or other neutral decisionmaker to determine whether the person is now a danger or flight risk. In *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019), the court granted habeas relief and permanently enjoined ICE from re-arresting a noncitizen previously released on bond "unless and until a hearing, with adequate notice, is held in Immigration Court to determine whether his bond should be revoked or altered," and later cases such as *Vargas v. Jennings*, Case No. 20-cv-5785-PJH (N.D. Cal. Sept. 14, 2020), *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050 (N.D. Cal. 2021), and *Romero v. Kaiser*, 2022 WL 1443250 (N.D. Cal. May 6, 2022), have applied the same pre-deprivation-hearing requirement to noncitizens who, like

Petitioner, were re-detained after a period of successful release.

3. The substantive justification for this detention is equally flawed. Instead of processing Petitioner under 8 U.S.C. § 1226(a), the statute governing discretionary bond for individuals arrested in the interior of the country, Respondents have misclassified him as an “arriving alien” to subject him to mandatory detention under 8 U.S.C. § 1225(b). This legal theory contradicts the plain language of the Immigration and Nationality Act (INA), repudiates decades of agency practice, and has been rejected by hundreds of federal courts nationwide.
4. Most critically, Respondents’ detention policy is a legal nullity. This Court has already rejected this exact legal theory in *Maldonado Vazquez v. Feeley*, --- F.Supp.3d ---, 2025 WL 2676082 (D. Nev. Sep. 17, 2025). This legal theory has been repudiated by a tidal wave of HUNDREDS of recent district court decisions nationwide. *See* Exhibit 2, all rejecting Respondents’ position. Furthermore, in a binding nationwide class action, a federal court recently entered a Final Judgment in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025), which expressly **VACATED** the underlying ICE policy as unlawful under the Administrative Procedure Act (APA). Continuing to detain Petitioner under a vacated policy is an act of defiance against a final federal court judgment.
5. Because Petitioner’s detention began with an unlawful, warrantless re-arrest and is perpetuated under the authority of a void agency policy, his confinement is illegal *ab initio*. It violates the Due Process Clause of the Fifth Amendment, the INA, the APA, and the Accardi doctrine, which obligates federal agencies to follow

their own rules. The only constitutionally sufficient remedy for a detention that lacks any lawful basis is immediate and unconditional release. Petitioner therefore seeks a writ of habeas corpus directing his immediate release, along with declaratory and injunctive relief to prohibit Respondents from re-detaining him under the same illegal authority.

II. JURISDICTION

A. This Court Has Jurisdiction Under 28 U.S.C. § 2241 and § 1331

6. This Court has jurisdiction under several legal provisions, including 28 U.S.C. § 2241, which grants federal courts the authority to issue writs of habeas corpus, and 28 U.S.C. § 1331, which provides for federal question jurisdiction. Jurisdiction over habeas claims is conferred by 28 U.S.C. § 2241, while non-habeas claims for declaratory and injunctive relief arise under 28 U.S.C. § 1331, the APA, and the Declaratory Judgment Act.
7. Additionally, jurisdiction is supported by Article I, § 9, cl. 2 of the Constitution, known as the Suspension Clause, and Article III, Section 2, which addresses the Court's authority to hear constitutional issues raised by the Petitioner. The Petitioner seeks immediate judicial intervention to address ongoing violations of constitutional rights by the Respondents. This action is grounded in the United States Constitution, the Immigration & Nationality Act of 1952, as amended (INA), 8 U.S.C. § 1101 *et seq.*, and the APA, 5 U.S.C. § 551 *et seq.* Furthermore, the Court may also exercise jurisdiction under 28 U.S.C. § 1331, as the action arises under federal law, and may grant relief pursuant to the Declaratory Judgment Act, 28

U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

8. The Court has authority to issue a declaratory judgement and to grant temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure (FRCP), as well as 28 U.S.C. §§ 2201-2202. Additionally, the Court can utilize the All Writs Act and its inherent equitable powers to provide such relief. Furthermore, the Court has the authority to issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241.
9. This Court possesses federal question jurisdiction under the APA to “hold unlawful and set aside agency action” deemed “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” as outlined in 5 U.S.C. § 706(2)(A). In the absence of a specific statutory review process, APA review of final agency actions can proceed through “any applicable form of legal action,” which includes actions for declaratory judgments, writs of prohibitory or mandatory injunction, or habeas corpus, in a court of competent jurisdiction, as specified in 5 U.S.C. § 703.
10. In *I.N.S. v. St. Cyr*, the Supreme Court held that federal courts retain *habeas corpus* jurisdiction under 28 USC § 2241, despite restrictions on judicial review enacted under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). 533 U.S. 289 (2001). Consequently, section 2241 habeas review remains available to Petitioner.
11. The U.S. Supreme Court has recognized district courts’ jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and

agency action contrary to law. Even though the government may detain individuals during removal proceedings, *Demore v. Kim*, 538 U.S. 510, (2003), (although that case involved detention under §1226(c) of certain criminal aliens) there are limitations to this power of the executive branch. Limitations like the Due Process Clause restrict the Government's power to detain noncitizens. It is well settled that individuals in deportation proceedings are entitled to due process of law under the Fifth Amendment. *Reno v. Flores*, 507 U.S. 292, 306, (1993). Courts must review immigration procedures and ensure that they comport with the Constitution.

12. Federal courts have retained the statutory authority to grant writs of habeas corpus since enactment of the Judiciary Act of 1789. In *Felker v. Turpin*, 518 U.S. 651 (1996), the Supreme Court declined to find a repeal of § 2241 by implication as to its original habeas corpus jurisdiction. See also *Boumediene v. Bush*, 553 U.S. 723 (2008). In addition to the Supreme Court in many cases, all Circuit Courts of Appeals have recognized district courts' jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law.
13. In this case, Petitioner asserts substantial constitutional violations—including deprivation of liberty without due process, arbitrary and capricious agency action, violations of the *Accardi* doctrine, and other injuries without notice or opportunity to be heard. These claims fall squarely within the scope of habeas review preserved by statute and recognized by controlling precedent. Accordingly, this Court has both the authority and the obligation to adjudicate the constitutional and statutory

claims presented in this Petition and to grant appropriate relief to remedy ongoing violations of Petitioner’s rights.

B. The INA’s Jurisdictional-Channeling Provisions Are Inapplicable

14. Petitioner’s claims challenge only his civil immigration detention and the procedures used to prolong it—not the merits of removability or any final order of removal—and therefore fall outside 8 U.S.C. § 1252(b)(9)’s channeling provision. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (detention challenges are not “questions of law or fact arising from” removal proceedings). Consistent with that framing, any injunctive relief sought here is strictly as-applied to Petitioner—for example, directing Petitioner’s release under § 1226(a) or barring application of § 1225 as to Petitioner—and does not “enjoin or restrain the operation” of any statute within § 1252(f)(1)’s bar. In any event, § 1252(f)(1) permits individualized, as-applied relief for a single noncitizen, even while prohibiting class-wide injunctions. *See Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–49 (2022).
15. Section 1252(f)(1) does not bar the individualized injunctive relief sought here. That provision limits lower courts’ authority to “enjoin or restrain the operation” of the INA’s detention and removal provisions on a class-wide or programmatic basis but expressly preserves injunctive relief “with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.” 8 U.S.C. § 1252(f)(1); *Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–50 (2022). Petitioner seeks only as applied relief tailored to Petitioner—e.g., directing Petitioner’s release under § 1226(a) or precluding DHS from enforcing the “arriving alien” definition of § 1225 toward Petitioner. That relief neither halts

the general operation of any INA provision nor provides class-wide relief and thus falls squarely within § 1252(f)(1)'s carveout.

16. Section 1252(g) is likewise inapplicable. It is a “narrow” jurisdictional bar that applies only to three discrete decisions or actions: “to commence proceedings, adjudicate cases, or execute removal orders.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Petitioner does not challenge any such decision. Petitioner challenges ongoing civil detention and DHS’s use of an unlawful interpretation to nullify the plain language of the INA and its regulations as applicable to these agencies. Such detention related claims and challenges to custody procedures fall outside § 1252(g). *See id.* at 482–83; cf. *Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (§ 1252(b)(9) does not channel detention claims).
17. Section 1252(e)(3) is likewise inapplicable as it is narrowly tailored to channel systemic or facial challenges to the validity of the expedited removal “system” or its implementing regulations and written policies to the U.S. District Court for the District of Columbia, and only within 60 days of implementation. It does not bar as-applied, individualized habeas challenges to the legality or constitutionality of a particular noncitizen’s detention under § 1225(b)(2) or whether § 1225 governs Petitioner’s detention or § 1226. The text of § 1252(e)(3) is explicit: it covers “[c]hallenges on the validity of the system” and review of “whether such a regulation, or a written policy directive, written policy guideline, or written procedure ... is not consistent with applicable provisions of this title or is otherwise in violation of law.” It does not preclude review of the legality of detention as

applied to a specific individual, nor does it bar habeas review of constitutional claims or claims that the government is misapplying the statute in a particular case.

18. To prevent ouster of this Court's habeas jurisdiction, the Court should, pursuant to 28 U.S.C. § 1651(a) (All Writs Act) and 28 U.S.C. § 2241, issue an immediate limited order prohibiting Respondents from transferring Petitioner outside the court's District or otherwise changing Petitioner's immediate custodian without prior leave of Court while this action is pending. Such relief is necessary in aid of jurisdiction because habeas is governed by the district-of-confinement/immediate-custodian rule, and transfer can frustrate effective review. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441–42 (2004); *Ex parte Endo*, 323 U.S. 283, 307 (1944); *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966).

III. VENUE

19. Venue is proper in the United States District Court for the District of Nevada because Petitioner is currently detained at the Nevada Southern Detention Center in Pahrump, Nevada under the custody of the Department of Homeland Security (DHS). John Mattos, as the Warden of Nevada Southern Detention Center, is the Petitioner's immediate custodian, and Respondents exercise authority over Petitioner's custody in this jurisdiction, as supported by *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). Habeas petitions generally are filed in the district court with jurisdiction over the filer's place of custody, also known as the district of confinement, pursuant to 28 U.S.C. § 2241. Additionally, with respect to Petitioner's non-habeas claims seeking prospective declaratory and injunctive relief against federal officials (agencies and officers of the United States) sued in their

official capacities, venue is proper under 28 U.S.C. § 1391(e)(1)(B) because a substantial part of the events or omissions giving rise to these claims, including the initial arrest and continued detention of Petitioner and the enforcement of the mandatory detention agency interpretation, occurred in this District. Furthermore, the Respondents are officers of United States agencies, the Petitioner is detained within this District, and there is no real property involved in this action.

IV. PARTIES

20. Petitioner, C.A.P.R., is a 27-year-old noncitizen who has resided in the United States for several years. He entered without inspection through San Ysidro, California where Petitioner and his family were encountered by U.S. Customs and Border Protection (CBP) upon entry. At the time of entry, CBP issued Petitioner a Notice to Appear (NTA) and released him on an Order of Release on Recognizance (OREC), authorizing his entry into the United States pending immigration proceedings. He was recently detained during a check-in with ICE, without notice or an opportunity to respond.
21. Respondent John Mattos is the responsible Warden of Nevada Southern Detention Center. As such, Respondent Mattos is responsible for the operation of the Detention Center where Petitioner is detained and is the immediate custodian who is currently holding Petitioner in physical custody. Because ICE contracts with private and county-operated detention facilities to house immigration detainees, Respondent Mattos has immediate physical custody of the Petitioner and is sued in his official capacity.

22. Respondent Brian Henkey is the Salt Lake City Field Office Director for Immigration and Customs Enforcement (hereinafter “FOD”) in Salt Lake City Field Office. As such, Respondent Henkey is responsible for the supervision, detention, and enforcement actions concerning noncitizens under ICE Nevada jurisdiction, including Petitioner. Respondent Henkey is being sued in his official capacity.
23. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (hereinafter “ICE”). As such, Respondent Lyons is responsible for the oversight of ICE operations. Respondent Lyons is being sued in his official capacity.
24. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (hereinafter “DHS”). As Secretary of DHS, Secretary Noem is responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Secretary Noem is being sued in her official capacity.
25. Respondent Pamela Bondi is the Attorney General of the United States and is sued in her official capacity as U.S. government agencies are Respondents in this Petition.
26. Petitioner names certain federal officials in their official capacities solely to preserve alternative, non-habeas avenues for prospective relief—such as as-applied declaratory and injunctive orders under 28 U.S.C. § 1331, the APA’s waiver of sovereign immunity, 5 U.S.C. § 702, the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, and the All Writs Act, 28 U.S.C. § 1651—necessary to enjoin enforcement of DHS regulations and their interpretation as applied to Petitioner, ensure compliance with DHS/EOIR custody regulations, prevent transfer or

removal of Petitioner, and effectuate any release the Court orders at the agency level where policy and implementation authority reside. See, e.g., *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949); *Dugan v. Rank*, 372 U.S. 609 (1963).¹

V. EXHAUSTION OF REMEDIES

27. **No statutory exhaustion requirement applies to habeas cases**, and the recent interpretations by DHS and EOIR have effectively closed all administrative avenues for securing release for noncitizens, like Petitioner, who entered the U.S. without inspection. ICE’s internal policy from July 2025, coupled with the EOIR’s Board of Immigration Appeals (BIA) precedent, mandates that immigration judges deny bond to the Petitioner and similarly situated noncitizens, rendering any further administrative steps futile. An administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it as noted in *Gibson v. Berryhill*, 411 U. S. 564, 575, n. 14 (1973). Requiring Petitioner to seek reconsideration with ICE or a bond hearing with an immigration judge “would be to demand a futile act” as no relief would be granted while Petitioner languishes in detention, as highlighted in *Houghton v. Shafer*,

¹ Petitioner acknowledges, consistent with *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that the proper respondent to the habeas claim is the immediate custodian, and does not rely on the federal officials as “habeas respondents.” Rather, Petitioner names these federal officials in their official capacities solely to ensure that the Court can issue effective relief on non-habeas claims, such as declaratory and injunctive relief, and to direct agency action to those with actual authority to implement it. Should the Court find these officials improper as respondents to the habeas count, Petitioner respectfully requests that any dismissal be limited to that claim and without prejudice to their continued status as respondents for the non-habeas claims. Maintaining these officials as parties is necessary to ensure that, if relief is granted, the responsible agency officials cannot simply re-arrest Petitioner or otherwise frustrate the Court’s order by invoking their erroneous interpretation of the INA. This approach is consistent with *Padilla* and ensures that the Court’s orders are both effective and enforceable.

392 U.S. 639, 640 (1968). Moreover, even if any remedies were available, the habeas statute does not require Petitioner to exhaust them.

28. Furthermore, even if applied, the doctrine of exhaustion of administrative remedies would have been futile on claim attacking constitutionality of ICE's actions and ICE's and EOIR's current interpretations of the mandatory detention provisions. Administrative hearings cannot address the constitutional claims at issue, rendering further proceedings ineffective. Moreover, where ICE seeks to quickly remove noncitizens like Petitioner even to third countries, without due process, particularly under the current administration's policies, underscores the inadequacy of administrative remedies. *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992) (futility exception to exhaustion applies where administrative remedies are inadequate or unavailable). Thus, pursuing such remedies would be an exercise in futility, as they fail to provide any meaningful opportunity to address the constitutional violations at hand.
29. Petitioner has exhausted his administrative remedies to the extent required by law, and Petitioner's only remedy is by way of this judicial action.

VI. STATEMENT OF FACTS AND PROCEDURAL HISTORY

30. Petitioner, C.A.P.R., is a noncitizen who entered the United States through San Ysidro, California several years ago in September 2023 while seeking asylum in the U.S. and was apprehended at the border upon entry. After a full interview and determination by DHS that he was not a flight risk or danger, he was **released from DHS custody on an Order of Release on Recognizance (OREC) pursuant to 8 U.S.C. § 1226(a) and its implementing regulation, 8 C.F.R. § 236.1(c)**. Petitioner

has been fully compliant with all immigration supervision requirements since his entry until his sudden and unlawful OREC revocation and detention in January 2026, during a routine check-in with ICE while he was complying with his OREC.

31. Petitioner has fully complied with all conditions of release and immigration supervision imposed by ICE for several years. He consistently complied with all reporting requirements, maintained contact with immigration authorities as directed, and permitted any monitoring or supervision deemed necessary by ICE. At no point did Petitioner violate any condition of his release or supervision. Petitioner's long-term compliance demonstrates ICE's determination that he was neither a flight risk nor a danger to the community, and that continued release was sufficient to ensure his appearance at all required court dates and hearings.
32. Petitioner had previously filed an I-589 Application for Asylum and Withholding of Removal, within the 1-year statutory time limit to file for such application. This application has been pending with the immigration court.
33. It is important to note that at no time was Petitioner provided with: (a) a written notice revoking his Order of Supervision; (b) a statement of reasons for his detention; (c) an interview or opportunity to respond; (d) identification of the authorized official who ordered the revocation; or (e) any warrant, charging document. Petitioner repeatedly inquired about the reason for his detention, but ICE officers provided no information.
34. Petitioner has no pending criminal charges, no history of violence, and no record of noncompliance with immigration supervision. In fact, the record over the past few years proves that he has been fully compliant with his OREC.

35. Petitioner has an upcoming immigration court hearing on February 17, 2026 at 8:30 AM. Exhibit 3. Nevertheless, he is not subject to a final order of removal. His detention was effectuated outside any lawful adjudicatory process and in direct violation of ICE regulations. Petitioner's detention constitutes an unlawful and summary revocation of supervised release, carried out without notice, authority, or an opportunity to be heard. Absent immediate judicial intervention, Petitioner will continue to suffer irreparable harm from this unconstitutional deprivation of liberty.
36. ICE has repeatedly determined that Petitioner is neither a flight risk nor a danger to the community, as demonstrated by his continuous release from custody since 2023. For more than two years, Petitioner has fully complied with all reporting and supervision requirements, remained at the same verified residence in Utah County, Utah maintained steady employment, and established strong family and community ties. Petitioner is the primary caregiver and sole financial provider for his wife, nine-month-old infant and his ten-year-old daughter, who suffers from arthritis and requires ongoing medical care in addition to her daily care, housing, and support. Petitioner's continued and unlawful detention has imposed severe and unnecessary hardship on his family, particularly his minor children.
37. Upon information and belief, as of the time of filing of this Writ of Habeas, Petitioner remains confined in the Nevada Southern Detention Center, solely because of ICE's invocation of its new interpretation that Petitioner is an "arriving alien" or "applicant for admission" and is therefore subject to mandatory detention. Even Petitioner were to file for a bond redetermination with the immigration judge, they would deny it pursuant to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. All

Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). Accordingly, it would be futile for Petitioner to request a bond for release from an Immigration Judge. Due to the binding nature of *Matter of Yajure Hurtado*, all immigration courts known to counsel are denying bond requests for similarly situated noncitizens, making habeas the only effective remedy. Similarly, even in cases an Immigration Judge would grant bond, ICE would appeal it which would leave Petitioner incarcerated through the appeal, which would take months and end up dismissed based on *Yajure Hurtado*.

38. On December 18, 2025, the U.S. District Court for the Central District of California entered a Final Judgment in the nationwide class action *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). Specifically, the court: (1) DECLARED that all members of the “Bond Eligible Class” are detained under 8 U.S.C. § 1226(a), are not subject to mandatory detention under § 1225(b)(2), and are entitled to a bond hearing before an immigration judge; (2) VACATED ICE’s policy, as described in its July 8, 2025 “Interim Guidance Regarding Detention Authority for Applicants for Admission,” finding it unlawful under the APA; (2) ENTERED FINAL JUDGMENT as to Counts I, II, and III of the Amended Class Complaint and certified those claims for immediate appeal pursuant to Federal Rule of Civil Procedure 54(b). Although Petitioner is not a member of the class as he was apprehended upon arrival, the vacated ICE policy treating him as an “arriving alien” or “applicant for admission” is still valid as that policy was vacated as unlawful under the APA. *Id.*

VII. PETITIONER’S ARREST AND DETENTION ARE UNLAWFUL *AB INITIO*

39. Petitioner’s detention is unlawful from its very inception because his arrest by ICE violated the clear and restrictive statutory framework established by Congress. The Immigration and Nationality Act (INA) provides only two potential authorities for a civil immigration arrest in the interior of the United States. The primary authority, 8 U.S.C. § 1226(a), explicitly requires that an arrest be conducted “[o]n a **warrant** issued by the Attorney General”. The statute provides a narrow exception to this rule in 8 U.S.C. § 1357(a)(2), which permits a warrantless arrest only where an officer has reason to believe the individual is unlawfully present **and** is “likely to escape before a warrant can be obtained.” Respondents satisfied neither of these statutory requirements, rendering the seizure of Petitioner a legal nullity from the outset.
40. The warrantless seizure of Petitioner was statutorily invalid because Respondents could not possibly meet the exigency requirement of 8 U.S.C. § 1357(a)(2). The “likely to escape” determination is a mandatory prerequisite, not mere surplusage. *See United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 878 (S.D. Ohio 2016). Here, it was a factual impossibility for Petitioner to pose a risk of escape, as he was already in a secure ICE reporting facility when ICE officers detained him. As courts have recognized, the government cannot justify a warrantless arrest under this exception without an “individualized assessment” of flight risk, and the argument that any person in local custody is inherently likely to escape upon release has been rejected. Since the exception for a warrantless arrest is inapplicable, Respondents’ only remaining authority was 8 U.S.C. § 1226(a),

which required a warrant that Respondents did not possess. Having failed under both statutory provisions, the arrest was void *ab initio*.

41. Because the arrest was fundamentally unlawful, the only constitutionally sufficient remedy is immediate and unconditional release. A subsequent administrative bond hearing is wholly inadequate, as it cannot cure the initial violation of Petitioner's liberty. The government's continued custody of Petitioner is the direct "fruit of the poisonous tree"—the poisonous tree being the illegal arrest itself. *See Wong Sun v. United States*, 371 U.S. 471, 484–88 (1963); *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920). Allowing subsequent proceedings, like a bond hearing, to continue would improperly legitimize a detention that never had a lawful basis. Ordering such a hearing would treat the detention as if it were lawfully initiated under 8 U.S.C. § 1226(a), rewarding Respondents for bypassing the statute's explicit warrant requirement. As other courts have concluded, where detention is based on an unlawful arrest and derivative evidence is suppressed, the appropriate remedy is immediate release. *See Rosado v. Figueroa*, No. CV-25-02157-PHX DLR, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025). Law and justice require restoring the liberty that was unlawfully taken.
42. Petitioner's detention is thus unlawful under any statutory theory Respondents could possibly advance. His detention was initiated under 8 U.S.C. § 1225, a statute this Court has repeatedly found inapplicable to interior apprehensions in dozens of cases involving similarly situated petitioners. Yet, even if Respondents had attempted to detain him under the correct statute for interior apprehensions, 8 U.S.C. § 1226(a), the arrest would still be void because they failed to obtain the

prerequisite warrant that the statute unequivocally requires. These are not mere procedural missteps; an arrest conducted without any statutory authority is an unreasonable seizure that violates the Fourth Amendment. Because the initial seizure and subsequent detention are unlawful *ab initio* under either statutory scheme, the only appropriate and constitutionally sufficient remedy is the one that restores the liberty that was illegally taken: immediate and unconditional release. A bond hearing under § 1226(a) is an inadequate remedy because it presupposes a lawful arrest under that statute—a condition that does not exist here.

VIII. RESPONDENTS' UNLAWFUL REVOCATION OF RELEASE AND RE-DETENTION

43. Petitioner's detention is not the result of an initial custody determination but an unlawful re-arrest executed in violation of mandatory federal regulations, his constitutional right to due process, and the agency's own prior binding finding that he was eligible for discretionary release. As such, his detention was unlawful *ab initio* and must be remedied by immediate release.

A. The Revocation Violated Mandatory Regulations and Was Executed Without Lawful Authority

44. The authority to revoke an Order of Release on Recognizance (OREC) is strictly limited by regulation to a narrow group of high-level officials. 8 C.F.R. § 236.1(c)(9) provides: "When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign), in which event the alien may

be taken into physical custody and detained.” This authority is exclusive, and DHS Delegation Order 7030.2 expressly prohibits its redelegation. Exhibit 4. Any revocation by an unauthorized official is therefore ultra vires and invalid.

45. Petitioner was released on a Form I-220A (Order of Release on Recognizance), which documents a custody determination made under 8 U.S.C. § 1226(a) and its implementing regulation, 8 C.F.R. § 236.1. This is not parole under 8 U.S.C. § 1182(d)(5)(A). Both federal courts and the Board of Immigration Appeals have repeatedly recognized that an OREC constitutes a release under § 1226(a) pending removal proceedings. See, e.g., *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115–16 (9th Cir. 2007); *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023).
46. Furthermore, the regulatory framework for changing a noncitizen’s custody status is explicit and mandatory. To revoke an OREC, DHS must: (1) issue a new custody determination, typically via Form I-286; (2) provide contemporaneous written notice to the noncitizen; and (3) advise the individual of the right to seek prompt review by an Immigration Judge. See 8 C.F.R. § 236.1(d)(1)–(3). These are not mere formalities but substantive safeguards to ensure any deprivation of liberty is based on individualized information and subject to fair adjudication.
47. Here, none of these mandatory procedures were followed. Petitioner was summarily arrested without being provided a new custody determination, written notice, a statement of reasons, or identification of the official who ordered the revocation. Failure to comply with these procedures renders the revocation invalid. See, e.g., *Santamaria Orellana v. Baker*, No. 1:25-cv-02841 (D. Md. Oct. 7,

2025); *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765, at 10 (E.D.N.Y. Sept. 29, 2025).

B. The Revocation Violated Petitioner’s Fifth Amendment Right to Due Process

48. Because Petitioner had been released on an OREC, he acquired a protected liberty interest in his continued freedom. The summary revocation of that liberty without any process whatsoever violates the Fifth Amendment’s Due Process Clause. The governing standard for procedural due process is the three-part balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), which weighs the private interest, the risk of erroneous deprivation, and the government’s interest. Every factor weighs decisively in Petitioner’s favor.
49. First, Petitioner’s private liberty interest is paramount. He has lived in the United States for years on supervised release, fully complied with all conditions, and built deep family and community ties. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The abrupt, unexplained deprivation of this liberty constitutes a profound intrusion.
50. Applying the *Mathews* framework in this precise posture, courts in this Circuit have consistently held that noncitizens who have been living in the community on bond or parole are entitled to a pre-deprivation hearing before an immigration judge prior to re-detention. In *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019), the court granted habeas and permanently enjoined ICE from re-arresting the petitioner “unless and until a hearing, with adequate notice, is held in Immigration Court” to

decide whether bond revocation was justified. In *Vargas v. Jennings*, the court issued injunctive relief after concluding that the petitioner had raised serious questions on the merits of his claim “that he has a protectable liberty interest in his conditional release under *Morrissey* and that he must be afforded a pre-deprivation hearing if respondents seek to re-arrest him.” Likewise, in *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050 (N.D. Cal. 2021), and *Romero v. Kaiser*, 2022 WL 1443250 (N.D. Cal. May 6, 2022), the courts held that due process, as articulated in *Morrissey* and *Mathews*, requires a pre-detention hearing before an IJ when DHS seeks to revoke bond and re-detain a previously released noncitizen. More recent decisions—including *Rodriguez Diaz v. Kaiser*, 2025 WL 3011852 (N.D. Cal. Sept. 16, 2025), *Aguilar Garcia v. Kaiser*, No. 3:25-cv-05070 (N.D. Cal. June 14, 2025), and the Eastern District of California’s orders in *D.L.C. v. Wofford* and *Pineda v. Chestnut*—have reaffirmed that re-detention without such a pre-deprivation bond or custody hearing violates due process where the noncitizen has a substantial conditional liberty interest and has complied with supervision.

51. The government cannot diminish this liberty interest by mischaracterizing Petitioner as an arriving alien at the ‘threshold of initial entry.’ Unlike the noncitizen in *Department of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), who was apprehended moments after crossing the border, **Petitioner was released into the United States and lived here for years under supervision. Once released, Petitioner acquired a significant, constitutionally protected liberty interest in enjoying continued freedom.** Petitioner’s situation is therefore governed by the Supreme Court’s decision in *Morrissey v. Brewer*, 408 U.S. 471,

482 (1972), which recognized that the revocation of conditional liberty inflicts a ‘grievous loss’ that triggers robust due process protections. The government’s decision to release Petitioner created an ‘implicit promise’ that his liberty would ‘be revoked only if [he] fail[ed] to live up to the... conditions [of release].’ *Pinchi v. Noem*, 792 F. Supp. 3d 1025 (N.D. Cal. 2025) (quoting *Morrissey*, 408 U.S. at 482). The government cannot now ignore the liberty interest it created. See also *Chavarria v. Chestnut*, No. 25-cv-01755-DAD-AC, 2025 WL 3533606, at *3 (E.D. Cal. Dec. 9, 2025).

52. Second, the risk of erroneous deprivation from the procedures used—which were no procedures at all—is exceptionally high. Detaining a compliant individual without advance notice, an individualized assessment, or an opportunity to be heard creates a near-certainty of error. The procedural safeguards required by regulation and affirmed by federal courts—notice, a hearing, and a decision by an authorized official—are the “substitute procedural safeguards” that would eliminate this risk. Their complete absence here makes the due process violation manifest. Courts in this Circuit confronted with virtually identical facts have reached the same conclusion, holding that ongoing or renewed detention “with no process at all” after a period of successful release violates due process and that a pre-deprivation hearing before an IJ is required before ICE may revoke bond or parole and re-detain the noncitizen. See, e.g., *J.U. v. Maldonado*, 2025 WL 2772765, at 10 (holding that “ongoing detention of Petitioner with no process at all... violates his due process rights”); *Pinchi v. Noem*, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at 5 (N.D.

Cal. July 24, 2025); *Kelly v. Almodovar*, No. 25 Civ. 6448 (AT), 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025).

53. Third, the government's interest does not justify this lawless conduct. While the government has an interest in detaining noncitizens who pose a flight risk or danger, that interest is nonexistent here, as evidenced by Respondents' own years-long determination that Petitioner was suitable for release on supervision. The administrative burden of providing notice and a hearing is minimal compared to the severe harm of arbitrary detention. The government's failure to provide these basic procedural protections before re-detaining Petitioner renders his redetention unconstitutional under the Due Process Clause and mandates his immediate release.

C. Respondents Are Estopped From Re-Characterizing Petitioner's Detention Status

54. Petitioner was released on a Form I-220A, Order of Release on Recognizance (OREC), which documents a custody determination made under 8 U.S.C. § 1226(a) and its implementing regulation, 8 C.F.R. § 236.1. Both federal courts and the Board of Immigration Appeals have repeatedly recognized that an OREC constitutes a release under § 1226(a) pending removal proceedings—not parole under 8 U.S.C. § 1182(d)(5)(A). *See, e.g., Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115-16 (9th Cir. 2007) (holding that a noncitizen released on an “Order of Release on Recognizance” necessarily must have been detained and released under § 1226, including because he was not an “arriving alien” under the regulations governing § 1225 examinations); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 485 (S.D.N.Y. 2025) (Release on one's own recognizance is done pursuant to §

1226; it is a form of “conditional parole” from detention, authorized under § 1226); *Martinez v. Hyde*, 792 F. Supp. 3d 211, 215 (D. Mass. 2025) (explaining that petitioner’s release on her own recognizance “does not indicate that she was examined or detained under section 1225 but instead explicitly premises her release on section 1226 ([i]n accordance with section 236 of the Immigration and Nationality Act.”);² *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023) (This binding precedent on Respondents held that release on one’s own recognizance is a release under INA 236(a)(2)(B), 8 U.S.C. § 1226(a)(2)(B), therefore § 1225(b) could not possibly apply to Petitioner’s case.

55. Here, DHS’s consistent treatment of Petitioner as subject to detention on a discretionary basis under § 1226(a), “is fatal to Respondents’ claim that he is now subject to mandatory detention under § 1225(b).” *Lopez Benitez*, 795 F. Supp. 3d at 483–84. Respondents’ own evidence clearly demonstrates their determination throughout MG’s entire immigration journey that he is—and always has

² As the district court in *Martinez v. Hyde*, explained, individuals detained following examination under section 1225 can only be paroled into the United States “for urgent humanitarian reasons or significant public benefit”. 792 F. Supp. 3d at 215, (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018) (quoting 8 U.S.C. § 1182(d)(5)(A) (“section 1182(d)(5)(A)”))). Tellingly, release on recognizance is not “humanitarian” or “public benefit” “parole into the United States” under section 1182(d)(5)(A) but rather a form of “conditional parole” from detention upon a charge of removability, authorized under § 1226. *Id.*

This distinction reflects more than an officer’s choice of paperwork because, although both styled as “parole,” these two mechanisms serve fundamentally different purposes. *Id.* Parole “into the United States,” under section 1182(d)(5)(A), permits a non-citizen to physically enter the country, subject to a reservation of rights by the Government that it may continue to treat the non-citizen “as if stopped at the border.” See *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). Section 1226 governs a separate (non-mandatory) detention scheme applicable when an individual is “already in the country” and Conditional parole, under section 1226(a)(2)(B), instead releases a non-citizen already in the country from domestic detention. *Martinez*, 792 F. Supp. 3d at 215, citing *Jennings*, 583 U.S. at 289.

been—subject to only 8 U.S.C. § 1226. Thus, in determining that Petitioner was eligible for release under § 1226 and issuing him an OREC, the government necessarily included the legal findings that he was not subject to mandatory detention under § 1225, and that he was not a danger or a flight risk.

56. Respondents are barred by the doctrine of collateral estoppel from re-characterizing the statutory basis for Petitioner’s detention. This eleventh-hour attempt to retroactively apply § 1225(b) is an impermissible post hoc rationalization that the Court must reject. Cf. *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 22 (2020) (holding an agency must defend its actions based on the reasons it gave when it acted, not on subsequent justifications). By releasing Petitioner on an Order of Release on Recognizance (OREC) explicitly under the authority of 8 U.S.C. § 1226(a), the government made a binding legal determination that it cannot now abandon simply because it has changed its litigation posture.
57. The doctrine of collateral estoppel, or issue preclusion, bars a party from re-litigating an issue of fact or law if four elements are met: (1) the issue is identical to one decided in a prior proceeding; (2) the issue was actually litigated and determined; (3) the determination was a critical and necessary part of the prior decision; and (4) the party against whom estoppel is asserted had a full and fair opportunity to litigate the issue. All four elements are satisfied here.
58. **First, the issue is identical.** The question then, as now, is whether Petitioner’s custody is governed by the discretionary release framework of 8 U.S.C. § 1226(a) or the mandatory detention framework of 8 U.S.C. § 1225(b).
59. **Second, the issue was actually determined by DHS.** The government’s own

evidence confirms that on March 26, 2022, it issued Petitioner an Order of Release on Recognizance (OREC). That OREC explicitly premised the release on “section 236 of the Immigration and Nationality Act”—8 U.S.C. § 1226. This was a formal agency adjudication of Petitioner’s custody status, not a procedural oversight. The government considered the applicable law, made a definitive choice, and issued a formal order based on that determination.

60. Third, the determination was critical and necessary to the release. A decision to release a noncitizen on their own recognizance is a discretionary act authorized only under § 1226(a). Conversely, § 1225(b) mandates detention. Therefore, the legal finding that § 1226(a) was the governing statute was a prerequisite for the OREC to be lawfully issued. Without that determination, Petitioner’s release would have been contrary to law.
61. Fourth, the party against whom estoppel is asserted—the government—is the same party that made the original determination. DHS had a full and fair opportunity to assess the facts and law when it chose to proceed under § 1226(a). It is now bound by that decision.
62. For years, Petitioner relied on the government’s formal determination, scrupulously complying with all conditions of his release. To permit Respondents to unilaterally reverse their position now—without any change in facts or law, and for the first time in this litigation—would be fundamentally unfair and would render the agency’s own custody adjudications meaningless. Having made its choice, the government is estopped from claiming § 1226 never applied.

IX. LEGAL AND STATUTORY FRAMEWORK

A. Noncitizens Are Entitled to Due Process

63. It is a bedrock principle of constitutional law that the Fifth Amendment’s Due Process Clause protects all “persons” within the United States from deprivation of liberty without due process, a protection that extends to all noncitizens, regardless of whether their presence is “lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see also Landon v. Plasencia*, 459 U.S. 21, 32 (1982); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886).

B. This Court’s Holding in *Maldonado Vazquez*: Interior Apprehensions Are Governed by § 1226(a)

64. This Court has already rejected the government’s attempt to subject long-term residents apprehended in the interior to the mandatory detention provisions of 8 U.S.C. § 1225(b)(2). In *Maldonado Vazquez v. Feeley*, --- F.Supp.3d ---, 2025 WL 2676082 (D. Nev. Sep. 17, 2025), a case where this Court harmonized the INA’s distinct detention schemes. It held that § 1225, which applies to aliens “seeking admission,” does not cover individuals already present in the U.S., as “seeking admission” requires an active attempt to enter, not mere presence. *Id.* The court therefore concluded that noncitizens apprehended in the interior, like Petitioner, are properly detained under 8 U.S.C. § 1226(a) and are entitled to a bond hearing. As Petitioner’s circumstances are legally indistinguishable from those in *Maldonado Vazquez* regarding an arrest conducted in the interior, the same statutory analysis compels the same conclusion.

C. Recent Federal Court Cases Rejecting DHS’ and EOIR’s New Interpretation

65. This Court’s holding in *Maldonado Vazquez* aligns with a tidal wave of recent decisions from hundreds of district courts that have repudiated the government’s novel reinterpretation of the INA (See Ex. 2). These courts consistently find that applying the “arriving alien” framework of § 1225 to interior apprehensions defies the statute’s plain language.³ As one court memorably explained, a person who sneaks into a movie theater is described as being “already present there,” not as “seeking admission.” *Lopez Benitez v. Francis*, — F.Supp.3d at —, 2025 WL 2371588, at *7. The government’s position would also render § 1226(a)—the statute governing discretionary bond for interior arrests—a near nullity, a result Congress could not have intended. *Id.* at *8. While these cases confirm the illegality

³ *Savane v. Francis*, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Petitioner arrested pursuant to 1225 which was improper; habeas petition granted and immediate release ordered within one business day); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) (Petitioner unlawfully detained pursuant to 1225, government ordered to transport Petitioner back to EDNY within 24 hours and immediately upon effectuating his transfer, to release him from custody); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025), (petitioner entered without inspection more than 30 years ago, detained pursuant to 1225, court found 1226(a) applied based on statutory language; PI granted and court ordered release); *Echevarria v. Bondi*, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025), entered without inspection in 2001, arrested in 2025 under 1225(b); the 24 year period petitioner resided in the U.S. made the plain language of 1225(b) was inapplicable to him, at the time of arrest an immigration officer was not “examining” him and he was not “seeking” admission; Based on *Jennings* and *Nielsen*, statutory scheme of 1226(a) applies); *Maldonado Vazquez v. Feeley*, 2025 WL 2676082 (D. Nev. Sept. 17, 2025) (entered without inspection over 20 years ago; detained July 2025; court help petitioner held pursuant to 1226(a) not as the government contends 1225(b)(2); Yajure Hurtado renders requiring prudential exhaustion futile; PI granted and release ordered on IJ bond); *Rodriguez Vazquez v. Bostock*, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025) (court granted summary judgement on behalf of a class of people without lawful status held in Tacoma who entered without inspection and not apprehended upon arrival, court held plain text of 1226(a) applies rather than 1225(b) and issues a detailed statutory analysis); *Guzman Alfarro v. Wamsley*, 2025 WL 2822113 (W.D. Wash. Oct. 2, 2025) (court granted similar relief as a class member of *Rodriguez Vasquez*); *Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025) (Court held 1226(a) and not 1225(b)(2) authorizes detention; procedural due process violated under *Mathews*, habeas granted); *Lopez-Campos v. Raycroft*, No. 2:25-cv-12486, 2025 WL 2496379, at *5-6 (E.D. Mich. Aug. 29, 2025) (granting petition for writ of habeas corpus ordering immediate release or bond hearing, where, for 30 years, courts have applied section 1226(a) to noncitizens like the petitioner who was already in the United States but facing removal, rejecting the government’s argument that section 1225 applied so no bond hearing was required.

of Petitioner’s detention, habeas relief is individualized, necessitating this petition to vindicate Petitioner’s rights.

X. LEGAL FRAMEWORK FOR THE RELIEF SOUGHT

A. Habeas Jurisdiction

66. This Court has fundamental authority and a constitutional duty under 28 U.S.C. § 2241 to remedy Petitioner’s unlawful detention. The Supreme Court has consistently affirmed that the Great Writ is the primary instrument for challenging the legality of civil immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *I.N.S. v. St. Cyr*, 533 U.S. 289, 314 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 285–86 (2018). As “perhaps the most important writ known to the constitutional law,” habeas corpus is an equitable tool that empowers this Court not just to review custody, but to “dispose of the matter as law and justice require” under 28 U.S.C. § 2243. *Fay v. Noia*, 372 U.S. 391, 400 (1963); *Schlup v. Delo*, 513 U.S. 298, 319 (1995). That power explicitly includes ordering a petitioner’s immediate release. *Boumediene v. Bush*, 553 U.S. 723, 787 (2008). This Court’s jurisdiction is secure, as the concept of “custody” is broad, attaching at the time of filing and persisting despite subsequent release due to the significant ongoing restraints on Petitioner’s liberty. *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).

B. The Administrative Procedure Act (APA)

68. Petitioner’s detention is predicated on two agency actions—ICE’s July 2025 “Interim Guidance” and the BIA’s decision in *Matter of Yajure Hurtado*, 29 I&N

Dec. 216 (BIA 2025)—that are subject to this Court’s review. These policies represent the “consummation of the agency’s decisionmaking process” and are the direct cause of Petitioner’s unlawful confinement, qualifying them as reviewable “final agency action” under the APA. *See Bennett v. Spear*, 520 U.S. 154, 178 (1997); 5 U.S.C. § 704.

C. The Accardi Doctrine Requires Agencies to Follow Their Own Rules

69. Respondents’ actions also violate the bedrock principle of administrative law that agencies are bound by their own rules. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). This doctrine is not limited to formal regulations but extends to internal procedures and instructions that affect individual rights. *See Morton v. Ruiz*, 415 U.S. 199, 235 (1974); *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). By abandoning their long-standing regulations and practices that have historically afforded bond hearings for interior apprehensions, Respondents have acted unlawfully, and their actions must be set aside. *See U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969).

XI. PETITIONER’S DETENTION IS UNLAWFUL UNDER THE BINDING FINAL JUDGMENT IN MALDONADO BAUTISTA

70. Petitioner’s detention is unlawful for another simple, dispositive reason: he is being held by the same government Respondents who are subject to a binding nationwide Final Judgment that expressly **VACATES** the very policy they are using to confine him. In *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025) (*Maldonado Bautista*) a federal court entered a Final Judgment under Federal Rule of Civil Procedure 54(b) that:

- a. **DECLARED** that noncitizens like Petitioner—who entered without inspection and were apprehended in the interior—are subject to discretionary bond hearings under 8 U.S.C. § 1226(a), not mandatory detention under 8 U.S.C. § 1225(b); and
- b. **VACATED** the July 2025 ICE “Interim Guidance” policy as “unlawful under the APA” .

71. The court’s **vacatur** of the ICE policy is the critical point although Petitioner is not a class member as he was apprehended at the border. A vacated agency policy is a legal nullity. It is void. Respondents cannot lawfully detain Petitioner based on authority that a federal court has already nullified. Their continued detention of Petitioner is not just an unlawful interpretation of the INA; it is an act of defiance against a binding Final Judgment entered specifically to “eliminate any doubt regarding [their] legal obligations” after they demonstrated widespread noncompliance with the court’s earlier orders.
72. This definitive ruling mandates **immediate release**, not a bond hearing. A bond hearing is a remedy for a detention that was lawfully initiated under 8 U.S.C. § 1226(a). It is not a remedy for a detention that was unlawful from its inception (*ab initio*). Here, the detention is based on a void policy and is therefore illegal at its core. A subsequent administrative hearing cannot cure this fundamental violation. To order a bond hearing would be to reward Respondents’ non-compliance by prolonging an illegal detention and treating it as if it had a lawful basis. When a person’s liberty is taken without legal authority, the only just remedy is to restore that liberty before the unlawful action occurred.

73. This individual habeas petition is the precise vehicle required to enforce the rights declared in *Maldonado Bautista*. As the Supreme Court clarified in *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022), the INA’s jurisdictional rules at 8 U.S.C. § 1252(f)(1) prevent class actions from yielding coercive, class-wide release orders. Instead, the statutory scheme contemplates a two-step process: (1) a class-wide declaratory judgment establishes the illegality of a government policy, and (2) individual habeas petitions, which are protected by the Suspension Clause, provide the “necessary and distinct vehicle” to enforce that declaration and secure release. *See Jennings v. Rodriguez*, 583 U.S. 281, 309 (2018); *Hamama v. Adducci*, 912 F.3d 869, 879 (6th Cir. 2018).
74. Therefore, neither claim preclusion nor exhaustion bars this petition. This action seeks a coercive remedy (release) that was statutorily unavailable in the class action. The declaratory judgment in *Maldonado Bautista*, which has “the force and effect of a final judgment or decree” under 28 U.S.C. § 2201(a), serves as a predicate for this Court to grant relief, not a bar to it. *See Calderon v. Ashmus*, 523 U.S. 740, 747 (1998); *Henglein v. Colt Indus. Operating Corp.*, 260 F.3d 201, 211–12 (3d Cir. 2001); *Allard v. DeLorean*, 884 F.2d 464, 466 (9th Cir. 1989). Because the Rule 23(b)(2) declaratory relief in *Maldonado Bautista* “operates uniformly across the class,” it definitively establishes the unlawfulness of Petitioner’s detention. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361–62 (2011). This Court should enforce that final judgment by granting the only remedy that cures an illegal detention: immediate and unconditional release.

XII. CAUSES OF ACTION AND CLAIMS FOR RELIEF

COUNT ONE

Unlawful Re-Detention in Violation of the Fifth Amendment Due Process Clause and Agency Regulations

75. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.
76. Petitioner's re-arrest and detention are unlawful *ab initio* because Respondents summarily revoked his supervised release in violation of his protected liberty interest under the Fifth Amendment's Due Process Clause and in direct defiance of their own mandatory regulations.
77. By releasing Petitioner on an Order of Release on Recognizance (OREC) under 8 U.S.C. § 1226(a), Respondents granted him a protected liberty interest in his continued freedom from physical custody. The summary revocation of that liberty without any process whatsoever fails the three-part balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976). Petitioner's private liberty interest is paramount; the risk of erroneous deprivation from the procedures used—which were no procedures at all—is exceptionally high; and the government's interest is nonexistent, as its own years-long supervision of Petitioner demonstrated he was neither a flight risk nor a danger.
78. The re-detention is also ultra vires because it violated binding federal regulations. The authority to revoke an OREC is strictly limited by 8 C.F.R. § 236.1(c)(9) to a handful of designated officials and cannot be redelegated. Furthermore, any change in custody status requires a new custody determination, written notice, and advice of the right to seek review by an Immigration Judge. 8 C.F.R. § 236.1(d)(1)–(3).

Respondents followed none of these mandatory procedures. Petitioner was summarily arrested without notice, a statement of reasons, or identification of an authorized official who ordered the revocation. Failure to comply with these substantive safeguards renders the revocation invalid. See *J.U. v. Maldonado*, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025).

79. Finally, having made a binding determination to release Petitioner under the discretionary framework of 8 U.S.C. § 1226(a), Respondents are now estopped from reversing their position to claim he is subject to mandatory detention under 8 U.S.C. § 1225(b). Because the re-detention violated due process and was executed without regulatory authority, it is void, and Petitioner is entitled to immediate release.

COUNT TWO
Unreasonable Seizure in Violation of the Fourth Amendment
(8 U.S.C. §§ 1226(a), 1357(a)(2))

80. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.
81. Petitioner’s seizure and detention are unlawful ab initio because his arrest violated the clear statutory framework established by Congress and the Fourth Amendment’s prohibition on unreasonable seizures. The primary authority for a civil immigration arrest in the interior of the United States requires that it be conducted “[o]n a warrant.” 8 U.S.C. § 1226(a). The narrow exception for a warrantless arrest under 8 U.S.C. § 1357(a)(2) demands a showing that the individual is “likely to escape before a warrant can be obtained”.

82. Respondents failed to meet either requirement. It was a factual impossibility for Petitioner to be “likely to escape” in that situation as described in the facts and procedural history above. Having failed to satisfy the statute’s mandatory exigency requirement, Respondents’ only lawful path to arrest Petitioner was to obtain a warrant under 8 U.S.C. § 1226(a), which they have failed to do.
83. Petitioner’s warrantless re-arrest check-in constituted an unreasonable seizure in violation of the Fourth Amendment. The reasonableness of a seizure depends on the totality of the circumstances. Here, the seizure was of an individual who had already been granted a form of supervised release by the government, who was fully compliant with all conditions of that release, and who voluntarily presented himself to the authorities.
84. Seizing a person in this posture, who has a recognized liberty interest and has demonstrated no risk of flight or danger, without a warrant or any form of pre-deprivation process, is inherently unreasonable. The government cannot create a system of supervised release and then arbitrarily convert a compliant check-in into a warrantless arrest without offending the core protections of the Fourth Amendment. This seizure was not effectuated to prevent flight or danger but as part of a summary enforcement action based on a change in internal policy. Such a seizure, devoid of individualized suspicion or exigent circumstances, is constitutionally unreasonable and renders Petitioner’s resulting detention unlawful.
85. An arrest conducted without any statutory authority is an unreasonable seizure in violation of the Fourth Amendment. Because the initial seizure was void, the government’s custody over Petitioner’s person is the direct “fruit of the poisonous

tree” and is incurably tainted. A subsequent bond hearing cannot remedy a detention that never had a lawful beginning. The only proper remedy for this fundamental statutory and constitutional violation is immediate and unconditional release.

COUNT THREE
Statutory Violation of the Immigration and Nationality Act, Agency Regulations
And the Accardi Doctrine

86. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.
87. Petitioner’s detention is the direct result of a cascade of unlawful agency actions that violate the plain text of the Immigration and Nationality Act (INA), contravene decades of binding agency regulations, and therefore constitute a flagrant violation of the Accardi doctrine. Respondents are unlawfully detaining Petitioner by misclassifying him as an “arriving alien” subject to mandatory detention under 8 U.S.C. § 1225(b) when the statutes and the agency’s own rules unambiguously require his case to be processed under 8 U.S.C. § 1226(a), which provides for discretionary release on bond.
88. First, Respondents’ actions defy the clear statutory scheme established by Congress. The INA creates two distinct detention frameworks: § 1225 governs the inspection and mandatory detention of aliens “arriving in the United States,” while § 1226(a) governs the discretionary detention of aliens arrested “in the United States” on a warrant. Petitioner, a long-term resident apprehended in the interior,

falls squarely within the latter category. By applying the “arriving alien” framework to him, Respondents unlawfully erase this critical statutory distinction.

89. Second, Respondents’ actions violate their own binding regulations and long-standing practice. For over two decades, agency regulations have implemented the statutory distinction by explicitly providing for bond eligibility for interior apprehensions. After Congress amended the INA in 1996, the agency issued an interim rule clarifying that noncitizens “present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination” under 8 U.S.C. § 1226. This policy is enshrined in regulations such as 8 C.F.R. §§ 236.1 and 1236.1. The new policy articulated in the July 2025 ICE memorandum and the *Yajure Hurtado* decision represents a radical and unlawful departure from these established rules.
90. Finally, by defying their own statutes and regulations, Respondents have violated the *Accardi* doctrine, a bedrock principle of administrative law that commands that federal agencies are bound by their own rules. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). The *Accardi* doctrine applies with full force not only to formal regulations but also to internal policies and guidance that confer “important procedural benefits upon individuals,” such as the right to a bond hearing. *Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 521, 538 (1970); *see also Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991).
91. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service (now DHS) issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension,

Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] **who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.**” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

92. This is not a mere procedural error; it is a fundamental breach of the rule of law. Respondents cannot simply ignore decades of their binding procedures to achieve a policy goal of mass mandatory detention. Because Respondents’ actions were taken in direct contravention of the INA and their own established rules, those actions are invalid, rendering Petitioner’s resulting detention unlawful and requiring this Court to set it aside.

COUNT FOUR
Violation of the Fifth Amendment of the U.S. Constitution
Procedural and Substantive Due Process

93. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.
94. Petitioner’s detention is a profound offense to the Fifth Amendment, violating his rights to both substantive and procedural due process. It is axiomatic that the Due Process Clause applies to all persons within the United States, regardless of immigration status, and that “freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the

liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Respondents' actions trample upon this fundamental right.

95. **Substantive Due Process:** The detention is substantively unconstitutional because it is arbitrary and serves no legitimate, non-punitive purpose. Civil immigration detention is permissible only to prevent flight or danger to the community. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 846 (2018). As established, Petitioner is neither a flight risk nor a danger. Petitioner's mandatory detention, without any individualized assessment, bears no reasonable relation to any legitimate government purpose and is therefore arbitrary deprivation of liberty, excessive, and unconstitutional.
96. **Procedural Due Process:** Even if a legitimate purpose for detention existed, the procedures used to effectuate it are constitutionally rotten. Due process demands a "meaningful opportunity to be heard at a meaningful time and in a meaningful manner" before a neutral decision-maker. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). The current scheme—whereby Respondents unilaterally subject Petitioner to mandatory detention based on an unlawful policy—entirely lacks these fundamental safeguards and fails the three-part balancing test set forth in *Mathews*:
97. **The Private Interest:** Petitioner's liberty interest is paramount; the risk of erroneous deprivation is extreme considering that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c), is not a flight risk, and does not pose a danger to the community. Being free from physical detention by one's own government "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542

U.S. 507, 529 (2004). The right to be free of detention of indefinite duration pending a bail determination, is “without question, a weighty one.” *Landon v. Plasencia*. Petitioner is being held in jail in the same conditions as criminal inmates, unable to work and is far from family. At minimum, the government must come forward with concrete, case-specific reasons that outweigh Petitioner’s substantial liberty interest in continued release.

98. **The risk of erroneous deprivation** of liberty is extreme. The system lacks any neutral adjudicator, as ICE is acting as both prosecutor and judge, a structural defect that creates a constitutionally intolerable risk of wrongful deprivation, as highlighted in *Marcello v. Bonds*, 349 U.S. 302, 305-306 (1955). Respondents are effectuating prolonged detention based on their own self-serving interpretation of the law, with no check on their power. This risk is exacerbated by the coordinated actions of both DHS and EOIR, which operate under a unified approach that effectively denies bond to noncitizens in Petitioner’s situation, thereby unilaterally depriving them of their liberty.
99. **The Government’s Interest:** The government’s interest in enforcing its detention policy is minimal, if not entirely illegitimate. There is no valid government interest in enforcing an interpretation of the law that is contrary to the plain text of the INA, that conflicts with its own regulations providing for bond hearings under 8 U.S.C. § 1226(a), and that is based on a policy (*Matter of Yajure Hurtado*) that has been judicially declared untenable. The government has no cognizable interest in violating the law or wasting taxpayer resources on the unnecessary detention of individuals who are neither dangerous nor flight risks.

100. All three *Mathews* factors weigh decisively in Petitioner's favor. The current scheme is fundamentally unfair, unconstitutional, and deprives Petitioner of liberty without the process that is, and has always been, due.

XIII. REMEDY

THE ONLY CONSTITUTIONALLY SUFFICIENT REMEDY IS IMMEDIATE AND UNCONDITIONAL RELEASE

101. When a person's liberty is taken without any lawful authority, the only effective and constitutionally sufficient remedy is to restore that liberty immediately and unconditionally. A subsequent bond hearing cannot cure a detention that was void from its inception (*ab initio*). Federal courts possess broad equitable power under 28 U.S.C. § 2243 to "dispose of the matter as law and justice require," which includes ordering immediate release when the government's custody is illegal. See *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987); *Rosado v. Figueroa*, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025). Here, law and justice demand nothing less than Petitioner's release, as his detention is a legal nullity built upon a foundation of statutory and constitutional violations.
102. Petitioner's detention is unlawful at its core because the arrest itself was executed in open defiance of the Immigration and Nationality Act's clear commands. Whether viewed as an arrest under 8 U.S.C. § 1225 or 8 U.S.C. § 1226(a), the seizure was illegal. Respondents claim authority under § 1225, but that statute applies to arriving aliens at the border, not long-term interior residents like Petitioner. The correct statute for an interior apprehension, § 1226(a),

unequivocally requires that an arrest be made “[o]n a warrant.” Respondents had no such warrant.

103. A bond hearing is a wholly inadequate remedy for such a fundamental violation. The purpose of a bond hearing is to assess the propriety of continued detention following a lawful arrest. It presupposes that the government’s custody was, at some point, legitimate. That is not the case here. To order a bond hearing would be to retroactively sanitize an illegal seizure and give the government a “pass for not securing a warrant.” *Javier De Jesus Aguilar v. English*, No. 3:25-CV-898 DRL-SJF, 2025 WL 3280219 (N.D. Ind., Nov. 25, 2025). As that court correctly reasoned when ordering immediate release under similar facts, “[t]he simple matter is this: the government has not established a lawful basis for detention... and the government must live by the rules that Congress has instituted.” *Id.*
104. This requested remedy is squarely in line with the relief ordered by district courts throughout the Ninth Circuit in redetention cases. In *Ortega v. Bonnar*, the court granted habeas, permanently enjoined ICE from re-arresting the petitioner absent a pre-deprivation hearing in immigration court, and thus “restor[ed] the liberty that was unlawfully taken.” In *Vargas v. Jennings* and *Jorge M.F. v. Jennings*, the courts issued injunctive relief prohibiting re-detention without a pre-deprivation IJ hearing applying the *Mathews* factors. *Romero v. Kaiser* likewise held that a noncitizen released on bond has a protectable liberty interest and that “due process requires a hearing before an IJ prior to re-detention.” More recently, Eastern District of California decisions such as *D.L.C. v. Wofford* and *Pineda v. Chestnut* have ordered immediate release and barred any future re-detention

“unless and until” the government first provides notice and a pre-deprivation bond hearing before a neutral arbiter, while *R.A.N.O. v. Wofford* and *R.F.G.Z. v. Wofford* have enjoined re-detention unless DHS proves flight risk or danger by clear and convincing evidence at such a pre-deprivation hearing.

105. Numerous courts—including multiple Ninth Circuit district courts—have granted immediate and unconditional release, or have categorically prohibited re-detention absent a pre-deprivation bond hearing, in identical circumstances of unlawful bond/OREC revocation and re-arrest. See, e.g., *Pineda v. Chestnut*, No. 1:25-cv-01970-DC-JDP (HC), 2026 WL 25510 (E.D. Cal. Jan. 5, 2026); *D.L.C. v. Wofford*, No. 1:25-cv-01996-DC-JDP, 2026 U.S. Dist. LEXIS 1007 (E.D. Cal. Jan. 5, 2026); *R.A.N.O. v. Wofford*, No. 1:25-cv-01535-KES-EPG (HC), 2026 U.S. Dist. LEXIS 1963 (E.D. Cal. Jan. 6, 2026); *R.F.G.Z. v. Wofford*, No. 1:25-cv-01995-KES-EPG (HC), 2026 U.S. Dist. LEXIS 1971 (E.D. Cal. Jan. 6, 2026); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, Case No. 20-cv-5785-PJH (N.D. Cal. Sept. 14, 2020); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050 (N.D. Cal. 2021); *Romero v. Kaiser*, 2022 WL 1443250 (N.D. Cal. May 6, 2022); *Rodriguez Diaz v. Kaiser*, 2025 WL 3011852 (N.D. Cal. Sept. 16, 2025); and *Aguilar Garcia v. Kaiser*, No. 3:25-cv-05070 (N.D. Cal. June 14, 2025).⁴

⁴ *Pineda v. Chestnut*, No. 1:25-CV-01970-DC-JDP (HC), 2026 WL 25510, at *4-6 (E.D. Cal. Jan. 5, 2026) (Petitioner “shall be released immediately from the Respondents’ custody with the same conditions she was subject to immediately prior to her detention.” “Respondents shall not impose any additional restriction on her, such as electronic monitoring, unless that is determined to be necessary at a future pre-deprivation/custody hearing;” and “[i]f the government seeks to re-detain Petitioner, it [] must hold a pre-deprivation bond hearing before a neutral arbiter, at which Petitioner’s eligibility for bond must be considered”); *Barrientos v. Chestnut*, No. 1:25-CV-01490-SKO (HC), 2025 WL 3677319, at *5 (E.D. Cal. Dec. 18, 2025) (court ordered immediate release and forbade re-detention unless the government could prove

106. See also case law from other circuits: *Arizmendi v. Noem*, No. 25-CV-7056, 2025 WL 3723960 (E.D. NY Dec. 24, 2025) (immediate release granted in a TRO); *Ye v. Maldonado*; 25-CV-6417; 2025 WL 3521298 (EDNY Dec. 8, 2025) (Court grants habeas, orders immediate release.); *Ibarra v. Warden of the Federal Detention Center Philadelphia*; 25-cv-6312; 2025 WL 3294726, (E.D. Pa. Nov. 25, 2025). (Grants habeas and orders release.); *Buele Morocho v. Jaminson*; 5:25-cv-05930; 2025 WL 3296300 (E.D. Pa. Nov. 26, 2025). (Grants habeas and orders immediate release. If re-detained, government must afford him due processing, including a bond hearing upon request.); *Ousmane Soumare v. Jamal L. Jamison*; CV 25-6490; 2025 WL 3461542 (E.D. Pa. Dec. 2, 2025). (Grants habeas, orders immediate release.) *Yilmaz v. Warden of Fed. Det. Ctr. Philadelphia*; CV 25-6572; 2025 WL 3459484 (E.D. Pa. Dec. 2, 2025). (Court orders immediate release, finding no flight risk or danger); *Anirudh v. McShane*, No. 25-6458, 2025 WL 3527528 (E.D. Penn. Dec. 9, 2025). (Grants habeas and order release); *Alberto Picon v. O'Neill*; CV 25-6731, 2025 WL 3634212 (E.D. Pa. Dec. 15, 2025). (Grants habeas and orders immediate release) *see also Mendes v. Hyde*, No. 25-CV-627-JJM-AEM, 2025 WL 3496546, at *2 (D.R.I. Dec. 5, 2025) (Finding that Mr. Mendes is constitutionally entitled to a bond hearing but also holding that “because the Government has put forth no evidence to suggest that Mr. Mendes poses a flight risk or is a danger to the community, the Court finds that his **immediate release is**

at a pre-deprivation bond hearing before a neutral decisionmaker by clear and convincing evidence at a hearing that the petitioner was a flight risk or danger to the community such that her physical custody is legally justified). This Court should order the same relief here.

appropriate.”) (emphasis added); *Barrera Rodriguez v. Hyde*, No. 25-cv-607-JJM-PAS, 2025 WL 3274606, at *2 (D.R.I. Nov. 25, 2025) (same).

107. Granting a bond hearing would not only fail to cure the violation, it would compound the harm. It would force Petitioner to languish in unlawful custody for weeks longer while awaiting a hearing, spend additional money on a bond (if one is even granted, as bonds grants are diminishing even after habeas grants) all while Respondents have failed to produce a single shred of evidence that he is a flight risk or a danger to the community. This Court should not reward the government’s disregard for the law by prolonging the very illegal detention it created. When the government’s custody over a person is the “fruit of the poisonous tree”—the poisonous tree being the illegal arrest itself—the only just remedy is to sever the connection by ordering immediate and unconditional release.
108. Furthermore, should this Court nonetheless order a bond hearing as an alternative to immediate release, it is critical that the order contain specific procedural safeguards to make that remedy meaningful. There is a troubling trend of immigration judges denying bond after a habeas grant based on rote assertions of flight risk or danger, often without the government presenting any actual evidence. To counteract this and ensure Petitioner is afforded a constitutionally adequate hearing so we do not have to return to this Court and **to prevent a perfunctory and meaningless hearing that would only prolong Petitioner’s unlawful detention, any order for a bond hearing must explicitly direct that the government bears the burden of establishing by clear and convincing evidence that Petitioner’s detention is necessary.**

109. Finally, to ensure the remedy of release is not rendered illusory, the Court must explicitly ENJOIN Respondents from immediately substituting physical custody with another form of unlawful restraint: electronic monitoring. There is a now-common agency practice of subjecting virtually every noncitizen released from custody to GPS ankle monitoring—a blanket policy applied without the individualized assessment of flight risk required by due process. This reflects a de facto agency policy of imposing GPS monitoring, even after an immigration judge has made a finding that a bond is sufficient to mitigate flight risk. This practice allows the agency to unilaterally subvert a judicial release order by replacing one form of custody with another. To provide a truly meaningful remedy and prevent Petitioner from being forced to return to this Court to challenge these new custody-like restraints, the Court should exercise its broad equitable power under 28 U.S.C. § 2243 to “dispose of the matter as law and justice require.” Accordingly, Petitioner requests that the Court’s order specify that his release is unconditional and enjoin Respondents from imposing any conditions of supervision, such as electronic monitoring, unless they first demonstrate to this Court, with five days’ advance notice, that significantly changed circumstances and a new, particularized assessment of risk justify such a severe restraint on Petitioner’s liberty.

XIV. CONCLUSION AND PRAYER FOR RELIEF

110. The arrest continued detention of Petitioner violates due process rights. But for intervention by this Court, Petitioner has no means of release from ICE custody. Petitioner faces ongoing and irreparable harm as a result of unlawful detention, including deprivation of liberty, loss of employment, and separation from family. These injuries cannot be remedied by monetary damages and will continue absent immediate judicial intervention. The balance of equities and the public interest strongly favor expedited consideration and equitable relief, including immediate release or a prompt bond hearing. Without such relief, Petitioner will continue to suffer irreparable harm, and the constitutional and statutory violations at issue will persist.
111. Petitioner's fact pattern is similar to *Barco Mercado v. Francis*, No. 25-cv-6582 (LAK), 2025 WL 3295903, (S.D. NY, Nov. 26, 2025) where Petitioner was previously released on bond, applied for asylum and rearrested recently by the government under § 1225(b) and held without bond. The Court granted his writ of habeas returning him to his previous bond conditions ("Mr. Barco shall remain free of detention or any other restraint under the immigration laws of the United States to which he was not subject upon his release on bond in 2022"). See also numerous cases cited by that court in Appendix A to its decision warranting immediate release.
112. See also *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787 (N.D. IL., Oct. 24, 2025) – where the Petitioner entered on foot, got caught at the border upon entry and released on his own recognizance to apply for asylum. The Court granted the

writ of habeas and ordered the government to either: (1) provide Petitioner with a bond hearing before an immigration judge, at which the Government shall bear the burden of justifying his continued detention by clear and convincing evidence of dangerous or risk of flight; or (2) release Petitioner from custody, under reasonable conditions of supervision. Id; *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. October 21, 2025) (Petitioner previously released on OREC granted bond hearing before an Immigration Judge, at which the Government shall bear the burden of justifying, by clear and convincing evidence of dangerousness or flight risk; or (2) release from custody, under reasonable conditions of supervision). There are many more authorities ordering immediate release or shifting the burden to the government when Petitioner has been previously granted release on OREC or bond and complied with the conditions of release.

WHEREFORE, Petitioner prays that this Court grant the following relief. Petitioner respectfully requests expedited consideration of this Petition due to the ongoing deprivation of liberty and irreparable harm:

- (1) **Grant the Petition for Writ of Habeas Corpus** and, pursuant to its authority under 28 U.S.C. § 2243, order Respondents to **immediately and unconditionally release** Petitioner from custody, because his detention is unlawful *ab initio* under both 8 U.S.C. § 1225 (misclassification as an “arriving alien”) and 8 U.S.C. § 1226(a) (failure to obtain the statutorily required warrant for an interior arrest), and rests

solely on agency actions that are contrary to the INA, ultra vires, arbitrary and capricious, and adopted and applied in violation of the Accardi doctrine, as set forth in the APA/Accardi claim.

- (2) **Order** that Petitioner be released under his current Order of Release on Recognizance (or previous one unlawfully revoked) and not be taken into ICE custody absent full compliance with statutory and regulatory due process protections.
- (3) **Enjoin** Respondents from re-detaining Petitioner or revoking his Order of Release on Recognizance absent strict compliance with all governing regulations, including a showing of specific, individualized changed circumstances making his removal significantly likely in the reasonably foreseeable future, supported by a written decision from a duly authorized official;
- (4) **In the alternative**, should the Court decline to order immediate unconditional release, issue an order directing Respondents to provide Petitioner with a bond hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a) and its implementing regulations at 8 C.F.R. §§ 236.1 and 1236.1 within forty-eight (48) hours of the Court's order, and further specifying that at any such hearing: (a) the **government bears the burden** of proving that Petitioner is either a flight risk or a danger to the community; and (b) the government must satisfy that burden by **clear and convincing evidence**, in order to prevent the recurring problem of perfunctory bond denials based on unsupported assertions of risk rather than actual evidence;
- (5) **Enjoining Respondents**, upon Petitioner's release, from subjecting Petitioner to any form of electronic monitoring, GPS ankle bracelet, ISAP enrollment, or other alternative-to-detention program that functions as a custody-like restraint, absent

prior leave of this Court. Respondents shall be prohibited from imposing such conditions unless, at least five (5) days in advance, they file notice with this Court and demonstrate—based on a new, particularized assessment of significantly changed circumstances and a concrete, evidence-based showing of flight risk or danger—that such conditions are necessary, and the Court expressly authorizes them pursuant to its authority under 28 U.S.C. § 2243 to dispose of the matter as law and justice require.

- (6) **Issue an Order to Show Cause** directing Respondents to file a return within three (3) days, pursuant to 28 U.S.C. § 2243, justifying in fact and law why the writ should not be granted;
- (7) **ENJOIN** Respondents from re-detaining Petitioner in the future under 8 U.S.C. § 1225 or the DHS policy vacated by the *Maldonado Bautista* court;
- (8) **Award** Petitioner reasonable attorney’s fees and costs; and
- (9) **Grant** such other and further relief as this Court deems just, proper or equitable under the circumstances.

Respectfully Submitted,

This 5th Day of February, 2026.

/s/ T. Laura Lui
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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with Petitioner's family members and have reviewed various documents for Petitioner. On the basis of those discussions, I hereby verify that I have reviewed the foregoing Petition and that the facts and statements made in this Petition and Complaint are true and correct to the best of my knowledge or belief pursuant to 28 USC § 2242.

This 5th Day of February, 2026.

/s/ Karen Weinstock
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