UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No:

Emiliano Garay Garcia,

Petitioner,

v.

Kristi NOEM, Secretary, U.S. Department of Homeland Security, Pam BONDI, U.S. Attorney General; Todd LYONS, Acting Director, Immigration and Customs Enforcement; WARDEN OF THE BROWARD TRANSITIONAL CENTER; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; IMMIGRATION AND CUSTOMS ENFORCEMENT; and U.S. DEPARTMENT OF HOMELAND SECURITY,

Respondents.

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VERIFIED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

I. INTRODUCTION

1. Petitioner Emiliano Garay Garcia ([redacted]) submits this Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, together with claims for declaratory and injunctive relief, challenging his continued and unlawful detention by the Department of Homeland Security ("DHS") and Immigration and Customs Enforcement ("ICE") at the Pompano Beach, Broward Transitional Center.

2. Mr. Garay Garcia is a long-term resident of the United States with decades of physical presence, extensive family and community ties, no criminal history, and a substantial

record of community ties and employment. Despite these equities, he was abruptly and randomly detained by ICE during an interior enforcement action in September 2025, far removed from any border or port of entry.

3. Mr. Garay Garcia is currently in removal proceedings under INA § 240 and is prima facie eligible to apply for an I-589 Application for Asylum and for Withholding of Removal, based on his well-founded fear of persecution if he were to return to Mexico where [redacted]. Moreover, Mr. Garay Garcia is eligible for 42B Cancellation of Removal (INA § 240A(b)) based on his minor U.S. citizen daughter, [redacted], who would suffer exceptional and extremely unusual hardship if her father were removed. Mr. Garay Garcia is also engaged to his U.S. citizen fiancé, Ms. Kenia Reyes, who he plans to marry once released. His marriage will further strengthen his forms of relief and ties to the United States.

4. Mr. Garay Garcia also has 3 U.S. citizen children: Francisco Garay, born on [redacted], in Florida; Joanna Garay, born on [redacted] in Florida; and [redacted] born on [redacted], in Florida. All his children are contributing members of society thanks to the guidance and support of their father who worked to get them through school and provide them with a stable household.

5. Even so, DHS has detained Mr. Garay Garcia without affording him any meaningful opportunity for release, asserting that he is subject to mandatory detention as an "applicant for admission" under INA § 235(b). That position is legally erroneous. Mr. Garay Garcia is not an arriving alien, was not apprehended at or near the border, and has resided openly in the United States for decades.

6. Federal courts, including the U.S. District Court for the Central District of California in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025), have squarely rejected DHS's sweeping effort to classify long-term interior residents as mandatory detainees under INA § 235(b). That decision declared DHS's no-bond detention policy unlawful and confirmed that individuals in Mr. Garay Garcia's posture are detained, if at all, under INA § 236(a).

7. Here, DHS's continued detention of Mr. Garay Garcia is unlawful not only because he has been denied a bond hearing, but because DHS lacks statutory authority to detain him under § 235(b) at all. Moreover, Mr. Garay Garcia was denied bond due to lack of jurisdiction on January 12, 2026. His detention therefore violates the Immigration and Nationality Act, the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment.

8. Immediate judicial intervention is warranted. Each additional day of confinement inflicts irreparable harm on Mr. Garay Garcia and his family, despite the absence of any lawful basis for his continued detention.

II. JURISDICTION

9. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner Emiliano Garay Garcia is "in custody" at the Pompano Beach, Broward Transitional Center, which is located within this judicial district, and he challenges the legality and constitutionality of his ongoing immigration detention under federal law. See 28 U.S.C. §§ 2241(a), 2243; *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (holding that habeas corpus is the proper vehicle for challenging unlawful custody).

10. Federal courts have long recognized that 28 U.S.C. § 2241 confers jurisdiction to review claims asserting that immigration detention violates statutory or constitutional limits, including challenges to detention that exceeds the government's lawful authority.

11. This Court's jurisdiction is also supported by the Administrative Procedure Act, 5 U.S.C. § 706, which authorizes judicial review of agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, as well as agency action that is contrary to constitutional right. Petitioner also invokes the protections of the Fifth Amendment's Due Process Clause, which guarantees that no person shall be deprived of liberty without due process of law.

12. Petitioner does not seek review of a removal order or challenge prosecutorial discretion decisions. Rather, he challenges the legality of his continued detention and the government's failure to detain him under the correct statutory authority or provide adequate procedural safeguards. Accordingly, this Court has jurisdiction to adjudicate Petitioner's claims and to grant appropriate habeas and equitable relief.

III. VENUE

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e) because Petitioner Emiliano Garay Garcia is detained within the Southern District of Florida, specifically at the Pompano Beach, Broward Transitional Center in Broward County, and Respondents are officers and employees of the United States who operate and maintain immigration detention facilities within this District.

14. Venue is also proper under *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), because Petitioner's immediate custodian is located within this District and Petitioner's confinement is within the territorial jurisdiction of this Court.

IV. REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

15. Under 28 U.S.C. § 2241, federal courts have the authority to entertain petitions for a writ of habeas corpus from individuals who are "in custody" under federal authority in violation of the Constitution, laws, or treaties of the United States. Petitioner Emiliano Garay Garcia meets these criteria. He is presently in federal immigration custody at the Pompano Beach, Broward Transitional Center, and he contends that his continued detention is not authorized by statute and violates constitutional due process. Because Petitioner alleges that he is being held in custody in violation of federal law, this Court's habeas jurisdiction under § 2241 is properly invoked.

16. 28 U.S.C. § 2243 mandates that a court receiving a habeas petition must act quickly. Under the statute, the court "shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." Once an order to show cause issues, the custodian must respond within three days unless additional time is allowed for good cause. These provisions reflect Congress's clear intent that habeas petitions, particularly those challenging unlawful detention—receive prompt judicial attention and swift resolution.

17. Petitioner has alleged a prima facie entitlement to habeas relief. He is detained under an incorrect statutory framework, without lawful authority, and without constitutionally adequate process. Nothing on the face of this Petition suggests that Petitioner is not entitled to relief. To the contrary, his claims are substantial and well-grounded in statutory text, binding precedent, and constitutional principles. Accordingly, pursuant to 28 U.S.C. § 2243, this Court should promptly issue an order to show cause requiring Respondents to justify the legality of Petitioner's continued detention or, in the alternative, order his immediate release. The summary

nature of habeas corpus and the constitutional imperative to protect liberty demand swift judicial intervention where, as here, a person remains confined without lawful cause.

V. PETITIONER

18. Petitioner Emiliano Garay Garcia is a citizen of Mexico who has resided in the United States for decades and has remained continuously present since at least 2003.

19. He is currently detained at Pompano Beach, Broward Transitional Center in Broward County, Florida.

20. Mr. Garay Garcia has no criminal history aside from traffic infractions, has paid taxes, and has deep community ties and employment history in the United States.

21. He is the father of three United States citizen children and is engaged to his U.S. citizen fiancé, Ms. Kenia Reyes, who he intends to marry once he is released. His minor daughter, [redacted], who is his qualifying relative for purposes of cancellation of removal relies on her father in all aspects of her life. In addition to his minor children, Mr. Garay Garcia also raised two adult U.S. citizen children, Joanna Garay, who was born on [redacted], and Francisco Garay, who was born on [redacted]. Mr. Garay Garcia acted as a father and provider to both children throughout their upbringing. Notably, Francisco Garay, is in the process of filing an I-130 immigrant petition on behalf of Mr. Garay Garcia, demonstrating the family's effort to regularize Mr. Garay Garcia's immigration status through lawful means and reflecting the strong bond between father and son.

22. Mr. Garay Garcia intends to pursue cancellation of removal under INA § 240A(b) (cancellation of removal for certain nonpermanent residents) and appears prima facie eligible for such relief given his lengthy residence, good moral character, and the exceptional and extremely unusual hardship his removal would cause to his U.S. citizen children. Moreover, Mr. Garay

Garica is prima facie eligible to apply for an I-589 Application for Asylum and for Withholding of Removal, based on his well-founded fear of persecution if he were to return to Mexico where [redacted].

VI. RESPONDENTS

23. Respondent, WARDEN OF THE BROWARD TRANSITIONAL CENTER, has immediate physical custody over Petitioner. As the local custodian, the Warden is responsible for the day-to-day administration of the detention facility where Petitioner is held. The Warden is sued in his/her official capacity as a representative of the entity exercising direct custody over Petitioner.

24. Respondent TODD LYONS, is the Acting Director, Immigration and Customs (ICE). ICE is the component of the Department of Homeland Security (DHS) which is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. Mr. Lyons is named in his official capacity. In his official capacity, he is a legal custodian of the petitioner.

25. Respondent KRISTI NOEM, in her official capacity as the Secretary of the Department of Homeland Security, is the highest-ranking official in DHS. She has ultimate authority over ICE and the enforcement of immigration laws, including detention policy. DHS, under Respondent Noem's direction, is responsible for the decision to continue Petitioner's detention and to designate him as subject to mandatory custody. She is sued in her official capacity.

26. Respondent PAM BONDI, in her official capacity as the Attorney General of the United States, oversees the U.S. Department of Justice, which includes the Executive Office for Immigration Review (EOIR). EOIR encompasses the nation's Immigration Courts and the Board of Immigration Appeals (BIA). The Attorney General has ultimate authority over immigration

court procedures, including the availability of bond hearings and the interpretation of detention statutes through precedent decisions. Respondent Bondi is sued in her official capacity.

27. Respondent EOIR (Executive Office for Immigration Review) is a component of the U.S. Department of Justice responsible for adjudicating immigration proceedings. EOIR includes the Immigration Judges who conduct removal and bond proceedings, as well as the BIA which issues appellate administrative decisions. EOIR is sued as a Respondent because it is responsible for administering the bond hearing process (or lack thereof) at issue here. EOIR has failed to provide Petitioner a custody redetermination process, and Petitioner seeks relief to compel EOIR to perform its duty to afford him a bond hearing under the correct legal standards.

VII. LEGAL FRAMEWORK

28. Federal immigration law provides for the detention of noncitizens under several distinct statutory provisions, depending on the circumstances. Proper classification under these statutes is crucial, as it determines whether a person is eligible for release or must be kept in custody. The Immigration and Nationality Act ("INA") draws a fundamental distinction between noncitizens who may be released on bond and those whom Congress has mandated must be detained.

29. **INA § 236(a) (8 U.S.C. § 1226(a)) - Discretionary Detention with Bond Eligibility:** Section 236(a) is the default detention authority for individuals placed in removal proceedings who are already present in the United States. It authorizes the Attorney General (now the Secretary of Homeland Security by delegation) to arrest and detain a noncitizen pending a decision on removal, and further provides that DHS "may release" the noncitizen on bond or conditional parole, unless a separate mandatory detention provision applies. In other words, absent

a statutory mandate to detain, custody under § 236(a) is discretionary and release is legally available.

30. **INA § 236(c) (8 U.S.C. § 1226(c)) - Mandatory Detention for Certain Criminal or Terrorism-Related Grounds:** Section 236(c) carves out a narrow category of noncitizens—primarily those with specified criminal convictions or terrorism-related conduct—for whom detention is mandatory. Individuals detained under this provision generally may not be released on bond. Mr. Garay Garcia falls outside this category. He has no criminal history whatsoever aside from traffic infractions, and DHS has never alleged that § 236(c) applies to him.

31. The Supreme Court upheld the constitutionality of § 236(c) in *Demore v. Kim*, 538 U.S. 510 (2003), while emphasizing that detention under this provision is intended to be brief and limited in duration, typically lasting only a short period during the removal process. That rationale has no application here, where Mr. Garay Garcia is not subject to § 236(c) at all.

32. **INA § 235(b) (8 U.S.C. § 1225(b)) - Mandatory Detention of "Applicants for Admission":** Section 235(b) governs the treatment of noncitizens who are "applicants for admission." It provides that if such an individual is not "clearly and beyond a doubt" entitled to be admitted, the individual "shall be detained" during removal proceedings. Historically and statutorily, this provision applies to true arriving aliens, those who present themselves at a port of entry or are apprehended at or near the border while attempting to enter the United States.

33. Section 235(b)(1) applies to expedited removal of certain recent entrants or individuals using fraudulent documents, while § 235(b)(2) applies to other applicants for admission not placed in expedited removal. Critically, both subsections are limited to individuals who are encountered seeking entry into the United States, not to long-term interior residents apprehended years or decades after their initial arrival.

34. In sum, Congress intended that **true arriving aliens**, individuals literally at the threshold of entry, could be detained without bond during proceedings as a general rule. The statute does not authorize DHS to retroactively treat long-settled residents as "arriving aliens" simply because of the manner of their entry long ago.

35. **INA § 241(a) (8 U.S.C. § 1231) - Post-Removal-Order Detention.** Section 241 governs detention following the entry of a final order of removal. It mandates detention during a 90-day removal period and permits continued detention in limited circumstances thereafter. This provision is not at issue here because Mr. Garay Garcia has no final order of removal and his case remains pending in removal proceedings.

36. The critical question in Mr. Garay Garcia's case is whether his detention is governed by **INA § 236(a)**, which allows release, or **INA § 235(b)**, which would mandate detention. DHS contends that Mr. Garay Garcia is an "applicant for admission" subject to § 235(b) mandatory detention, notwithstanding his decades-long presence in the United States and prior government recognition of his residence and employment.

37. Federal courts have repeatedly rejected this expansive interpretation. In *Nuñez v. Sukkar*, 2026 U.S. Dist. LEXIS 12713, No. 0:26-cv-60061-WPD (S.D. Fla. Jan. 22, 2026), this Court followed *Maldonado Bautista* to grant a petition for writ of habeas corpus for a noncitizen detained under similar circumstances.

38. The petitioner in *Nuñez* entered the United States without inspection in 2007. *Id.* Nuñez was arrested by Florida Highway Patrol agents for operating a motor vehicle without a valid driver's license. *Id.* Other than that arrest, Nuñez has no criminal record. *Id.* Nuñez was transferred to ICE custody. *Id.*

39. ICE issued a notice to appear, charging Nuñez as inadmissible as "alien present in the United States who has not been admitted or paroled" in violation of INA § 212(a)(7)(A)(i). *Id.* The Immigration Judge denied Nuñez's bond request, ruling that the immigration court lacks jurisdiction to determine bond under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *Id.*

40. This Court found that section 1225 governs removal proceedings to "arriving aliens," while section 1226 is a default rule that applies to aliens already present in the United States. *Id.* As a result, "[t]he circumstances surrounding Petitioner's arrest by warrant align with § 1226(a), not § 1225(b)(2)(A)." *Id.*

41. This Court that because "the statutory text, context, and scheme of § 1225 do not support a finding that a noncitizen is 'seeking admission' when he never sought to do so," section 1226(a) and its implementing regulations governed Nuñez' detention, not section 1225(b)(2)(A). *Id.*

42. Therefore, Nuñez was entitled to an individualized bond hearing as a detainee under section 1226(a). *Id.*

43. In reaching its ruling, this Court ruled that the government's reliance on *Matter of Yajure Hurtado* was misplaced.

44. Under this Court's ruling in *Nuñez*, Mr. Garay Garcia's detention is likewise governed by section 1226(a).

45. This Court reached the same result in *Guzman v. Noem*, 2026 U.S. Dist. LEXIS 14763, No. 0:26-cv- 20255-WPD (S.D. Fla. Jan. 27, 2026). This Court also ruled in *Guzman* that petitioner was not required to exhaust administrative remedies: because the petitioner had already been unlawfully detained for several months, exhaustion would be inadequate, futile, or would cause irreparable harm. *Id.*

46. Many other Federal courts have also rejected the government's policy of improperly treating noncitizens such as Mr. Garay Garcia as if they were "seeking admission":

- *Beltran v. Noem*, No. 25-cv-2650 LL, 2025 WL 3078837, at *5 (S.D. Cal. Nov. 4, 2025) ("The Court finds the plain text of § 1225(b)(2) does not support Respondents' contention that it applies to any noncitizen present in the United States who has not been admitted.").
- *Lopez v. Warden, Otay Mesa Ctr. Det. Ctr.*, No. 25-CV-2527-RSH-SBC, 2025 WL 3005346, at *4 (S.D. Cal. Oct. 27, 2025) ("The Court concludes that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and that detention is instead governed by § 1226(a).").
- *Esquivel-Ipina v. LaRose*, No. 25-CV-2672-JLS (BLM), 2025 WL 2998361, at *5 (S.D. Cal. Oct. 24, 2025) ("Petitioner is not an applicant for admission under § 1225(b) and is entitled a bond hearing under § 1226(a).").
- *Jhon Peter Hyppolite v. Noem*, No. 25-cv-4303, 2025 U.S. Dist. LEXIS 197628, 2025 WL 2829511, at *12 (E.D.N.Y. Oct. 6, 2025) (collecting cases reaching the same conclusion).
- *Martinez Lopez v. LaRose*, No. 25-CV-2717-JES-AHG, 2025 WL 3030457, at *6 (S.D. Cal. Oct. 30, 2025).
- *Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431, at *8 (S.D. Cal. Sept. 3, 2025).

47. By law, an individual like Mr. Garay Garcia, who entered the United States many years ago, was not apprehended upon arrival, and has lived openly in the community must be treated as a person already present in the United States and placed in removal proceedings under INA § 240, not as an arriving alien at the border.

48. As federal courts have clarified, the mandatory detention provision of § 1225(b)(2)(A) "does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings." Such individuals are detained, if at all, under § 1226(a), unless another mandatory provision applies, which it does not here.

49. This interpretation accords with decades of agency practice and longstanding regulations recognizing Immigration Judges' authority to conduct custody determinations for individuals in regular removal proceedings, except for limited categories such as true arriving aliens or § 236(c) detainees. See 8 C.F.R. §§ 236.1(c)(8), 1236.1(d), 1003.19(h).

50. By classifying Mr. Garay Garcia as an arriving alien, DHS seeks to place him in a statutory category reserved for individuals encountered at the border or seeking initial admission, notwithstanding his decades of residence and prior governmental recognition. That effort stretches § 235(b) beyond its text and purpose.

51. In *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025), the U.S. District Court for the Central District of California addressed this precise issue. The court held that noncitizens who entered without inspection, were not apprehended upon arrival, and later lived in the United States are detained under INA § 236(a), not § 235(b).

52. The court emphasized that § 235(b) was never intended to apply categorically to all individuals who entered without inspection, no matter how long ago or under what circumstances. Rather, § 236(a) remains the default detention authority for individuals placed in removal proceedings outside the immediate context of arrival.

53. The court also issued a nationwide declaratory judgment and certified a Bond Eligible Class, extending its ruling to similarly situated individuals across the country and declaring DHS's blanket no-bond detention policy unlawful.

54. Mr. Garay Garcia falls squarely within the reasoning and scope of Maldonado Bautista. Indeed, his case presents even stronger equities, as his presence in the United States has been affirmatively recognized through the issuance of a Notice to Appear and an Alien Registration Number.

55. Accordingly, as a matter of federal law, Mr. Garay Garcia cannot lawfully be detained under § 235(b). DHS's continued detention of him is ultra vires and unlawful.

56. At minimum, Mr. Garay Garcia must be treated as a detainee under INA § 236(a), with the attendant opportunity for release. DHS's refusal to release him, or even to apply the correct detention statute, violates the INA and binding federal precedent.

57. Under § 236(a), detention is discretionary and must be justified on an individualized basis. Given Mr. Garay Garcia's decades-long residence, lack of criminal history aside from traffic infractions, family ties, and caregiving responsibilities, continued detention cannot be justified.

58. DHS's attempt to label Mr. Garay Garcia as an "applicant for admission" under § 235(b) has been rejected by federal courts and finds no support in the statutory text.

59. Because Mr. Garay Garcia has been illegally detained for many months, exhaustion of administrative remedies would be inadequate, futile, or would cause irreparable harm.

60. This Court should therefore apply the correct legal framework, recognize that Mr. Garay Garcia's detention is unlawful, and grant relief to terminate his continued confinement.

VIII. FACTS

61. Petitioner Emiliano Garay Garcia has resided in the United States for decades. His presence in the country dates back to at least 2003 and has resided in Florida since he entered the United States. Since that time, Mr. Garay Garcia has remained continuously present in the United States.

62. Mr. Garay Garcia has built his life and family in this country and has no criminal history aside from traffic infractions. Before the events giving rise to this case, he had no prior encounters with immigration enforcement. He has been a law-abiding resident who has worked consistently, supported his family, and contributed to his community.

63. He is the father of three United States citizen children and is engaged to his U.S. citizen fiancé, Ms. Kenia Reyes, who he intends to marry once he is released. His minor daughter, [redacted], who is his qualifying relative for purposes of cancellation of removal relies on her father in all aspects of her life. In addition to his minor children, Mr. Garay Garcia also raised two adult U.S. citizen children, Joanna Garay, who was born on [redacted], and Francisco Garay, who was born on [redacted]. Mr. Garay Garcia acted as a father and provider to both children throughout their upbringing. Notably, Francisco Garay, is in the process of filing an I-130 immigrant petition on behalf of Mr. Garay Garcia, demonstrating the family's effort to regularize Mr. Garay Garcia's immigration status through lawful means and reflecting the strong bond between father and son.

64. Mr. Garay Garcia resides with his long-term fiancé, Ms. Kenia Reyes, who relies on Mr. Garay Garcia financially, emotionally, and physically. They share a household and have built a life together.

65. Mr. Garay Garcia works in construction. He has paid taxes through an Individualized Taxpayer Number (ITIN), evidencing his compliance with civic and legal obligations.

66. These facts underscore that Mr. Garay Garcia has deep and longstanding ties to the United States, strong incentives to appear for all immigration proceedings, and every reason to continue pursuing lawful status through the immigration court process.

67. Mr. Garay Garcia has no history of violence, no criminal record, no prior removal orders, and no history of absconding. There is no evidence that he poses any danger to the community or risk of flight. In short, all traditional considerations relevant to custody and release overwhelmingly favor his release.

68. Despite his decades-long presence and exemplary record, Mr. Garay Garcia was suddenly and unexpectedly arrested by ICE on or about September 20, 2025, during an interior enforcement action far removed from any border or port of entry. He was thereafter placed in removal proceedings under INA § 240.

69. Following his arrest, DHS detained Mr. Garay Garcia and took the position that he is not entitled to release because he is allegedly subject to mandatory detention as an "applicant for admission" under INA § 235(b). ICE has refused to release him, asserting that no bond or custody redetermination is available. Moreover, the immigration judge denied bond on January 12, 2026, asserting lack of jurisdiction.

70. In other words, the government contends that because of the manner of his entry many years ago, Mr. Garay Garcia must remain detained throughout his removal proceedings, with no opportunity for release. This position represents a sharp departure from longstanding practice. Historically, individuals like Mr. Garay Garcia—long-term interior residents apprehended years after entry—were detained, if at all, under INA § 236(a), which permits release.

71. That longstanding framework was abruptly disrupted in mid-2025, when DHS adopted a new policy asserting that individuals who entered without inspection are categorically

ineligible for bond, no matter how long they have lived in the United States or how deeply rooted they are in their communities. *See Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025).

72. Shortly thereafter, the Board of Immigration Appeals issued a precedential decision adopting this sweeping interpretation. In *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the BIA concluded that Immigration Judges lack authority to consider bond for individuals who entered without inspection, reasoning that such individuals are "applicants for admission" subject to mandatory detention under INA § 235(b)(2)(A).

73. Under this view, even individuals like Mr. Garay Garcia—who have lived in the United States for decades and have strong family and community ties—must remain detained for the duration of their proceedings, with release available only through DHS's discretionary parole authority, which has not been offered here.

74. The government's no-release position in Mr. Garay Garcia's case is thus part of this new and controversial detention policy. That policy has been repeatedly challenged in federal court and has been found unlawful.

75. The decision in *Maldonado Bautista v. Santacruz* directly addresses the legality of DHS's detention theory. In that case, a class of detainees, similarly situated to Mr. Garay Garcia, challenged DHS's blanket policy of treating long-term interior residents as arriving aliens subject to mandatory detention under INA § 235(b).

76. The district court expressly rejected the government's position. It held that individuals who entered without inspection, were not apprehended upon arrival, and lived in the United States before detention are detained under INA § 236(a), not § 235(b), and therefore cannot be categorically denied release.

77. The court issued a declaratory judgment confirming that DHS's no-bond detention policy is unlawful and may not be applied to class members. The court also noted that the overwhelming majority of federal courts to consider the issue had reached the same conclusion even prior to class-wide relief.

78. Mr. Garay Garcia falls squarely within the scope and reasoning of *Maldonado Bautista*. He has lived openly in the United States for decades, was not apprehended at or near the border, and is not subject to detention under INA §§ 236(c), 235(b)(1), or 1231.

79. Despite this binding authority, DHS continues to detain Mr. Garay Garcia at the Pompano Beach, Broward Transitional Center without lawful justification. His continued confinement inflicts ongoing harm on him and his dependent family members and serves no legitimate governmental purpose. These facts compel immediate judicial intervention to end his unlawful detention.

IX. FIRST CLAIM FOR RELIEF
Mr. Garay Garcia's Detention Violates 8 U.S.C. § 1226(a)

80. Petitioner incorporates by reference the allegations of fact set forth sections I through VIII above.

81. Section 1225(b)(2)'s mandatory detention provisions do not apply to Petitioner because he has been present and residing in the United States for decades and was not apprehended at or near the border or while seeking admission.

82. As federal courts have repeatedly held, Section 1225(b)(2) does not apply to noncitizens who previously entered the United States and have been present and residing in the interior of the country prior to their apprehension and placement in removal proceedings.

83. Individuals in Petitioner's posture are instead governed by Section 1226, which authorizes discretionary detention and permits release unless Section 1226(c) or Section 1231 applies.

84. No mandatory detention provision applies to Mr. Garay Garcia. He has no criminal history that would trigger Section 1226(c).

85. Accordingly, Mr. Garay Garcia's continued detention under Section 1225(b)(2) is unlawful and contrary to the plain language, structure, and purpose of the INA.

86. Because DHS lacks statutory authority to detain Petitioner under Section 1225(b)(2), his continued custody violates federal law and must be remedied through habeas corpus relief.

X. SECOND CLAIM FOR RELIEF

Violation of the Administrative Procedure Act

(5 U.S.C. § 706 – Agency Action Not in Accordance with Law, in Excess of Authority, and Arbitrary and Capricious)

87. Petitioner incorporates by reference the allegations of fact set forth sections I through VIII above.

88. Under the Administrative Procedure Act, a reviewing court must "hold unlawful and set aside agency action" that is arbitrary, capricious, an abuse of discretion, not in accordance with law, contrary to constitutional right, or in excess of statutory authority. 5 U.S.C. § 706(2)(A)–(C).

89. DHS's decision to detain Mr. Garay Garcia under INA § 1225(b)(2) constitutes agency action that is not in accordance with law, exceeds the agency's statutory authority, and is arbitrary and capricious.

90. DHS has applied Section 1225(b)(2) to Petitioner despite the absence of statutory predicates for mandatory detention, including despite Petitioner's decades-long residence in the United States.

91. This misapplication of the statute contravenes the INA, binding federal court precedent, and DHS's own long-standing regulatory framework governing detention and release.

92. DHS's detention of Mr. Garay Garcia is therefore unlawful under the APA and must be set aside.

XI. THIRD CLAIM FOR RELIEF
Violation of the Fifth Amendment (Due Process Clause)
(Unconstitutional Detention Without Individualized Process)

93. Petitioner incorporates by reference the allegations of fact set forth sections I through VIII above.

94. The Fifth Amendment to the United States Constitution provides that no person shall be deprived of liberty without due process of law. This protection applies to all persons within the United States, including noncitizens such as Mr. Garay Garcia.

95. Due process has both procedural and substantive components, both of which are violated by Respondents' continued detention of Petitioner.

96. **Procedural Due Process.** At a minimum, due process requires that the government provide fair procedures before depriving an individual of physical liberty, including an opportunity to be heard at a meaningful time and in a meaningful manner.

97. Here, Mr. Garay Garcia has been detained without any opportunity to appear before a neutral decision-maker to contest his confinement, to present evidence of his strong equities, or to challenge the government's legal justification for detention.

98. The complete denial of any individualized hearing creates an unacceptably high risk of erroneous deprivation of liberty, particularly where, as here, Petitioner has no criminal history, deep family ties, and overwhelming evidence that he poses neither a danger nor a flight risk.

99. Under the balancing framework set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), Petitioner's fundamental interest in freedom from bodily restraint is substantial, the risk of erroneous deprivation is extreme in the absence of a hearing, and the government's interests can be fully addressed through less restrictive means.

100. **Substantive Due Process.** Substantively, civil detention must bear a reasonable relation to a legitimate governmental purpose and may not be arbitrary or excessive in relation to that purpose.

101. Mr. Garay Garcia's detention is not reasonably related to ensuring his appearance at proceedings or protecting the community. He has demonstrated decades of stability, lawful conduct, and compliance.

102. Detaining him solely based on a categorical interpretation of the statute—without regard to his individual circumstances—is arbitrary and constitutionally impermissible.

103. The Supreme Court has repeatedly recognized that liberty is the norm and detention without trial is the carefully limited exception. Prolonged civil detention without justification or process offends the most basic principles of due process.

104. By continuing to detain Mr. Garay Garcia without any individualized assessment or opportunity to contest his confinement, Respondents are violating the Fifth Amendment.

105. This Court should declare such detention unconstitutional and order appropriate relief to vindicate Petitioner's due process rights.

XII. FOURTH CLAIM FOR RELIEF

Mr. Garay Garcia's Detention Falls Within the *Maldonado Bautista* Bond Eligible Class and DHS's Application of INA § 1225(b)(2) Is Unlawful

106. Petitioner incorporates by reference the allegations of fact set forth sections I through VIII above.

107. Mr. Garay Garcia is a member of the certified Bond Eligible Class in *Maldonado Bautista v. Santacruz*. He entered the United States years ago, was not apprehended upon arrival, and is not subject to detention under INA §§ 1226(c), 1225(b)(1), or 1231.

108. In *Maldonado Bautista*, the district court issued a nationwide declaratory judgment holding that DHS's policy of categorically detaining such individuals under INA § 1225(b)(2) is unlawful.

109. The court also held that class members must be treated as detained, if at all, under INA § 1226(a), and therefore may not be denied release based on the government's erroneous interpretation of Section 1225(b)(2).

110. DHS's continued detention of Mr. Garay Garcia as an alleged Section 1225(b)(2) detainee directly contravenes the declaratory judgment issued in *Maldonado Bautista*.

111. Respondents are bound by that judgment and have no lawful basis to ignore or circumvent it. Each day of Petitioner's continued detention constitutes an ongoing violation of federal law.

112. Under principles of class-wide relief and res judicata, DHS may not relitigate the legality of its detention policy as applied to Mr. Garay Garcia.

113. This Court should enforce the declaratory relief issued in *Maldonado Bautista*, declare Petitioner's classification under Section 1225(b)(2) unlawful, and order appropriate habeas relief.

XIII. FIFTH CLAIM FOR RELIEF
Mr. Garay Garcia's Detention Violates DHS and EOIR Detention and Bond Regulations

114. Petitioner incorporates by reference the allegations of fact set forth sections I through VIII above.

115. After the enactment of IIRIRA, DHS and EOIR promulgated regulations interpreting the INA's detention provisions and clarifying the availability of bond and custody redetermination hearings.

116. In promulgating these regulations, the agencies expressly recognized that noncitizens present in the United States without having been admitted or paroled—formerly referred to as individuals who entered without inspection, are eligible for bond and bond redetermination under INA § 1226.

117. DHS's current practice of applying INA § 1225(b)(2) to long-term interior residents like Mr. Garay Garcia is inconsistent with these regulations and exceeds the agency's authority.

118. By detaining Mr. Garay Garcia under Section 1225(b)(2) and denying him any opportunity for release, Respondents are acting in violation of 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

119. Habeas corpus relief is warranted because Mr. Garay Garcia is in custody in violation of the laws and regulations of the United States.

XIV. PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that this Court grant the following relief:

a. Assume jurisdiction over this Petition, as this matter falls squarely within the Court's habeas corpus and federal question jurisdiction;

b. Declare that Petitioner's detention is governed by 8 U.S.C. § 1226(a) and that his continued detention under 8 U.S.C. § 1225(b)(2) is unlawful;

c. Declare that Petitioner's detention under INA § 235(b) is unlawful. In particular, Petitioner seeks a declaratory judgment that he is not properly classified as an "applicant for admission" subject to mandatory detention, and that his continued detention violates the Immigration and Nationality Act, the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment;

d. Issue an Order to Show Cause directing Respondents to show cause within three days why this Petition should not be granted;

e. Declare that Petitioner is detained, if at all, under INA § 236(a). This declaration should make clear that Petitioner must be treated as a § 236(a) detainee and is not subject to mandatory detention under INA § 235(b);

f. Issue a Writ of Habeas Corpus or other appropriate Order directing Respondents to remedy Petitioner's unlawful detention, specifically by:

    1. Immediately releasing Petitioner from ICE custody under reasonable conditions of supervision (such as reporting requirements or other noncustodial conditions), as his continued detention lacks statutory authority; OR

    2. In the alternative, if the Court elects not to order immediate release, ordering Respondents to provide Petitioner with a prompt and constitutionally adequate custody redetermination hearing before an Immigration Judge within seven days of the Court's Order. Such a hearing must comport with due process and require DHS to prove by clear and convincing evidence that Petitioner's continued detention is necessary due to flight risk or danger. If no custody determination is issued within that timeframe, the Court should order

Petitioner's immediate release;

g. ENJOIN Respondents FROM TRANSFERRING PETITIONER OUTSIDE THE JURISDICTION OF THE SOUTHERN DISTRICT OF FLORIDA during the pendency of this action, as such a transfer would risk mooting this Petition and impair the Court's jurisdiction; and

h. Grant such other and further relief as the Court deems just and proper.

Dated: February 6, 2026

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28 U.S.C. § 2242 VERIFICATION STATEMENT

I submit this verification on behalf of the petitioner as the Petitioner's attorney. I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

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