THE LEGAL CLINIC

JOSHUA J. ABEYTA #11791
1001 Bishop Street, Suite 1120
Honolulu, HI 96813
Telephone: (808) 777-7071
Email: jabeyta@tlchawaii.org

CADES SCHUTTE
A Limited Liability Law Partnership

LISA K. SWARTZFAGER #10867
1000 Bishop Street, Suite 1200
Honolulu, HI 96813
Telephone: (808) 521-9200
Email: lswartzfager@cades.com

Attorneys for Petitioner
GONZALO CONSTANTE VALVERDE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GONZALO CONSTANTE VALVERDE, Petitioner, v. SHIKHA DOSANJ, WARDEN, FEDERAL DETENTION CENTER, HONOLULU, HAWAI'I; DAVID PORTER, ACTING FIELD OFFICE DIRECTOR, HONOLULU FIELD OFFICE, IMMIGRATION AND CUSTOMS ENFORCEMENT; PAM BONDI, ATTORNEY GENERAL OF THE UNITED STATES; KRISTI NOEM, SECRETARY OF HOMELAND	CIVIL NO. _____ **PETITION FOR WRIT OF HABEAS CORPUS;** **VERIFICATION PURSUANT TO 28 U.S.C. § 2242 AND 28 U.S.C. § 1746;** **DECLARATION OF NERIBEL CHARDON;** **EXHIBITS "A" – "E"**

SECURITY, IN THEIR OFFICIAL CAPACITIES,

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner Gonzalo Constante Valverde ("**Petitioner**") is an asylum seeker from Ecuador who is detained at the Federal Detention Center, Honolulu, Hawai'i. *See* Ex. A (Notice to EOIR: Alien Address).

2. Petitioner is not a flight risk nor a danger to the community. Prior to his detention, he was reporting with U.S. Immigration and Customs Enforcement ("**ICE**") and had committed no crimes.

3. While he awaits a decision on his asylum application, he has maintained stable employment, integrated into the community, demonstrated good moral character, and obeyed all laws. *See* Ex. C (Letter from Marie Frine Ja Porres).

4. Under 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond, Petitioner is entitled to a bond determination.

5. Nonetheless, Petitioner is unable to get a bond hearing before an immigration judge.

6. Accordingly, Petitioner petitions this Court for a writ of habeas corpus to vindicate his right to due process.

JURISDICTION AND VENUE

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

8. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

9. Venue is proper because Petitioner resides in Hawaii, was detained in Hawaii, and remains detained in the District of Hawaii.

REQUIREMENTS OF 28 U.S.C. § 2243

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

PARTIES

11. Petitioner Gonzalo Constante Valverde ("**Petitioner**") resides in Hawaii. Petitioner is currently detained at the Federal Detention Center, Honolulu, Hawai'i. See Ex. A.

12. Respondent Shikha Dosanj is the Warden of the Federal Detention Center, Honolulu, Hawai'i and is petitioner's immediate custodian pursuant to the

facility's contract with ICE to detain noncitizens. Respondent Dosanj is a legal custodian of Petitioner.

13. Respondent David Porter is the acting Field Office Director for ICE. As such, Respondent Porter is a legal custodian of Petitioner.

14. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security ("**DHS**"). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees ICE, the agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

15. Respondent Pam Bondi is the Attorney General of the United States and the senior official of the U.S. Department of Justice. In that capacity, she has the authority to interpret the immigration laws and adjudicate removal cases. She also oversees the Executive Office for Immigration Review ("**EOIR**"), which administers the immigration courts and the Board of Immigration Appeals ("**BIA**"). Respondent Noem is a legal custodian of Petitioner.

16. Respondent Todd Lyons is the Acting Director for ICE and the Senior Official Performing the Duties of the Director. He is charged with administering and enforcing the immigration laws of the United States, routinely conducts business within this District, and bears legal responsibility for all efforts related to the detention and removal of the Petitioner.

17. All respondents are named in their official capacities. One or more of the respondents is Petitioner's immediate custodian.

STATEMENT OF FACTS

18. Petitioner is a 38 year-old citizen of Ecuador. *See* Ex. B.

19. Petitioner fled Ecuador on May 14, 2024 and remained in Mexico for eight months while he awaited his appointment with U.S. Customs and Border Protection ("**CBP**") that he booked via the CBP One application. *See* Ex. B.

20. Petitioner entered the United States on January 10, 2025, as scheduled via the CBP One application. Ex. D (Department of Homeland Security Notice to Appear).

21. On information and belief, Petitioner was immediately processed upon entry to the United States by a Customs and Border Patrol official and paroled into the United States.

22. Petitioner timely applied for asylum on or around January 16, 2025. Ex. B.

23. Petitioner has not yet received a decision on his application for asylum.

24. On information and belief, after applying for asylum, Petitioner received employment authorization from the United States Citizenship and Immigration Services ("**USCIS**").

25. Prior to his detainment, Petitioner briefly lived in New York, Minnesota,

and ultimately moved to Hawaii for a work opportunity on the island of Kauai.

26. Petitioner has been compliant in reporting to ICE.

27. Petitioner, attempting to report his updated address to ICE, was asked to report to the ICE field office in Honolulu. He flew from Kauai to Honolulu, as requested. When he reported to ICE on December 2, 2025, Petitioner was arrested. He has remained in detention since that time.

28. Petitioner is currently being held in ICE's custody in the District of Hawai'i. Ex. A.

PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION

29. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(1) because he was paroled into the United States. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II) ("An alien described in this clause is an alien . . . who has not been admitted or paroled into the United States[.]"); *Qasemi v. Francis*, No. 25-CV-10029 (LJL), 2025 WL 3654098, at *8 (S.D.N.Y. Dec. 17, 2025) ("Petitioner . . . has been paroled into the United States. Accordingly, he cannot be detained under subsection (iii) of Section 1225(b)(1). That conclusion follows from the plain text of the statute. The phrase 'who has not been ... paroled into the United States' exempts noncitizens who are both presently on parole and those who were paroled in the past.").

30. Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2), including because, as a person already present in the United States,

Petitioner is not presently "seeking admission" to the United States. *See Rico-Tapia v. Smith*, No. CV 25-00379 SASP-KJM, 2025 WL 2950089, at *6-7 (D. Haw. Oct. 10, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *11 (D. Nev. Sept. 17, 2025) (holding, "consistent with the overwhelming majority of district courts in the Ninth Circuit and across the country that have thus far considered the issue," that § 1226, not §1225, applies to noncitizens like the petitioner who had resided in the U.S. prior to their apprehension) (citing cases).

31. Numerous courts have rejected the Government's position that noncitizens residing in the United States who are arrested and detained for potential removal are not entitled to a bond hearing with the possibility of release under 8 U.S.C. § 1226(a), but rather are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See Rico-Tapia v. Smith*, No. CV 25-00379 SASP-KJM, 2025 WL 2950089, at *6-7 (D. Haw. Oct. 10, 2025); *Rodriguez v. Bostock*, 2025 WL 2782499, at *1 (W.D. Wash. Sept. 30, 2025) ("[T]he government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice.") (collecting cases); *Arce-Cerva, v. Noem*, 2025 WL 3017866, at *2 (D. Nev. Oct. 28, 2025) ("[T]he Government and BIA's interpretation of the § 1225(b)(2) is both contrary to the plain meaning of the statutory text, legislative history, and decades of agency practice, and raises serious constitutional concerns under the Due Process Clause of the Fifth Amendment."); *Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025

WL 2829511, at *9-12 (E.D.N.Y. Oct. 6, 2025) (petitioner who was processed and released after a CBP One appointment and then later arrested is subject to the discretionary provisions of 8 U.S.C. § 1226(a) rather than the mandatory provisions of § 1225(b)).

32. To the extent the Government attempts to argue that Petitioner was paroled under 8 U.S.C. § 1182(d)(5)(A) and such parole subjects him to mandatory detention, the many courts that have rejected this argument are more persuasive than the courts that have concluded otherwise.

33. Petitioner's parole expired on April 18, 2025, and petitioner was detained more than seven months later December 1, 2025. *See* Ex. E (Form I-94 with "admit until date of 2025 April 18") & Ex. A (Notice to EOIR with detention date of December 1, 2025).

34. 8 U.S.C. § 1182(d)(5)(A) provides that when parole is terminated, the immigrant "shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States."

35. Courts have rejected the position that 8 U.S.C. § 1182(d)(5)(A) "say[s] that parolees return, upon termination or expiration of their parole, to the 'position of an applicant for admission standing at the threshold of entry.'" *See Coal. for Humane Immigrant Rights v. Noem*, No. 25-CV-872 (JMC), 2025 WL 2192986, at *24 (D.D.C.

Aug. 1, 2025), *appeal filed* (No. 25-5289).

36. Thus, "[w]hile § 1182(d)(5)(A) may permit Petitioner to be returned to ICE custody, there is 'nothing in this text that affirmatively authorizes...indefinite detention. To the contrary, it provides that, when parole is revoked, 'the alien shall...be returned to the custody from which he was paroled and thereafter *his case shall continue to be dealt with in the same manner as that of any other applicant for admission*.'" *Montiel v. Raycraft*, No. 1:25-CV-1610, 2026 WL 32076, at *2 (W.D. Mich. Jan. 6, 2026) (quoting *Clark v. Martinez*, 543 U.S. 371, 386 (2005) (emphasis in original; cleaned up)).

37. "[Section] 1226(a), not [Section] 1225(b)(2)(A), governs 'any other applicant for admission' who has resided in the United States and was already within the United States when apprehended and arrested." *Id.* (citing cases reaching the same conclusion).

38. As one court explained:

> [8 U.S.C. § 1182(d)(5)(A)] says that two things happen to such a parolee: (1) he "shall forthwith return or be returned to the custody from which he was paroled"; and (2) "thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." In other words, the noncitizen is physically brought back into immigration detention ("custody") and then legally continues to be treated as an "applicant for admission," because his parole itself did not constitute an admission. *See* 8 U.S.C. § 1182(d)(5)(A) (stating that parole "shall not be regarded as an admission of the alien"). That does not prove that the law treats the parole as if it never happened. . . . [I]t does not imply a *return* to the status of an applicant for admission, because a noncitizen is already an "applicant[ ] for admission" while their parole is

> active. *See, e.g.*, *Biden v. Texas*, 597 U.S. 785, 806, 142 S.Ct. 2528, 213 L.Ed.2d 956 ("[T]he INA expressly authorizes DHS to process applicants for admission under a third option: parole.") (citing 8 U.S.C. § 1182(d)(5)(A)). Accordingly, the statute says that the noncitizen whose parole is terminated "continue[s]" to be treated as an applicant for admission, not that she "returns" to the status of applicant for admission.

Id. at *24.

39. Consistent with these and many other decisions, Petitioner's detention was not a continuation of his initial border encounter and his detention months after his parole expired is subject to the discretionary framework of Section 1226. *See Ivonin v. Rhoney*, No. 6:25-CV-06673 EAW, 2026 WL 199283, at *4 (W.D.N.Y. Jan. 26, 2026) ("[T]his Court agrees with other courts who have looked at this issue and concluded that in instances, as here, where a petitioner's re-arrest was *not* a continuation of the initial border encounter, but an independent decision to detain the individual after the expiration of his parole, the detention pursuant to that re-arrest arises under § 1226. In other words, suggesting that Ivonin is still on the threshold of entry into this country, based on his re-entry into the United States through parole which expired over seven years ago, stretches the 'legal fiction' beyond reason.") (emphasis in original) (discussing cases); *Qasemi v. Francis*, No. 25-CV-10029 (LJL), 2025 WL 3654098, at *11–12 (S.D.N.Y. Dec. 17, 2025) (concluding that detention of petitioner who had been paroled pursuant to Section 1182(d)(5)(A) and then detained "must be conducted under the discretionary framework of Section 1226(a), which 'governs the process of arresting and detaining noncitizens who have already entered

the United States pending their removal'") (citation omitted); *Daza v. Albarran*, No. 25-CV-10214-RFL, 2026 WL 81518, at *4 (N.D. Cal. Jan. 12, 2026) ("At the time of her November 2025 detention, [following expiration of her parole] Petitioner was not an arriving noncitizen seeking entry into the country and had been living here for one year. Accordingly, she was not seeking admission at the time of her detention, so Section 1225(b)(2)'s mandatory detention provision does not apply."); *Afghan v. Noem*, No. CV SAG-25-04105, 2025 WL 3713732, at *2 (D. Md. Dec. 23, 2025) ("[T]his Court is unpersuaded by Respondents' contention that 8 U.S.C. § 1182(d)(5)(A) requires his return to custody now that his parole has expired. That subsection provides that once parole expires, the alien's 'case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States. Because Respondent was arrested in the interior of the United States, and not upon arrival, he is entitled to a bond hearing pursuant to § 1226(a).'") (internal quotations and citation omitted); *Hyppolite*, 2025 WL 2829511, at *9-12 (detention of the petitioner who was processed and released after a CBP One appointment and then later arrested "can only be authorized if the procedures followed comply with 8 U.S.C. § 1226(a)").

40. Petitioner is not lawfully subject to mandatory detention under 8 U.S.C. § 1226(c), including because he has not been convicted of any crime that triggers such detention. *See Demore v. Kim*, 538 U.S. 510, 513-14, 531 (2003) (allowing mandatory

detention under § 1226(c) for brief detention of persons convicted of certain crimes and who concede removability).

41. Accordingly, Petitioner is subject to detention, if at all, under 8 U.S.C. § 1226(a).

PETITIONER IS ENTITLED TO A BOND HEARING EVEN IF SUBJECT TO MANDATORY DETENTION

42. Even if Petitioner is subject to mandatory detention under 8 U.S.C. § 1225 or any other statute, DHS's detention of the Petitioner violates his right to Due Process under the Fifth Amendment of the United States Constitution.

43. Petitioner's interest in being free from custody is protected by the Due Process Clause, regardless of whether his presence in the United States "… is lawful, unlawful, temporary, or permanent, and regardless of whether detention falls under § 1225 or § 1226." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Benitez v. Hermosilla*, 2:25-cv-02535-BAT (W.D. Wash. Dec 30, 2025).

44. The Ninth Circuit has applied the three-factor test set forth by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976), commonly referred to as the *Mathews* test, to determine the process available to detained noncitizens under the Due Process Clause, including whether and when they are entitled to bond hearings. *Rodriguez Diaz v. Garland*, 45 F.4th 1189, 1206 (9th Cir. 2022).

45. Under the *Mathews* test, three distinct factors should be considered: (1) the private interest that will be affected by the official action; (2) the risk of an

erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional procedural safeguards; and (3) the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail. *Mathews*, 424 U.S. at 321.

46. First, Petitioner's freedom from bodily restraint is "the most elemental of liberty interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

47. Petitioner, who was released on parole and then re-detained, has a strong liberty interest in remaining free from detainment. *See Sorosh v. Wofford*, No. 1:26-CV-00409 DAD SCR, 2026 WL 323058, at *3 (E.D. Cal. Feb. 6, 2026) ("[N]oncitizens paroled into the United States pursuant to § 1182(d)(5) have a liberty interest in their continued release."); *Pinchi v. Noem*, 792 F.Supp.3d 1025, 1032 (N.D. Cal. 2025) ("Thus, even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody.") (citing cases); *Rico-Tapia*, 2025 WL 2950089, at *9 (holding that a noncitizen who was initially detained and released "has a substantial private interest in remaining free from detention"); *G.S. v. Bostock*, 2025 WL 3014274, at *7 (W.D. Wash. Oct. 8, 2025) ("District courts … have held that once released from immigration custody, noncitizens acquire 'a protectable liberty interest in remaining out of custody on bond.'"); *Salcedo Aceros*, 2025 WL 2637503, at *6 ("Accordingly, a noncitizen released from custody pending

removal proceedings has a protected liberty interest in remaining out of custody.").

48. Petitioner resided on the island of Kauai, Hawaii until he was detained and transferred to the Honolulu Detention Center on the island of Oahu, Hawaii. By detaining Petitioner without the opportunity for a bond hearing, the Government has deprived the Petitioner of his liberty interest to live and work in the community that he calls home.

49. Second, there is great risk of erroneous deprivation of Petitioner's liberty because Petitioner will not be granted a bond hearing under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), in which the Board of Immigration Appeals issued a decision which purports to require the Immigration Court to unlawfully deny a bond hearing to all persons such as Petitioner. *See Ramirez Tesara v. Wamsley*, C25-1723-KKE-TLF (W.D. Wash. Nov 25, 2025) ("[T]he Court affirms its prior finding of a high risk of erroneous deprivation of Petitioner's liberty interest in the absence of a pre-detention hearing."); *see also Rico-Tapia*, 2025 WL 2950089, at *9 ("[T]he risk of an erroneous deprivation of liberty is high where, as here, Rico-Tapia has not received a bond hearing."); *Salcedo Aceros*, 2025 WL 2637503, at *12 ("Where an individual has not received a bond or redetermination hearing, 'the risk of an erroneous deprivation [of liberty] is high.'") (citation omitted).

50. By depriving the Petitioner of his right to a bond hearing, Petitioner is left with no meaningful opportunity to contest his detention. Petitioner's risk of erroneous

deprivation is particularly high because not only was Petitioner deprived of any hearing prior to his re-detainment, but a hearing would have likely determined that Petitioner presents no risk to public safety and no risk of non-appearance.

51. Third, the Government's interest in re-detaining Petitioner without a hearing is low. Petitioner was gainfully employed on the island of Kauai and had no criminal history. Moreover, Petitioner made his best effort to report to ICE when requested and kept ICE and the immigration court informed of his address. While "the Government has an interest in enforcing compliance with parole terms and detaining individuals who violate those terms," other courts in the Ninth Circuit have concluded that "the Government's interest in redetaining non-citizens previously released without a hearing is minimal: any administrative or financial burdens in providing Petitioner a hearing are far outweighed by the risk of erroneous deprivation of the liberty interest at issue." *Ramirez Tesara v. Wamsley*, C25-1723-KKE-TLF (W.D. Wash. Nov 25, 2025); *see also Doe v. Becerra*, No. 2025 WL 691664, at *2 (E.D. Cal. Mar. 3, 2025) ("In immigration court, custody hearings are routine and impose a minimal cost.") (internal quotation marks omitted).

52. Accordingly, Petitioner's detention without a bond hearing is in violation of the Due Process clause of the Fifth Amendment of the United States Constitution.

EXHAUSTION

53. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon his

request, receive a custody redetermination hearing (colloquially called a "bond hearing") with strong procedural protections. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022) ("Section 1226(a) and its implementing regulations provide extensive procedural protections that are unavailable under other detention provisions, including several layers of review of the agency's initial custody determination, an initial bond hearing before a neutral decisionmaker, the opportunity to be represented by counsel and to present evidence, the right to appeal, and the right to seek a new hearing when circumstances materially change."); *Brito v. Garland*, 22 F.4th 240, 244, 256-57 (1st Cir. 2021) (affirming class-wide declaratory judgment and explaining "noncitizens detained pursuant to 8 U.S.C. § 1226(a) are entitled to receive a bond hearing at which the Government must prove the alien is either dangerous by clear and convincing evidence or a risk of flight by a preponderance of the evidence.") (internal quotations omitted); 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

54. However, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals issued a decision which purports to require the Immigration Court to unlawfully deny a bond hearing to all persons such as Petitioner.[1]

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[1] The BIA's reversal and newly revised interpretation of the statute are not entitled to deference. *See Loper Bright Ent. v. Raimondo*, 603 U.S. 369, 412-13 (2024); *see also Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *9 (N.D. Cal. Sept. 12, 2025) (rejecting the BIA's reasoning in *Matter of Yajure Hurtado* because it is inconsistent with the BIA's earlier pronouncements and the reasoning

55. The responsible administrative agency has therefore predetermined that Petitioner will be denied a bond hearing.

56. The Immigration Court lacks jurisdiction to adjudicate the constitutional claims raised by Petitioner, and any attempt to raise such claims would be futile. *See, e.g.*, *Flores-Powell v. Chadbourne*, 677 F.Supp.2d 455, 463 (D. Mass. 2010) ("[E]xhaustion is excused by the BIA's lack of authority to adjudicate constitutional questions and its prior interpretation of the mandatory detention statute.").

57. There is no statutory requirement for Petitioner to exhaust administrative remedies.

58. Petitioner is being irreparably harmed by his ongoing unlawful detention without a bond hearing. *See Rico-Tapia*, 2025 WL 2950089, at *8 ("[U]unlawful detention constitutes an 'extreme or very serious damage' that cannot be compensable in damages.").

59. Accordingly, there is no requirement for Petitioner to further exhaust administrative remedies before pursuing this Petition. *See Sec. & Exch. Comm'n v. G. C. George Sec., Inc.*, 637 F.2d 685, 688 (9th Cir. 1981) (explaining that where a statute does not require exhaustion, administrative exhaustion is not required in situations of

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lacks persuasive power); *Elias Escobar v. Hyde*, 2025 WL 2823324, at *3 (D. Mass. October 3, 2025) (rejecting the BIA's reasoning in *Matter of Yajure Hurtado* because, in part, "the decision is inconsistent with other BIA decisions and with decades of the Department of Homeland Security's practice").

irreparable harm or futility).

60. At least one decision from this Court has rejected the argument that prudential exhaustion is required in a detained noncitizen's request for a bond hearing because it would be futile for the detained noncitizen to seek a bond hearing before an immigration judge. *See Rico-Tapia*, 2025 WL 2950089, at *4.

61. Under similar circumstances as those present here, this Court held the petitioner was entitled to a bond hearing before a neutral arbiter in immigration court. The Court concluded, *inter alia*, that petitioner had substantial private interest in remaining free from detention, the risk of an erroneous deprivation of liberty is high where the detained person has not received a bond hearing, and the government's interest in detention is low, particularly considering petitioner's compliance with DHS requirements and his ability to preserve a clean record, and custody hearings in immigration court appear routine given the requirements imposed by federal regulations. *See Rico-Tapia*, 2025 WL 2950089, at *4; *see also J.O.L.R. v. Wofford*, No. 1:25-CV-01241-KES-SKO (HC), 2025 WL 2908740, at *3 (E.D. Cal. Oct. 14, 2025) (granting injunctive relief because due process requires a pre-deprivation bond hearing and explaining "[c]ivil immigration detention, which is 'nonpunitive in purpose and effect[,]' is justified only when a noncitizen presents a risk of flight or danger to the community.") (citation omitted).

CLAIMS FOR RELIEF

COUNT ONE

Violation of 8 U.S.C. 1226(a) and Associated Regulations

62. Petitioner repeats and realleges the allegations set forth in the preceding paragraphs as though set forth at length.

63. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

64. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

65. Petitioner has not been, and will not be, provided with a bond hearing as required by law.

66. Petitioner's continuing detention is therefore unlawful.

COUNT TWO

Violation of Fifth Amendment Right to Due Process
(Failure to Provide an Individualized Hearing for Domestic Civil Detention)

67. Petitioner repeats and realleges the allegations set forth in the preceding paragraphs as though set forth at length.

68. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

69. The Fifth Amendment's Due Process Clause specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of

law." U.S. Const. amend. V.

70. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693; *see Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law"); *cf. Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020) (holding noncitizens due process rights were limited where the person was not residing in the United States, but rather had been arrested 25 yards into U.S. territory, apparently moments after he crossed the border while he was still "on the threshold").

71. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas*, 533 U.S. 678 at (2001).

72. The Supreme Court thus "repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana,* 504 U.S. 71,

81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks,* 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

73. Numerous courts have concluded that noncitizens have a protectable liberty interest in remaining out of custody on bond pending further immigration proceedings. *See Ortega v. Kaiser*, 2025 WL 1771438, at *4 (N.D. Cal. June 26, 2025) (citing cases); *Bostock*, 2025 WL 3014274, at *7 ("[A]s numerous courts in this circuit have held, a noncitizen released from custody pending removal proceedings has a protected liberty interest in remaining out of custody.") (citing cases).

74. Petitioner was arrested inside the United States after living and working in the United States for approximately one year and is being held without being provided any individualized detention hearing.

75. Petitioner's continuing detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

COUNT THREE

Violation of Fifth Amendment Right to Due Process (Substantive Due Process)

76. Petitioner repeats and realleges the allegations set forth in the proceeding paragraphs as though set forth at length.

77. Because Petitioner is not being provided a bond hearing, the government is not taking any steps to effectuate its substantive obligation to ensure that immigration detention bears a "reasonable relation" to the purposes of immigration

detention (*i.e.*, the prevention of flight and danger to the community during the pendency of removal proceedings) and is not impermissibly punitive. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring).

78. Petitioner's detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner shall not be transferred outside the District of Hawaii;

(3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.

(4) Declare that Petitioner's detention without the opportunity for a bond hearing violates regulatory, statutory, and constitutional requirements.

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or, in the alternative, provide Petitioner with a bond hearing and order Petitioner's release on conditions the Court deems just and proper.

(6) Grant any further relief this Court deems just and proper.

DATED: Honolulu, Hawai'i, February 9, 2026.

CADES SCHUTTE
A Limited Liability Law Partnership

/s/ Lisa K. Swartzfager
LISA K. SWARTZFAGER

Attorney for Petitioner
GONZALO CONSTANTE VALVERDE