UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

Gaperault JOSEPH Petitioner, vs. **Jason STREEVAL,** Warden, Stewart Detention Center KRISTI NOEM, Secretary Department of Homeland Security; TODD LYONS, Director, Immigration Customs Enforcement; PAMELA BONDI, Attorney General; NICK ANNAN, Director, Atlanta ICE Field Office Respondents.	**CASE NO. 4:26-cv-_____** **PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

AND COMPLAINT FOR DECLARATIVE AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. Petitioner, Gaperault Joseph, (Petitioner), [redacted], challenges his ongoing unlawful detention by U.S. Immigration and Customs Enforcement ("ICE") at the Stewart Detention Center in Lumpkin, Georgia. Petitioner is neither a flight risk nor a danger to the community.
2. Petitioner's initial and continued detention by ICE is unlawful and unconstitutional.

The government's recent policy shift has caused the re-detention of many individuals with no due process who were previously released on parole to pursue asylum or other forms of relief in the United States. While ICE alleges the Petitioner is an "arriving alien" under 8 U.S.C. § 1225(b) because he entered without inspection but was allegedly apprehended two miles from the border and then paroled into the US under INA Section 212(d)(5), he is no longer an arriving alien due to his subsequent release, grant of Temporary Protected Status ("TPS") and re-detention without any due process. Petitioner was suddenly re-apprehended at his ICE check-in three years and ten months after his release on parole due to no fault of his own.[1] Petitioner is entitled to due process under the Fifth Amendment before losing his liberty. Petitioner was never notified that the government intended to re-detain him, and the Respondents failed to consider his equities, the fact that he has a US citizen child with his wife or any of the applications he had filed for status in the US which were either pending or approved.

3. The petitioner's release and re-detention as well as the fact that he was granted and now holds Temporary Protected Status shift his detention from 8 U.S.C. § 1225(a) to 8 U.S.C. § 1226(a), making him not mandatory detention without judicial review. Further, his detention was illegal because he was afforded no due process.

II. JURISDICTION

4. 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

[1] Petitioner's parole was not renewed by ICE.

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.

5 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.

6. The Eleventh Circuit 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 people during removal proceedings, *Denmore v. Kim*, 538 U.S. 510, 523 (2003), there are limitations to this power of the executive branch. Limitations like the Due Process Clause restrict the government's power to detain noncitizens. *Id; Frech v. U.S. Attn'y Gen.,* 491 F.3d 1277, 1281 (11th Cir. 2007) (*stating* "It is well settled that individuals in deportation proceedings are entitled to due process of law under the Fifth Amendment.) (*citing Reno v. Flores*, 507 U.S. 292, 306 (1993)). Courts must

review immigration procedures and ensure that they comport with the Constitution. *See* also *J.G. v. Warden, Irwin Cnty. Detention Ctr.*, 501 F. Supp 3d 1331 (M.D. GA 2020).

7. 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.
8. 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.
9. 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, *Denmore 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.

10. 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.

11. 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.

12. 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).

13. 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.

14. 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).

15. 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.
16. 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

17. Venue is proper in the United States District Court for the Middle District of Georgia because Petitioner is currently detained at the Stewart Detention Center, Lumpkin, Georgia, under the custody of the Department of Homeland Security (DHS). Respondent Jason Streeval, as the Warden of Stewart 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 resides within this District, and there is no real property involved in this action.

IV. PARTIES

18. Petitioner Gaperault Joseph is a noncitizen who arrived in the United States on or around May 19, 2024. He resides in Sycamore, Georgia and has no criminal record. He is currently detained at Stewart Detention Center in Lumpkin, Georgia.

19. Respondent Jason Streeval is the Warden of Stewart Detention Center, Lumpkin, Georgia. As such, the warden 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. The warden has immediate physical custody of the Petitioner and is sued in his official capacity.

20. Respondent Ladeon Francis is the Field Office Director for the ICE Atlanta Field Office. As such, Respondent Francis is responsible for the oversight of ICE operations at the Stewart Detention Center. Respondent Francis is being sued in his official capacity. He is the head of the ICE office that unlawfully arrested Petitioner, and such arrest took place under his direction and supervision. He is the immediate *legal* custodian of Petitioner.

21. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE). As such, Respondent Lyons is responsible for the oversight of ICE operations and the head of the federal agency responsible for all immigration enforcement in the United States. Respondent Lyons is being sued in his official capacity.

22. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS). As Secretary of DHS, Secretary Noem is the cabinet-level official 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.

23. Respondent Pamela Bondi is the Attorney General of the United States and is sued in her official capacity since U.S. government agencies are Respondents in this complaint. Furthermore, the Immigration Judges who decide removal cases and applications for bond and relief from removal do so as her designees at the Executive Office for Immigration Review (EOIR).

24. 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).

25. 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.

V. STATEMENT OF FACTS AND PROCEDURAL HISTORY

26. Petitioner Gaperault Joseph is a citizen of Haiti arrived in the United States on May 19, 2024. He entered the country on humanitarian parole through the CBP1 program but was served with a notice to appear ("NTA") the same day. Exhibit A. His wife, Lynn Troup, is a US citizen. Petitioner applied for Temporary Protected Status ("TPS") in July 2024, and it was granted on September 23, 2024 and was valid until February 2, 2026. Exhibit B. The current administration terminated TPS for Haiti early, but a class action lawsuit restored Haitian TPS until February 2, 2026.[2] On February 2, 2026, the termination of Haitian TPS was stayed, and his TPS is therefore still valid. *See* Exhibit C *Miot v. Trump,* 1:25-cv-02471, (D.D.C.). Mr. Joseph entered on parole through CBP1, but there is no documentation in the

[2] See CLINIC Legal article on recent TPS developments https://www.cliniclegal.org/resources/recent-tps-developments

immigration court's file showing until when it is or was valid, but we maintain it was likely not for very long since he was issued an NTA when he entered the US. He would then have been simply released into the interior of the US until he was granted TPS on September 23, 2024. He was detained by ICE on January 10, 2026, because he filled out an application form to lawfully obtaining a firearm, believing it was lawful for him to do so. He never obtained any firearm but instead was arrested by ICE simply for filling out the application. Petitioner was and is in lawful status with TPS when he was detained, and under INA Section 244(d)(4) should not be detained as a TPS holder. Petitioner has no criminal record. He has never been the subject of a prior removal order. He was lawfully employed as a machine operator at SK Battery in Commerce, Georgia.

27. On July 1, 2025, *Haitian Evangelical Clergy Ass'n et. al. v. Trump et. al.*, set aside the partial vacatur of TPS. *Haitian Evangelical Clergy Ass'n et. al. v. Trump et. al.*, 1:25-cv-1464-BMC (E.D. NY) Exhibit D. Then, *Miot v. Trump*, *supra* stayed the termination during the lawsuit.[3] This binding court decision means TPS remains valid and that Mr. Joseph should not be detained as he still has TPS and has not done anything to make himself mandatory detained under 8 USC Section 1226(c).
28. Petitioner poses no danger to the community.
29. Petitioner is currently in active removal proceedings and has a scheduled Master Calendar Hearing on February 25, 2026, at 10:00 am. before Immigration Judge Bianca Brown at 146 CCA Road, Lumpkin, Georgia 31537. This scheduled hearing confirms that Petitioner remains under the jurisdiction of the immigration court and

[3] The case does not give a termination date.

that his case is moving forward procedurally while he remains detained in ICE custody.

VI. EXHAUSTION OF REMEDIES

30. **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 and who never should have been detained in the first place given that he has TPS. 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*, 392 U.S. 639, 640 (1968). Moreover, even if any remedies were available, the habeas statute does not require Petitioner to exhaust them.

31. 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.

32. Petitioner has exhausted his administrative remedies to the extent required by law, and Petitioner's only remedy is by way of this judicial action.

33. LEGAL AND STATUTORY BACKGROUND

A. Noncitizens Are Entitled to Due Process

34. The principle that noncitizens present in the United States must be afforded due process is deeply rooted in our legal history for hundreds of years. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (Fourteenth Amendment applies to all persons within the territorial jurisdiction of the United States, regardless of race, color, or nationality); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) ("Fifth Amendment . . . protects every person within the jurisdiction of the United States from deprivation of life, liberty, or property without due process of law . . . [i]ncluding those whose presence in this country is unlawful, involuntary, or transitory[.]") (citation omitted)).

35. These landmark Supreme Court cases affirm that due process protections apply to

all persons within the U.S., regardless of their immigration status. These foundational principles are not merely historical artifacts but are vital, living tenets that must guide current immigration practices. The Court has consistently recognized that noncitizens facing deportation are entitled to due process under the Fifth Amendment, as seen in *Landon v. Plasencia*, 459 U.S. 21 (1982) (noncitizens facing deportation are entitled to due process under the Fifth Amendment, which includes a full and fair hearing and notice of that hearing); *Zadvydas v. Davis*, 533 U.S. 678 (2001) (Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent).

B. Petitioner Was Not Properly Re-Detained

36. Petitioner was arrested by ICE about a year and a half after entry to the United States. The government failed to follow its own regulations because his parole was no longer valid and he had TPS, so he could not be detained under INA §244(d)(4) or re-detained under 8 USC §1225. Under 8 USC Section 1225(b)(2)(A), "if the Department of Homeland Security ("DHS") declines to detain an 'applicant for admission' under Section 1225(b)(2)(A), it may (1) grant the noncitizen's parole into the United Stats if parole provides a 'significant public benefit'; or (2) return the noncitizen to his home country." *Magana-Garcia v. Bondi*, 1:26-cv-051-ADA at 6 (WDTX Jan 26, 2026) *quoting* 8 USC Section 1225(b)(2)(C), 1182(d)(5)(A); *Biden v. Texas*, 597 U.S. 785, 814-15 (2022). The *Magana-Garcia* court goes on to explain that "DHS has discretion to terminate the discretionary parole when 'in the opinion of the Secretary of Homeland Security,' 'the purposes of such parole…

have bee served' at which time the formerly-paroled noncitizen 'shall forthwith return to be returned to the custody from which he was paroled' and the noncitizen's 'case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States'. *Id.* at 6-7 *quoting* 8 USC 1182(d)(5)(A). However, this does not mean forever and indefinitely.

37. During the time that the Petitioner in this case was on parole, he applied for and obtained TPS which is still valid. TPS was revoked for Haiti, and its revocation was enjoined by a federal court as improper. Petitioner is a class member. His TPS is therefore still valid. A TPS holder cannot be removed, and there no reason to detain a TPS holder short of mandatory detention conditions being met under *See* 8 U.S.C. § 1254a(a)(1)(A); 8 USC 122. Further, Petitioner has recently married, Lynn Troup, and US citizen. She is in the process of filing an I-130 petition on his behalf.

38. Petitioner's parole was not renewed but allowed him to file other applications. His humanitarian situation is unchanged except now his US citizen spouse will suffer hardship if he is removed. The Respondents' detention of Petitioner has been traumatic to Ms. Troup, who was present when he was detained. Now, Petitioner is detained, meaning his case is fast-tracked. Petitioner did nothing wrong and continued to comply with the conditions of his release. Petitioner was paroled in through CBP1 and given a notice to appear in court. Exhibit A. DHS did not extend his parole, but he was granted TPS.

Petitioner is No Longer Detained Under 8 USC Section 1225

39. Petitioner's legal and physical situation in the United States materially changed. These material changes to his status mean that his current detention is now under

8 USC 1226(a). First, Petitioner's humanitarian parole has expired. He continued to be released in the interior of the United States for 1.5 years. He was no longer being inspected or paroled Respondents cannot simply brand him an "arriving alien" forever. *Jennings v. Rodriguez* recognizes that 8 USC §1225(b) governs custody during inspection and parole and sets parameters for when parole can be granted. 583 U.S. 281 (2018). However, such parole is intended to be temporary. *Jennings* does not indicate that status as a parolee under 1225(b) continues indefinitely after parole expires, after someone has a pending asylum application and is authorized to work, and after he applies for and is granted TPS. 1226 and 1225 are not intended to be overlapping authorities that DHS can pick from indefinitely. Further, under *Zadvydas v. Davis*, detention has to serve a reasonable relation to its purpose. 533 US 678 (2001). Simply detaining a noncitizen because the Respondents have the ability to after releasing him for years serves no purpose.

40. Petitioner was granted TPS and he now holds that status as explained, *supra.* TPS placed the Petitioner in lawful, Congressionally authorized protected status. TPS is a lawful status. His TPS and the fact that his parole expired years earlier mean that is therefore no longer an arriving alien. His TPS approval letter in fact has a Form I-94 at the bottom of it which denotes lawful status. Exhibit B. Further, because a TPS holder cannot be removed, he cannot be detained under 8 USC Section 1225 after a TPS grant because there is a specific prohibition on removal. He therefore must be detained under 8 USC § 1226 and is eligible for a bond redetermination hearing with the Immigration Court. *See H.F.S.R. v. Frances*

1:26-cv-238-AT (NDGA Jan 20, 2026) (stating that the Petitioner in that case, who had been granted TPS was not an "arriving alien" seeking admission because he had resided in the United Sates for years, maintaining a stable lawful TPS designation "until DHS's abrupt – and legally questionable – termination uprooted his life and legal status." Dec. at 17. Exhibit E.

41. Further, if the Petitioner was detained under 8 USC §1226(a), he was IMPROPERLY detained because his arrest was done without a warrant or probable cause. While the government may detain noncitizens it encounters in the interior of the Country under 8 U.S.C. § 1226(a), such arrest must be accompanied by a warrant. 8 U.S.C. § 1357(a)(2). Even after someone's arrest, they are eligible for a bond hearing before an Immigration Judge (IJ) or release on recognizance. Nevertheless, Respondents have classified him as an "arriving alien" and detained him under 8 U.S.C. § 1225(b)(2)—rendering him ineligible for bond. Exhibit A.

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

42. Similar court cases known to undersigned counsel that have dealt with the same issue from other courts, although this is certainly not an exhaustive list, just illustrative of the overwhelming authority around the country that Petitioner's detention under § 1225(b)(2) is unjustified and unlawful: *J.A.M. v. Streeval*, 4:25-cv-342-CDL, 25 WL 3050094 (M.D. Ga. Nov. 1, 2025); *Magana-Garcia v. Bondi*, 1:26-cv-051-ADA (W.D. Tex Jan. 28, 2026) (holding that when humanitarian parole is extended, it cannot be arbitrarily revoked). Exhibit F.

43. As the *Lopez Benitez* Court poignantly articulated: "This understanding accords with the plain, ordinary meaning of the words "seeking" and "admission." For example, someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as "seeking admission" to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as "seeking admission" (or "seeking" "lawful entry") at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there. As § 1225(b)(2)(A) applies only to those noncitizens who are actively "seeking admission" to the United States, it cannot, according to its ordinary meaning, apply to Mr. Lopez Benitez, because he has already been residing in the United States for several years." *Lopez Benitez v. Francis*, —— F.Supp.3d at ——, 2025 WL 2371588, at *7.

44. That can be applied here too. In this case, the Petitioner did offer to purchase a ticket, even paid for one. When he obtained TPS, he did lawfully purchase a ticket. Now the Respondents would like to kick him out of the theater before the end of the movie.

45. LEGAL FRAMEWORK FOR THE RELIEF SOUGHT

A. Habeas Jurisdiction

46. Habeas corpus relief extends to a person "in custody under or by color of the authority of the United States" if the person can show she is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241 (c)(1), (c)(3); *I.N.S. v. St. Cyr*, 533 U.S. 289, 314 (2001). *See* also *Antonelli v. Warden*,

U.S.P. Atlanta, 542 F.3d 1348, 1352 (11th Cir. 2008) (holding a petitioner's claims are proper under 28 U.S.C. section 2241 if they concern the continuation or execution of confinement). The U.S. Constitution guarantees that the writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004), (citing U.S. Const., Art. I, § 9, cl. 2). This includes immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (addressing post final-removal order detention under § 1231). *Jennings v. Rodriguez*, 583 U.S. 281, 285–86 (2018) (addressing § 1226 detention, which is more applicable to this instant case as Petitioner does not have a final order of removal).

47. "[H]abeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513 U.S. 298, 319 (1995), that "[t]he court shall … dispose of [] as law and justice require," 28 U.S.C. § 2243. "[T]he court's role was most extensive in cases of pretrial and noncriminal detention." *Boumediene v. Bush*, 553 U.S. 723, 779– 80 (2008) (citations omitted). "[W]hen the judicial power to issue habeas corpus properly is invoked the judicial officer must have adequate authority to make a determination in light of the relevant law and facts and to formulate and issue appropriate orders for relief, including, if necessary, an order directing the prisoner's release." Id. at 787. The Petitioner seeking habeas relief must demonstrate he is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

48. Even if Petitioner were to be released prior to this Court granting relief, "in custody" would still be satisfied because significant restraints short of jail, which

include removal proceedings and the continuous threat of re-detention, satisfy § 2241. See *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).

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

50. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000).

B. <u>The Administrative Procedure Act (APA)</u>

51. The APA authorizes judicial review of final agency action. 5 U.S.C. § 704. The APA sets minimum standards for final agency action.

52. Final agency actions are those (1) that "mark the consummation of the agency's decisionmaking process" and (2) "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).

53. ICE's "Interim Guidance Regarding Detention Authority for Applications for Admission" constitutes a final agency action, making it subject to this Court's review in the Petitioner's case. Under this new interpretation, the agency asserts

that the Petitioner is subject to mandatory detention without bond. This guidance represents the culmination of ICE's decision-making process concerning the Petitioner's custody and is an unlawful interpretation of the INA, contrary to its plain language. Likewise, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is a final agency action subject to this Court's review in Petitioner's case.

C. The *Accardi* Doctrine Requires Agencies to Follow Internal Rules

54 Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); see also *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

55. *Accardi* is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. See *Morton v. Ruiz*, 415 U.S. 199, 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

56. *MALDONADO BAUTISTA* CLASS ACTION

57. Petitioner is a member of the nationwide class certified in *Maldonado Bautista v.*

Santacruz, No. 5:25-CV-01873, 2025 WL 3288403 (C.D. Cal. December 18, 2025). There has been a class action decision in *Maldonado Bautista v. Santacruz et. al.*, No. 5:25-cv-01873 (C.D. Cal.) on December 18, 2025. However, not one Immigration Judge in Georgia has found jurisdiction to grant bond to date, stating they are bound by *Yajure Hurtado*, and have not been given guidance to hold a bond hearing in a case like Petitioner's.[4]

58. Further, the certification of a class action under Federal Rule of Civil Procedure 23(b)(2), which seeks and obtains only **declaratory** relief, does not extinguish an individual's fundamental right to petition for a writ of habeas corpus and seek immediate release from unlawful detention.

59. As the Supreme Court clarified in *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022), this statutory scheme deliberately separates broad, class-wide declaratory relief from coercive individual remedies. Consequently, the *Maldonado Bautista* court could only declare the government's detention policy unlawful; it could not order the release of any class member. This creates a right without a remedy at the class level. The Suspension Clause protects the writ of habeas corpus, not requests for injunctive relief, see *Jennings v. Rodriguez*, 583 U.S. 281, 309 (2018), and individual habeas petitions remain the necessary and distinct vehicle to enforce the rights established by a class-wide declaratory judgment. See *Hamama v. Adducci*, 912 F.3d 869, 879 (6th Cir. 2018).

[4] The Georgia-Alabama American Immigration Lawyers' Association chapter and various nonprofits are communicating about this issue, but so far there have been no reports of success with bond jurisdiction in immigration court for an individual situated like the Petitioner absent a habeas grant order.

60. Petitioner's membership in the *Maldonado Bautista* class does not preclude this individual habeas action because this petition does not seek the "same" relief as the class action. The *Maldonado Bautista* class sought and obtained a declaration of rights—that class members are eligible for bond hearings under 8 U.S.C. § 1226(a). This petition seeks **release from unlawful detention**, a coercive, individual remedy that the class action could not provide due to the remedial limitations of 8 U.S.C. § 1252(f)(1), as affirmed in *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022).

61. Neither claim preclusion nor the exhaustion doctrine bars this Court from granting habeas relief. The doctrine of claim preclusion is inapplicable because Petitioner was unable to seek the core habeas remedy of immediate release in the prior class action. As courts have recognized, preclusion is meant to prevent a second bite at the apple, not deny the first. Because the Maldonado Bautista court was statutorily barred from awarding class-wide coercive relief, that action cannot preclude a subsequent, individual petition that specifically seeks that remedy. The declaratory judgment serves as a predicate for further relief, not a bar to it.

62. CAUSES OF ACTION AND CLAIMS FOR RELIEF

COUNT ONE

Declaratory Judgement

Summary of Claim of Petitioner's First Claim for Relief: *Petitioner seeks a declaratory judgment that Petitioner is not an "applicant for admission" or "arriving alien" subject to mandatory detention under 8 U.S.C. § 1225(b), and that Petitioner's detention is governed solely by 8 U.S.C. § 1226(a), which provides for discretionary*

bond hearings. This claim is grounded in the statutory text, longstanding agency practice, and recent federal court decisions rejecting the government's contrary interpretation.

63. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

64. Petitioner requests a declaration from this Court that Petitioner is not an applicant for admission "seeking admission" or "an arriving alien" subject to mandatory detention under 8 U.S.C. §§ 1225(b)(1) or (b)(2). Petitioner further requests a declaration that Petitioner's current detention by Respondents, if justified at all, is governed solely by 8 U.S.C. § 1226(a).

COUNT TWO

Statutory Violation of the Immigration and Nationality Act: No-Bond Detention in Violation of 8 U.S.C. § 1226(a) and Unlawful Detention Under Improper Statutory Classification (INA §§ 1225 vs. 1226)

Summary of Claim of Petitioner's Second Claim for Relief: Petitioner challenges the no-bond detention as a violation of the INA, specifically 8 U.S.C. § 1226(a), which entitles Petitioner to a bond hearing before an immigration judge. The government's application of § 1225(b) to Petitioner is contrary to the statute and decades of agency and judicial practice.

65. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

66. Since Petitioner is not an applicant for admission "seeking admission" or an "arriving alien" subject to 8 U.S.C. §§ 1225(b)(1) or (b)(2) and has no disqualifying criminal arrests or convictions subject to 8 U.S.C. § 1226(c), Petitioner is entitled to a bond redetermination hearing by an immigration judge pursuant to 8 U.S.C. § 1226(a).

67. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens whose parole long expired and who were granted Temporary Protected Status.

68. Respondents' actions, as detailed herein, infringe upon the Petitioner's statutory right to a bond redetermination hearing before an immigration judge. Additionally, the Respondents' application of § 1225(b)(2) to the Petitioner unlawfully enforces continued detention, contravening both the Immigration and Nationality Act (INA) and the Petitioner's constitutional rights, which will be further addressed below.

69. Petitioner's continued detention under § 1225(b)(2) is therefore unauthorized by statute, contrary to longstanding agency practice, and in violation of the INA and APA.

70. Petitioner had a bond hearing before an immigration judge, the judge denied bond, infringing upon Petitioner's constitutional rights to a full and fair hearing (the immigration judges are no longer neutral arbitrators), thereby violating his lawful right to bond consideration. This occurred despite the fact that he has TPS.

COUNT THREE

Violation of the TPS Regulations

Summary of Claim of Petitioner's Third Claim for Relief: *Petitioner alleges that Respondents' refusal to provide a bond hearing violates binding agency regulations, including 8 C.F.R. §§ 244.10, 1244.10, and 1003.19, which require that TPS holders cannot be removed while they have TPS.*

71. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

72. Because removal is barred, detention cannot be justified for an individual in

removal proceedings.

COUNT FOUR

Violation of the Fifth Amendment of the U.S. Constitution

Substantive Due Process

Summary of Claim of Petitioner's Fourth Claim for Relief: *Petitioner asserts that the continued detention without a bond hearing violates substantive due process under the Fifth Amendment, as recognized by the Supreme Court in Zadvydas v. Davis and Jennings v. Rodriguez. The government may detain only to prevent flight or danger, and Petitioner's detention serves no such purpose.*

73. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

74. All persons residing in the United States are protected by the Due Process Clause of the Fifth Amendment.

75. The Due Process Clause of the Fifth Amendment provides that "[n]o person shall be … deprived of life, liberty, or property, without due process of law." U.S. CONT. amend. V. "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). This vital liberty interest is at stake when an individual is subject to detention by the federal government.

76. Under the civil-detention framework set out in *Zadvydas* and its progeny, the Government may deprive a non-citizen of physical liberty only when the confinement serves a legitimate purpose—such as ensuring appearance or protecting the community—and is reasonably related to, and not excessive in

relation to, that purpose. Nonpunitive purpose such as preventing danger or flight and may not be excessive in relation to that purpose. See *Jennings*, 583 U.S. at 300–01; *Demore v. Kim*, 538 U.S. 510, 523 (2003)

77. Immigration detention is civil, not criminal, in nature, and therefore cannot be punitive. There are only two permissible reasons for immigration detention: to avoid flight risk, and to avoid danger to the community. Petitioner's detention therefore does not bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal.

78. After entering the United States unlawfully and being granted humanitarian parole, Petitioner went on to develop ties to the community and resided here for a year and a half, being afforded Temporary Protected Status due to the conditions in Haiti. He has now married a US citizen. Petitioner is therefore a "person" within the meaning of the Due Process Clause of the Fifth Amendment to the U.S. Constitution and has a fundamental liberty interest in freedom from physical restraint.

79. Respondents' actions in detaining Petitioner arbitrarily, allowing his humanitarian parole to expire, and revoking his liberty arbitrarily after one and a half years deciding that Petitioner's TPS grant did not change his admission or detention status.

80. Because Respondents had no legitimate, non-punitive objective in detaining Petitioner without bond, Petitioner's detention violates substantive due process under the Fifth Amendment to the U.S. Constitution. Continued confinement

therefore bears no reasonable, non-punitive relationship to any legitimate aim and is unconstitutionally arbitrary under *Zadvydas*.

COUNT FIVE

Violation of the Fifth Amendment of the U.S. Constitution

Summary of Claim of Petitioner's Fifth Claim for Relief: *Petitioner contends that the detention as an "arriving alien" without individualized process violates procedural due process under the Fifth Amendment. The Supreme Court and Eleventh Circuit have repeatedly held that civil detention must be accompanied by meaningful process and individualized findings. See Mathews v. Eldridge*

81. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

82. The Fifth Amendment forbids deprivation of liberty without notice and a meaningful opportunity to be heard before a **neutral** decision-maker. The Supreme Court and several circuit courts of appeal have repeatedly affirmed that procedural due process applies to all persons within the United States, including noncitizens, and that civil detention must be accompanied by robust procedural safeguards.

83. In addition to being ultra vires, the novel interpretation of DHS and EOIR of Petitioner's detention under § 1225(b)(2) violates the due process rights of noncitizens like Petitioner by subjecting them to continued mandatory detention solely on the basis of these agencies' wrongful interpretations, without any individualized assessment of flight risk or danger. This automatic and prolonged detention deprives noncitizens of their liberty without adequate procedural safeguards, contravening the fundamental requirements of due process under the Fifth Amendment.

84. The Supreme Court has repeatedly recognized that civil detention must be accompanied by meaningful process and individualized findings; yet, Respondents are now permitted prolonged detention based on agency *interpretation* rather than judicial determination and legal basis. As a result, noncitizens are forced to remain in custody for an extended period, suffering significant harm and disruption to their lives, without any statutory, regulatory or constitutional justification. This scheme is not only beyond the authority granted by Congress, but also fundamentally unfair and unconstitutional.

85. The Supreme Court states in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976): "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Noncitizens are entitled to due process protections in removal proceedings, including notice and a hearing. *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Due process applies to all persons within the United States, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

86. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, (1976). Pursuant to *Mathews*, courts weigh the following three factors: (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 the probable value, if any, of additional or substitute procedural safeguards"; and (3)

"the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

87. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976), test to Petitioner's case:

a. 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*, 459 U.S. at 34, 103 S.Ct. 321. Petitioner is being held at an immigration detention center in the same conditions as criminal inmates, unable to work and is far from his family. At minimum, the government must come forward with concrete, case-specific reasons that outweigh Petitioner's substantial liberty interest in continued release.

b. The risk of erroneous deprivation of liberty is significant due to the absence of an independent adjudicator, as highlighted in *Marcello v. Bonds*, 349 U.S. 302, 305-306 (1955). 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.

ICE is acting as both the prosecutor as well as the adjudicator. ICE can

effectuate long detention periods for Petitioner and others in his situation just because they now interpret Petitioner as being subject to mandatory detention as an "arriving alien" and immigration judges at EOIR are prevented from considering bonds under the same circumstances.

c. Lastly, the interest of the government in being able to invoke mandatory detention against someone they released for three years and ten months, who committed no criminal act, and reliably showed up for all scheduled appointments is minimal. Petitioner is gainfully employed and married to a US citizen. He was working with authorization. Respondents seem to be ignoring all class action lawsuits recently, meaning that each detained noncitizen has to seek an individual habeas, causing a great financial burden on Petitioners, and greatly increasing the workload of the federal judiciary. When the government ignores law (and agency breaks its own regulations, policies and procedures), it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law, requiring Respondents to instead follow the law and their regulations reduces fiscal and administrative burdens on the government. Furthermore, the government's interest is further diminished by the potential constitutional violations that arise from denying noncitizens their due process rights, as the interpretation effectively eliminates the procedural safeguards intended to prevent erroneous

deprivation of liberty.

In conclusion, all three *Mathews* factors favor Petitioner's position. The DHS and EOIR interpretations violate Petitioner's procedural due process rights under the Fifth Amendment. Collateral harms from detention including separation from Petitioner's family and friends and Petitioner's ability to maintain employment—further underscore the weight of the private interest and the risk of erroneous deprivation. These are collateral consequences of continued confinement that amplify the ongoing liberty deprivation, are not compensable by money damages, and therefore weigh heavily in the *Mathews* balance and the equitable analysis, without expanding the scope of relief requested.

COUNT SIX

Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B) Contrary to Law and Constitutional Rights

Summary of Claim of Petitioner's Sixth Claim for Relief: *Petitioner alleges that detaining petitioner while he has TPS constitute final agency actions that are not in accordance with law and are contrary to constitutional rights, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B).*

88. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

89. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B).

90. The APA's reference to "law" in the phrase "not in accordance with law," "means, of course, any law, and not merely those laws that the agency itself is charged with

administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

91. DHS acted contrary to law. *See also Accardi* v. Shaughnessy, 347 U.S. 260, 268 (1954) (agency must follow its own regulations) (a separate claim to relief under *Accardi* is forthcoming below).

92. "Agency actions beyond delegated authority, are 'ultra vires,' and courts must invalidate them." *U.S. ex rel. O'Keefe v. McDonnell Douglas Corp.*, 132 F.3d 1252, 1257 (8th Cir. 1998); *see also Romero v. INS*, 39 F.3d 977, 980 (9th Cir. 1994) (holding that an immigration regulation that is inconsistent with the statutory scheme is invalid). Similarly, agency regulations that conflict with statutory text or structure must be invalidated.

93. Because these agencies' interpretations effectively transform a discretionary detention for people who are flight risks or a danger to mandatory detention to all without the possibility for release on bond, and as they directly contravene the plain language of the INA and its regulations, these decisions must be invalidated by this Court.

94. Petitioner's detention, premised solely on this ultra vires interpretation is "not in accordance with law," "in excess of statutory jurisdiction," and "arbitrary [and] capricious" under 5 U.S.C. § 706(2), entitling Petitioner to immediate release.

COUNT SEVEN

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)

Arbitrary and Capricious

Summary of Claim of Petitioner's Seventh Claim for Relief: *Petitioner asserts that Respondents' actions are arbitrary and capricious under the APA, 5 U.S.C. § 706(2)(A), because they depart from established law and practice without reasoned explanation, fail to consider reliance interests, and ignore less-restrictive alternatives.*

95. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

96. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

97. Respondents' detention of Petitioner's TPS was arbitrary and capricious; ignoring the injunction by the *Minot* court, arresting him anyway was also arbitrary and capricious. Further, detaining him after he has been released and reporting for a year and a half is also arbitrary and capricious. There is no rational reasoning that Respondents have articulated for the sudden decision to detain the Petitioner.

98. An agency decision that "runs counter to the evidence before the agency" is also arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983).

99. Petitioner's detention, beyond being unlawful and ultra vires, also "failed to consider important aspects of the problem". Petitioner's detention is arbitrary and capricious and in excess of statutory authority because DHS: (1) failed to consider Petitioner's reliance interests; (2) failed to consider less-restrictive alternatives to detention; (3) failed to offer a reason for revoking his reporting status and ignoring his valid TPS; and (4) failed to comply with various regulations. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020) (reliance interests). *See* also *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983) (requirement of reasoned decision-making).

100. For these and other reasons, Respondent's actions leading to Petitioner's detention and his continued detention was arbitrary and capricious and should be held unlawful and set aside.

COUNT EIGHT

Ultra Vires Action

Summary of Claim of Petitioner's Ninth Claim for Relief: *Petitioner seeks to set aside Respondents' actions as ultra vires, as there is no statutory or constitutional authority for Petitioner's continued detention under the circumstances presented.*

101. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

102. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Petitioner under these circumstances.

103. Petitioner has a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires actions.

COUNT ELEVEN

Violation of the Declaratory Judgment in *Maldonado Bautista* and Continued Unlawful Detention

104. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

105. As a class member, Petitioner is entitled to the benefit of the declaratory judgment that Petitioner's detention is governed by 8 U.S.C. § 1226(a) (discretionary detention with bond eligibility), not 8 U.S.C. § 1225(b) (mandatory detention).

106. The *Maldonado Bautista* declaratory judgment, which held that class members are detained under 8 U.S.C. § 1226(a), has the full force and effect of a final judgment until it is stayed or reversed. Despite this, the government has instructed immigration judges not to apply the decision to class members, and immigration judges all over the country are continuing to deny bond to class members.

107. As declared in *Maldonado Bautista*, Petitioner's detention was unlawful ab initio. As numerous courts have held, a subsequent administrative bond hearing is "wholly inadequate to remedy that unlawful detention" and cannot cure the initial constitutional violation of depriving Petitioner of his liberty without due process of law. Therefore, the precise reasoning of *Armando De Macedo Mendes v. Hyde*, C.A. No. 25-cv-627-JJM-AEM, 2025 WL 3274606 (D.R.I. Dec. 5, 2025) should apply to Petitioner, where the government has initiated an unlawful detention and, as in that case, has "put forth no evidence to suggest that [the petitioner] poses a flight risk or is a danger to the community," the only just and appropriate remedy is immediate release.

108. REMEDIES

THE APPROPRIATE REMEDY FOR PETITIONER'S UNLAWFUL DETENTION IS IMMEDIATE RELEASE

Even though some cases grant bond hearings to noncitizens who won habeas relief, the Petitioner has TPS and should not be detained because he cannot be removed.

Bond Hearing Will Require More Detention Time

If the Court orders a bond hearing before an immigration judge, it will take several more days or weeks to schedule a bond hearing, at additional costs to Petitioner,

while he remains detained, in a situation where Respondents have not even alleged, yet alone proven, that he is a danger or flight risk. Respondents have not produced a single shred of evidence why he should not be released. There is simply no viable argument that this Petitioner is a flight risk or a danger to the community given the facts of this case. Further, he has already been arrested by ICE officials who ignored the fact that he has TPS.

Bond Hearing Cannot Cure Unlawful Arrest

Petitioner's arrest and continued detention are unlawful from the outset because he was not arrested pursuant to a warrant under 8 U.S.C. § 1226, as required for interior apprehensions, but was instead detained as a purported "applicant for admission" under § 1225(b)—a provision that, by its terms and longstanding practice, applies only to individuals encountered at the border or a port of entry, not to long-term residents apprehended in the interior or those granted TPS. This is not a mere technicality; it is a fundamental statutory violation.

In analogous contexts, such as an unlawful arrest without probable cause or a search conducted without a warrant, courts have consistently held that the only effective remedy is suppression of evidence or outright release from custody. The government cannot retroactively cure an unlawful deprivation of liberty by later manufacturing a post hoc justification or issuing a belated warrant.

The same principle applies here: if ICE were to issue a warrant now or attempt to reclassify the basis for detention after the fact, it would not remedy the original statutory violation as they arrested petitioner under 8 U.S.C. § 1225(b)(2).

When Petitioners are granted a bond in immigration court now, they are all being subject to restrictive ankle monitors, and ICE is retaining their ID's such as state driver's licenses and valid employment authorization documents, which can take many months to replace. *See* Exhibit G. Helland Memo Regarding Electronic Monitoring. Driver's licenses cannot be replaced without the employment card in hand, causing a public safety hazard. This court should also order that Petitioner's valid identity documents be returned to him and that he should not be monitored electronically because there is no inkling that he is a flight risk or a danger to the community.

If Court Grants Bond Hearing – Ensure Burdens Are Met

Should the Court grant a bond hearing, since there is no 11th Circuit caselaw on who carries the burden of proof, the Court should follow the 3 circuit courts who have decided the issue and determine that the government must prove, by clear and convincing evidence, that Petitioner is a flight risk or danger and order so with very detailed instructions for Respondents to follow. *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022); *Velasco Lopez v. Decker*, 978 F.3d 842, 853–56 (2d Cir. 2020); *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021). The reason for that is the Congress's assumption was that for non-criminal noncitizens who are detained pursuant to § 1226(a) the default is release, not detention (in contrast to § 1226(c) that deals with mandatory detention for criminal aliens). *There have been a rash of very unreasonable denials very recently out of Stewart Detention Center, and it's not at all clear that immigration judges can provide consistent adjudications and unbiased decisions.*

109. CONCLUSION AND PRAYER FOR RELIEF

The 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. Without such relief, Petitioner will continue to suffer irreparable harm, and the constitutional and statutory violations at issue will persist.

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) **Assume** jurisdiction over this matter under 28 U.S.C. §§ 2241 and 1331 and the Suspension Clause;

(2) **Issue** an Order to Show Cause, ordering Respondents to justify why this writ should not be granted to Petitioner and the basis of Petitioner's detention in fact and law, **within the 3 days authorized by the statute**;

(3) Grant the Petition for a Writ of Habeas Corpus and order Respondents to immediately release Petitioner from custody;

(4) **Declare** that Respondents' detention of Petitioner under 8 U.S.C. § 1225(b) is contrary to law and violates the Fifth Amendment to the United States Constitution, as Petitioner's detention is governed by 8 U.S.C. § 1226(a), consistent with the declaratory judgment entered in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov.

25, 2025);

(5) In the alternate, order a full, fair, and unbiased bond hearing by an immigration judge finding he is detained under 8 U.S.C. § 1226 and requiring the immigration judge to evaluate objectively if he is a flight risk and or danger to the community and make a bond determination accordingly;

(6) Enjoin Respondents from re-detaining Petitioner in the future pursuant to 8 U.S.C. § 1225;

(7) Enjoin Respondents from retaining Petitioner's state issued identity documents and employment authorization card;

(8) Enjoin Respondents from placing an ankle monitor on the Petitioner;

(9) Award Petitioner reasonable attorney's fees and costs;

(10) Grant such other and further relief as this Court deems just, proper or equitable under the circumstances.

Respectfully Submitted,

This 10th Day of February, 2026.

Rachel Effron Sharma
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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 10th day of February 2026.

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