

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA**

ALAN JAFET HURTADO FLORES,

Petitioner,

v.

WARDEN of Folkston D. Ray ICE Processing
Center;

GEORGE STERLING, Field Office Director
of Enforcement and Removal Operations,
Atlanta Field Office (ERO Atlanta);

TODD M. LYONS, Senior Official Performing
the Duties of Director, Immigration and
Customs Enforcement;

DAREN K. MARGOLIN, Director, Executive
Office For Immigration Review (EOIR);

KRISTI NOEM, Secretary, U.S. Department
of Homeland Security (DHS); and

PAMELA BONDI, U.S. Attorney General; in
their official capacities,

Respondents.

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

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1 INTRODUCTION

2 1. Petitioner, Mr. Alan Jafet Hurtado Flores is an asylum seeker from Honduras who
3 entered the United States without inspection over six (6) years ago. Mr. Hurtado Flores was
4 apprehended by immigration authorities when attending his probation appointment on December
5 2025. The Respondents have detained Mr. Hurtado Flores at the Folkston D. Ray ICE Processing
6 Center in Folkston, Georgia.

7 2. Mr. Hurtado Flores is a member of a nationwide class of noncitizens who are in
8 immigration detention and being denied access to a bond hearing based on the government’s
9 allegation that they entered the United States without admission or inspection (colloquially
10 referred to as “entered without inspection” or “EWI”).

11 3. On November 25, 2025, the U.S. District Court for the Central District of
12 California granted declaratory relief to the entire class in *Maldonado Bautista v. Santaacruz*, No.
13 5:25-CV-01873-SSS-BFM (C.D. Cal.),¹ (*See, Exhibit. 1*) holding that the government is
14 unlawfully subjecting them to mandatory (meaning no-bond) detention and that class members
15 are eligible for release on bond under the immigration laws. Under the Court’s order, class
16 members should be able to request a bond hearing in immigration court before an immigration

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18 ¹ On November 20, 2025, the district court granted partial summary judgment on behalf of
19 individual plaintiffs holding that the government’s policy is inconsistent with the plain language of
20 the *Immigration and Nationality Act* (“INA”), and that petitioners are properly subject to § 1226(a);
21 and on November 25, 2025, , the Court certified a nationwide class and expressly “extend[ed] the
22 same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.” *Maldonado*
23 *Bautista v. Santaacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *9,
24 11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-
Petitioners); *Maldonado Bautista v. Santaacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----,
2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners’ proposed
nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order
Granting Petitioners’ Motion for Partial Summary Judgment). The declaratory judgment held that the
Bond Denial Class members are detained under 8 U.S.C. § 1226(a) and thus may not be denied
consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861,
at *11.

1 judge (IJ) who must consider whether they are suitable for release on bond while their removal
2 proceedings are pending.

3 4. Because the Department of Homeland Security (DHS) and the Executive Office
4 for Immigration Review (EOIR) have refused to abide by the declaratory judgment issued on
5 behalf of the certified class in *Maldonado Bautista v. Santacruz*, Mr. Hurtado Flores is likely to
6 face many additional months in detention. Mr. Hurtado Flores has no other option but to bring
7 this petition for a writ of habeas corpus to enforce his rights a member of the Bond Eligible Class
8 certified in *Maldonado Bautista v. Santacruz, id.*

9 5. Mr. Hurtado Flores also seeks relief from this Court, as a detainee under INA §
10 1226(a), independent of any claim to class membership, because his continued, lengthy
11 immigration related detention is anyhow unconstitutional due to the violation of his
12 constitutional right to due process under the Fifth Amendment, the violation of the
13 *Administrative Procedure Act* (APA) unlawful denial of bond, and the violation of statutory
14 rights under the INA for unlawful denial of bond hearings

15 6. Accordingly, to vindicate Mr. Hurtado Flores' rights, as a member of the Bond
16 Eligible Class in *Maldonado Bautista*, as well as under the Constitution of the United States, and
17 his statutory rights under INA, this Court should grant the instant petition for a writ of habeas
18 corpus.

19 7. Therefore, the Court should order Mr. Hurtado Flores' release unless Respondents
20 provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.

21 **JURISDICTION**

22 8. This action arises under the Constitution and the *Immigration and Nationality Act*,
23 8 U.S.C. § 1101 *et seq*

1 9. This Court has jurisdiction under 28 U.S.C. § 2241 (the general grant of habeas
2 authority to the district court); 28 U.S.C. § 1331 (federal question), and Article I, section 9,
3 clause 2 of the United States Constitution (the Suspension Clause) as Mr. Roberto Cruz Arcos is
4 presently in custody at the Stewart Detention Center under or by color of the authority of the
5 United States, and such custody is in violation of the U.S. Constitution, laws, or treaties of the
6 United States.

7 10. This Court may grant relief pursuant to to 28 U.S.C. § 2241, the Declaratory
8 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

9 11. Federal district courts have jurisdiction to hear habeas claims by non-citizens
10 challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678 (2001).

11 12. Federal courts also have federal question jurisdiction, through the *Administrative*
12 *Procedure Act* (APA), to “hold unlawful and set aside agency action” that is “arbitrary,
13 capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. 706(2)(A).

14 **VENUE**

15 13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
16 500 (1973), venue lies in the United States District Court for the Southern District of Georgia,
17 the judicial district in which Petitioner currently is detained.

18 14. Venue is also properly in this Court pursuant to 228 U.S.C. § 2241(c)(3) and 8
19 U.S.C. § 1391(b)(2) and 1391(e) because the Petitioner is in the physical custody of Respondents
20 and Immigration and Customs Enforcement, an agency within the Department of Homeland
21 Security Petitioner. Mr. Hurtado Flores is detained at the Folkston D. Ray ICE Processing Center
22 in Folkston, Georgia and is under the direct control of Respondents and their agents.

1 15. Furthermore, Respondents are employees, officers, and agencies of the United
2 States, and because a substantial part of the events or omissions giving rise to the claims
3 occurred and continue to occur at the Atlanta Field Office of ICE's Enforcement and Removal
4 Operations division (ERO Atlanta) within the Southern District of Georgia's District and
5 Waycross Division.

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

7 16. The federal habeas corpus statute provides that "[a] court, justice or judge
8 entering a writ of habeas corpus shall forthwith award the writ or issue an order directing the
9 respondent to show cause why the writ should not be granted, unless it appears from the
10 application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

11 17. Courts have long recognized the significance of the habeas statute in protecting
12 individuals from unlawful detention. Habeas corpus is "perhaps the most important writ known
13 to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of
14 illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The
15 application for the writ usurps the attention and displaces the calendar of the judge or justice who
16 entertains it and receives prompt action from him within the four corners of the application."
17 *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

18 18. Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests, and this Court
19 should grant the petition for writ of habeas corpus "forthwith," as the legal issues have already
20 been resolved for class members in *Maldonado Bautista*.

21 19. However, if pursuant to Section 2243, this Court issues an order to show cause
22 (OSC), it must direct the respondents to file a return showing why the petition for a writ of
23 habeas corpus filed by Mr. Hurtado Flores pursuant to 28 U.S.C. § 2241 should not be granted.

1 25. Respondent, **WARDEN** of Folkston D. Ray ICE Processing Center, on
2 information and belief, is an employee of The Geo Group, a private corporation which runs the
3 Folkston D. Ray ICE Processing Center in Folkston, Georgia where Petitioner is detained. He
4 has immediate physical custody of Mr. Hurtado Flores. He is sued in his official capacity.

5 26. Respondent, Mr. **GEORGE STERLING**, Field Office Director of Enforcement
6 and Removal Operations, is the Director of the, Atlanta Field Office of ICE's Enforcement and
7 Removal Operations division (ERO Atlanta). As such, Mr. Sterling, Field Office Director of
8 Enforcement and Removal Operations, is Petitioner's immediate custodian and is responsible for
9 Petitioner's detention and removal. He is named in his official capacity.

10 27. Respondent, **TODD M. LYONS**, is the Senior Official Performing the Duties of
11 Director of the U.S. Immigration Customs Enforcement, is the federal agency responsible for
12 custody decisions relating to non-citizens charged with being removable from the United States,
13 including the arrest, detention, and custody status of non-citizens. Mr. Lyons has responsibility
14 for the administration of the immigration laws pursuant to 8 U.S.C. § 1103 and is a legal
15 custodian of Mr. Nolasco Gomez. He is sued in his official capacity.

16 28. Respondent, **DAREN K. MARGOLIN**, is the Director of the Executive Office
17 for Immigration Review (EOIR), is the federal agency responsible for implementing and
18 enforcing the INA in removal proceedings, including for custody redeterminations in bond
19 hearings.

20 29. Respondent, **KRISTI NOEM**, is the Secretary of the Department of Homeland
21 Security. She is responsible for the implementation and enforcement of the Immigration and
22 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms.
23 **Noem** has ultimate custodial authority over Petitioner and is sued in her official capacity.

1 30. Respondent, **PAMELA BONDI**, is the Attorney General of the United States.
2 She is responsible for the Department of Justice, of which the Executive Office for Immigration
3 Review and the immigration court system it operates is a component agency. She is sued in her
4 official capacity.

5 **STATEMENT OF FACTS**

6 31. Mr. Alan Jafet Hurtado Flores is a 19-year-old man who was born in Honduras
7 who fled his home country to [REDACTED]

8 32. Mr. Hurtado Flores entered the United States without inspection (EWI) in 2019.

9 33. On or about January 2026, Mr. Hurtado Flores went to his scheduled probation
10 appointment and was taken into custody by DHS officials.

11 34. Mr. Hurtado Flores is in the physical custody of Respondents at the Folkston D.
12 Ray ICE Processing Center in Folkston, Georgia.

13 35. Mr. Hurtado Flores is a member of the second group of people who members of
14 the Bond Eligible Class, as he:

- 15 a. **Does not have lawful status in the United States** and is currently detained at the
16 Folkston D. Ray ICE Processing Center.
- 17 b. Mr. Hurtado Flores entered **the United States without inspection** over 2 years
18 ago and presented himself to CBP officials at or near the border and close in time
19 to their entry, **was released and then re-detained** by immigration authorities
after residing in the United States, *cf. id.*; and
- 20 a. **is not subject nor detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.**

21 36. After taking Mr. Hurtado Flores into custody on or around December 2025, DHS
22 then transferred to the Folkston D. Ray ICE Processing Center. Mr. Hurtado Flores has a pending
23 asylum application and SIJS residency petition before the Immigration Court. placed. However,
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1 DHS seem to be detaining Mr. Hurtado Flores as being inadmissible under 8 U.S.C. §
2 1182(a)(6)(A)(i), as someone who entered the United States without inspection.

3 37. Mr. Hurtado Flores is being held without a court date. It is important to note that
4 the Executive Office for Immigration Review and its subagency the Immigration Court and the
5 Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory
6 relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on
7 bond.

8 38. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full
9 “force and effect of a final judgment.” 28 U.S.C. § 2201(a). Nevertheless, Respondents continue
10 to flagrantly defy the judgment in that case and continue to subject Mr. Hurtado Flores to
11 unlawful detention despite his clear entitlement to consideration for release on bond as a Bond
12 Eligible Class member.

13 39. With this in mind, it is of extreme urgency that this Court issue a decision as early
14 as practicable. This will allow the undersigned attorney to effectively argue for Mr. Hurtado
15 Flores’ release and ensure that the IJ afford Mr. Hurtado Flores a bond hearing as ordered in the
16 judgment in *Maldonado Bautista* and in accordance with his due process right.

17 40. Therefore, the Court should expeditiously grant this petition.

18 **LEGAL FRAMEWORK**

19 **A. HABEAS CORPUS**

20 41. “Habeas relief is available when a person is ‘in custody in violation of the
21 Constitution or laws or treaties of the United States.’” *Lopez-Campos v. Raycraft*, No. 2:25-cv-
22 12486, 2025 WL 2496379, at *3 (E.D. Mich. Aug. 29, 2025) (quoting 28 U.S.C. § 2241(c)(3)).
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1 42. The right to file a petition for a writ of habeas corpus is intended to, at a
2 minimum, provide “a means of reviewing the legality of Executive detention.” *Rasul v. Bush*,
3 542 U.S. 466, 474 (2004) (quoting *INS v. St. Cyr*, 533 U.S. 289, 301 (2001)).

4 43. In the context of immigration, there are two main sources of authority for habeas
5 corpus petition. The first, is the civil habeas statute, 28 U.S.C. § 2241. It provides that:

6 (a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof,
7 the district courts and any circuit judge within their respective jurisdictions. The order
8 of a circuit judge shall be entered in the records of the district court of the district
9 wherein the restraint complained of is had.

10 (c) The writ of habeas corpus shall not extend to a prisoner unless—

11 (1) He is in custody under or by color of the authority of the United States
12 or is committed for trial before some court thereof; or

13 . . .

14 (3) He is in custody in violation of the Constitution or laws or treaties of
15 the United States . . . 28 U.S. Code § 2241 - Power to grant writ.

16 44. The second basis of jurisdiction, is the Suspension Clause of the U.S. Constitution,
17 also known as the Great Writ. *See* U.S. Const. art. I, § 9, cl. 2 (“The Privilege of the Writ of
18 Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public
19 Safety may require it.”).

20 **B. DUE PROCESS CLAUSE, US CONSTITUTION**

21 45. The Fifth Amendment of the U.S. Constitution protects every person from being
22 “deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V § 2.

23 46. In the immigration context, the Supreme Court extended these constitutional
24 protections to all noncitizens within the United States, including those who entered unlawfully,
declaring that “[noncitizens] 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.” *See, Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953);

1 *see also Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (There are literally millions of aliens within
2 the jurisdiction of the United States. The Fifth Amendment, as well as the Fourteenth
3 Amendment, protects every one of these persons from deprivation of life, liberty, or property
4 without due process of law.); *Plyler v. Doe*, 457 U.S. 202, 215 (1982) (holding that unlawfully
5 present aliens were entitled to both due process and equal protection under the Fourteenth
6 Amendment).

7 47. The Court reasoned that noncitizens physically present in the United States,
8 regardless of their legal status, are recognized as persons guaranteed due process of law by the
9 Fifth and Fourteenth Amendments. *Plyler*, 457 U.S. at 210 (citing *Mezei*, 345 U.S. at 212; *Wong*
10 *Wing v. United States*, 163 U.S. 228, 238 (1896); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886)).
11 Thus, the Court determined, [e]ven one whose presence in this country is unlawful, involuntary,
12 or transitory is entitled to that constitutional protection. *Mathews*, 426 U.S. at 77; see also
13 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (explaining that the Due Process Clause applies to
14 all ‘persons’ within the United States, including aliens, whether their presence here is lawful,
15 unlawful, temporary, or permanent). “The Due Process Clause extends to all ‘persons’ regardless
16 of status, including non-citizens (whether here lawfully, unlawfully, temporarily, or
17 permanently).” *Lopez-Campos*, 2025 WL 2496379, at *9 (citing *Zadvydas v. Davis*, 533 U.S.
18 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S.
19 292, 306 (1993)).

20 48. Accordingly, notwithstanding Congress’s indisputably broad power to regulate
21 immigration, fundamental due process requirements notably constrained that power with respect
22 to aliens within the territorial jurisdiction of the United States. See *Kwong Hai Chew*, 344 U.S.
23 590, 596–97 (1953) (explaining that a lawful permanent resident may not be deprived of his life,
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1 liberty or property without due process of law, and thus cannot be deported without notice of the
2 nature of the charge and a hearing at least before an executive or administrative tribunal).

3 49. This fundamental due process protection applies to all noncitizens, including both
4 removable and inadmissible noncitizens. *See Zadvydas v. Davis*, 533 U.S. 678, 721 (2001)
5 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be
6 free from detention that is arbitrary or capricious”). It also protects noncitizens who have been
7 ordered removed from the United States and who face continuing detention, *Diouf v. Napolitano*,
8 634 F.3d 1081, 1086-87 (9th Cir. 2011), as well as those noncitizens deemed “arriving” under
9 the INA, *Jennings v. Rodriguez*, 138 S.Ct. 830, 862 (2018). (Breyer, J., dissenting) (stating that
10 “arriving” noncitizens enjoy due process protections against prolonged detention because they
11 are “are held within the territory of the United States at an immigration detention facility” (citing
12 *Wong Wing v. United States*, 163 U.S. 228, 238 (1896)); *see also Kwai Fun Wong v. United*
13 *States*, 373 F.3d 952, 973-74 (9th Cir. 2004) (concluding that the “entry fiction” does not
14 preclude substantive constitutional protection for noncitizens considered “arriving”).

15 50. As a matter of context, in the last two decades, the Supreme Court has addressed
16 several challenges to the immigration detention scheme. For instance, in *Zadvydas v. Davis*, 533
17 U.S. 678, 721 (2001), the Supreme Court explained that “Freedom from imprisonment—from
18 government custody, detention, or other forms of physical restraint—lies at the heart of the
19 liberty” that the Due Process Clause protects. *Id.* at 690. The Supreme Court then held that the
20 government must demonstrate that a noncitizen’s removal is reasonably likely to occur if the
21 noncitizen remains detained for six months after the removal period specified in 8 U.S.C. §
22 1231(a)(6). 533 U.S. at 701. In doing so, the Court recognized a presumption that detention

1 longer than six months following a noncitizen's removal period violates that noncitizen's due
2 process right to liberty. *Id.*

3 51. In *Demore v. Kim*, 538 U.S. 510, 523 (2003), the Supreme Court upheld the
4 mandatory detention of a noncitizen under 8 U.S.C. § 1226(c) based on the petitioner's
5 concession of deportability and the Court's understanding that detention under § 1226(c) is
6 typically "brief." *Demore*, 538 U.S. at 522 n.6, 528. Nevertheless, the Supreme Court's decision
7 in *Demore* did not foreclose a noncitizen's right to challenge prolonged detention that does not
8 provide protections that permit a noncitizen to challenge continued confinement.

9 52. To guarantee against such arbitrary detention and to guarantee the right to liberty,
10 due process requires "adequate procedural protections" that ensure the government's asserted
11 justification for a noncitizen's physical confinement "outweighs the individual's constitutionally
12 protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation
13 marks omitted).

14 53. Following *Zadvydas* and *Demore*, circuit court of appeals that confronted the
15 issue found either that the INA or due process require a bond hearing or release for noncitizens
16 subject to unreasonably prolonged detention pending removal proceedings. *See, e.g., Sopo v.*
17 *U.S. Attorney Gen.*, 825 F.3d 1199 (11th Cir. 2016), *vacated as moot*, 890 F.3d 952 (11th Cir.
18 2018); *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016); *Lora v. Shanahan*, 804 F.3d 601 (2d Cir.
19 2015); *Rodriguez v. Robbins (Rodriguez III)*, 804 F.3d 1060 (9th Cir. 2015); *Diop v.*
20 *ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. 2011); *Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003).

21 54. Later, in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court held that
22 the Ninth Circuit erred by interpreting 8 U.S.C. §§ 1226(c) and 1225(b) to require bond hearings
23 as a matter of statutory construction. The Supreme Court concluded that §§1225(b), 1226(a), and
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1 1226(c) do not give detained [noncitizens] the right to periodic bond hearings during the course
2 of their detention. Because the Ninth Circuit had not decided whether the Constitution itself
3 requires bond hearings in cases of prolonged detention, the Court remanded for the Ninth Circuit
4 to address the issue. *Id.* at 851. The Court’s majority opinion did not express any views on the
5 constitutional question and left it to the lower courts to address the issue in the first instance.

6 55. In his dissent, Justice Breyer expressed that “to hold a [person] without bail is to
7 deprive him of bodily “liberty...” “...where there is no bail proceeding, there has been no bail-
8 related “process” at all.” citing *United States v. Salerno*, 481 U. S. 739 –751 (1987). Justice
9 Breyer also mentioned that “[f]reedom from bodily restraint has always been at the core of the
10 liberty protected by the Due Process Clause from arbitrary governmental action.”
11 citing *Foucha v. Louisiana*, 504 U. S. 71, 80 (1992); *Demore v. Kim*, 538 U. S. 510, 532 (2003)
12 (Kennedy, J., concurring); *Zadvydas*, 533 U. S., at 718 (Kennedy, J., dissenting). To Justice
13 Breyer “[t]he Due Process Clause foresees eligibility for bail as part of due process” because
14 “[b]ail is basic to our system of law.” *Jennings*, at 862, (citing *Salerno, supra*, at 748–
15 751; *Schilb v. Kuebel*, 404 U. S. 357, 365 (1971); *Stack v. Boyle*, 342 U. S. 1, 4 (1951)).

16 56. Since the Supreme Court’s *Jennings* decision, lower courts have expressed that
17 “...any statute that allows for arbitrary prolonged detention without any process is
18 unconstitutional or that those who founded our democracy precisely to protect against the
19 government’s arbitrary deprivation of liberty would have thought so.” *See. e.g., Rodriguez v.*
20 *Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

21 57. In immigration cases, civil detention has been found to only permissible where it
22 bears a “reasonable relation to the purpose for which the individual was committed.” *Jackson v.*
23 *Indiana*, 406 U.S. 715, 738 (1972). As concluded in *Zadvydas v. Davis*, 533 U.S. at 690, due

1 process thus requires “adequate procedural protections” to ensure that the government’s asserted
2 justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally
3 protected interest in avoiding physical restraint.” *Id.* at 690 (internal quotation marks omitted).

4 58. Also, and relevant here, in the immigration context, the Supreme Court has
5 recognized only two valid purposes for civil detention: to mitigate the risks of danger to the
6 community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528. The government may not detain a
7 noncitizen based on any other justification.

8 59. Thus, where the government detains a noncitizen for a prolonged period or where
9 the noncitizen pursues a substantial defense to removal or claim to relief, due process requires an
10 individualized hearing before a neutral decisionmaker to determine whether such a significant
11 deprivation of liberty is reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy, J.,
12 concurring) (stating that an “individualized determination as to [a noncitizen’s] risk of flight and
13 dangerousness” may be warranted “if the continued detention became unreasonable or
14 unjustified”); *cf. Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the “initial
15 commitment” requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-
16 50 (1972) (noting that “lesser safeguards may be appropriate” for “short-term confinement”);
17 *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment context, that
18 “the length of confinement cannot be ignored in deciding whether [a] confinement meets
19 constitutional standards”).

20 60. To determine if the prolonged detention of a noncitizen is reasonable, Courts have
21 applied a reasonableness test, which involves three main factors. First, courts have evaluated
22 whether the noncitizen has raised a “good faith” challenge to removal—that is, the challenge is
23 “legitimately raised” and presents “real issues.” *Chavez-Alvarez v. Warden York Cty. Prison*, 783

1 F.3d 469, 476 (3d Cir. 2015). Second, reasonableness is a “function of the length of the
2 detention,” with detention presumptively unreasonable if it lasts six months to a year. *Id.* at 477-
3 78; *accord Sopo*, 825 F.3d at 1217-18. In assessing the length of detention, delay attributable to
4 the government weighs against finding the detention reasonable. *Sopo*, 825 F.3d at 1218. Third,
5 courts consider the likelihood that detention will continue pending future proceedings. *Chavez-*
6 *Alvarez*, 783 F.3d at 478 (finding detention unreasonable after ninth months of detention, when
7 the parties could “have reasonably predicted that Chavez-Alvarez’s appeal would take a
8 substantial amount of time, making his already lengthy detention considerably longer”); *Sopo*,
9 825 F.3d at 128; *Reid*, 819 F.3d at 500.

10 61. Due process also requires certain minimal bond hearing procedures. First, the
11 government must bear the burden of proof by clear and convincing evidence to justify continued
12 detention. Second, the decisionmaker must consider available alternatives to detention. Finally, if
13 the government cannot meet its burden, a decisionmaker must assess a noncitizen’s ability to pay
14 a bond must when determining the appropriate conditions of release.

15 62. The requirement that the government bear the burden of proof by clear and
16 convincing evidence is also supported by application of the three-factor balancing test from
17 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Under the *Mathews* test, Courts consider (1)
18 “the private interest that will be affected by the official action.” (2) “the risk of an erroneous
19 deprivation of such interest,” and (3) “the Government’s interest, including the function involved
20 and the fiscal and administrative burdens that the additional or substitute procedural requirement
21 would entail.” *Mathews v. Eldridge*, 424 U.S. at 335.

22 63. Due process also requires that a neutral decisionmaker consider alternatives to
23 detention. A primary purpose of immigration detention is to ensure a noncitizen’s appearance
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1 during removal proceedings. Detention is not reasonably related to this purpose if there are
2 alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S.
3 520, 538 (1979).

4 64. Courts have ruled that automatically stayed release from detention is a violation of
5 the Fifth Amendment. *See, e.g., Mohammed H. v. Trump*, 781 F. Supp. 3d 886, 895 (D. Minn.
6 2025) (finding that it “does not require any showing of dangerousness or flight risk. Nor is it
7 subject to immediate review by an immigration judge. It operates by fiat and has the effect of
8 prolonging detention even after a judicial officer has determined that release on bond is
9 appropriate. That mechanism's operation here—in the absence of any individualized
10 justification—renders the continued detention arbitrary as applied. Cf. *Zadvydas*, 533 U.S. at
11 699–700, 121 S.Ct. 2491.

12 65. The “recent shift to use the mandatory detention framework under Section
13 1225(b)(2)(A) is not only wrong but also fundamentally unfair. In a nation of laws vetted and
14 implemented by Congress, we don't get to arbitrarily choose which laws we feel like following
15 when they best suit our interests.” *Lopez-Campos*, 2025 WL 2496379, at *10.

16 66. It is important to consider for asylum seekers detention is often lengthy and that
17 immigration detainees face severe hardships while incarcerated. Immigration detainees are held
18 in lock-down facilities, with limited freedom of movement and access to their families: “the
19 circumstances of their detention are similar, so far as we can tell, to those in many prisons and
20 jails.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); *accord Chavez-Alvarez*, 783 F.3d at
21 478; *Ngo v. INS*, 192 F.3d 390, 397-98 (3d Cir. 1999); *Sopo*, 825 F.3d at 1218, 1221. “And in
22 some cases[,] the conditions of their confinement are inappropriately poor.” *Jennings*, 138 S. Ct.
23 at 861 (Breyer, J., dissenting) (citing Dept. of Homeland Security (DHS), Office of Inspector

1 General (OIG), *DHS OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE*
2 *Detention Facilities* (2017) (reporting instances of invasive procedures, substandard care, and
3 mistreatment, *e.g.*, indiscriminate strip searches, long waits for medical care and hygiene
4 products, and, in the case of one detainee, a multiday lock down for sharing a cup of coffee with
5 another detainee)).

6 67. These conditions and obstacles only further underscore the serious due process
7 concerns that prolonged immigration detention entails for Mr. Hurtado Flores. Upon weighing
8 the *Mathews* factors this Court should find that the Government's interest in fewer bond
9 hearings (the efficient processing on noncitizens for removal) is diminished. Additionally, since
10 Mr. Hurtado Flores' detention will continue pending future immigration proceedings, this Court
11 should find that the Government's interest in denying him the opportunity for a bond hearing
12 does not outweigh Mr. Hurtado Flores' liberty interest and it will also create a high risk of
13 erroneous deprivation to said right.

14 68. The government's decision that all noncitizens, like the Mr. Hurtado Flores, are to be
15 mandatorily detained is arbitrary and affords to individuals like him no process, let alone due
16 process. Therefore, it should be unconstitutional. *See Mathews v. Eldridge*, 424 U.S. 319 (1976).

17 **C. The Immigration and Nationality Act of 1952 ("INA")**

18 69. The Immigration and Nationality Act of 1952 ("INA"), codified in Chapter 12 of
19 Title 8 of the United States Code, governs all aspects of immigration law. *See* 8 U.S.C. §§ 1101
20 *et seq.* Forming the basis of current immigration laws of the United States, the INA addresses
21 issues of admission qualifications for noncitizens, naturalization and loss of nationality, refugee
22 assistance, and removal procedures for noncitizen terrorists. *Id.* *See also* Margaret C. Jasper,
23 *The Immigration and Nationality Act of 1952*, Legal Almanac: The Law of Immigration (2012).

1 70. Sections 8 U.S.C. §§ 1225, 1226 of the *Immigration and Nationality Act* (“INA”) govern how the executive branch evaluates inadmissible noncitizens. Logically speaking, 2 inspection or apprehension of the noncitizen is a necessary precondition of removal. Only after 3 a noncitizen is identified as inadmissible can removal proceedings happen.² The Supreme Court 4 has already distinguished these two provisions in *Jennings v. Rodriguez*. See 583 U.S. 281, 289 5 (2018). The *Jennings* Court determined that the government may “detain certain aliens seeking 6 admission into the country” under § 1225(b) while § 1226 “authorizes the Government to detain 7 certain aliens *already in the country* pending the outcome of removal proceedings.” *Id.* 8 (emphasis added).

9
10 71. Under § 1225, an “applicant for admission” is a noncitizen “present in the United 11 States who has not been admitted or who arrives in the United States.” 8 U.S.C. § 1225(a)(1). 12 “[A]dmission” and “admitted” are defined as “the lawful entry of the alien into the United States 13 after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A).

14 72. Section 1225(b)(1) of INA authorizes expedited removal for certain “applicants 15 for admission” in two categories. First, noncitizens “arriving in the United States” that are 16 determined by an immigration officer to be inadmissible due to misrepresentation or failure to 17 meet documents requirements. *Id.* at § 1225(b)(1)(A)(i); see also *id.* at § 1182(a)(6)(C), (a)(7).

18 73. Second, noncitizens that (a) are inadmissible because of misrepresentation or 19 failure to meet documents requirements; (b) have not “been admitted or paroled into the United 20 States”; (c) have not “affirmatively shown, to the satisfaction of an immigration officer, that 21

22 ² See also, *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr et al*. 5:25-cv-01873-SSS-BFM, --- 23 *F. Supp. 3d* ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). Amended Order Consolidating The 24 Court’s Orders On Motion For Partial Summary Judgment, Class Certification, And Application For Reconsideration Or Clarification.

1 [they have] been physically present in the United States continuously for the 2-year period
2 immediately prior to the date of the determination of inadmissibility”; and (d) have been
3 designated by the Attorney General for expedited removal. *Id.* at § 1225(b)(1)(A)(iii).

4 74. These two categories of noncitizens subject to § 1225(b)(1) are subject to
5 mandatory detention “until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297.
6 Individuals that fall into § 1225(b)(1) are “normally ordered removed ‘without further hearing or
7 review’ pursuant to an expedited removal process” unless claiming asylum or a fear of
8 persecution. *Jennings*, 53 U.S. at 287 (first quoting § 1225(b)(1)(A)(i); then citing §
9 1225(b)(1)(A)(ii)).

10 75. Noncitizens who are “seeking admission” and not covered by the expedited
11 removal provisions in § 1225(b)(1) are subject to Section 1225(b)(2). *See id.* at 287. This
12 category would include, for example, noncitizens who are arriving in the United States, seek
13 admission, and are inadmissible for some reason other than misrepresentation or failure to meet
14 documents requirements. *See* 8 U.S.C. § 1182(a)(2)–(3).

15 76. Section 1225(b)(2)(A) governs mandatory detention of applicants for admission.
16 Subject to limited exceptions, Section 1225(b)(2) provides that such noncitizens “shall be
17 detained” for full removal proceedings under § 1229a “if the examining immigration officer
18 determines” that the noncitizen “is not clearly and beyond a doubt entitled to be admitted.” *Id.* at
19 § 1225(b)(2)(A).³

20
21 ³ (b) Inspection of applicants for admission

22 (2) Inspection of other aliens

23 (A) In general

24 Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the
examining immigration officer determines that an alien seeking admission is not clearly and beyond a
doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.
8 U.S.C. § 1225(b)(2)(A).

1 77. On the other hand, Section 1226(a) “provides the general process for arresting and
2 detaining aliens who are present in the United States and eligible for removal.” This Section
3 provides for discretionary detention. 8 U.S.C. §1226(a). *See, e.g., Rodriguez Diaz v. Garland*, 53
4 F.4th 1189, 1196 (9th Cir. 2022).

5 78. Under § 1226(a), a noncitizen “may be arrested and detained” “[o]n a warrant
6 issued by the Attorney General” if their removal proceedings are pending, 8 U.S.C. § 1226(a).⁴
7 Detention pursuant to § 1226(a) is not mandatory. If the noncitizen was not charged with,
8 arrested for, or convicted of certain criminal offenses enumerated in § 1226(c),⁵ the government
9 has discretion to release them on “bond of at least \$1,500 with security approved by, and
10 containing conditions prescribed by, the Attorney General; or ... conditional parole.” *Id.* at §
11 1226(a)(2)(A)–(B).

12 79. Beyond how noncitizens are identified as inadmissible, the one key distinction
13 between these two Sections is that noncitizens detained under § 1226(a) are entitled to receive
14
15

16 ⁴ (a) Arrest, detention, and release

17 On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision
18 on whether the alien is to be removed from the United States. Except as provided in subsection (c) and
19 pending such decision, the Attorney General—

18 (1) may continue to detain the arrested alien; and

18 (2) may release the alien on—

19 (A) bond of at least \$1,500 with security approved by, an containing conditions
20 prescribed by the Attorney General... 8 U.S.C. § 1226(a).

20 ⁵ Known as the *Laken Riley Act*, subsection (c) of § 1226, provides for mandatory detention of
21 noncitizens found inadmissible or deportable under certain provisions and who have been “charged with,”
22 “arrested for,” “convicted of,” or admit “having committed” certain listed crimes. 8 U.S.C. § 1226(c).
23 “[N]oncitizens arrested and detained under § 1226 have a right to request a custody redetermination (i.e.,
24 a bond hearing) before an Immigration Judge.” *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL
2496379, at *4 (citing 8 C.F.R. 1236.1(c)(8), (d)(1)). “The IJ evaluates whether there is a risk of
nonappearance or danger to the community.” *Id.* (citing *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA
2006)).

1 bond hearings at the outset of detention. 8 C.F.R. §§ 236.1(d)(1). *See also Jennings v. Rodriguez*,
2 583 U.S. 281, 306 (2018).

3 80. Not only does § 1226(a) provide several layers of review of the agency’s initial
4 custody determination, but it also confers “an initial bond hearing before a neutral
5 decisionmaker, the opportunity to be represented by counsel and to present evidence, the right to
6 appeal, and the right to seek a new hearing when circumstances materially change.” *See, e.g.,*
7 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022) (observing that § 1226(a) and its
8 implementing regulations “provide extensive procedural protections that are unavailable under
9 other detention provision”).

10 81. For decades the DHS had applied § 1226(a) and its discretionary release and
11 review of detention “to the vast majority of noncitizens allegedly in this country without valid
12 documentation”—a practice codified by regulation. *See, e.g., Salcedo Aceros*, 2025 WL
13 2737503, at *3. However, last year the Government upended this long-held understanding of the
14 law.

15 82. First, on July 8, 2025, U.S. Immigration and Customs Enforcement (“ICE”) issued
16 an interim guidance memo stating that anyone who entered without inspection was ineligible for
17 release on bond and could not challenge their detention at a bond hearing in immigration court,
18 regardless of how long an individual has lived in the United States.⁶ As result, DHS attorneys
19 started arguing, and some IJs started finding, that such individuals were not eligible for bond
20 hearings in immigration court.

21
22
23 ⁶ *See*, AILA Doc. No. 25071607, accessible through <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (last accessed on Friday, January
24 16, 2026 at 6:27 pm.)

1 83. Then, on September 5, 2025, the Board of Immigration Appeals (“BIA”) issued a
2 precedential decision binding on all IJs, holding that an IJ had no authority to consider bond
3 requests for any person who entered the United States without inspection. *See Matter of Yajure*
4 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The BIA determined that such individuals are subject
5 to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible for release on
6 bond. In practice, DHS is not exercising this authority. As a result, thousands of people are
7 facing months or years in detention without any individualized consideration for whether they
8 should be detained.

9 84. As discussed above, mandatory detention of applicants for admission applies after
10 an immigration officer has determined that they will not be entitled to admission if the
11 examining immigration officer determines that [a noncitizen] seeking admission is not clearly
12 and beyond a doubt entitled to be admitted. 8 U.S.C. § 1225(b)(2)(A). But the Government is
13 now contending that anyone who entered without inspection remains an “applicant for
14 admission” who is “seeking admission” and thus subject to mandatory detention under Section
15 1225(b)(2). *See e.g., Rodriguez Vasquez v. Bostock, et al.* 3:25-CV-05240-TMC, 2025 WL
16 2782499 (W.D. Wash. Sept. 30, 2025) (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)).

17 85. In regard to this new interpretation, as of late 2025, several district courts have
18 held that the Government’s new, and more expansive interpretation of mandatory detention
19 under the INA is either incorrect or likely incorrect on the basis that this reading of the statute
20 would render 1226(c) inoperable or moot. Several Courts have then rejected the government’s
21 position and have held that such individuals are subject to § 1226(a) and thus eligible for a bond
22 hearing. *See also e.g., Rodriguez Vasquez v. Bostock, et al.* 3:25-CV-05240-TMC, 2025 WL
23 2782499 (W.D. Wash. Sept. 30, 2025); *See e.g., Aguilar Merino v. Ripa*, 25-23845-CIV, 2025

1 WL 2941609 (S.D. Fla. Oct. 15, 2025), and *J.Y.L.C., v. Bostock, et al.*, 3:25-cv-02083-AB, (D.
2 Or. Nov. 12, 2025) (collecting cases rejecting *Matter of Yajure Hurtado*).

3 86. One of those recent cases where the Court rejected the government’s position, and
4 relevant here, is *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp.
5 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). On November 20, 2025, the District
6 Court granted partial summary judgment for the four petitioners, holding that the government’s
7 policy is inconsistent with the plain language of the *Immigration and Nationality Act* (“INA”),
8 and that petitioners are properly subject to § 1226(a). See e.g., *J.A.M. v. Streeval*, No. 4:25-CV-
9 342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025) and *P.R.S. v. Streeval*, No. 4:25-cv-330-
10 CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025).

11 87. Then, on November 25, 2025, the Court certified all noncitizens in the United
12 States without lawful status who (1) have entered or will enter the United States without
13 inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be
14 subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department
15 of Homeland Security makes an initial custody determination as “the Bond Eligible Class.” and
16 expressly “extend[ed] the same declaratory relief granted to Petitioners to the Bond Eligible
17 Class as a whole.” *Id.* at *9 (emphasis added).

18 88. As expressed above, Mr. Hurtado Flores is a member of the second group of
19 people who are members of the *Maldonado Bautista* Bond Eligible Class.

20 **D. THE ADMINISTRATIVE PROCEDURE ACT (APA), 5 U.S.C. § 706(2)(A)**

21 89. Section 706(2)(A) of the APA commands a reviewing court to “hold unlawful *and*
22 *set aside* agency action, findings, and conclusions” that are found to be “arbitrary, capricious, . . .
23 or otherwise not in accordance with law.” § 706(2)(A) (emphasis added).

1 90. APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial
2 review of agency action under the APA may proceed by “any applicable form of legal action,
3 including actions for declaratory judgments or writs of prohibitory or mandatory injunction or
4 habeas corpus”). The APA affords a right of review to a person who is “adversely affected or
5 aggrieved by agency action.” 5 U.S.C. § 702.

6 91. Respondents’ continued detention of Mr. Hurtado Flores for an prolong or
7 otherwise indefinite period of time without a review of his custody or a bond hearing is adversely
8 and severely affecting his liberty and freedom.

9 **E. EXHAUSTION**

10 92. Section 706(2)(A) of the APA commands a reviewing court to “hold unlawful *and*
11 *set aside* agency action, findings, and conclusions” that are found to be “arbitrary, capricious, . . .
12 or otherwise not in accordance with law.” § 706(2)(A) (emphasis added).

13 93. Under the doctrine of exhaustion of administrative remedies, ‘a party may not
14 seek federal judicial review of an adverse administrative determination until the party has first
15 sought all possible relief within the agency itself.’” *Howell v. INS*, 72 F.3d 288, 291 (2d Cir.
16 1995) (quoting *Guitard v. U.S. Sec’y of Navy*, 967 F.2d 737, 740 (2d Cir. 1992)).

17 94. However, a party need not exhaust administrative remedies, however, when the
18 available remedies would “provide no genuine opportunity for adequate relief” or when
19 “administrative appeal would be futile.” *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003)
20 (Sotomayor, J.) (quoting *Able v. United States*, 88 F.3d 1280, 1288 (2d Cir. 1996)). *See also*
21 *McCarthy v. Madigan*, 503 U.S. 140, 146-49 (1992), *superseded by statute on other grounds as*
22 *stated in Booth v. Churner*, 532 U.S. 731 (2001) (noting that traditional exceptions include where
23 exhaustion would cause “undue prejudice to subsequent assertion of a court action” or

1 “irreparable harm” to the petitioner, where there is “some doubt as to whether the agency was
2 empowered to grant effective relief,” or where it would be futile because “the administrative
3 body is shown to be biased or has otherwise predetermined the issue before it”) (internal
4 quotation marks omitted).

5 95. In the context of immigration, Congress has not explicitly mandated exhaustion.
6 Where Congress has not explicitly spoken, requiring the exhaustion of administrative remedies
7 lies within “sound judicial discretion.” *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). In
8 exercising that discretion, the Supreme Court has stated that “federal courts must balance the
9 interest of the individual in retaining prompt access to a federal judicial forum against
10 countervailing institutional interests favoring exhaustion.” *Id.* at 146. Those institutional interests
11 are “protecting administrative agency authority and promoting judicial efficiency.” *Id.* at 145.

12 96. The *McCarthy* Court also identified situations in which the interest of the individual
13 weighs heavily against the institutional interests. *See id.* at 146–49. Relevant here, “an
14 administrative remedy may be inadequate where the administrative body . . . has otherwise
15 predetermined the issue before it.” *Id.* at 148 (citing *Gibson v. Berryhill*, 411 U.S. 564, 575, n.14
16 (1973)).

17 97. As mentioned above, on July 8, 2025, the U.S. Immigration and Customs
18 Enforcement (“ICE”) was instructed, via an interim guidance memo, that anyone who entered
19 without inspection (EWIs) is ineligible for release on bond. Then, on September 5, 2025, the
20 Board of Immigration Appeals (“BIA”) held that “[b]ased on the plain language of section
21 235(b)(2)(A) of the [INA], Immigration Judges lack authority to hear bond requests or to grant
22 bond to aliens who are present in the United States without admission.” *See Matter of Yajure*
23 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

1 98. In accordance with the July 8, 2025 interim guidance memo and the Board of
2 Immigration Appeals (BIA) decision in *Matter of Yajure Hurtado*, DHS' attorneys have the
3 practice of arguing, and Immigration Court IJs throughout the country, including those stationed
4 at Folkston D. Ray ICE Processing Center have started finding that individuals such as Mr.
5 Hurtado Flores could not challenge their detention at a bond hearing in immigration court,
6 regardless of how long an individual has lived in the United States. As result, individuals, such
7 as Mr. Hurtado Flores are denied bond hearings in immigration court.

8 99. Since the Board of Immigration Appeals (BIA) is an administrative body located in
9 the DOJ, which, of course, is part of the executive branch of the government. Its members are
10 appointed by the Attorney General, and its decisions are binding on all immigration judges,
11 *Yajure Hurtado* thus precludes an IJ from finding jurisdiction over noncitizens like Mr. Hurtado
12 Flores to hold a custody redetermination hearing. As such, this Court should find that the
13 agency's position is already set and recourse to administrative remedies is very likely futile.

14 100. Additionally, Immigration Judges have informed class members in bond hearings
15 that they have been instructed by "leadership" that the declaratory judgment in *Maldonado*
16 *Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound
17 to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA
18 2025).

19 101. Since the government has already predetermined that anyone who entered without
20 inspection (EWIs) is ineligible for release on bond, established a no-bond for EWIs policy, and
21 has resorted to an across-the-board application of § 1225(b)(2), Mr. Hurtado Flores had to
22 proceed directly to filing this petition for writ of habeas corpus based on *Maldonado Bautista*
23 class membership and for the violation to his statutory and constitutional rights.

1 108. Respondents are parties to *Maldonado Bautista* and bound by the Court’s
2 declaratory judgment, which has the full “force and effect of a final judgment.” 28 U.S.C.
3 § 2201(a).

4 109. By denying Mr. Hurtado Flores a bond hearing under § 1226(a) and wrongly
5 asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Mr.
6 Hurtado Flores’ statutory rights under the INA and the Court’s judgment in *Maldonado Bautista*.

7 **COUNT 2: UNCONSTITUTIONAL DETENTION IN**
8 **VIOLATION OF THE FIFTH AMENDMENT**

9 110. Petitioner, Mr. Hurtado Flores, repeats, re-alleges, and incorporates by reference
10 each and every allegation in the preceding paragraphs as if fully set forth herein.

11 111. “Freedom from imprisonment—from government custody, detention, or other
12 forms of physical restraint—lies at the heart of the liberty that [the] Clause protects.” *Zadvydas*
13 *v. Davis*, 533 U.S. 678, 690 (2001).

14 112. Civil immigration detention is only permissible where it bears a “reasonable
15 relation to the purpose for which the individual was committed.” *Jackson v. Indiana*, 406 U.S.
16 715, 738 (1972); *Zadvydas*, 533 U.S. at 690. Those purposes are limited: preventing flight and
17 protecting the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

18 113. Mr. Hurtado Flores’ immigration proceedings are at an early stage, and he could
19 raise a “good faith” challenge to removal. There is no removal order. His removal is not
20 imminent or reasonably foreseeable.

21 114. The Mr. Hurtado Flores’ continued and prolonged detention does not bear a
22 reasonable relation to the purpose for which it was committed until the government satisfies its
23 burden of proof to show by clear and convincing evidence that community protection or flight
24 risk concerns apply to him. This can only happen in a bond hearing, which the Respondents are

1 not affording to Mr. Hurtado Flores. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972);
2 *Zadvydas*, 533 U.S. at 690.

3 115. Furthermore, the mandatory detention provision at 8 U.S.C. § 1225(b)(2) does
4 not apply to noncitizens, such as Mr. Hurtado Flores, residing in the United States who are
5 subject to the grounds of inadmissibility only because they previously entered the country
6 without being admitted.

7 116. Petitioner, Mr. Hurtado Flores, is detained under § 1226(a) and is not subject to
8 another detention provision, such as 1225(b)(1), § 1226(c), or § 1231.

9 117. However, in accordance with the BIA decision in *Matter of Yajure Hurtado*, DHS
10 attorneys have the practice of arguing and IJs throughout the country, including those stationed
11 the Folkston D. Ray ICE Processing Center have started finding that individuals, such as Mr.
12 Hurtado Flores, could not challenge their detention at a bond hearing in immigration court,
13 regardless of how long an individual has lived in the United States. As result, individuals such
14 as, Mr. Hurtado Flores, are denied bond hearings in immigration court.

15 118. These cumulative actions render his detention even more constitutionally suspect,
16 as they reflect punitive conduct rather than civil processing.

17 119. Respondents lack statutory authority to detain Mr. Hurtado Flores under Section
18 1225(b)(2) because that statute does not apply to noncitizens in his circumstances. Accordingly,
19 Mr. Hurtado Flores' continued detention constitutes a deprivation of liberty without due process
20 of law. The Court should order his release.

21 **COUNT 3: VIOLATION OF INA AND ITS**
22 **IMPLEMENTING REGULATIONS; 8 U.S.C. § 1226(A)**
23 **UNLAWFUL DENIAL OF BOND HEARINGS**

1 120. Petitioner, Mr. Hurtado Flores, herein incorporates all allegations and facts set
2 forth in the paragraphs above.

3 121. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to
4 noncitizens, such as Mr. Hurtado Flores, residing in the United States who are only subject to the
5 grounds of inadmissibility because they previously entered the country without being admitted.

6 122. Mr. Hurtado Flores is detained under § 1226(a) and is not subject to the any
7 detention provisions proscribed in 1225(b)(1), § 1226(c), or § 1231.

8 123. The government's no-bond for EWIs policy and the incorrect, willful, and
9 capricious application of § 1225(b)(2) to Mr. Hurtado Flores violates the *Immigration and*
10 *Nationality Act*.

11 **COUNT 4: UNLAWFUL DENIAL OF BOND HEARING IN**
12 **VIOLATION OF EIGHTH AMENDMENT RIGHT TO BAIL**

13 124. Petitioner, Mr. Hurtado Flores, re-alleges and incorporates by reference the
14 paragraphs above.

15 125. The Eighth Amendment of the United States Constitution prohibits "cruel and
16 unusual punishments." U.S. Const. amend. VIII cl. 4.2.

17 126. Bail is "basic to our system of law." It not only "permits the unhampered
18 preparation of a defense," but also "prevent[s] the infliction of punishment prior to
19 conviction." *Jennings*, at 862, (Breyer, J., dissenting) citing *Salerno, supra*, at 748–
20 751; *Schilb v. Kuebel*, 404 U. S. 357, 365 (1971); *Stack v. Boyle*, 342 U. S. 1, 4 (1951).

21 127. The government's categorical, incorrect, willful, and capricious application of §
22 1225(b)(2) to Mr. Hurtado Flores and continued detention without a bond hearing results in
23 indefinite and unconstitutional imprisonment which surmounts to a cruel and unusual
24 punishment in violation of the Eighth Amendment

1 128. For these reasons, Mr. Hurtado Flores' ongoing and prolonged detention without
2 a bond hearing violates the Eighth Amendment.

3 **COUNT 5: CONTINUED DETENTION WITHOUT BOND**
4 **HEARING IN VIOLATION OF THE ADMINISTRATIVE**
5 **PROCEDURE ACT, 5 U.S.C. § 706(2)(A)**

6 129. Petitioner, Mr. Hurtado Flores, herein incorporates all allegations and facts set
7 forth in the paragraphs above.

8 130. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to
9 noncitizens, such as Mr. Hurtado Flores, residing in the United States who are only subject to the
10 grounds of inadmissibility because they originally entered the United States without inspection.
11 Such noncitizens are detained under § 1226(a), unless they are subject to another detention
12 provision, such as § 1225(b)(1), § 1226(c) or § 1231.

13 131. The Mr. Hurtado Flores is detained under § 1226(a) and is not subject to the any
14 detention provisions proscribed in 1225(b)(1), § 1226(c), or § 1231.

15 132. Nonetheless, IJs stationed at Folkston D. Ray ICE Processing Center have a
16 policy and practice of applying § 1225(b)(2) and denying bond hearings to detainees, such as Mr.
17 Hurtado Flores.

18 133. Respondents continue to keep Mr. Hurtado Flores detained under the wrong
19 provision of INA. Such action against Mr. Hurtado Flores is arbitrary, capricious, and not in
20 accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 23 a. Assume jurisdiction over this matter;

- 1 b. Issue an Order prohibiting the Respondents from transferring Petitioner from the
- 2 district without the court's approval;
- 3 c. Issue a declaration that Respondents are detaining Petitioner in violation of the
- 4 declaratory judgment issued in *Maldonado Bautista*;
- 5 d. Issue a Writ of Habeas Corpus requiring that within one day, Respondents release
- 6 Petitioner; on his own recognizance, under parole, or on low bond or any other
- 7 reasonable conditions of supervision;
- 8 e. Alternatively, issue a Writ of Habeas Corpus, hold a hearing before this Court if
- 9 warranted to determine if the Petitioner should be subject to mandatory detention
- 10 under 8 U.S.C. § 1225(b)(2); require Respondents to release Petitioner unless they
- 11 provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;
- 12 a. Issue a declaration that Petitioner's ongoing prolonged detention violates the Due
- 13 Process Clause of the Fifth Amendment and the Eighth Amendment.
- 14 a. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
- 15 (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under
- 16 law; and
- 17 b. Grant any other and further relief that this Court deems just and proper.

18 Respectfully submitted,

19 /s/ Michael Urbina

20 Michael Urbina

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22 Counsel for Petitioner

23 Dated: February 10, 2026

