

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

Tomas Gustavo GUZMAN VERDUGO )

A  )

Petitioner )

v. )

Vernon Liggins )

Acting Director, Baltimore Field Office, )

Immigration and Customs Enforcement; )

Todd Lyons, Director of )

Immigration and Customs Enforcement; )

Kristi Noem, Secretary of Homeland Security; and )

Pamela Jo Bondi, United States Attorney General )

Respondents )

(sued in their official capacity) )

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) Case Number:

) PETITION FOR WRIT

) OF HABEAS CORPUS AND

) COMPLAINT FOR DECLARATORY

) AND INJUNCTIVE RELIEF AND FOR

) AN ORDER TO SHOW CAUSE

**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241  
(Expedited Consideration Requested)**

**INTRODUCTION**

1. Petitioner, Tomas Gustavo Guzman Verdugo, is a noncitizen from Mexico. On information and belief, Petitioner entered the United States without inspection in about 2015 or 2016 at the age of 19 or 20 years old. He was not apprehended or detained at the time, and he has remained in the United States ever since. In late 2025, Petitioner applied for benefits with United States Citizenship and Immigration Services (USCIS) after experiencing domestic violence from his U.S. citizen spouse. In addition to his estranged spouse, Petitioner has three U.S. citizen siblings, the eldest of whom is an active-duty member of the U.S. Marine Corps. Petitioner is employed full-time and is the owner of a Maryland-based landscaping company. He is visibly Hispanic and speaks Spanish as his first and best language.
2. On February 10, 2026, agents from the Department of Homeland Security (“DHS”) detained Petitioner in what appears to be a case of racial profiling. Shortly after leaving his home for work at approximately 6:30 A.M., Petitioner was driving a privately owned vehicle when DHS agents flashed their lights. Petitioner pulled over and DHS agents detained him.
3. Petitioner is now being held in Respondent’s Custody at Immigration and Customs Enforcement’s Baltimore Field Office, located at 31 Hopkins Plaza, Baltimore, MD 21201. As of 3:25 P.M. on February 12, 2026, the ICE Online Detainee Locator System showed Petitioner “In ICE Custody” and showed his current detention facility as “Call ICE For Details,” which is consistent with his confinement at the Baltimore Field Office “hold room.”
4. Petitioner will likely be transferred soon to a long-term ICE detention facility outside of this jurisdiction.
5. Petitioner requests an immediate order from this Honorable Court retaining jurisdiction over Petitioner pending the resolution of this matter.
6. Petitioner brings this petition for a writ of habeas corpus to seek enforcement of his rights as a member of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) Petitioner now faces unlawful detention because

the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) refuse to abide by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v. Santacruz*.

7. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at \*11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, 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).
8. 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.
9. Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief.
10. Petitioner is a member of the Bond Eligible Class, as he:
  - a. does not have lawful status in the United States and is currently detained at the Baltimore Field Office. He was apprehended by immigration authorities on February 10, 2026;
  - b. entered the United States without inspection approximately ten years ago and was not apprehended upon arrival, *cf. id.*; and
  - c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.
11. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member.

12. Immigration judges have informed class members in bond hearings that they have been instructed by “leadership” that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency’s prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) (holding that all noncitizens present in the United States who entered the country without a lawful entry must be mandatorily detained under 8 U.S.C. § 1225(b) rather than the discretionary detention provision of 8 U.S.C. § 1226(a), regardless of the number of years that have passed since that unlawful entry). These instructions were originally predicated on the idea that the partial summary judgment in the case was not final, but after the final judgment was issued on December 18, 2025, the rationale shifted to an extremely questionable argument that a final declaratory judgment is not binding.
13. Because Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista*, the judgment that the legal conclusion underlying *Yajure Hurtado* is no longer tenable, the Court should accordingly order that Respondents must release Petitioner.
14. Alternatively, the Court should order Petitioner’s release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.
15. In the alternative, this Court should, in its inherent power, release Petitioner pending resolution of this Petition.

#### **PARTIES**

16. Petitioner is a noncitizen from Mexico who is currently detained by ICE. On information and belief, Petitioner is currently detained at the ICE Baltimore Field Office, located at 31 Hopkins Plaza, Baltimore, MD 21201.
17. Respondent Vernon Liggins is the Acting Field Office Director of the Baltimore Field Office for Immigration and Customs Enforcement (“ICE”) within the United States Department of Homeland Security, is responsible for the administration of immigration laws and the execution of detention and removal determinations, and is a custodian of Petitioner. Respondent Liggins’ address is Baltimore ICE ERO Field Office, 31 Hopkins Plaza, 6<sup>th</sup> Floor, Baltimore, MD 21201.
18. Respondent Todd Lyons is the Acting Director of ICE. He is responsible for the

administration and enforcement of the immigration laws of the United States; routinely transacts business in the District of Maryland; is legally responsible for pursuing any effort to remove the Petitioner; and as such is a custodian of the Petitioner His address is ICE, Office of the Principal Legal Advisor, 500 12th St SW, Mail Stop 5900, Washington, DC 20536-5900.

19. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's arrest and detention. Respondent is a legal custodian of Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr Ave. SE, Washington, DC 20528-0485.
20. Respondent Pamela Jo Bondi is the United States Attorney General. She is being sued in her official capacity. She oversees Immigration Judges and the Board of Immigration Appeals. She is also Petitioner's legal custodian. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington DC 20530-0001.

#### **JURISDICTION AND VENUE**

21. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.
22. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
23. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651. The Court has jurisdiction under 28 U.S.C. § 1331, 2241 (habeas corpus) and Article I, Section 9, Clause 2 of the U.S. Constitution ("Suspension Clause").
24. Venue is proper in the District of Maryland because, on information and belief, Petitioner is currently detained by Respondents in Baltimore, MD, which is the territorial jurisdiction of this Court. 28 U.S.C. § 1391.

**REQUIREMENTS OF 28 U.S.C. § 2243**

25. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
26. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, 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).

**FACTUAL ALLEGATIONS**

**CUSTODY AND BACKGROUND**

27. Petitioner is 29 years-old and was born in Mexico. He was detained by the Department of Homeland Security (“DHS”) on February 12, 2026, and is currently in the Respondent’s custody at the Baltimore Field Office, located at 31 Hopkins Plaza, Baltimore, MD 21201.
28. On information and belief, Petitioner entered the United States without inspection in 2015 or 2016 at 19 or 20 years of age. Petitioner was not apprehended or detained at the time, and he has remained in the United States ever since. On or about late 2025, Petitioner applied for benefits under the Violence Against Women Act with United States Citizenship and Immigration Services (USCIS) after experiencing domestic violence from his U.S. citizen spouse. In addition to his estranged spouse, Petitioner has three U.S. citizen siblings, the eldest of whom is an active-duty member of the U.S. Marine Corps. Petitioner is employed full-time and is the owner of a Maryland-based landscaping company. He is visibly Hispanic and speaks Spanish as his first and best language.

**DETENTION**

29. On February 12, 2026, agents from the Department of Homeland Security (“DHS”) detained Petitioner during a roadside stop. Shortly after leaving his home for work at

approximately 6:30 A.M., Petitioner was driving a privately owned vehicle when ICE agents flashed their lights. Petitioner pulled over and ICE agents detained him.

### RESPONDENTS' NATIONWIDE POLICIES

30. Since August 2025, Respondents' agents in the DMV region have been systematically making immigration arrests without a warrant and without probable cause findings as to immigration status and flight risk. ICE has used untargeted traffic stops to arrest individuals for alleged civil immigration violations.<sup>1</sup> ICE agents have arrested parents dropping off their children at school, leading neighbors to form "walking school buses" to safely escort kids to school.<sup>2</sup> People have also been arrested by federal agents on their way to church in the Columbia Heights neighborhood in D.C., where a large number of immigrants live, making people afraid to attend services.<sup>3</sup> Federal agents have also targeted food delivery drivers in D.C., stopping and arresting them without prior knowledge about their immigration status.<sup>4</sup>
31. On September 6, 2025, the Board of Immigration Appeals (BIA) released *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025). The BIA took the novel position that all noncitizens present in the United States who entered the country without a lawful entry—which would include Petitioner—must be mandatorily detained under 8 U.S.C. § 1225(b). *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220, 228.
32. On December 18, 2025, the District Court for the Central District of California issued a final judgment to the Bond Eligible Class, holding that they are detained under 8 U.S.C. §

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<sup>1</sup> See, e.g., Trump's crackdown in DC leaves residents on edge as federal agents set up checkpoints, WTOPnews (Aug. 21, 2025), <https://wtop.com/dc/2025/08/trumps-immigration-crackdown-brings-checkpoints-and-new-fears-to-washington>.

<sup>2</sup> Teo Armus, They watched ICE detain their dad. Now D.C. neighbors escort them to school., Wash. Post (Sept. 11, 2025), <https://www.washingtonpost.com/immigration/2025/09/11/immigrants-school-kids-trump-dc>; see also Federal surge has taken a toll on children of immigrants in Washington, PBS News (Sept. 17, 2025, 2:24 PM), <https://www.pbs.org/newshour/politics/federal-surge-has-taken-a-toll-on-children-of-immigrants-in-washington>.

<sup>3</sup> Michael Sean Winters, DC Mass attendance falls after immigration arrests, The Tablet (Aug. 25, 2025), <https://www.thetablet.co.uk/news/dc-mass-attendance-falls-after-immigration-arrests>; see also Madalaine Elhabbal, ICE arrests take toll on DC churches, Cath. News Agency (Aug. 21, 2025, 6:18 PM), <https://www.catholicnewsagency.com/news/266095/ice-arrests-take-toll-on-dc-churches>.

<sup>4</sup> Teo Armus et al., ICE Is Joining D.C. Police Patrols. Moped Drivers Are Getting Detained, Wash. Post (Aug. 21, 2025), <https://www.washingtonpost.com/dc-md-va/2025/08/21/dc-police-ice-moped-crackdown-delivery-drivers>; Didi Martinez, Detentions of D.C. delivery drivers leave immigrant communities on edge, NBC News (Aug. 19, 2025, 5:00 AM), <https://www.nbcnews.com/news/us-news/dc-delivery-driver-detentions-spark-concern-fear-community-rcna225671>.

1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista, supra*. Nevertheless, since then, the Executive Office for Immigration Review and the Department of Homeland Security have refused to abide by the declaratory relief, denying the opportunity for release on bond.

### **LEGAL FRAMEWORK AND ARGUMENT**

#### **The Petitioner is detained under 8 U.S.C. § 1226(a)**

33. The dispositive issue with respect to the Petitioner's claim of due process violations reduces to whether Petitioner's detention is governed by the mandatory detention provisions in 8 U.S.C. § 1225(b)(2) -as mandated by the BIA's interpretation in *Matter of Yajure Hurtado*- or the discretionary detention provisions in 8 U.S.C. § 1226(a).
34. Section 1225(a) provides that "[a]n alien present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1). "Applicants for admission are either covered by Section 1225(b)(1) or 1225(b)(2)." *Rodriguez v. Bondi*, 2025 WL 2490670, at \*2 (E.D. Va. June 24, 2025). Section 1225(b)(2) applies to all applicants that are not "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation," or who receive special designation by the Attorney General. See *Jennings*, 583 U.S. at 287 (explaining that § 1225(b)(2) "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)"). Both sections 1225(b)(1) and (b)(2) require the detention of persons deemed to be applicants for admission "until their asylum application is fully adjudicated or until removal proceedings conclude." *Rodriguez*, 2025 WL 2490670, at \*2.
35. Applicants for admission covered by § 1225(b)(2) "shall be detained for a [removal] proceeding" if an immigration officer "determines that an alien seeking admission is not clearly and beyond doubt entitled to be admitted" into the United States. 8 U.S.C. § 1225(b)(2)(A). Section 1225(b) also allows for an applicant for admission to be released on parole "for urgent humanitarian reasons or significant public benefit." *Jennings*, 583 U.S. at 288 (quoting 8 U.S.C. § 1182(d)(5)(A)).
36. In contrast with § 1225(b), § 1226(a) sets forth "the default rule" for detaining and removing aliens "already present in the United States." *Jennings v. Rodriguez*, 583 U.S.

281 (2018) at 303; see *Abreu v. Crawford*, 2025 WL 51475, at \*3 (E.D. Va Jan. 8, 2025) (“There is a statutory distinction between noncitizens who are detained upon arrival into the United States and those who are detained after they have already entered the country, legally or otherwise.”).

37. Section 1226(a) provides that, “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Pending the removal decision, the Attorney General may “continue to detain the arrested alien,” “release the alien on bond of at least \$1,500,” or “release the alien on conditional parole.” *Id.* § 1226(a)(1)-(2).

**The Respondents’ Detention of the Petitioner without Custody Review Violates His Procedural Due Process Rights**

38. To determine whether civil detention violates a detainee’s Fifth Amendment procedural due process rights, courts apply the familiar three-part test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts weigh 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.” *Id.* at 335.
39. The first *Mathews* factor requires consideration of the private interests affected by the federal respondents’ denial of Petitioner’s opportunity for a neutral custody review by an immigration judge. “The interest in being free from physical detention” is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); see *United States v. Salerno*, 481 U.S. 739, 755 (1987) (“In our society liberty is the norm, and detention ... is the carefully limited exception.”). In Petitioner’s case, the fundamental nature of freedom weighs in his favor, as he has lived in the United States for close to a decade, is married to a U.S. Citizen and pursuing immigration benefits through proper procedures, is the brother to three U.S. Citizen siblings, including an active-duty member of the U.S. Marine Corps, and is a Maryland small business owner.
40. Second, the risk that a noncitizen’s freedom will be erroneously deprived without access

to a neutral custody review is significant, as any internal process to demonstrate to ICE that release is warranted is not subject to review or challenge and indeed has no published procedural rules. All § 1225(b) detainees who seek release from custody must provide evidence to their individual ICE detention officer who reviews the evidence and makes a decision on custody. Whether that decision is subject to supervisor review is unknown, and possibly not universally enforced. And even if it were, ICE is not a neutral arbiter of whether a noncitizens' detention is necessary—indeed, one cannot be both judge and jailer and still be called neutral.

41. Finally, the proposed procedures -requiring that the Petitioner be afforded a bond hearing before an immigration judge- does not meaningfully prejudice the government's interest in detaining dangerous noncitizens during removal proceedings.

**The Respondents' arrest of Petitioner violated the Fourth Amendment prohibition against unreasonable searches and seizures as well as statutory requirements for a warrantless immigration arrest.**

42. In the immigration context, to stop an individual for brief questioning about immigration status, the Government must have reasonable suspicion that the individual is illegally present in the United States. See *United States v. Brignoni-Ponce*, 422 U. S. 873, 880–882 (1975); *United States v. Arvizu*, 534 U. S. 266, 273 (2002); *United States v. Sokolow*, 490 U. S. 1, 7 (1989). The reasonable suspicion inquiry turns on the “totality of the particular circumstances.” *Brignoni Ponce*, 422 U. S., at 885, n. 10; *Arvizu*, 534 U. S., at 273.
43. While factors such as (i) presence at particular locations such as bus stops, car washes, day laborer pickup sites, agricultural sites, and the like; (ii) the type of work one does; (iii) lack of English speaking ability or speaking English with an accent; and (iv) apparent race or ethnicity may be considered in the totality of the circumstances, apparent ethnicity alone cannot furnish reasonable suspicion; however, it can be a “relevant factor” when considered along with other salient factors. *Noem v. Vasquez Perdomo*, U.S. 606, \_\_\_\_, 5-6 (2025); *Brignoni Ponce*, 422 U. S., at 887.
44. Under the totality of the circumstances, there was not a reasonable suspicion to detain the Petitioner to inquire about his immigration status. Petitioner was driving a privately

owned vehicle and, upon information and belief, had committed no crime, offense, or violation – traffic or otherwise.

45. Even where reasonable suspicion for a brief investigative stop has been established, an immigration officer may conduct a warrantless arrest of a noncitizen only when (1) the officer has “reason to believe” a person is in the United States in violation of the law; and (2) the officer has “reason to believe” the individual is likely to escape before a warrant can be obtained for his arrest. 8 U.S.C. §1357(a)(2).
46. Courts have interpreted the “reason to believe” standard for warrantless immigration arrests authorized under Section 1357(a) to be equivalent to the Fourth Amendment’s probable cause standard. See e.g. *Lau v. U.S. Immigr. & Naturalization Serv.*, 445 F.2d 217, 222 (D.C. Cir. 1971); *Morales v. Chadbourne*, 793 F.3d 208, 216–18 (1st Cir. 2015). Under this standard, courts have held that an immigration officer must have sufficient facts that would lead a reasonable person to believe, based on the circumstances, that the alien has violated federal immigration laws and is likely to escape before an ICE warrant can be obtained.
47. Here, there was no warrant for Petitioner’s arrest and there was no basis for a warrantless arrest. DHS agents initiated the forcible arrest of Petitioner based solely on the Petitioner’s ethnicity and English language abilities; and the Petitioner made no attempt to evade arrest or flee from the agents. The agents did not have reason to believe the Petitioner was in violation of immigration laws based on the information available to them before initiating the arrest and they did not have reason to believe he was likely to escape before a warrant could be obtained, therefore Petitioner was arrested in violation of 8 U.S.C. §1357(a)(2).

## **CLAIMS FOR RELIEF**

### **COUNT ONE**

#### **Violation of Fifth Amendment Right to Due Process**

48. The allegations in the above paragraphs are realleged and incorporated herein.
49. The Due Process Clause of the Fifth Amendment forbids the Government from depriving any person of liberty without due process of law. U.S. Const. amend. V.
50. To determine whether civil detention violates a detainee’s Fifth Amendment procedural

due process rights, courts apply the three-part test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976)

51. In Petitioner's case, the fundamental nature of freedom weighs in his favor, as he has lived in the United States for close to a decade, is married to a U.S. Citizen and pursuing immigration benefits through proper procedures, is the brother to three U.S. Citizen siblings, including an active-duty member of the U.S. Marine Corps, and is a Maryland small business owner.
52. Second, the risk that Petitioner's freedom will be erroneously deprived is significant, as the Executive Office for Immigration Review and the Department of Homeland Security (DHS) have refused to abide by the declaratory relief ordered in *Maldonado Bautista*, *supra*.
53. Finally, the proposed procedures -requiring that the Petitioner be afforded a bond hearing before an immigration judge- do not meaningfully prejudice the government's interest in detaining dangerous noncitizens during removal proceedings.
54. Respondents have no constitutional authority to deprive Petitioner of due process, and to the extent that any decision of the Attorney General, statute, or regulation conflicts with that right, the authority must be declared unconstitutional and corrective measures taken.
55. As a result of the constitutional violation against Petitioner by Respondents, he has suffered prejudice, actual and substantial hardship, and irreparable injury in fact.
56. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

## **COUNT TWO**

### **8 U.S.C. § 1226(a)**

57. The allegations in the above paragraphs are realleged and incorporated herein.
58. 8. U.S.C. § 1226(a) states that "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States" and that the Attorney General may "continue to detain the arrested alien," "release the alien on bond of at least \$1,500," or "release the alien on conditional parole." 8 U.S.C. § 1226(a)(1)-(2)
59. Section 1226(a) sets forth "the default rule" for detaining and removing aliens "already present in the United States." *Jennings v. Rodriguez*, 583 U.S. 281 (2018) at 303.

60. Because the Petitioner 1) resided in the United States for approximately ten years; 2) was arrested while already present in the United States, and 3) there are no other grounds for mandatory detention under § 1226, his detention is governed by § 1226(a).
61. Respondent's policy categorically denying the Petitioner an opportunity for a bond hearing before an immigration judge pursuant to the BIA's decision in *Matter of Yajure Hurtado* violates 8 U.S.C. § 1226(a).

### COUNT THREE

#### Violation of Fourth Amendment Prohibition against Unreasonable Searches and Seizures

62. The allegations in the above paragraphs are realleged and incorporated herein.
63. The Fourth Amendment prohibits government agents from conducting unreasonable searches and seizures. U.S. Const. amend. IV.
64. In the immigration context, to stop an individual for brief questioning about immigration status, the Government must have reasonable suspicion that the individual is illegally present in the United States. See *United States v. Brignoni-Ponce*, 422 U. S. 873, 880–882 (1975); *United States v. Arvizu*, 534 U. S. 266, 273 (2002); *United States v. Sokolow*, 490 U. S. 1, 7 (1989). The reasonable suspicion inquiry turns on the “totality of the particular circumstances.” *Brignoni Ponce*, 422 U. S., at 885, n. 10; *Arvizu*, 534 U. S., at 273.
65. The totality of the circumstances indicates that the DHS officers who detained the Petitioner lacked the reasonable suspicion required to stop him for questioning regarding his immigration status. While the Supreme Court has indicated that factors such as (i) presence at particular locations such as bus stops, car washes, day laborer pickup sites, agricultural sites, and the like; (ii) the type of work one does; (iii) lack of English speaking ability or speaking English with an accent; and (iv) apparent race or ethnicity may be considered in the totality of the circumstances, the Petitioner's perceived ethnicity alone is not sufficient to give rise to a reasonable suspicion that he was in the United States in violation of immigration laws. *Noem v. Vasquez Perdomo*, U.S. 606, \_\_\_, 5-6 (2025); *Brignoni Ponce*, 422 U. S., at 887.
66. Under the totality of the circumstances, there was not a reasonable suspicion to detain the

Petitioner to inquire about his immigration status. Petitioner, who is visibly Hispanic, was driving a privately owned vehicle to work when DHS agents flashed their lights, pulled him over, and detained him. There is every indication that DHS Agents initiated the road-side stop based on Petitioner's ethnicity alone.

67. For these reasons, Petitioner's detention violates the Fourth Amendment prohibition against unreasonable searches and seizures.

#### COUNT FOUR

##### **8. U.S.C. §1357 and Implementing Regulations**

68. The allegations in the above paragraphs are realleged and incorporated herein.
69. Pursuant to 8 U.S.C. §1357(a)(2) an ICE officer may conduct a warrantless arrest of an individual only when (1) the officer has "reason to believe" a person is in the United States in violation of the law; and (2) the officer has "reason to believe" the individual is likely to escape before a warrant can be obtained for his arrest.
70. Courts have interpreted the "reason to believe" standard for warrantless immigration arrests authorized under Section 1357(a) to be equivalent to the Fourth Amendment's probable cause standard. See e.g. *Lau v. U.S. Immigr. & Naturalization Serv.*, 445 F.2d 217, 222 (D.C. Cir. 1971); *Morales v. Chadbourne*, 793 F.3d 208, 216–18 (1st Cir. 2015). Under this standard, courts have held that an immigration officer must have sufficient facts that would lead a reasonable person to believe, based on the circumstances, that the alien has violated federal immigration laws and is likely to escape before an ICE warrant can be obtained.
71. DHS agents initiated the forcible arrest of Petitioner based solely on Petitioner's Hispanic appearance and English language abilities; and the Petitioner made no attempt to evade arrest or flee from the agents. The agents did not have reason to believe the Petitioner was in violation of immigration laws based on the information available to them at the time they initiated the warrantless arrest, and they did not have reason to believe he was likely to escape before a warrant could be obtained
72. For these reasons, Petitioner's warrantless arrest violates 8. U.S.C. §1357.

**PRAYER FOR RELIEF**

Petitioner asks that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (3) Retain jurisdiction over Petitioner pending the resolution of this matter;
- (4) Declare that Petitioner's detention without opportunity for a neutral custody review violates the Due Process Clause of the Fifth Amendment and/or 8 U.S.C. § 1226;
- (5) Declare that the investigative stop and warrantless arrest that led to Petitioner's detention violates the Fourth Amendment prohibition against unreasonable searches and seizures as well as 8. U.S.C. §1357;
- (6) Issue an order requiring that Petitioner be returned to Maryland if Petitioner has been transferred out of Maryland;
- (7) Issue an order granting Petitioner's immediate release in Maryland pending a bond hearing to take place in Maryland under 8 U.S.C. § 1226(a);
- (8) Issue a Writ of Habeas Corpus directing Respondents to provide Petitioner a bond hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a);
- (9) In the alternative, hold a bail hearing through the Court's inherent authority pending adjudication of this Petition, as Petitioner has a clear case on the law and facts given that Petitioner is properly detained under 8 U.S.C. § 1226(a). See *Gomes v. U.S. Dep't of Homeland Sec.*, 460 F. Supp. 3d 132, 144 (D.N.H. 2020) (this Court "'has inherent power to release the petitioner pending determination of the merits' . . . if (1) the petitioner has a clear case on the law and facts, or (2) exceptional circumstances are present and the petitioner demonstrates a substantial claim of constitutional error.") (citing *Glynn v. Donnelly*, 470 F.2d 95, 98 (1st Cir. 1972));
- (10) Enjoin Respondents from rearresting the Petitioner;
- (11) Order any further relief this Court deems just and proper.

**Certification Pursuant to Local Standing Order 2025-01**

I, the undersigned, hereby certify pursuant to Fed. R. Civ. P. 11, as follows:

- (1) I understand the Petitioner to be presently detained in Maryland, based on a review of the ICE Detainee Locator website showing “call ICE for details”, the fact that Petitioner was arrested by ICE in Maryland two days ago, and the fact that Petitioner called a family member from the ICE Baltimore Field Office on Thursday, February 12, 2026;
- (2) emergency relief is necessary, because Petitioner is at risk of unlawful removal from the United States; and
- (3) this Court has subject-matter jurisdiction over the Petitioner pursuant to 28 U.S.C. § 2241, and no jurisdiction-stripping statute applies to prevent habeas corpus review of detention and unlawful removal.

Respectfully submitted,

/s/ Benjamin G. Messer  
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Dated: February 12, 2026