UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

OSCAR POP-CAN, Baltimore Hold Room, ICE Enforcement and Removal Operations, 31 Hopkins Plz., 6th Fl., Baltimore, MD 21201
A# [redacted]

Petitioner,

v.

VERNON LIGGINS, *in his official capacity as Acting Field Office Director for Detention & Removal*, U.S. Immigration and Customs Enforcement, 31 Hopkins Plz., 6th Fl., Baltimore, MD 21201;

TODD LYONS, *in his official capacity as Director*, U.S. Immigration and Customs Enforcement, 500 12th St. SW, Washington, DC 20536;

KRISTI NOEM, *in her official capacity as Secretary*, U.S. Department of Homeland Security, Washington, DC 20528; and

PAMELA BONDI, *in her official capacity as Attorney General of the United States*, u.s. Department of Justice, 950 Pennsylvania Ave. NW, Washington, DC 20530,

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

Civil Action No. _____

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Oscar Pop-Can (hereinafter "Mr. Pop-Can"), a native and citizen of Guatemala, with Alien Registration Number [redacted] petitions this Court for a Writ of Habeas Corpus, 28 U.S.C. § 2241, to challenge his continued custodial detention by the United States Department of Homeland Security ("DHS"), through its component arm, United States Immigration and Customs Enforcement ("ICE").

2. Mr. Pop-Can challenges Respondents' erroneous assertion that he is subject to mandatory detention under 8 U.S.C. § 1225(b). That assertion is premised on Respondents' July 2025 reinterpretation of the detention provisions of the Immigration and Nationality Act, as amended ("INA"), 8 U.S.C. § 1101 et seq. *See Martinez v. Hyde*, No. 25-11613-BEM, 2025 U.S. Dist. LEXIS 141724, at *12 (D. Mass. July 24, 2025) ("Indeed, mandatory detention for all applicants has only been the official policy of the Department of Homeland Security . . . since July 8, 2025, when Acting Director of U.S. Immigration and Customs Enforcement, Todd M. Lyons, issued an internal memorandum explaining that the agency had revisited its legal position.").

3. Under Respondents' reinterpretation of this provision, any foreign national who is present in the United States without having been admitted or paroled is subject to mandatory detention.

4. On November 25, 2025, the United States District Court for the Central District of California issued a decision in *Maldonado Bautista v. Noem* granting certification to the class put forth, defined as:

> "Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8

> U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination."

Maldonado Bautista v. Noem, No. 5:25-cv-01873-SSS-BFM, Doc. 82 #:1460, p. 15 (C.D. Cal. Nov. 25, 2025). On December 18, 2025, the Court issued a final judgment declaring that (1) all eligible class members are detained under 8 USC § 1226(a) and are not subject to mandatory detention under § 1225(b)(2) and (2) eligible class members are entitled to consideration for release on bond by immigration officers and, if not released, a custody redetermination hearing before an immigration judge. *See Maldonado Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM, Doc. 94 #:1785 (C.D. Ca. Dec. 18, 2025). Mr. Pop-Can meets all requirements for *Maldonado Bautista* class membership.

5. There is a growing body of case law from within and outside of this judicial district holding that Respondents' reinterpretation of 8 U.S.C. § 1225(b)(2)(A) is contrary to law. *See, e.g.*, *Maldonado v. Baker*, No. 25-3084-TDC, 2025 WL 2968042, at *8 (D. Md. Oct. 21, 2025) (collecting cases) ("[T]he Court finds that, consistent with the vast majority of federal courts that have recently considered this issue, the detention of inadmissible noncitizens who, like Maldonado, are already present in the United States is governed by the discretionary detention provision of § 1226(a), rather than the mandatory detention provisions of § 1225(b)."); *Quispe v. Crawford*, No. 1:25-cv-01471, 2025 WL 2783799, at *5 (E.D. Va. Sept. 29, 2025) (stating "as Respondents recognize, other federal courts around the country have found that in order to be detained under § 1225(b)(2), applicants for admission must be actively 'seeking admission' and not be just 'present' in the U.S."); *Cabrera Valenzuela v. Mason*, No. 2:26-cv-00057, 2026 WL 357872, at *1 (S.D. W. Va. Feb. 9, 2026) ("The authority the political branches possess over immigration does not include the power to seize liberty first and justify confinement later. Due process

is not a courtesy extended at the government's convenience. Due process is the condition that makes custody lawful in the first place. Congress itself has recognized this principle by requiring that civil immigration detention be tethered to a lawful custody determination—one that determines whether continued detention is warranted or whether release on bond is appropriate."); *Castañon-Nava v. U.S. Dep't of Homeland Sec.*,161 F.4th 1048, 1060-61 (7th Cir. 2025) (describing the government's interpretation of 8 U.S.C. § 1225 as "superficial" and rendering portions of the INA "superfluous, violating one of the cardinal rules of statutory construction"); *see also Afghan v. Noem*, No. SAG-25-04105, 2025 WL 3713732 (D. Md. Dec. 23, 2025); *Ibarra v. Warden of the Fed. Det. Ctr. Phila.*, No. 25-6312, 2025 U.S. Dist. LEXIS 232202 (E.D. Pa. Nov. 25, 2025); *Hasan v. Crawford*, No. 1:25-cv-1408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Mo-Rales v. Thompson*, No. SA-25-CV-01391-JKP, 2025 WL 3470871 (W.D. Tex. Nov. 21, 2025); *Y-C- v. Genalo*, No. 25-cv-06558 (NCM), 2025 WL 3653496 (E.D.N.Y. Dec. 17, 2025); *Brito Hidalgo v. Raycraft*, No. 25-cv-13588, 2025 WL 3473360 (E.D. Mich. Dec. 3, 2025); *Amaya-Quinteros v. Coreciviv, Inc.*, No. 1:25-cv-1672 AC P, 2025 WL 3687642 (E.D. Cal. Dec. 19, 2025); *Alejandro v. Olson*, No.1:25-cv-2027-JPH-MKK, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787 (N.D. Ill. Oct. 24, 2025); *Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025). *But see Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, 2026 WL 81679 (N.D. Tex. Jan. 9, 2026); *Cabanas v. Bondi*, No. 4:25CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025).[1] This is another such case.

[1] Petitioner acknowledges the United States Court of Appeals for the Fifth Circuit's days-old decision in *Buenrostro-Mendez v. Bondi* upholding Respondents' interpretation of 8 U.S.C. §§ 1225 and 1226 lawful. --- F.4th -

6. Mr. Pop-Can's continued detention by Respondents without any mechanism to challenge his confinement violates the Due Process Clause of the Fifth Amendment to the United States Constitution and presents a federal question under 28 U.S.C. § 1331 through the INA. Petitioner seeks declaratory and injunctive relief under 28 U.S.C. § 1331 in conjunction with 28 U.S.C. § 2201, in the form of an order from this Court requiring his immediate release because he is not lawfully detained under § 1225(b) or, alternatively, that Respondents provide him with a bond hearing before a neutral and impartial adjudicator.

JURISDICTION AND VENUE

7. As of the time of this filing, Mr. Pop-Can's last known place of detention is ICE's Baltimore Hold Room in Baltimore, Maryland, which is within the jurisdiction of the United States District Court for the District of Maryland. *See* Exhibit A (ICE Detainee Locator).[2]

8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 ("habeas corpus"), 28 U.S.C. § 1651 ("All Writs Act"), 28 U.S.C. § 1331 ("federal question"), the INA, and the Fifth Amendment to the United States Constitution (the "Due Process Clause").

9. This Court has jurisdiction to adjudicate habeas corpus claims brought by foreign nationals who challenge the legality of their detention by United States immigration officials. *See Reno v. Flores*, 507 U.S. 292, 307 (1993) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.");

--, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). *But see Castañon-Nava*, 161 F.4th at 1060-61. That decision is not binding on this Court, as this case is within the jurisdiction of the United States Court of Appeals for the Fourth Circuit.

[2] The ICE Detainee Locator system does not identify where Mr. Pop-Can is detained. *See* Exhibit A (directing users to call ICE for details). Rachael E. Savage, Esq., of Eldridge Crandell, LLC, went in-person to the ICE Baltimore Hold Room on February 10, 2026, and confirmed Mr. Pop-Can was detained there.

Rodriguez v. Perry, 747 F. Supp. 3d 911, 915 (E.D. Va. 2024) ("The federal habeas corpus statute gives a district court jurisdiction to review immigration-related detention cases.") (citing 28 U.S.C. § 2241(c)(3)).

10. Title 8 U.S.C. § 1252(g) does not operate as a jurisdictional bar because that statute does not apply to actions taken to detain foreign nationals. *See Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) ("Section 1252(g) 'applies only to three discrete actions,' i.e. commencement of removal proceedings, adjudication of removal cases, and execution of removal orders.").

11. 8 U.S.C. § 1252(b)(9) does not preclude jurisdiction because that statute applies to review of removal orders and not to detention decisions made prior to the issuance of a removal order. *See Demore v. Kim*, 538 U.S. 510, 517 (2003) (quoting *Webster v. Doe*, 486 U.S. 592, 603 (1988)) (explaining that "'where Congress intends to preclude judicial review of constitutional claims its intent to do so must be clear'").

EXHAUSTION

12. Generally, a petitioner seeking habeas corpus under 28 U.S.C. § 2241 must exhaust administrative remedies. *See, e.g., Braden v. 30th Judicial Circuit Ct. of Ky.*, 410 U.S. 484, 489-492 (1973); *Callwood v. Enos*, 230 F.3d 627, 634 (3d Cir. 2000). "The INA does not require a noncitizen to exhaust administrative remedies before asserting a constitutional challenge to immigration detention procedures." *Maldonado*, 2025 WL 2968042, at *4 (citing *Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022)). A petitioner need not "exhaust administrative remedies where the issue presented involves only statutory construction," *Vasquez v. Strada*, 684 F.3d 431, 433-34 (3d Cir. 2012), because those cases evince that agencies have "predetermined the issue before [them]" or

there is an "unreasonable or indefinite timeframe for administrative action." *McCarthy v. Madigan*, 503 U.S. 140, 146 (1992).

13. There are no applicable statutory exhaustion requirements and the issue in this case hinges entirely on the statutory construction of 8 U.S.C. §§ 1225 and 1226, so Mr. Pop-Can is not required to exhaust.

REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court should grant this Petition for Writ of Habeas Corpus or issue an order to show cause to Respondents forthwith, unless Mr. Pop-Can is not entitled to relief. *See* 28 U.S.C. § 2243. If an order to show cause is issued, the Court should require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

PARTIES

15. Mr. Pop-Can is detained in the ICE Baltimore Hold Room in Baltimore, Maryland, which is within the jurisdiction of the United States District Court for the District of Maryland. *See* Exhibit A. He is in the custody and under the direct control of Respondents and their agents.

16. Respondent Vernon Liggins is sued in his official capacity as the Acting ICE Field Office Director for Baltimore. He supervises and oversees the ICE Baltimore Hold Room.

17. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. He supervises and oversees Respondent Baker.

18. Respondent Kristi Noem is sued in her official capacity as the Secretary of DHS. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the

INA, and oversees ICE, the component agency directly responsible for Mr. Pop-Can's detention. *See* 8 U.S.C. § 1103(a). Respondent Noem is a legal custodian of Petitioner.

19. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. The Attorney General oversees the Executive Office for Immigration Review and, within the Executive Branch, is the arbiter of all questions of law pertaining to the INA. *See* 8 U.S.C. § 1103(a)(1), (g).

STATEMENT OF FACTS

20. Mr. Pop-Can is a native and citizen of Guatemala. He last entered the United States around 2021 without being inspected and admitted by an immigration officer.

21. Mr. Pop-Can has remained in the United States since his last entry, residing in Maryland, for about five years. He has no known criminal history anywhere in the world.

22. Mr. Pop-Can was not apprehended by ICE upon entry and has not had prior proceedings in immigration court. *See* Exhibit B (EOIR Automated Case Information System Printout).

23. Mr. Pop-Can was apprehended by ICE in Baltimore, Maryland, on February 9, 2026, as he was driving to work. He has been in immigration detention since his apprehension.

24. Though they have already detained Mr. Pop-Can, Respondents have yet to initiate Mr. Pop-Can's immigration proceedings as they have not filed a Form I-862, Notice to Appear, with any immigration court. *See id.*; *see also* 8 C.F.R. § 1003.4(a) (explaining that proceedings commence after the filing of the Notice to Appear).

CLAIMS FOR RELIEF

COUNT ONE
Violation of INA, 8 U.S.C. §§ 1225(b) and 1226(a)

25. Mr. Pop-Can incorporates and realleges the factual statements above as if fully set forth here.

26. Respondents' theory that Mr. Pop-Can is subject to mandatory detention under 8 U.S.C. § 1225(b) rests on their erroneous recent reinterpretation of the INA's detention provisions at 8 U.S.C. §§ 1225(b) and 1226(a). Several reasons demonstrate the incorrectness of the Respondents' position.

27. First, Respondents' reinterpretation of the INA's detention provisions conflicts with the Supreme Court's opinion in *Jennings v. Rodriguez*. 583 U.S. 281 (2018).

28. In *Jennings*, the Supreme Court instructed that 8 U.S.C. § 1225(b) "applies primarily to aliens seeking entry into the United States ('applicants for admission' in the language of the statute)." *Id.* at 297. Section 1226, on the other hand, "applies to aliens already present in the United States." *Id.* at 303. "Section 1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings." *Id.* "Section 1226(a) also permits the Attorney General to release those aliens on bond . . ." *Id.*

29. Mr. Pop-Can has been in the United States for about five years. By any measure, he is "already present in the United States." *Jennings*, 583 U.S. at 303. Under these circumstances, *Jennings* instructs that the authority to detain Mr. Pop-Can does not stem from 8 U.S.C. § 1225(b). Respondents' reinterpretation of §§ 1225(b) and 1226(a) conflicts with *Jennings*, so it must be rejected.

30. Second, it is settled that a "statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . ." *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (internal quotations omitted)); *see, e.g.*, *Lawson*

v. Suwanee Fruit & S.S. Co., 336 U.S. 198, 201 (1941) (cautioning against statutory interpretations that would create "obvious incongruities in the [statutory] language" or erase from the statute an entire subsection). Respondents' reinterpretation of §§ 1225(b) "would also make recently adopted provisions in 8 U.S.C. § 1226 completely superfluous." *Ndiaye v. Jamison*, 2:25-cv-06007, 2025 U.S. Dist. LEXIS 227253, at *15 (E.D. Pa. Nov. 19, 2025); *see also Castañon-Nava*, 161 F.4th at 1061.

31. In 2025, Congress passed the Laken Riley Act, which amended § 1226(c) to add new categories of noncitizens subject to mandatory detention. *See* Laken Riley Act, Pub. L. No. 119-1 § 2, 139 Stat. 3, 3 (2025). "The amended subsection explicitly requires mandatory detention of all noncitizens who (1) are 'inadmissible' for entering the country without being admitted or paroled and (2) have been charged with or convicted of certain crimes such as burglary." *Ndiaye*, 2025 U.S. Dist. LEXIS 227253, at *16 (citing 8 U.S.C. § 1226(c)(1)(E)). If § 1225(b) required what the Respondents now claim that it does—mandatory detention of all foreign nationals who entered the United States illegally—there would have been no need for Congress to amend the statute to require detention for those who illegally entered and committed certain enumerated crimes. *See id.*; *accord Demirel v. Fed. Det. Ctr. Phila.*, No. 2:25-cv-05488, 2025 U.S. Dist. LEXIS 226877, at *11 (E.D. Pa. Nov. 18, 2025); *see also Stone v. INS*, 514 U.S. 386, 397 (1995) ("When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.").

32. Third, Respondents' reinterpretation of the detention provisions "would upend decades of practice. Indeed, mandatory detention for all applicants has only been the official policy of [DHS] . . . since July 8, 2025, when Acting Director of [ICE], Todd M. Lyons, issued

an internal memorandum explaining that the agency had revisited its legal position." *Martinez*, 2025 U.S. Dist. LEXIS 141724, at *12 (internal quotation omitted). In short, "[p]ast agency practice also favors applying § 1226 to noncitizens like" Mr. Pop-Can. *Ndiaye*, 2025 U.S. Dist. LEXIS 227253, at *18; *see Maldonado*, 2025 WL 2968042, at *8 (noting "Respondents' new interpretation of these detention provisions so as to require mandatory detention of all inadmissible noncitizens runs counter to nearly 30 years of government immigration practice").

33. The novelty of Respondents' new theory of immigration detention is underscored by the conflicting pronouncements of it by Respondents themselves. In an August 4, 2025, order, the Attorney General determined that foreign nationals arrested in the interior of the United States (other than at a port of entry) are detained under 8 U.S.C. § 1226, thus, entitled to bond hearings. *See Matter of Akhmedov*. 29 I&N Dec. 166 (BIA 2025). She did this by designating it as precedent "in all proceedings involving the same or similar issues" the Board's decision in *Matter of Akhmedov*. *Id.* at 166 n.1.

34. In *Akhmedov*, the Board considered DHS's appeal of an Immigration Judge's grant of bond to a foreign national arrested in the interior of the United States. *See id.* at 166, 168. The Board's decision—as adopted by the Attorney General—is clear: "The respondent's custody determination is governed by the provisions of section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a) (2018)." *Id.* at 166.

35. Just like the foreign national in *Akhmedov*, Mr. Pop-Can was arrested by immigration officers in the interior of the United States. Just like the foreign national in *Akhmedov*, Mr. Pop-Can is, at a minimum, entitled to a bond hearing.

36. Under pertinent regulation, "[t]he Board shall be governed by the provisions and limitations prescribed by applicable law, regulations, and procedures, and by decisions of the Attorney General (through review of a decision of the Board, by written order, or by determination and ruling pursuant to section 103 of the Act)." 8 C.F.R. § 1003.1(d)(1)(i). By statute, the Attorney General's determinations and rulings on all questions of law pertaining to the INA bind the Executive Branch. *See* 8 U.S.C. § 1103(a)(1).

37. On September 5, 2025, the Board of Immigration Appeals issued its decision in *Matter of Yajure Hurtado*. 29 I&N Dec. 216 (BIA 2025). In that case, the Board determined that a foreign national who has not been admitted to the United States is detained under 8 U.S.C. § 1225(b)(2)(A) and not entitled to a bond hearing. *See id.* at 220. *Yajure Hurtado* cannot be reconciled with the Attorney General's decision in *Akhmedov*, where the Attorney General determined that 8 U.S.C. § 1226(a) governs foreign nationals who enter the United States unlawfully and who immigration officers later encounter. *See Akhmedov*, 29 I&N Dec. at 166.

38. The Board's attempt to reconcile the Attorney General's decision in *Akhmedov* with its own decision in *Yajure Hurtado* underscores this point. *See* 29 I&N Dec. at 226. In *Yajure Hurtado*, the Board articulated no reasoning for its disagreement with the Attorney General other than stating the opinion that a foreign national's presence in the United States "does not somehow eviscerate or nullify section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), or vest the Immigration Judge with authority over the respondent's bond request." *Id.* at 226. But the Attorney General's decision controls the Board. *See* 8 U.S.C. § 1103(a)(1); 8 C.F.R. § 1003.1(d)(1)(i).

39. The Board's observation in *Yajure Hurtado* that 8 U.S.C. § 1225(b) was not before the Attorney General in *Akhdemov* does not give license to the Board to act contrary to both statutory and regulatory authority declaring that the Attorney General—and not the Board—speaks for the Executive Branch with respect to "all questions of law." 8 U.S.C. § 1103(a)(1); *see* 8 C.F.R. § 1003.1(d)(1)(i). Nor can it invalidate the Attorney General's determination that custody determinations of foreign nationals arrested in the United States interior are "governed by the provisions of section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a) (2018)." *Akhmedov*, 29 I&N Dec. at 166.

40. *Matter of Yajure Hurtado*'s inconsistency with prior pronouncements reduces even its "power to persuade." *Loper Bright Enters. v. Riamondo*, 603 U.S. 369, 402 (2024) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). Accordingly, the Court should grant the petition for a Writ of Habeas Corpus.

41. Fourth, dozens of courts across the country have agreed that the appropriate remedy in habeas cases like Mr. Pop-Can's is release on recognizance without further conditions of release. *See, e.g.*, *Munoz Materano v. Arteta*, 2025 WL 2630826, at *20 (S.D.N.Y. Sept. 12, 2025) (ordering immediate release); *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025) (same); *Rueda Torres v. Francis*, No. 25-cv-8408, 2025 WL 3168759, at *6 (S.D.N.Y. Nov. 13, 2025) (same); *Cifuentes v. Soto*, No. 25-cv-18029, 2025 WL 3771380, at *4 (D.N.J. Dec. 31, 2025) (same); *Gonzalez Centeno v. Lowe*, No. 3:25-cv-2518, 2026 WL 94642, at *4 (M.D. Pa. Jan. 13, 2026) (same); *Feisal O. v. Noem*, No. 26-cv-81, 2026 WL 92857, at *3 (D. Minn. Jan. 13, 2026) (same); *Garcia Covarrubias v. Holston*, No. 2:25-cv-02445, 2026 WL 25970, at *4 (D. Nev. Jan. 5, 2026) (same) *Kenzhebaev v. Noem*, No. 1:25-cv-1786, 2025 WL 3737975, at *9 (W.D.

Mich. Dec. 29, 2025) (same); *Kobilov v. O'Neill*, No. 26-cv-0058, 2026 WL 73475, at *3 (E.D. Pa. Jan. 8, 2026) (same, finding a bond hearing unnecessary where there was no record indication petitioner was a danger or flight risk); *Ortega-Aguirre v. Noem*, No. 4:25-cv-04332, 2025 WL 3684697, at *4 (S.D. Tex. Oct. 10, 2025) (same); *Bumbila Iza v. Arnott*, No. 6:25-cv-3392, 2026 WL 67152, at *5 (W.D. Mo. Jan. 8, 2026) (same); *see also Mata Velasquez v. Kurzdorfer*, --- F. Supp. 3d ---, No. 25-cv-493, 2025 WL 1953796 (W.D.N.Y. July 16, 2025) (ordering release and that petitioner could not be re-detained without a pre-deprivation hearing); *Gil v. Warden, Otay Mesa Det. Ctr.*, No. 3:25-cv-03279, 2025 WL 3675153, at *4 (S.D. Cal. Dec. 17, 2025) (same); *Sekhon v. Warden of Golden State Annex Det. Facility*, No. 1:25-cv-1692, 2026 WL 74151, at *4 (E.D. Cal. Jan. 9, 2026) (same).

42. These courts have correctly determined that release is the only appropriate remedy for the constitutional violations in this case, including the lack of pre-deprivation notice or individualized review before arrest, which cannot be remedied by a post-deprivation hearing. *See Alfaro Herrera v. Baltazar*, No. 1:25-cv-04014, 2026 WL 91470, at *13 (D. Colo. Jan. 13, 2026) (holding that because the petitioner had been previously released to the community and holding a bond hearing would prolong his unlawful detention, "[r]espondents' violations of Petitioner's rights are best remedied by ordering Petitioner's immediate release from immigration detention"); *Qasemi v. Francis*, No. 25-cv-10029, 2025 WL 3654098 at *14, (S.D.N.Y. Dec. 17, 2025) (noting a bond hearing would not be an adequate remedy for the due process violations in petitioner's sudden arrest and detention); *Crespo Tacuri v. Genalo*, No. 25-cv-06896, 2026 WL 35569, at *7 (E.D.N.Y. Jan. 6, 2026) (ordering release, finding that post-deprivation review cannot remedy the

due process violation of detaining petitioner with no process or individualized assessment); *Moctezuma Macias v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (holding that given that the government's repeated use of unlawful detention policies across the country, causing petitioners to "sit in jail waiting for a judicial decision," the court would order immediate release instead of causing additional delay through a bond hearing); *see also Garrison G. v. Bondi*, No. 26-CV-172, 2026 WL 157677, at *4 (D. Minn. Jan. 17, 2026) (finding that ICE's violation of the Fourth Amendment by entering petitioner's home without a warrant or consent alone also warranted immediate release).

43. Immediate release is also warranted because requesting bond before an immigration court is futile. *See, e.g.*, Exhibit C (Declaration of Jorge E. Artieda) (describing how "Immigration Judge[s] appeared to apply [bond determination] factors that, if consistently applied, would make bond impossible for virtually any detained individual in removal proceedings;" that "[t]here did not appear to be meaningful individualized assessment" of individuals' circumstances; and that "[t]he hearings appeared to be perfunctory exercises designed to create a veneer of due process while ensuring predetermined outcomes").

44. Petitioner's counsel's own experience reflects the same trend. Of her sixteen cases in which this Court has ordered an immigration court to conduct an individualized bond hearing before a neutral and impartial adjudicator, the immigration judge has denied bond in fifteen of them. None of the fifteen individuals had criminal history beyond minor traffic infractions. All had close family ties in the United States, and all had been present in the United States for six years or more. Some owned their own businesses and others

owned real property in the United States. In each case, the immigration judge alleged—apparently regardless of the individual's personal circumstances—that the individual presented such a flight risk that there was no monetary amount that could secure the individual's presence in court. It is virtually impossible to secure a bond under Respondents' current policy of denying on flight risk in any case. *See also* Exhibit C.

45. Further, in the last year, ICE has been appealing nearly all bond grants to the Board, thereby invoking the "automatic stay" regulation in 8 C.F.R. § 1003.19(i)(2) to prohibit individuals from posting bond and being released. Dozens of habeas courts have ruled that the automatic stay violates due process and have had to order Respondents to allow a petitioner to post her bond. *See, e.g.*, *Merchan-Pacheo v. Noem*, No. 1:25-cv-03860, 2026 WL 88526, at *16 (D. Colo. Jan. 12, 2026) (finding automatic stay violates due process); *M.P.L. v. Arteta*, No. 25-cv-5307, 2025 WL 3288354, at *7 (S.D.N.Y. Nov. 25, 2025) (same, noting that "at least 50 district court decisions across the United States in the last 6 months alone" have found that DHS's use of the automatic stay provision violates or likely violates due process, and collecting cases at n.6); *Otilio B.F. v. Andrews*, No. 1:25-cv-01398, 2025 WL 3152480, at *11 (E.D. Cal. Nov. 11, 2025) (finding the automatic stay likely violates due process and granting preliminary injunction); *Guasco v. McShane*, No. 1:25-cv-1650, 2025 WL 3270201, at *2 (M.D. Pa. Nov. 24, 2025) (noting that other habeas courts have "assailed the Government's practice of acting both as the prosecution and the judge in making a unilateral and unreviewed decision as to detention") (internal citation omitted). This, too, renders bond requests futile.

46. Moreover, even in cases in which a federal court orders an immigration court to conduct a bond hearing, Respondents routinely fail to comply with those orders. *See, e.g.*, *Juan*

T.R. v. Noem, No. 26-CV-0107, 2026 WL 232015 (D. Minn. Jan. 28, 2026) (identifying nearly 100 instances in which Respondents failed to comply with court orders in habeas cases in January 2026 alone); *see also Cruz Gomez v. Noem*, No. 1:26-cv-00269-SAG, Doc. 9 (D. Md. Feb. 6, 2026) (ordering immediate release because Respondents repeatedly refused to comply with this Court's order to conduct a bond hearing within ten days of his filing of a Motion for Custody Redetermination with the immigration court). Immediate release is therefore warranted.

COUNT TWO
Violation of the Fifth Amendment Right to Due Process

47. Mr. Pop-Can incorporates and realleges the factual allegations above as if fully set forth here.

48. It is settled that the Fifth Amendment's Due Process Clause applies to all "persons" within the United States. *See Matthews v. Diaz*, 426 U.S. 67, 77 (1976). Mr. Pop-Can has been in the United States for about five years.

49. The term "persons" includes foreign nationals like Mr. Pop-Can. *See id.*

50. It is equally well settled that freedom from confinement is a core liberty interest and violation of that liberty interest raises a colorable substantive due process claim. *See, e.g.*, *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)); *Reno v. Flores*, 507 U.S. 292, 301 (1993) (collecting cases); *see also Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (noting bodily freedom is the "most elemental of liberty interests").

51. As such, Mr. Pop-Can also has the right to procedural due process. Immigration proceedings are civil and they are intended to be "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690. More than a century of Supreme Court precedent instructs

that the Fifth Amendment entitles foreign nationals to procedural due process. *See Reno*, 507 U.S. at 306 (citing *The Japanese Immigrant Case*, 189 U.S. 86 (1903)). A failure to provide any process whatsoever contravenes no less than one hundred years of Supreme Court precedent interpreting the Due Process Clause as applying to foreign nationals such as Mr. Pop-Can. *See, e.g., Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

52. "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)." *Quispe-Ardiles*, No. 1:25-cv-01382 (MSN), 2025 WL 2783800,, at *22 (E.D. Va. Sept. 30, 2025). "Under that test, courts must weigh (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.* (quoting *Mathews*, 424 U.S. at 335).

53. Mr. Pop-Can invokes "'the most elemental of liberty interests'; '[t]he interest in being free from physical detention.'" *Id.* at *17 (quoting *Hamdi*, 542 U.S. at 529) (alterations in original). To be sure, Respondents' refusal to provide any process whatsoever creates significant risk that Mr. Pop-Can will be deprived of that interest.

54. The Government's interest in implementing its novel reinterpretation of 8 U.S.C. § 1225(b) is minimal. This new "approach attempts to upend decades of immigration practice." *Hasan*, 2025 U.S. Dist. LEXIS 184734, at *24. "Indeed, mandatory detention for all applicants has only been the official policy . . . since July 8, 2025 . . . ." *Martinez*, 2025 U.S. Dist. LEXIS 141724, at *12. In contrast, the resumed application of decades of

agency practice will satisfy the Government's interest in enforcement of the immigration laws.

55. In Mr. Pop-Can's case, all three *Mathews* factors weigh heavily in favor of holding that Respondents' refusal to provide him any process whatsoever violates his right to procedural due process. The Court should grant the petition for a Writ of Habeas Corpus for this reason as well.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause as to why this petition should not be granted within three (3) days;

(3) Declare that Petitioner's detention by Respondents under 8 U.S.C. § 1225(b) is unlawful under the INA and in violation of the Due Process Clause of the Fifth Amendment;

(4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately or, in the alternative, order that a truly neutral and impartial adjudicator conduct an individualized bond hearing pursuant to 8 U.S.C. § 1226(a);

(5) Enjoin Respondents from transferring Petitioner outside of this judicial district; and

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

Dated: February 13, 2026

Respectfully submitted,

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