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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

ARMANDO JESUS TORRES MEDINA,

Petitioner,

v.

EVAN TJADEN, Acting Field Office
Director, Salt Lake City Enforcement and
Removal Operations, U.S. Immigration and
Customs Enforcement (ICE/ERO);
JOHN DOE, ICE/ERO Field Agent;
KRISTI NOEM, Secretary United States
Department of Homeland Security;
PAMELA BONDI, U.S. Attorney General,

Respondents.

**AMENDED PETITION FOR
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

Case No. 2:26-cv-195 JNP


Pursuant to E.R.C.P. 15(a), Petitioner Armando Torres submits this amended petition for a writ of habeas corpus.

Armando Torres is a national of Venezuela who came to the United States seeking asylum. He was able to enter the U.S. without encountering immigration officials and came to Utah where he had friends. Within a year of entering the U.S., he applied for asylum, and his asylum claim remains pending. On February 19, 2026, he was arrested on an outstanding Utah warrant and then released on March 5, 2026. However, rather than return to the community, he was taken into immigration custody and is being held without the opportunity to seek release,

even on bond. This mandatory detention violates the Constitution and laws of the United States of America. For this reason, Mr. Torres asks the court pursuant to 28 U.S.C. § 2241 to order that Respondents make an initial custody determination, inform Mr. Torres of his rights under *Bautista*, and permit him to seek bond redetermination if the screening officer denies release as a matter of discretion. He further asks the court to order Respondents not to transfer her out of this district or deport him while this case is pending.¹

FACTS APPLICABLE TO ALL CLAIMS




Seeking Asylum in the United States

1. Armando Torres was born in Venezuela on  (Ex. 1 at 1.)
2. About three years ago, he came to the United States seeking asylum.
3. He was able to enter the country without encountering immigration officials, and he made his way to Utah where he had a friend living already.
4. Within a year of entering the United Staes, he filed his asylum application (form I-589) and was granted an employment authorization card. (Ex. 1, 2.)

¹ “[T]ransfer of Petitioner to another district could interfere with his access to counsel and ability to participate in the proceedings.” *Tran v. Bondi, et al.*, No. CV25-1897-JLR-BAT, ECF No. 6 at 3 (W.D. Wash. Oct. 7, 2025) (*sua sponte* issuing such an order in a § 2241 case involving an ICE detainee). And this court has “inherent power to preserve its ability to hear the case.” *Alves v. U.S. Dep’t of Just.*, 2025 WL 2629763, at *5 (W.D. Tex. Sept. 12, 2025) (same). Courts around the country, including within this district, have entered emergency orders preventing the transfer and removal of ICE detainees pending the resolution of their § 2241 petition. *See, e.g., Ahlat v. Bondi*, 1:25-cv-00199, ECF No. 8 (D. Utah Dec. 19, 2025); *Velasquez Montillo v. Brooksby*, 4:26-cv-18, ECF No. 7 (D. Utah Feb. 17, 2026); *M.M. v. Wamsley*, 2025 WL 3053023, at *1 (W.D. Wash. Oct. 31, 2025); *Bustos v. Raycraft*, 2025 WL 3022294, at *2 (E.D. Mich. Oct. 29, 2025); *Ferro v. Hyde*, No. 2025 WL 3003708, at *1 (D. Me. Oct. 27, 2025) (order issued same day petition was filed); *Lopez Pop v. Noem*, 2025 WL 3050095, at *7 (C.D. Cal. Oct. 3, 2025); *Singh v. Delaney Hall*, 2025 WL 2772644, at *1 (D.N.J. Sept. 29, 2025); *Hom v. Ceja*, 800 F.Supp.3d 1147, 1149 (D. Colo. Sept. 17, 2025).

5. He also applied for and received Temporary Protect Status. (Ex. 3.)
6. As a result of these filings, he was told to report to U.S. Citizen and Immigration Service (USCIS) for fingerprinting, which he did on May 15, 2024, and June 11, 2024. (Ex. 4, 5.)
7. Despite these multiple contacts with DHS officials, he was never threatened with arrest or told that he could remain free only if he complied with certain requirements.
8. Prior to his arrest in this case, he had been working as a mechanic, and about 6 months ago he opened his own mechanic shop.

2026 Arrest by ICE

9. At the time of this filing, Mr. Torres has no known criminal convictions.
10. He does have a criminal case pending in  (Ex. 6), and a traffic citation pending in  (Ex. 7).
11. The criminal case is for an alleged assault and theft that occurred on September 10, 2025. (Ex. 6.)
12. Court records reflect that Mr. Torres appeared on a summons and remained out of custody while the case was pending. (*Id.* at 2.)
13. When he missed a hearing on January 29, 2026, a warrant was issued. (*Id.* at 4.)
14. A few weeks later he was stopped for a traffic violation (Case No. , and he was booked on the warrant.
15. At a hearing on March 5, 2026, the court ordered that he be released. (*Id.* at 6; Ex. 8.)
16. He was not released, however.
17. He remained at the Utah County Jail on an ICE detainer.
18. On March 6, 2026, an ICE agent took him from the jail to an office in Orem, Utah, and he was detained there.

19. ICE officers told him he had an asylum petition with no court date, so they were putting him under removal proceedings and gave him a court date of March 16, 2026, to see an immigration judge. (Ex. 9.)
20. On information and belief, ICE officers have issued a Notice to Appear (NTA), which is the charging document that initiates standard removal proceedings under 8 U.S.C. § 1229a.
21. The fact that he now has a hearing with an immigration judge is inconsistent with a claim that he is being removed under 8 U.S.C. § 1225, which provides for “expedited removal” that applies only to “arriving aliens” and does not involve any hearings before an immigration judge.
22. Nevertheless, ICE officers told Mr. Torres that he could not be released on bond because he is ineligible for a bond or a bond hearing with an immigration judge.
23. They told him he had no choice but to remain in custody while his removal case and asylum defense litigated.
24. After this meeting, ICE officers took Mr. Torres to the Tooele County Jail.
25. He remains in ICE custody at the Tooele County Jail at the time of this filing.

Detention Rationale

26. At this time, Mr. Torres is unclear about the rationale for his mandatory ICE detention.
27. On information and belief, he asserts that immigration officials are following a decision issued by the Bureau of Immigration Appeals (BIA) in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
28. Under this decision, foreign nationals who are discovered in the United States after entering “without inspection,” even years earlier, are treated as “arriving aliens” who are subject to “expedited removal” and mandatory detention under 8 U.S.C. § 1225.

29. However, federal courts around the country and in this district have held that this interpretation of the Immigration and Nationality Act (INA) is invalid. *See, e.g., Bautista v. Santacruz*, -- F. Supp. 3d --, 2026 WL 468284 (C.D. Cal. Feb. 18, 2026); *Tanchez v. Noem*, 2026 WL 125184 (D. Utah Jan. 16, 2026); *Carbajal v. Wimmer*, 2:26-cv-00093-TC, ECF No. 20 (D. Utah Feb. 9, 2026); *but see Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026); *Cisneros v. Noem*, -- F. Supp. 3d --, 2026 WL 396300, at *1 (D. Utah Feb. 12, 2026).
30. On December 18, 2025, the California Central District Court certified a national class of noncitizens that is “entitled to initial custody determination and custody redetermination hearings.” *Bautista v. Santacruz*, 5:25-cv-01873, ECF No. 93 at 46 n.23 (C.D. Ca. Dec. 18, 2025).
31. That class is defined as: “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.” *Id.* at 51.
32. Mr. Torres is a member of the “Bond Eligible Class” as it is defined by *Bautista*.
33. Accordingly, Mr. Torres seeks a writ of habeas corpus requiring that agents make an initial custody determination and that he be allowed to seek redetermination at a hearing with an immigration judge.

DECISION BEING CHALLENGED

34. Mr. Torres challenges Respondents’ decision to keep him in custody after being released by the Fourth District Court on March 5, 2026.
35. This is the first petition filed to challenge this detention.

JURISDICTION

36. Mr. Torres is in the physical custody of Respondents in the state of Utah.
37. This court has jurisdiction over this petition pursuant to 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1346 (United States as Respondent); and 28 U.S.C. § 1651 (All Writs Act).
38. Respondents have waived sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.
39. The 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.*; the All Writs Act, 28 U.S.C. § 1651; the Due Process Clause of the Fifth Amendment; and the court's inherent equitable powers.
40. Even if the government were to argue that the court lacks jurisdiction, this court has jurisdiction to determine its jurisdiction. *Belbacha v. Bush*, 520 F.3d 452, 455-56 (D.C. Cir. 2008) (citing *United States v. United Mine Workers*, 330 U.S. 258, 293 (1947)).
41. This jurisdiction includes the authority to grant "interim relief" and enjoin a transfer to another district to preserve its ability to review its own jurisdiction. *Id.* (discussing All Writs Act, 28 U.S.C. § 1651).
42. Mr. Torres is seeking relief related only to his custody status, which is not inconsistent with an order of removal, so exhaustion of administrative remedies, if any, is not required.

VENUE

43. Venue lies in the District of Utah because this is the judicial district in which Mr. Torres is currently detained. *Rumsfeld v. Padilla*, 542 U.S. 426, 442-42 (2004); *Braden v. 30th Judicial Circuit Court of KY.*, 410 U.S. 484, 493-500 (1973).

44. Venue is also proper in this judicial district under 28 U.S.C. § 1391(e) because respondents are officers or employees of the United States; Mr. Torres is being held in this district; and a substantial part of the events or omissions giving rise to the Petition occurred in this judicial district.

REQUIREMENTS OF 28 U.S.C. § 2243

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

46. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative relief in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

47. Mr. Torres is a citizen of Venezuela. He is in ICE custody in Utah.
48. Respondent EVAN TJADEN is the Acting Field Office Director of the Salt Lake City Enforcement and Removal Operations and U.S. Immigration and Customs Enforcement (ICE/ERO). He is the legal custodian of Mr. Torres. He is named in his official capacity.
49. Respondent JOHN DOE is an ICE/ERO Field Agent. He is the physical custodian of Mr. Torres. He is named in his official capacity.
50. Respondent KRISTI NOEM is the Secretary of the Department of Homeland Security (“DHS”). In this capacity, Respondent Noem is the legal custodian of Mr. Torres. She is named in her official capacity.
51. Respondent PAMELA BONDI is the Attorney General of the United States. In this capacity, Ms. Bondi is the legal custodian of Mr. Torres. Respondent Bondi is sued in her official capacity.

LEGAL BACKGROUND

I. The Right to be Free—Even for Noncitizens

52. “In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).
53. This fundamental principle of our free society is enshrined in the Fifth Amendment’s Due Process Clause, which specifically forbids the Government to “deprive[]” any “person . . . of . . . liberty . . . without due process of law.” U.S. Const. amend. V.
54. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212

(1953) (“[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law”).

55. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” protected by the Due Process Clause.

Zadvydas, 533 U.S. at 678.

56. The Supreme Court “has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection,” including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979)

(collecting cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

II. Civil Detention Provisions of the INA

57. In 1996, acting within the recognized constraints of constitutional due process, Congress rebalanced and codified three explicit detention provisions for noncitizens. Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. No. 104-208, Div. C. §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.

58. These three provisions relate to the type of removal proceedings a noncitizen is subjected to and are codified in 8 U.S.C. §§ 1225, 1226, and 1231.

59. First, 8 U.S.C. § 1225 describes a type of removal identified as “expedited removal” and requires detention without bond of noncitizens who are subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other arriving aliens, as defined at 8 C.F.R. §§ 1.2 and 1001.1(q).

60. Second, 8 U.S.C. § 1226 authorizes the issuance of administrative warrants for the detention of noncitizens for standard removal proceedings before an Immigration Judge under 8 U.S.C. § 1229a.

61. Finally, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)-(b).

62. This case concerns the detention provisions § 1225 and § 1226.

Bond Determination (and Redetermination) Under § 1226

63. Following enactment of IIRIRA, new regulations established that, in general, people who entered the country without inspection were not subject to the border detention regime of § 1225 and that they were instead subject to the detention provisions of § 1226. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 63 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

64. Individuals arrested and detained pursuant to the procedures of § 1226 are generally entitled to a bond determination at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d), unless they have been arrested, charged with, or convicted of certain crimes, in which case they are subject to mandatory detention. *See* 8 U.S.C. § 1226(c).

65. The regulations published at 63 Fed. Reg. 10312, 10323 (Mar. 6, 1997) were consistent with the constitutionally reviewed procedures of decades of prior practice, in which noncitizens present in the U.S.—noncitizens who were not “arriving aliens” as defined at 8 C.F.R. § 1001.1(q)—who were not released by an ICE officer, were entitled to a custody hearing before an Immigration Judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* Report of the Committee on the Judiciary on H.R. 2202, Report No. 104-469, Part 1 at 229

(March 4, 1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1251(a)).

66. Those regulations are consistent with the record of Congressional intent, as documented in the Report of the Committee on the Judiciary on H.R. 2202, Report No. 104-469, Part I (March 4, 1996) and in the Report of the Conference Committee, Report No. 104-828 (September 24, 1996).
67. The Congressional record shows that Congress was very aware during the drafting of IIRIRA of the constitutional parameters within which they were working. That includes the robust precedent establishing that persons in the U.S., regardless of their manner of entry, are constitutionally entitled to due process of law, including when they are subject to civil detention. *See, e.g., Yick Wo v. Hopkins*, 118 U.S. 356, (1886); *Yamataya v. Fisher*, 189 U.S. 86 (1903) (Japanese Immigrant Case); *Plyler v. Doe*, 102 S. Ct. 2382 (1982).
68. As explicitly set out in the implementing regulations, individuals (like Petitioner) arrested and detained in the interior of the United States after months or years of physical presence in the U.S., are presumed to be entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§1003.19(a), 1236.1(d), unless they have been arrested, charged with, or convicted of certain crimes, in which case they are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).
69. The regulations published at 63 Fed. Reg. 10312, 10323 (Mar. 6, 1997) are consistent with the constitutionally reviewed procedures of decades of prior practice, in which noncitizens present in the U.S.—noncitizens who were not “arriving aliens” as defined at 8 C.F.R. § 1001.1(q)—were entitled to a custody hearing before an Immigration Judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see* H.R. Rep. No. 104-469, Part 1 at 229

(March 4, 1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1251(a)).

70. In the decades that followed implementation of IIRIRA, the common understanding of the law was that 8 U.S.C. § 1226 applied to nearly everyone who entered the United States without inspection.
71. As a result, individuals like Mr. Torres, detained after years of physical presence in the United States, were routinely placed in standard removal proceedings and received bond hearings, unless their criminal history rendered them ineligible.
72. That practice was consistent with many more decades of prior practice, in which noncitizens who were not “arriving aliens” as defined at 8 C.F.R. § 1001.1(a) were entitled to a custody hearing before an Immigration Judge or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1251(a)).
73. Following those regulations, in the three decades since IIRIRA, noncitizens like Mr. Torres—noncitizens present in the U.S. who “entered without inspection” (or EWI’s as they are often called)—were routinely arrested only under the warrant and other procedures set out in § 1226.

Changes to Legal Interpretation in 2025

74. Despite the regulations and nearly three decades of practical implementation, DHS published a notice on July 8, 2025, titled “Interim Guidance Regarding Detention Authority for Applicants for Admission.” The notice was disseminated internally, to all ICE employees.
75. Apparently, the memo was leaked to the American Immigration Lawyers Association (“AILA”). See *ICE Memo: Interim Guidance Regarding Detention Authority for*

Applications for Admission, AILA Doc. No. 25071607 (July 8, 2025), available at <https://perma.cc/5GKM-JYGX> (last accessed Mar. 4, 2026).

76. According to the notice, DHS, in coordination with DOJ, “revisited its legal position on detention and release authorities” and concluded that “[§ 1225(b)(2)], rather than § 1226, is the applicable immigration authority” for any “alien present in the United States who has not been admitted.” *Id.*
77. Under this new analysis, “it is the position of DHS that such aliens are subject to [mandatory] detention under [§ 1225(b)] and may not be released from ICE custody.” *Id.*
78. “These aliens are also ineligible for a custody redetermination hearing (“bond hearing”) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, *these aliens are now treated in the same manner that ‘arriving aliens’ have historically been treated.*” *Id.*
79. As noted above, the BIA formally endorsed this statutory interpretation. *Matter of Yajure Hurtado* 29 I&N Dec. 216 (BIA 2025).
80. In other words, despite the conflicting regulatory language, express Congressional intent, and long-standing constitutional due process requirements, it is now Respondents’ position that all noncitizens present within the United States without lawful admission must be detained without bond.

Federal Court Rulings

81. Federal courts around the country have rejected Respondents’ legal position and ordered that petitioners like Mr. Torres be allowed to seek bond redetermination by an immigration judge. *See, e.g., Bautista v. Santacruz*, -- F. Supp. 3d --, 2026 WL 468284 (C.D. Cal. Feb. 18,

2026); *Tanchez v. Noem*, 2026 WL 125184 (D. Utah Jan. 16, 2026); *Carbajal v. Wimmer*, 2:26-cv-00093-TC, ECF No. 20 (D. Utah Feb. 9, 2026).

82. Mr. Torres is in the class certified by *Bautista*, so he should be allowed to argue for a bond before an immigration judge.

A Prior Problem

83. However, there is an analytically prior problem.

84. Immigration judges perform only bond “*re*-determinations”; the initial bond determination is made by ICE agents in the field. 8 CFR 1003.19.

85. This section, titled “Custody/bond,” describes the shared role that immigration agents and judges play in these determinations: initial “[c]ustody and bond determinations” are “made by the service pursuant to 8 CFR part 1236,” and these may be “reviewed by an Immigration Judge pursuant to 8 CFR part 1236.” 8 CFR § 1003.19(a).

86. The next section describes this review by an immigration judge as “an initial bond *re*-determination.” *Id.* § 1003.19(a) (emphasis added).

87. Here, Respondents violated the INA by instructing their officers to deny bond at Mr. Torres’s initial meeting.

88. By following *Hurtado* in the first instance, Respondents violated the INA and accompanying regulations.

89. Even before he sees an immigration judge, Respondents’ agents must make an initial “[c]ustody and bond determination” under the standards applicable to such.

III. Constitutional Due Process

90. The INA and accompanying regulations are not the only authority that prohibits unlawful detention.

91. The Fifth Amendment to the U.S. Constitution prohibits federal officials from depriving a person of his liberty “without due process of law.”
92. In determining whether due process has been violated, the court should balance: (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government’s interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
93. To establish a due process violation, a petitioner must also show prejudice. *Tamayo-Tamayo v. Holder*, 486 F.3d 484, 495 (9th Cir. 2007) (citation omitted) (internal quotations omitted).
94. There can be no reasonable dispute that up until September 5, 2025, Respondents and their agents would have provided a noncitizen in Mr. Torres’s situation an initial custody determination by an ICE agent and a bond redetermination hearing by an immigration judge.
95. The refusal to consider release initially or to seek redetermination by an immigration judge violated Due Process.
96. Mr. Torres’s continued detention based on Respondents’ unconstitutional statutory reinterpretation as announced in *Hurtado* constitutes actual prejudice.
97. He has no other forum in which to seek judicial review of the constitutional and legal issues raised by his continued detention on the basis of the Respondents’ actions, memos, and decisions.

98. Immigration detention should not be used coercively and should be used only when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas* at 690.
99. Accordingly, Petitioner seeks a Writ of Habeas Corpus requiring that Respondents (a) make an initial custody determination under the applicable statutes and rules, and (b) if bond is denied, allow him to seek redetermination at a bond hearing before an Immigration Judge.

CLAIMS FOR RELIEF

Federal law authorizes this court to issue a writ of habeas corpus when a person is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(a), (c)(3). “[A]n order barring their transfer to or from a place of incarceration” is “a proper claim for habeas relief.” *Kiyemba v. Obama*, 561 F.3d 509, 513 (D.C. Cir. 2009). Respondents’ plan to keep Mr. Torres in custody while his asylum application is pending has several constitutional and legal problems.

I. CLAIM 1: Violation of the INA and Governing Regulations

The allegations in the above paragraphs are realleged and incorporated herein. Mr. Torres entered the United States without inspection. He has lived within the United States for more than two years. He has significant ties to this community and no criminal record. He falls within the class certified by *Bautista*. On information and belief, Respondents have now issued a Notice to Appear in removal proceedings pursuant to 8 U.S.C. § 1229a.

Respondents violated the INA and governing regulations by (a) denying him an initial custody determination under 8 U.S.C. § 1225, and (b) denying him the ability to seek bond redetermination by an immigration judge.

On information and belief, Respondents have not complied with the notice requirements imposed by the court in *Bautista*.

The failure to follow these statutes, rules, and court orders makes ongoing detention unlawful. The court should issue a writ of habeas corpus and order Respondents to (a) notify Mr. Torres of his rights as required by *Bautista*, (b) make an initial custody determination, and (c) allow him to seek bond redetermination of custody is denied as a matter of officer discretion.

II. CLAIM 2: Violation of Fifth Amendment right to Procedural Due Process.

The allegations in the above paragraphs are realleged and incorporated herein.

Procedural due process requires notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333–34 (1976). To state a claim for a violation of procedural due process rights, a petitioner must establish (1) a protected property or liberty interest, and (2) a denial of adequate procedural protections. *ASSE Int'l, Inc. v. Kerry*, 803 F.3d 1059, 1073 (9th Cir. 2015). Here, the interest at stake, and the procedures denied are those required by the INA and accompanying regulations.

As noted above, a due process claim requires the court to consider three factors. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). As to the first *Mathews* factor, the private interest affected by the government action, “Petitioner’s liberty interest in remaining free from governmental restraint is of the highest constitutional import.” *Zavala*, 310 F.Supp.2d at 1076; *see also Ashley*, 288 F.Supp.2d at 670-71 (same) (quoting *St. John v. McElroy*, 917 F. Supp. 243, 250 (S.D.N.Y. 1996)). Mr. Torres is a long-term resident of the United States who recently began his own business as a mechanic. He has no criminal record that would make him ineligible for an immigration bond.

As to the second *Mathews* factor, this Court must look at the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could

be reduced by additional safeguards. As explained above, the current procedures cause an erroneous deprivation of the interest of this Petitioner in remaining at liberty, free from detention.

As to the third *Mathews* factor, the government has almost no reasonable interest in detaining Mr. Torres without first deciding whether he can be released under the INA. There is virtually no burden associated with an initial custody determination by an agent who is already interviewing and processing a noncitizen arrestee. And for a defendant who seeks to navigate the immigration court system with a series of hearings that could culminate in removal, the addition of a single, typically short, bond hearing is also minimal.

“To show prejudice, [a Petitioner] must present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided.”

Tamayo-Tamayo v. Holder, 486 F.3d 484, 495 (9th Cir. 2007) (citation omitted) (internal quotations omitted). Here, there is a readily apparent scenario in which the outcome of an initial custody determination or bond hearing would have been different. Mr. Torres has lived in the United States for years without any criminal activity. He has strong ties to the community with a U.S. Citizen fiancé and small child. It is certainly “plausible” that he would have been released had agents considered release as a matter of discretion instead of detaining him as a matter of law. And it is also “plausible” that an immigration judge would award him a bond if agents decided to detain him.

III. CLAIM 3: Violation of the APA

The allegations in the above paragraphs are realleged and incorporated herein.

Under the Administrative Procedures Act (APA), an agency action may be held unlawful and set aside if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). An action is an abuse of discretion if the agency “entirely failed

to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

For a challenged agency action to be upheld, the agency “must explain the evidence which is available, and must offer a rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs.*, 463 U.S. at 52 (1983) (internal quotations omitted) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

ICE’s decision to detain Mr. Torres without making an initial, discretionary custody determination must be vacated under the APA because it was arbitrary, capricious, and an abuse of discretion. Under 8 CFR 1003.19, Respondents and their agents were required to make an initial custody determination as a matter of discretion, and if they chose to deny release, they were required to allow seek bond redetermination by an immigration judge at a hearing on the record. On information and belief, there is no evidence to suggest there was a “rational” factual basis for this choice. Furthermore, Respondents’ decision to deny him a chance to seek bond redetermination by an immigration judge was arbitrary, capricious, and an abuse of discretion.

PRAYER FOR RELIEF

For these reasons, Mr. Torres asks the court to order the following relief:

1. Enter an emergency order that Respondents not (a) transfer him out of this district or (b) deport him while this petition is pending.
2. Allow Mr. Torres to conduct discovery.
3. Order Respondents to show cause why this petition should not be granted.

4. Issue a Writ of Habeas Corpus requiring Respondents to make an initial custody determination, inform Mr. Torres of his rights under *Bautista*, and permit him to seek bond redetermination if the screening officer denies release as a matter of discretion.
5. Declare that Petitioner's continued detention without bond or any individualized determination of danger or flight risk violates the Due Process Clause of the Fifth Amendment.
6. Order all other relief that the Court deems just and proper.

* * *

Counsel verifies that Petitioner has authorized this petition. It does not personally bear Petitioner's signature because he is in custody. It is based on information provided to Counsel by Petitioner. Counsel knows the facts asserted above to be true, or alleges them on information and belief, based on information obtained from Petitioner.

DATED this 9th day of March 2026.

/s/ Benjamin C. McMurray
BENJAMIN C. McMURRAY
Assistant Federal Public Defender