

1 Frederick Carroll (CA Bar No. 227628)
2 Andres Holguin-Flores (CA Bar No. 305860)
3 ACLU Foundation of San Diego and Imperial Counties
4 2760 Fifth Ave #300
5 San Diego, California 92101
6 (619) 232-2121
7 fcarroll@aclu-sdic.org
8 aholguinflores@aclu-sdic.org

9 Kathy Manley NYS 3935467*
10 Law Office of Kathy Manley
11 26 Dinmore Road
12 Selkirk, NY 12158
13 518-635-4005
14 Mkathy1296@gmail.com

15 **Pro hac vice forthcoming*

16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 JORGE GUAMAN-PINTO,

19 *Petitioner,*

20 v.

21 GREGORY ARCHAMBEAULT,
22 Enforcement and Removal Operations,
23 San Diego Field Office Director, U.S.
24 Immigration and Customs Enforcement;
25 Todd Lyons, Acting Director of
26 Immigration and Customs Enforcement;
27 Kristi Noem, Secretary, U.S. Department
28 of Homeland Security; CHRISTOPHER
LAROSE, warden at Otay Mesa Detention
Center; U.S. Department of Homeland
Security; U.S. Immigration and Customs
Enforcement,

Respondents.

Civil Case No. '26CV1716 JES BLM

**COMPLAINT AND PETITION FOR
WRIT OF HABEAS CORPUS AND
INJUNCTIVE RELIEF**

INTRODUCTION

1
2 1. Petitioner Jorge Guaman-Pinto (“Mr. Guaman-Pinto” or “Petitioner”) is a 20-year-
3 old national of Ecuador who entered the United States without inspection (as a 17-year-old
4 unaccompanied minor) on or about August 17, 2023. He soon encountered Customs and Border
5 Parole agents and requested asylum. He was released to his sponsor (an uncle) by the Office of
6 Refugee Resettlement on or about August 26, 2023 and given a Notice to Appear. He hired an
7 immigration attorney, who has appeared for him in removal proceedings, but who has not filed an
8 Asylum and Withholding Petition yet.
9

10 2. Mr. Guaman-Pinto was detained by ICE agents on January 12, 2026 when he was
11 a passenger in a car which was pulled over in Schenectady, New York. He is in the physical
12 custody of Respondents at the Otay Mesa Detention Center. He now faces unlawful detention
13 because the Department of Homeland Security (“DHS”) and the Executive Office of
14 Immigration Review (“EOIR”) have concluded he is subject to mandatory detention.
15

16 3. Petitioner is charged with, inter alia, having entered the United States without
17 admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

18 4. On September 5, 2025, the Board of Immigration Appeals (“BIA” or “Board”)
19 issued a precedent decision, binding on all immigration judges, holding that an immigration judge
20 has no authority to consider bond requests for any person who entered the United States without
21 admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) The Board determined
22 that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore
23 ineligible to be released on bond.
24

25 5. Petitioner’s detention on this basis violates the plain language of the Immigration
26 and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who
27 previously entered and are now residing in the United States. Instead, such individuals are
28 subject to a different statute, § 1226(a), that allows for release on conditional parole or bond, and

1 requires an individualized determination upon arrest. That statute expressly applies to people
2 who, like Petitioner, are charged as inadmissible for having entered the United States without
3 inspection.

4 6. Petitioner’s confinement is unlawful—as confirmed by a cascade of decisions,
5 including within this District, that have rejected Respondents’ interpretation of Section
6 1225(b)(2). Accordingly, he brings this petition seeking immediate and unconditional release. He
7 also asks this Court to enjoin his transfer outside this District. *Local 1814, Intern.*
8 *Longshoremen’s Ass’n, AFL-CIO v. New York Shipping Ass’n, Inc.*, 965 F.2d 1224, 1237 (2nd
9 Cir. 1992) (“Once the district court acquires jurisdiction over the subject matter of, and the
10 parties to, the litigation, the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect
11 that jurisdiction” (cleaned up)); *Khalil v. Joyce*, No. 2:25-cv-1963 (MEF) (D.N.J.) Mar. 19,
12 2025), ECF No. 81 (enjoining transfer and removal of an immigration habeas petitioner under
13 the All Writs Act). Alternatively, Petitioner respectfully asks the Court to issue an order to show
14 cause and hold a hearing pursuant to 28 U.S.C. § 2243 on the expedited basis set forth in the
15 statute, during which the Court should (1) find that Petitioner’s detention violates federal law and
16 (2) order his release or order a bond hearing.

19 JURISDICTION

20 7. This action arises under the Constitution of the United States and the INA, 8 U.S.C
21 § 1101 *et seq.*

22 8. This Court has subject matter jurisdiction pursuant to 28 U.S.C § 2241 (the general
23 grant of habeas authority to the district court); Art. I § 9, cl. 2 of the U.S. Constitution (“Suspension
24 Clause”); and 28 U.S.C § 1331 (federal question jurisdiction).

25 9. This Court may grant relief under the habeas corpus statutes, 28 U.S.C § 2241 *et*
26 *seq.*, the Declaratory Judgement Act, 28 U.S.C § 2201 *et seq.*, and the All Writs Act, 28 U.S.C §
27 1651.
28

VENUE

1
2 10. Venue is proper in the Southern District of California because Mr. Guaman-Pinto
3 is physically detained in the Otay Mesa Detention Center, which is located in this district. *See*
4 *Rumsfeld v. Padilla*, 542 U.S. 426, 428 (2004) (“[T]he traditional rule has always been that habeas
5 relief is issuable only in the district of confinement...”).

PARTIES

6
7
8 11. Petitioner Jorge Guaman-Pinto is an Ecuadoran national who was detained in by
9 ICE in Schenectady, New York on January 12, 2026. Mr. Guaman-Pinto is detained at the Otay
10 Mesa Detention Center. (Exhibit “A,” ICE Detainee Locator)

11 12. Respondent Todd Lyons is the Acting Director of the DHS ICE. As such, Todd
12 Lyons is responsible for Mr. Guaman-Pinto’s detention and removal. He is sued in his official
13 capacity.

14
15 13. Respondent Kristi Noem is the Secretary of the DHS. She is responsible for the
16 implementation and enforcement of the INA and oversees ICE, which is responsible for Mr.
17 Guaman-Pinto’s present DHS detention. Ms. Noem has ultimate custodial authority over Mr.
18 Guaman-Pinto and is sued in her official capacity. Respondent DHS is the federal agency
19 responsible for implementing and enforcing the INA, including the detention and removal of
20 noncitizens.

21 14. Respondent Pamela Bondi is the Attorney General of the United States. She is
22 responsible for the Department of Justice, of which the Executive Office for Immigration Review
23 (“EOIR”) and the immigration court system it operates is a component agency. She is sued in her
24 official capacity. Respondent EOIR is the federal agency responsible for implementing and
25 enforcing the INA in removal proceedings, including for custody redeterminations in bond
26 hearings.
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A. STATEMENT OF FACTS AND PROCEDURAL HISTORY

1
2 21. Jorge Guaman-Pinto is a 20-year-old Ecuadoran national who fled Ecuador due to
3 extreme violence and entered the United States as an unaccompanied minor, at the age of 17, on
4 or about August 17, 2023. (Exhibit “B,” at 1, Notice to Appear) He made a credible fear claim at
5 that time. (Exhibit “C, Form I-213)
6

7 22. Petitioner was released to his sponsor, Ruben Dario Guaman Tenegusñay (his
8 uncle), by the Office of Refugee Resettlement on or about August 26, 2023 and given a Notice to
9 Appear. (Exhibit “B” at 1, 6) He always appeared when directed. Mr. Guaman-Pinto was
10 residing with his uncle in Albany, New York between August, 2023 and his arrest on January 12,
11 2026.
12

13 23. No circumstances have changed that make Mr. Guaman-Pinto a flight risk or
14 danger to the community, nor has ICE even sought to claim any such change in circumstances.

15 24. On January 12, 2026, Mr. Guaman-Pinto was a passenger in a vehicle in
16 Schenectady, New York, which was pulled over by law enforcement. He was then detained by
17 ICE, and taken to the Buffalo Federal Detention Center, where he remained until approximately
18 February 23, 2026, when he was transferred to the Otay Mesa Detention Center near San Diego,
19 CA, where he remains. Upon information and belief, at no time following Mr. Guaman-Pinto’s
20 arrest did ICE give any individualized reason for his detention.
21

22 25. Mr. Guaman-Pinto had hired an immigration attorney, Rochelle Inger, who has
23 since appeared for him a few times in removal proceedings. However, she stated to undersigned
24 counsel that she does not do asylum applications¹. (Undersigned counsel does not practice in
25 immigration court.)
26

27
28 ¹ Ms. Inger stated to undersigned counsel that she intended to pursue Special Immigrant Juvenile Status for Mr. Guaman-Pinto, but that she was unable to pursue that while he was in detention.

1 the noncitizen pursuant to Section 1226(a) pending removal proceedings, the individual may ask
2 for a bond redetermination hearing before the immigration judge. 8 C.F.R. §1003.19.

3 32. In contrast with Section 1226, which applies to “certain [noncitizens] already in
4 the country,” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (emphasis added), Section 1225(b)
5 governs detention of noncitizens seeking entry into the United States (i.e., “applicants for
6 admission”). In other words, Section 1225(b) mandates detention for those noncitizens subject to
7 it, and they are not eligible to be considered for release.
8

9 33. Section 1225(b)(2)(A) applies to a narrower subset of applicants for admission. It
10 provides that, “if the examining officer determines that a[] [noncitizen] *seeking admission* is not
11 clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall be detained* for a
12 proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added).
13

14 34. For decades after the enactment of detention provisions at § 1226(a) and
15 § 1225(b)(2), people who entered the country without inspection but who were already in the
16 United States at the time of an ICE arrest were detained under § 1226(a) rather than
17 § 1225(b)(2). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of
18 Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar.
19 6, 1997). As the Supreme Court has made clear, “Section 1226(a) sets out the default rule: The
20 Attorney General may issue a warrant for the arrest and detention of an [noncitizen] ‘pending a
21 decision on whether the [noncitizen] is to be removed from the United States.’” *Jennings*, 583
22 U.S. at 287-89.
23

24 35. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy² that
25 rejected well-established understanding of the statutory framework and reversed decades of
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27
28 ² Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

1 practice. The policy claims that all persons who entered the United States without inspection
2 shall now be subject to mandatory detention provision under § 1225(b)(2)(A), regardless of when
3 a person is apprehended and affects those who have resided in the United States for months,
4 years, and even decades.

5 36. On September 5, 2025, the BIA adopted this same position in a published
6 decision, *Matter of Yajure Hurtado*³. There, the Board held that all noncitizens who entered the
7 United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are
8 ineligible for IJ bond hearings.
9

10 37. Since Respondents adopted their new policy, the vast majority of district courts
11 that have confronted this issue have found that Section 1226(a) applies in these circumstances,
12 and that the government's current position belies the text of the INA, canons of statutory
13 interpretation, legislative history, and longstanding agency practice. For examples in this
14 District, see, i.e. *Zayas v. Gordon*, 2026 US Dist. LEXIS 21405 (SDCA 2026); *Velazquez-*
15 *Beltran v. Noem*, 2026 US Dist. LEXIS 39070 (SDCA 2026); *Raudales-Valle v. Driver*, 2026 US
16 Dist. LEXIS 37925 (SDCA 2026); *Lucero v. Bondi*, 2026 US Dist. LEXIS 37781 (SDCA 2026);
17 *Tekbas v. LaRose*, 2025 US Dist. LEXIS 268487 (SDCA 2025.) See also *J.Y.L.C. v. Bostock*,
18 2025 US Dist. LEXIS 222436 (DOR 2025) (listing many cases across the country) and
19 *Mercado v. Francis*, 2025 U.S. Dist. LEXIS 232876 (SDNY 2025) (Appendix A, citing 350
20 cases across the country)
21

22 38. Courts have rejected DHS's and EOIR's new interpretation because it defies the
23 INA. The government's recently adopted position also ignores the text of § 1225(b)(2). For §
24
25

26 _____
27 ³ *Yajure Hurtado* was recently abrogated in *Maldonado Bautista v. Santacruz*, 2025 US Dist. LEXIS
28 262265 (CDCA 2025) but, upon information and belief, immigration judges are still following the
guidance in *Yajure Hurtado*.

1 1225(b)(2) to apply, an examining immigration officer must make three separate determinations:
2 that a person is 1) an applicant for admission; 2) seeking admission; and 3) not clearly and
3 beyond a doubt entitled to be admitted. Section 1225(a)(1) defines an “applicant for admission”
4 as [a noncitizen] present in the United States who has not been admitted or who arrives in the
5 United States.” The term “seeking admission . . . necessarily implies some sort of present-tense
6 action.” *Zayas v. Gordon*, supra, at *6. The government’s interpretation that all inadmissible
7 individuals are “seeking admission” within the meaning of § 1225(b) renders the meaning of the
8 term identical to the statutorily defined term “applicant for admission.” Such an interpretation
9 violates rule of surplusage and negates the plain meaning of text.
10

11 39. The legislative history further shows that § 1226(a) was intended to “restate[] the
12 [then-]current provisions in section 242(a)(1) regarding the authority of the Attorney General to
13 arrest, detain, and release on bond an alien who is not lawfully in the United States.” *Rodriguez*
14 *v. Bostock*, 779 F. Supp. 3d 1239, 1260 (WDVA 2025) (quoting H.R. Rep. No. 104-469, at 229
15 (1996)). Indeed, shortly after IIRIRA’s enactment, the former Immigration and Naturalization
16 Service and the Executive Office for Immigration Review (“EOIR,” which houses the
17 Immigration Courts and BIA) issued an interim rule to implement the statute that expressly
18 stated: “Despite being applicants for admission, aliens who are present without having been
19 admitted or paroled (formerly referred to as aliens who entered without inspection) will be
20 eligible for bond and bond redetermination.” 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
21

22 40. Thus, for almost 30 years, all participants in the immigration system have
23 understood that people arrested inside the United States generally fall within § 1226 for detention
24 purposes and therefore, unless subject to bars not applicable here, are required to receive a bond
25 hearing upon request—even if they initially entered the country without permission. Such a
26 longstanding and consistent interpretation “is powerful evidence that interpreting the Act in [this]
27 way is natural and reasonable.” *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J.,
28

1 dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in
2 part on “over 60 years” of government interpretation and practice to reject government’s new
3 proposed interpretation of the law at issue).

4 41. The LRA amendments to § 1226 that occurred recently, § 119, 139 Stat. 3, also
5 confirmed widespread understanding that individuals not admitted or paroled were still detained
6 pursuant to § 1226(a) if they were detained while already in the United States. Congress
7 expressly included inadmissible individuals who have been convicted of certain crimes as subject
8 to mandatory detention under § 1226(c)(1)(E). Again, if every noncitizen who was present
9 without being admitted was already subject to mandatory detention under § 1225(b)(2), Congress
10 would have had no reason to pass an entirely new provision in order to make those individual
11 subject to mandatory detention under § 1226(c)(1)(E) if they committed one of the listed crimes.

12 42. Petitioner was arrested after more than two years of continuous presence in the
13 United States, not while “seeking admission.” Accordingly, the mandatory detention provision of
14 § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were
15 residing in the United States at the time they were apprehended. His detention is governed by §
16 1226(a), and his continued detention under § 1225(b)(2) is in excess of statutory authority and
17 *ultra vires*.

18 **b. Noncitizens’ Procedural Due Process Rights**

19 43. The Due Process Clause of the Fifth Amendment entitles noncitizens to due
20 process of law. *Reno v. Flores*, 507 U.S. 292, 306 (1993). As clearly enunciated by the
21 Supreme Court, the protection of the Due Process Clause applies to noncitizens in the United
22 States “whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v.*
23 *Davis*, 533 U.S. 678, 693 (2001) (citations omitted).

24 44. Stated simply, “while [DHS] might want to enforce this country’s immigration
25 laws efficiently, it cannot do that at the expense of fairness and due process.” *Ceesay v.*
26
27
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1 *Kurzdorfer*, 2025 WL 1284720, at *1 (WDNY 2025) (citing *United States ex. rel. Accardi v.*
2 *Shaughnessy*, 347 U.S. 260, 266–68 (1954)).

3 45. Further, noncitizens are entitled to procedural due process protections, even in the
4 face of policy shifts between administrations. While a “new administration can change the
5 rules . . . it cannot change them and make up new rules as it goes along when the new rules
6 abridge constitutional rights.” *Velasquez v. Kurzdorfer*, 2025 WL 1953796, at *14 (WDNY
7 2025).

8
9 46. In the context of immigration detention due process claims, courts, including in
10 the Ninth Circuit, have applied the three-factor balancing test set forth in *Mathews v. Eldridge* to
11 determine what due process requires. See, i.e. *Rodriguez-Diaz v. Garland*, 53 F.4th 1189 (9th Cir.
12 2022.) These factors are: (i) the private interest that will be affected by the official action; (ii) the
13 risk of an erroneous deprivation of such interest through the procedures used, and the probable
14 value, if any, of additional or substitute procedural safeguards; and (iii) the Government’s
15 interest, including the function involved and the fiscal and administrative burdens that the
16 additional or substitute procedural requirement would entail. *Torres v. Hermosillo*, 2026 US
17 Dist. LEXIS 36722 (WDWA 2026)

18
19 47. In light of a noncitizen’s due process rights and the procedural rights conferred by
20 Section 1226(a) and the implementing regulations, a decision to detain a noncitizen requires an
21 individualized determination as to the noncitizen’s risk of flight and danger to the community.
22 See *Velesaca v. Decker*, 458 F. Supp. 3d 224, 235 (SDNY 2020); *Lopez Benitez*, 2025 WL
23 2371588, at *10; *Kelly v. Almodovar*, 2025 WL 2381591, at *3 (SDNY 2025).

24
25 48. Under the *Mathews* rubric, freedom from imprisonment, physical restraint, or
26 other forms of government custody is “the most elemental of liberty interests.” *Hamdi v.*
27 *Rumsfeld*, 542 U.S. 507, 529 (2004); *Lopez Benitez*, 2025 WL 2371588, at *9 (“[Petitioner]
28 invokes the most significant liberty interest there is—the interest in being free from

1 imprisonment”) (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)) (citing
2 *Hamdi*, 542 U.S. at 529); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (NDCA 2019)
3 (noncitizens in immigration custody had an arguably even greater liberty interest in remaining
4 out of detention than criminal parolees who required due process protection).

5 49. With respect to the second *Mathews* factor, given the strong liberty interest at
6 stake, the Fifth Amendment’s guarantee of due process requires at least some notice and an
7 opportunity to be heard before a person can be placed in immigration detention. *Trump v.*
8 *J.G.G.*, 604 U.S. 670, 673 (2025). Further, due process requires that “notice must be afforded
9 within a reasonable time and in such manner as will allow [noncitizens] to actually seek . . .
10 relief[.]” *Id.*

11 50. For the third *Mathews* factor, “the Attorney General’s discretion to detain
12 individuals under 8 U.S.C. § 1226(a) is valid where it advances a legitimate government
13 purpose.” *Velasco Lopez*, 978 F.3d at 854. The recognized government interests in immigration
14 detention are “ensuring the appearance of [noncitizens] at future immigration proceedings” and
15 “preventing danger to the community.” *Zadvydas*, 533 U.S. at 690. Where, as in this case, the
16 individual was released after an evaluation as to dangerousness and risk of flight, re-detention
17 generally requires a showing of a material change in circumstances. *Torres v. Hermosillo*, *supra*,
18 at *16; *Saravia v. Sessions*, 280 F.Supp.3d 1168, 1197 (NDCA 2017), *aff’d sub nom. Saravia for*
19 *A.H. v. Sessions*, 905 F.3d 1137 (11th Cir. 2018.)

20 51. Recent decisions by federal courts in various jurisdictions confirm that due
21 process requires the government to make individualized determinations to detain noncitizens and
22 give them notice and a meaningful opportunity to be heard when challenging their detention.
23 Further, if a noncitizen does not receive individualized consideration pre-deprivation, his due
24 process rights are irrevocably violated, and no amount of procedure provided post-detention can
25 remedy that violation. This is particularly clear where, as in the instant case, the government, by
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27
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1 releasing Petitioner in 2023 already made a determination that he was not a flight risk or a
2 danger - no change of circumstance justifies re-detention.

3 52. As a result, many courts have ordered a noncitizen's immediate release where
4 their pre-detention due process rights have been violated. Here, immediate release is appropriate
5 because Respondents have not—and cannot—show that they conducted an individualized
6 determination regarding Petitioner before re-detaining him on January 12, 2026, especially given
7 his status as an unaccompanied minor. *Tekbas v. LaRose*, 2025 US Dist. LEXIS 268487 (SDCA
8 2025) (granting immediate release to petitioner who entered the US in 2023 and was released on
9 his own recognizance the next day, but then was detained by ICE in October, 2025); *Cornejo v.*
10 *Andrews*, 2026 US Dist. LEXIS 17546 (EDCA 2026)(granting immediate release to petitioner
11 who entered the US in 2024 as an unaccompanied minor and was then detained at an ICE check-
12 in on November 9, 2025); *F.S.S.M. v. Wolford*, 2025 US Dist. LEXIS 254953 (EDCA
13 2025)(granting immediate release to petitioner who entered the US in 2019 as an unaccompanied
14 minor and was then detained by ICE while working on August 6, 2025); *Carranza v. Chestnut*,
15 2026 US Dist. LEXIS 40156 (EDCA 2026)(granting immediate release to petitioner who entered
16 the US in 2023 as an unaccompanied minor and was then detained at an ICE check-in on
17 December 29, 2025.)

18 53. In the alternative, Petitioner seeks at a minimum a bond hearing within 7 days of
19 the decision herein.

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21
22 **c. Unaccompanied Minor Status**

23 54. Because Mr. Guaman-Pinto entered the United States as an unaccompanied
24 minor, and was then released pursuant to the Trafficking Victims Protection Reauthorization Act
25 (TVPRA), he has a very strong liberty interest because “[p]etitioner’s release pursuant to the
26 TVPRA created a reasonable expectation that he would be entitled to retain his liberty under the
27 TVPRA’s protection.” *S.S.M. v. Wolford*, supra, at *13.
28

1 55. In addition, the TVPRA mandates that the government place unaccompanied
2 minors in the “least restrictive setting” possible, in the best interests of the child. *Cornejo v.*
3 *Andrews*, supra, at *18. And in releasing Petitioner, HHS had to have concluded that he was
4 neither a flight risk nor a danger to the community. *Id.*, at *20.

5 **d. Fourth Amendment Issues**

6 56. The Fourth Amendment bars arrest without probable cause or a proper warrant.
7
8 *See, e.g., Gamez Lira v. Noem*, 2025 WL 2581710, at *3–4 (DNM 2025) (finding habeas
9 petitioner’s Fourth Amendment claim likely to succeed in showing arrest and continued
10 detention unconstitutional when Respondents failed to make a probable cause determination
11 before re-arresting and detaining noncitizen in removal proceedings). In this case, Petitioner was
12 arrested only because he was a passenger in a car which was pulled over by law enforcement,
13 and ICE then decided to detain him unlawfully.

14 57. The appropriate remedy for this violation is release from detention. *See, e.g.,*
15 *Rosado v. Figueroa*, 2025 US Dist. LEXIS 156344, at *51-53 (DAZ 2025), *report and*
16 *recommendation adopted*, 2025 U.S. Dist. LEXIS 156336 (ordering habeas petitioner’s “release
17 from detention . . . granted because her Fourth Amendment rights were violated.”).

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C. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION:

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a) AND IMPLEMENTING REGULATIONS

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3
4 58. Petitioner realleges and incorporates by reference each and every allegation
5 contained above.

6
7 59. Petitioner was, at the time of arrest and detention by Respondents, *not* “seeking
8 admission” to the United States. He was already residing in the United States. Section 1226
9 governs the detention of individuals residing within the United States, like Petitioner, and
10 implements a discretionary detention regime with the opportunity for release.

11 60. Because Petitioner was not “seeking admission,” he is not lawfully detained
12 under 8 U.S.C. § 1225(b)(2) and his detention pursuant to that statute is *ultra vires* and not
13 lawful.

14
15 61. Rather, the proper statutory interpretation of the INA, consistent with decades of
16 practice, is that an individual in Petitioner’s circumstances who is placed into removal
17 proceedings is detained under 8 U.S.C. § 1226(a.) Because Petitioner detention should be
18 governed by Section 1226, the application of the mandatory detention statute, 8 U.S.C. §1225(b),
19 to Petitioner is unlawful under the Immigration and Nationality Act.

SECOND CAUSE OF ACTION:

**ICE’S FAILURE TO EXERCISE ITS DISCRETION VIOLATES DUE PROCESS AND
22 THE IMMIGRATION AND NATIONALITY ACT
23 U.S. CONST. AMEND. V; 8 U.S.C. § 1226(a)**

24 62. Petitioner realleges and incorporates by reference each and every allegation
25 contained above.

26 63. Because Petitioner was detained by ICE under a discretionary statute, 8 U.S.C.
27 § 1226(a), the agency was required to exercise its discretion in deciding whether or not to detain
28

1 him. However, because ICE arrested and detained Petitioner under 8 U.S.C. § 1225(b)(2), the
2 agency necessarily failed to exercise its discretion.

3 64. By refusing to exercise any discretion at all in his case, ICE denied Petitioner the
4 process that he was due under the discretionary detention statute, violating both the statute itself
5 and the Due Process Clause of the Constitution.

6 **THIRD CAUSE OF ACTION:**

7 **ICE'S DETENTION OF PETITIONER VIOLATES DUE PROCESS**
8 **BECAUSE HE WAS RELEASED UNDER THE TVPRA**

9 65. Petitioner realleges and incorporates by reference each and every allegation
10 contained above.

11 66. The Because Petitioner was detained by ICE after being released pursuant to the
12 TVPRA, his detention is a violation of his due process rights. *F.S.S.M. v. Wolford*, supra;
13 *Cornejo v. Andrews*, supra.

14 **FOURTH CAUSE OF ACTION:**

15 **VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT,**
16 **5 U.S.C. § 706(2)(A)**

17 67. Petitioner realleges and incorporates by reference each and every allegation
18 contained above.

19 68. The Administrative Procedure Act prohibits agency action which is arbitrary and
20 capricious or contrary to law. 5 U.S.C. § 706(2)(A). ICE officers' authority to conduct
21 warrantless arrests is prescribed in 8 U.S.C. 1357(a)(2). That statute requires that officers have
22 "reason to believe" a person is in the U.S. in violation of laws *and* "is likely to escape before a
23 warrant can be obtained for his arrest." That assessment must be individualized.

24 69. Upon information and belief, no individualized assessment of flight risk was
25 conducted for Petitioner and Respondents did not have probable cause to believe he was likely to
26 escape before a warrant could be obtained.
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1 “specific and articulable facts” to support reasonable suspicion. *See Terry v. Ohio*, 392 U.S. 1,
2 21 (1968).

3 75. Petitioner’s detention violates the Fourth Amendment because he was arrested
4 without probable cause or a proper warrant. *See, e.g., Gamez Lira v. Noem*, No. 1:25-CV-00855,
5 2025 WL 2581710, at *3–4 (D.N.M. Sept. 5, 2025) (finding habeas petitioner’s Fourth
6 Amendment claim likely to succeed in showing arrest and continued detention unconstitutional
7 when Respondents failed to make a probable cause determination before re-arresting and
8 detaining noncitizen in removal proceedings).

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10 76. The appropriate remedy for this violation is release from detention. *See, i.e.*
11 *Rosado v. Figueroa*, 2025 US Dist. LEXIS 156344, at *51-53 (DAZ 2025), *report and*
12 *recommendation adopted*, 2025 U.S. Dist. LEXIS 156336 (ordering habeas petitioner’s “release
13 from detention . . . granted because her Fourth Amendment rights were violated.”).

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Mr. Guaman-Pinto requests that this Court:

- 16
17 a. Exercise jurisdiction over this matter;
- 18 b. Enjoin Mr. Guaman-Pinto’s removal or transfer outside the jurisdiction of this
19 Court and the United States pending its adjudication of this petition;
- 20 c. Issue a writ of habeas corpus directing Respondents to immediately release
21 Petitioner from custody without any additional restraints on his liberty (as occurred in *Tekbas v.*
22 *LaRose*, 2025 US Dist. LEXIS 268487 [SDCA 2025]), and enjoining any re-detention under 8
23 U.S.C. § 1225(b)(2);
- 24
25 d. In the alternative, the Court should conduct a constitutionally adequate,
26 individualized bond hearing for the Petitioner within fourteen days. If, instead, Respondents are
27 ordered to carry out such a hearing in front of an impartial adjudicator, the Court should direct
28 that at that hearing:

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1. ICE must bear the burden of establishing by clear and convincing evidence that continued detention is justified;
 2. Especially given the prior release under TVPRA, the adjudicator must meaningfully consider alternatives to imprisonment such as release on recognizance, parole or electronic monitoring; and
 3. The adjudicator must meaningfully consider Petitioner’s ability to pay if setting a monetary bond.
- e. Award Petitioner costs and reasonable attorneys’ fees; and
- f. Order such other relief as this Court may deem just and proper.

Respectfully submitted this 18th day of March, 2026.

By: s/ Frederick Carroll
Frederick Carroll (CA Bar No. 227628)
Andres Holguin-Flores (CA Bar No. 305860)
ACLU Foundation of San Diego and Imperial Counties
2760 Fifth Ave #300
San Diego, California 92101
(619) 232-2121
fcarroll@aclu-sdic.org
aholguinflores@aclu-sdic.org

Kathy Manley NYS 3935467*
Law Office of Kathy Manley
26 Dinmore Road
Selkirk, NY 12158
518-635-4005
Mkathy1296@gmail.com

**Pro hac vice forthcoming*

Attorneys for Petitioner

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CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2026, I caused a true and correct copy of the foregoing document to be filed with the Clerk of the Court for the United States District Court – Southern District of California by using the CM/ECF system. All participants in this case are registered CM/ECF users and will be served by the CM/ECF system.

/s/Andres Holguin-Flores

Andres Holguin-Flores