UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

E.S.B.G.,	)	
	)	
Petitioner,	)	
	)	CASE NO.:
vs.	)	
	)	
SYLVESTER JENKINS, *Warden of the Federal Correctional Institute Atlanta,* and LADEON FRANCIS, *Field Office Director for ICE Atlanta Field Office,* and TODD LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement;* and KRISTI NOEM, *Secretary of Homeland Security* And PAMELA BONDI, *U.S. Attorney General.*	)	
	)	
Respondents.	)	
	)	

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. This Petition challenges the ongoing civil immigration detention of Petitioner, E.S.B.G. ("Petitioner"), A# 078-XXX-XXX by U.S. Immigration and Customs Enforcement (ICE) at Federal Correctional Institute (FCI) Atlanta, Georgia. See Exhibit 1, ICE locator. Petitioner was re-arrested without a warrant while buying food at a gas station on his way to work, after more than a year of compliant release in the community under DHS supervision. ICE now treats

him as an "arriving alien" subject to mandatory detention under 8 U.S.C. § 1225(b), and immigration judges have disclaimed bond jurisdiction on that basis. Since Petitioner is an applicant for Asylum and Withholding of Removal, he will soon be filing a motion for leave to proceed under a pseudonym in order to protect his identity.

2. The Immigration and Nationality Act ("INA") establishes two distinct detention frameworks. Section 1225 governs inspection and mandatory detention of noncitizens "arriving" at the border or otherwise "seeking admission," while 8 U.S.C. § 1226 governs arrest and discretionary detention of noncitizens apprehended "in the United States" on a warrant, with the possibility of release on bond or recognizance. Petitioner—who entered in December 2024, was processed and released by DHS, and then lived and worked in the interior under ICE supervision—falls squarely within § 1226, not § 1225.

3. Petitioner's detention is unlawful on two independent grounds. First, ICE's warrantless interior arrest violated the statutory arrest framework. Section 1226(a) requires an arrest "on a warrant," and the narrow warrantless-arrest exception in 8 U.S.C. § 1357(a)(2) applies only where an officer has reason to believe the person is likely to escape before a warrant can be obtained. Petitioner was calmly buying breakfast, had fully complied with his

OREC/parole and reporting obligations, and there was no individualized determination that he was "likely to escape." Section 1225(b) cannot be used to retrofit that interior seizure into a border-style "arriving alien" detention. The arrest and ensuing custody are therefore void ab initio.

4. Second, even assuming § 1226(a) applies, DHS unlawfully revoked Petitioner's prior release on an Order of Release on Recognizance (OREC), or in the alternative on immigration parole, without complying with mandatory custody regulations or basic due process. The revocation decision was not made by an authorized official, was not accompanied by a new written custody determination or notice, and was not preceded by any pre-deprivation hearing before a neutral decisionmaker, despite Petitioner's substantial conditional liberty interest created by his prior release and long-standing compliance.
5. Petitioner's current mandatory-detention classification also rests on a vacated legal theory. In July 2025, ICE adopted, and on September 5, 2025 the Board of Immigration Appeals endorsed in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), a new interpretation treating virtually all noncitizens who entered without inspection as "arriving aliens" subject to § 1225(b) and ineligible for bond. That policy and its BIA counterpart have since been set aside under the Administrative Procedure Act in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Feb. 18, 2026), which vacated both the July

2025 Interim Guidance and *Yajure Hurtado* as contrary to law and restored the prior § 1226(a) bond framework. Nevertheless, Respondents continue to apply the vacated policy to Petitioner.

6. Numerous federal courts around the country have rejected the government's attempt to detain long-settled, interior-apprehended noncitizens under § 1225(b) on the theory that they remain perpetual "applicants for admission," and have held that such individuals are detained—and bond-eligible—under § 1226(a). Petitioner's continued custody under § 1225(b) thus contravenes the INA's text and structure, the governing regulations, and the APA/Accardi doctrine requiring agencies to follow their own rules. See Exhibit 2 hundreds of such decisions.

7. Petitioner seeks (1) a writ of habeas corpus under 28 U.S.C. § 2241 ordering his immediate and unconditional release because his arrest and detention are unlawful ab initio; and (2) in the alternative, a declaratory judgment that his detention is governed by 8 U.S.C. § 1226(a) and an order requiring a prompt bond hearing before an Immigration Judge at which the government bears the burden to justify continued detention by clear and convincing evidence of danger or flight risk. Petitioner also seeks narrowly tailored injunctive relief to prevent re-detention under § 1225(b) or the vacated July 2025/Yajure framework absent changed circumstances and full compliance with governing

statutes, regulations, and due-process requirements.

II. JURISDICTION

A. This Court Has Jurisdiction Under 28 U.S.C. § 2241 and § 1331

8. This Court has jurisdiction over Petitioner's habeas claim pursuant to 28 U.S.C. § 2241 because Petitioner is in custody within this District under color of federal authority and challenges the legality of his detention under the Constitution and laws of the United States. Jurisdiction over Petitioner's non-habeas claims for declaratory and injunctive relief arises under 28 U.S.C. § 1331, the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–706, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

9. Petitioner's claims allege ongoing violations of the Fifth Amendment's Due Process Clause, the INA and its implementing regulations, the APA (including 5 U.S.C. § 706(2)), and the Accardi doctrine. The Court may grant declaratory relief, as well as temporary, preliminary, and permanent injunctive relief, under 28 U.S.C. §§ 2201–2202, the All Writs Act, 28 U.S.C. § 1651(a), and its inherent equitable powers, and may issue the writ of habeas corpus under 28 U.S.C. §§ 2241, 2243.

10. Petitioner's claims fall within the core of habeas review preserved by statute and the Suspension Clause. They challenge only the statutory and constitutional basis for his civil immigration detention and the procedures used

to effect and prolong that detention—not the merits of removability or any final order of removal. Habeas remains available to raise such custody-only claims notwithstanding jurisdiction-channeling provisions enacted in 8 U.S.C. § 1252.

B. The INA's Jurisdictional-Channeling Provisions Are Inapplicable

11. Section 1252(b)(9) does not bar jurisdiction because Petitioner challenges the legality of his detention and the statutory authority under which he is held, not "questions of law or fact arising from" the decision to remove him. Detention-only challenges of this kind are not channeled exclusively through a petition for review of a final order of removal. Any injunctive relief sought is strictly as-applied to Petitioner's custody (e.g., directing his release or requiring that he be treated as detained under § 1226(a)) and does not interfere with the immigration court's adjudication of the removal case itself.

12. Section 1252(f)(1) likewise does not preclude the individualized relief requested here. That provision limits lower courts' authority to enter broad, programmatic injunctions that "enjoin or restrain the operation" of the INA's detention and removal provisions, but expressly preserves authority to enter injunctive relief "with respect to the application of such provisions to an individual alien" against whom proceedings have been initiated. Petitioner seeks only case-specific relief governing his own detention, not class-wide or systemic relief.

13. Section 1252(g) is inapplicable. Petitioner does not challenge any decision "to commence proceedings, adjudicate cases, or execute removal orders." Rather, he challenges ICE's warrantless interior arrest, ongoing civil detention, and the statutory and regulatory bases asserted for that detention. Those custody-only claims fall outside § 1252(g)'s narrow bar.

14. Section 1252(e)(3) does not apply because Petitioner does not raise a systemic or facial challenge to the validity of the expedited-removal "system," its regulations, or any written policy within the exclusive jurisdiction of the U.S. District Court for the District of Columbia. He brings an individualized, as-applied habeas and APA/Accardi challenge to the legality of his detention and DHS's misapplication of 8 U.S.C. §§ 1225 and 1226 in his particular case. Such claims are not channeled to the District of Columbia under § 1252(e)(3).

15. In a recent precedential decision, the Eleventh Circuit confirmed that federal courts retain authority in habeas to determine which detention statute governs custody and to reject DHS's post-hoc attempts to re-label long-time § 1226(a) releasees as mandatory § 1225 detainees. In *Irela Labrada Hechavarria v. U.S. Attorney General*, 2026 WL 496486 (11th Cir. Feb. 23, 2026), the court held that the choice between 8 U.S.C. § 1225 and 8 U.S.C. § 1226 is a judicially reviewable question and declined to accept the government's effort to re-cast noncitizens it had long treated as § 1226(a) detainees and releasees as § 1225 "applicants for

admission" in order to impose mandatory, no-bond detention. It further made clear that the Executive may not evade individualized custody review by retroactively changing the purported statutory basis of detention years after the fact, particularly where the noncitizen has been allowed to live in the community in reliance on § 1226(a) custody determinations.

16. **To protect and preserve this Court's habeas jurisdiction under the "district of confinement" and "immediate custodian" rules, Petitioner also invokes the All Writs Act, 28 U.S.C. § 1651(a), and 28 U.S.C. § 2241, and requests a temporary order prohibiting Respondents from transferring him outside this District or changing his immediate custodian absent prior leave of Court while this action is pending.**

III. VENUE

17. Venue is proper in the United States District Court for the Northern District of Georgia because Petitioner is currently detained at the FCI Atlanta, Georgia, under the custody of the Department of Homeland Security (DHS). Habeas petitions generally are filed in the district court with jurisdiction over the filer's place of custody, also known as the district of confinement, pursuant to 28 U.S.C. § 2241. Additionally, with respect to Petitioner's non-habeas claims seeking prospective declaratory and injunctive relief against federal officials

(agencies and officers of the United States) sued in their official capacities, venue is proper under 28 U.S.C. § 1391(e)(1)(B) because a substantial part of the events or omissions giving rise to these claims, including the initial arrest and continued detention of Petitioner and the enforcement of the mandatory detention agency interpretation, occurred in this District. Furthermore, the Respondents are officers of United States agencies, the Petitioner is detained within this District, and there is no real property involved in this action.

IV. PARTIES

18. Petitioner, E.S.B.G., is a 44-year-old noncitizen who entered the United States in approximately December 2024 near the Texas border between designated ports of entry and was encountered by U.S. Customs and Border Protection ("CBP"). Following that encounter, DHS processed him for removal and released him from custody into the interior of the United States, as described below. He is currently detained at the Federal Correctional Institution (FCI) Atlanta in Atlanta, Georgia. The Petitioner has no criminal history, has consistently complied with all immigration obligations, and poses no danger to the community nor risk of flight.

19. Respondent Sylvester Jenkins is the Warden of the FCI Atlanta, Georgia. As such, Respondent Jenkins is responsible for the operation of the Detention

Center where Petitioner is detained and is the immediate custodian who is currently holding Petitioner in physical custody. Because ICE contracts with private and county-operated detention facilities to house immigration detainees, Respondent Jenkins has immediate physical custody of the Petitioner and is sued in his official capacity.

20. Respondent Ladeon Francis is the Field Office Director of the Atlanta ICE Field Office. As such, Respondent Francis is responsible for the oversight of ICE operations throughout Atlanta. Respondent Francis is being sued in his official capacity. He is the head of the ICE office responsible for Petitioner's arrest and continued detention. He is sued as the immediate *legal* custodian of Petitioner.

21. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE). As such, Respondent Lyons is responsible for the oversight of ICE operations and the head of the federal agency responsible for all immigration enforcement in the United States. Respondent Lyons is being sued in his official capacity.

22. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS). As Secretary of DHS, Secretary Noem is the cabinet-level official responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Secretary Noem is being sued in her official capacity.

23. Respondent Pamela Bondi is the Attorney General of the United States and is sued in her official capacity since U.S. government agencies are Respondents in this complaint. Furthermore, the Immigration Judges who decide removal cases and applications for bond and relief from removal do so as her designees at the Executive Office for Immigration Review (EOIR).

24. Petitioner names certain federal officials in their official capacities solely to preserve alternative, non-habeas avenues for prospective relief—such as as-applied declaratory and injunctive orders under 28 U.S.C. § 1331, the APA's waiver of sovereign immunity, 5 U.S.C. § 702, the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, and the All Writs Act, 28 U.S.C. § 1651—necessary to enjoin enforcement of DHS regulations and their interpretation as applied to Petitioner, ensure compliance with DHS/EOIR custody regulations, prevent transfer or removal of Petitioner, and effectuate any release the Court orders at the agency level where policy and implementation authority reside. See, e.g., *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949); *Dugan v. Rank*, 372 U.S. 609 (1963).

25. Petitioner acknowledges, consistent with *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that the proper respondent to the habeas claim is the immediate custodian, and does not rely on the federal officials as "habeas respondents." Rather, Petitioner names these federal officials in their official capacities solely

to ensure that the Court can issue effective relief on non-habeas claims, such as declaratory and injunctive relief, and to direct agency action to those with actual authority to implement it. Should the Court find these officials improper as respondents to the habeas count, Petitioner respectfully requests that any dismissal be limited to that claim and without prejudice to their continued status as respondents for the non-habeas claims. Maintaining these officials as parties is necessary to ensure that, if relief is granted, the responsible agency officials cannot simply re-arrest Petitioner or otherwise frustrate the Court's order by invoking their erroneous interpretation of the INA. This approach is consistent with *Padilla* and ensures that the Court's orders are both effective and enforceable.

V. STATEMENT OF FACTS AND PROCEDURAL HISTORY

26. Petitioner, E.S.B.G., is a 44-year-old noncitizen who entered the United States in approximately in December 2024 by crossing the Texas border between designated ports of entry. Upon entry, he was encountered by U.S. Customs and Border Protection and processed as an applicant for admission. Upon information and belief, after that encounter DHS (through ICE/CBP) issued him a Notice to Appear and released him from custody on a Form I-220A Order of Release on Recognizance ("OREC") under 8 U.S.C. § 1226(a). In the

alternative, if Respondents contend that DHS instead released him on immigration parole under 8 U.S.C. § 1182(d)(5)(A), Petitioner pleads that alternative status as set forth in Section IX below. Following his release, he complied with regular reporting requirements with ICE and was allowed to remain in the country to pursue asylum and complete his removal proceedings.

27. He has since resided in the United States, working in the construction industry and supporting his family as the primary breadwinner. Since that time, Petitioner has complied fully with all such reporting obligations and has remained in regular contact with immigration authorities. Upon information and belief, Petitioner also has a pending application for asylum relief before the immigration court.

28. Following his release, Petitioner established residence in the United States and obtained steady employment in the construction industry. He serves as the primary financial provider for his household and supports his dependents through consistent and lawful work. Petitioner has no prior criminal history, no prior immigration detention history, and has demonstrated full compliance with all conditions imposed upon him by immigration authorities.

29. Removal proceedings against Petitioner have been initiated, and he has been served with a Notice to Appear ("NTA"). *See Exhibit 3.* His case is currently pending before the Immigration Court in Atlanta, Georgia, where a master

calendar hearing has been scheduled for September 15, 2026, with Judge Winfield W. Murray.

30. On or about March 14, 2026, Petitioner was abruptly detained by ICE officers while buying breakfast at a gas station as he was on his way to work. At the time of his arrest, Petitioner was not engaged in any unlawful activity, was not operating a vehicle, and was not the subject of any known criminal investigation. ICE officers apprehended Petitioner directly in a public setting and detained him without a warrant or probable cause (upon information and belief, solely based on his appearance), despite his ongoing compliance with supervision requirements and without any intervening violation or change in circumstances.

31. Following his arrest, Petitioner was taken into ICE custody and subsequently transferred to the Federal Correctional Institution (FCI) Atlanta in Atlanta, Georgia, where he remains detained. From the moment of his apprehension, Petitioner has remained continuously in immigration detention and has not been released.

32. At no point prior to his arrest did Petitioner fail to comply with ICE reporting requirements, nor did he attempt to evade immigration authorities. To the contrary, Petitioner's consistent compliance demonstrates that less restrictive alternatives to detention were effective in ensuring his appearance and

cooperation. Nevertheless, ICE escalated Petitioner's custody to detention without any apparent individualized determination that he poses a danger to the community or a risk of flight.

33. Petitioner's detention is based solely on ICE's erroneous classification of similar noncitizens as an "arriving alien" or "applicant for admission", subject to mandatory detention under 8 U.S.C. § 1225(b). Petitioner was apprehended in the interior of the United States some time after entry, and therefore, Petitioner's detention should be governed by 8 U.S.C. § 1226(a), which allows for discretionary release on bond or recognizance.

34. Because Respondents continue to treat Petitioner as detained under § 1225(b), any request for bond redetermination before an Immigration Judge would be futile, as the Immigration Court has already disclaimed jurisdiction over such requests. Accordingly, habeas relief is the only available and effective remedy to secure Petitioner's release or a lawful custody hearing.

35. Petitioner is neither a danger nor a flight risk. Less-restrictive alternatives remain available and adequate such as release on recognizance or posting a low bond.

36. Any detention under these circumstances imposes unnecessary hardships on the Petitioner and his family, depriving them of financial and emotional support, and violating the Petitioner's right to due process and freedom from

arbitrary detention.

37. Upon information and belief, as of the time of filing of this Writ of Habeas, Petitioner remains confined at the FCI Atlanta, Georgia, solely because of ICE's invocation of its new interpretation that Petitioner is an "arriving alien" or "applicant for admission" and is therefore subject to mandatory detention. Even if Petitioner was to file for a bond redetermination with the immigration judge, they would deny it pursuant to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, which has since been **vacated** under the APA. All Respondents consider that all noncitizens who entered without inspection are detained pursuant to 8 U.S.C. § 1225(b)(2). Accordingly, it would be futile for Petitioner to request a bond for release from an IJ. Due to the binding nature of *Matter of Yajure Hurtado*, all immigration courts known to counsel are denying bond requests for similarly situated noncitizens, making habeas the only effective remedy. Similarly, even in cases an IJ would grant bond, ICE would appeal it which would leave Petitioner incarcerated through the appeal, which would take months and end up dismissed based on *Yajure Hurtado*.

38. Petitioner is not a member of the nationwide "Bond Eligible Class" certified in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.), because, although he entered without a visa and was encountered near the border, DHS did not initially classify him as an interior arrest after entry

without inspection in the same manner as the certified class, but instead released him on an OREC (or, in the alternative, on immigration parole, as discussed below).

VI. EXHAUSTION OF REMEDIES

39. **No statutory exhaustion requirement applies to habeas cases,** and the recent interpretations by DHS and EOIR have effectively closed all administrative avenues for securing release for noncitizens, like Petitioner, who entered the U.S. without inspection. ICE's internal policy from July 2025, coupled with the EOIR's Board of Immigration Appeals (BIA) precedent, mandates that immigration judges deny bond to the Petitioner and similarly situated noncitizens, rendering any further administrative steps futile. An administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it as noted in *Gibson v. Berryhill*, 411 U. S. 564, 575, n. 14 (1973). Requiring Petitioner to seek reconsideration with ICE or a bond hearing with an immigration judge "would be to demand a futile act" as no relief would be granted while Petitioner languishes in detention, as highlighted in *Houghton v. Shafer*, 392 U.S. 639, 640 (1968). Moreover, even if any remedies were available, the habeas statute does not require Petitioner to exhaust them.

40. Furthermore, even if applied, the doctrine of exhaustion of administrative remedies would have been futile on claim attacking constitutionality of ICE's actions and ICE's and EOIR's current interpretations of the mandatory detention provisions. Administrative hearings cannot address the constitutional claims at issue, rendering further proceedings ineffective. Moreover, where ICE seeks to quickly remove noncitizens like Petitioner even to third countries, without due process, particularly under the current administration's policies, underscores the inadequacy of administrative remedies. *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992) (futility exception to exhaustion applies where administrative remedies are inadequate or unavailable). Thus, pursuing such remedies would be an exercise in futility, as they fail to provide any meaningful opportunity to address the constitutional violations at hand.

41. Petitioner has exhausted administrative remedies to the extent required by law, and Petitioner's only remedy is by way of this judicial action.

VII. PETITIONER'S ARREST AND DETENTION ARE UNLAWFUL *AB INITIO*

42. On information and belief, Petitioner's arrest violated the Fourth Amendment to the Constitution. He was buying breakfast at a gas station on his way to work. He was not committing any crime and believes he was racially profiled

by officers who arrested him without a warrant or probable cause.

43. Petitioner's detention is unlawful from its very inception because his arrest by ICE violated the clear and restrictive statutory framework established by Congress. The Immigration and Nationality Act (INA) provides only two potential authorities for a civil immigration arrest in the interior of the United States. The primary authority, 8 U.S.C. § 1226(a), explicitly requires that an arrest be conducted **"[o]n a warrant** issued by the Attorney General". The statute provides a narrow exception to this rule in 8 U.S.C. § 1357(a)(2), which permits a warrantless arrest only where an officer has reason to believe the individual is unlawfully present and is "likely to escape before a warrant can be obtained." Respondents satisfied neither of these statutory requirements, as further detailed below, rendering the seizure of Petitioner a legal nullity from the outset.

44. The warrantless seizure of Petitioner was statutorily invalid because Respondents could not satisfy the exigency requirement of 8 U.S.C. § 1357(a)(2). The 'likely to escape' determination is a mandatory prerequisite, not mere surplusage. *See*, e.g., *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 878 (S.D. Ohio 2016). See also *Nava v. Dep't of Homeland Sec.*, 435 F. Supp. 3d 880, 885 (N.D. Ill. 2020) (holding that mere unlawful presence is insufficient to satisfy § 1357(a)(2), which requires a separate, individualized finding that the

person "is likely to escape before a warrant can be obtained." Petitioner was calmly buying breakfast at a gas station on his way to work, had been on ICE supervision, and had consistently complied with all reporting obligations. Nothing about this circumstance suggested he was likely to abscond before officers could obtain an administrative warrant, and Respondents do not appear to have made any contemporaneous finding to that effect. Because the exception for a warrantless arrest was inapplicable, Respondents' only remaining authority was 8 U.S.C. § 1226(a), which required a warrant they did not possess. Having failed under both statutory provisions, the arrest was void ab initio.

45. Because the arrest was fundamentally unlawful, the only constitutionally sufficient remedy is immediate and unconditional release. A subsequent administrative bond hearing is wholly inadequate, as it cannot cure the initial violation of Petitioner's liberty. The government's continued custody of Petitioner is the direct "fruit of the poisonous tree"—the poisonous tree being the illegal arrest itself. *See Wong Sun v. United States*, 371 U.S. 471, 484–88 (1963); *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920). Allowing subsequent proceedings, like a bond hearing, to continue would improperly legitimize a detention that never had a lawful basis. Ordering such a hearing would treat the detention as if it were lawfully initiated under 8 U.S.C. § 1226(a),

rewarding Respondents for bypassing the statute's explicit warrant requirement. As other courts have concluded, where detention is based on an unlawful arrest and derivative evidence is suppressed, the appropriate remedy is immediate release. *See Rosado v. Figueroa*, No. CV-25-02157-PHX DLR, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025). Law and justice require restoring the liberty that was unlawfully taken.

46. Petitioner's detention is thus unlawful under any statutory theory Respondents could possibly advance. Petitioner's detention was initiated under 8 U.S.C. § 1225, a statute district Courts around the country have repeatedly found inapplicable to interior apprehensions in dozens of cases involving similarly situated petitioners. Yet, even if Respondents had attempted to detain him under the correct statute for interior apprehensions, 8 U.S.C. § 1226(a), the arrest would still be void because they failed to obtain the prerequisite warrant that the statute unequivocally requires. These are not mere procedural missteps; an arrest conducted without any statutory authority is an unreasonable seizure that violates the Fourth Amendment. Because the initial seizure and subsequent detention are unlawful *ab initio* under either statutory scheme, the only appropriate and constitutionally sufficient remedy is the one that restores the liberty that was illegally taken: immediate and unconditional release. A bond hearing under § 1226(a) is an inadequate remedy because it presupposes a

lawful arrest under that statute—a condition that does not exist here.

VIII. RESPONDENTS' UNLAWFUL REVOCATION OF RELEASE AND RE-DETENTION

47. Following his apprehension by CBP near the border after entry, Petitioner was issued a written Order of Release on Recognizance (Form I-220A) and released from DHS custody into the community. That order imposed conditions of supervision, including regular reporting to ICE, with which Petitioner fully complied for more than a year before his sudden re-arrest in March 2026.

48. For purposes of his primary claim, Petitioner alleges that his initial post-CBP release was an OREC under § 1226(a), not immigration parole under 8 U.S.C. § 1182(d)(5)(A). In the alternative, if the Court concludes that DHS instead released Petitioner on parole under § 1182(d)(5)(A), the arguments set forth below.

49. Petitioner's detention is not the result of an initial custody determination but an unlawful re-arrest executed in violation of mandatory federal regulations, his constitutional right to due process, and the agency's own prior binding finding that he was eligible for discretionary release. As such, his detention was unlawful ab initio and must be remedied by immediate release.

A. The Revocation Violated Mandatory Regulations and Was Executed Without Lawful Authority

50. The authority to revoke a parole or an Order of Release on Recognizance (OREC) is strictly limited by regulation to a narrow group of high-level officials. 8 C.F.R. § 236.1(c)(9) provides: "When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign), in which event the alien may be taken into physical custody and detained." This authority is exclusive, and DHS Delegation Order 7030.2 expressly prohibits its redelegation. Exhibit 4. Any revocation by an unauthorized official is therefore ultra vires and invalid.

51. An Order of Release on Recognizance is the mechanism by which DHS effectuates discretionary release under INA § 236(a), 8 U.S.C. § 1226(a), and its implementing regulation, 8 C.F.R. § 236.1, not immigration parole under 8 U.S.C. § 1182(d)(5)(A). Federal courts and the Board of Immigration Appeals have repeatedly recognized that a noncitizen released on a Form I-220A is detained and released under § 1226(a), and therefore cannot simultaneously be treated as subject to mandatory detention under § 1225(b) as an "arriving alien." See, e.g., *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115–16 (9th Cir. 2007); *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011); *Lopez Benitez v.*

Francis, 795 F. Supp. 3d 475, 483–85 (S.D.N.Y. 2025); Martinez v. Hyde, 792 F. Supp. 3d 211, 215 (D. Mass. 2025); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023). These authorities confirm Petitioner's primary allegation that his initial post-CBP release was an OREC under § 1226(a), with the § 1182(d)(5)(A) parole theory pled solely in the alternative below.

52. Furthermore, the regulatory framework for changing a noncitizen's custody status is explicit and mandatory. To revoke an OREC, DHS must: (1) issue a new custody determination, typically via Form I-286; (2) provide contemporaneous written notice to the noncitizen; and (3) advise the individual of the right to seek prompt review by an Immigration Judge. See 8 C.F.R. § 236.1(d)(1)–(3). These are not mere formalities but substantive safeguards to ensure any deprivation of liberty is based on individualized information and subject to fair adjudication.

53. Here, none of these mandatory procedures were followed. Petitioner was summarily arrested without being provided a new custody determination, written notice, a statement of reasons, or identification of the official who ordered the revocation. Failure to comply with these procedures renders the revocation invalid. See, e.g., *Santamaria Orellana v. Baker*, No. 1:25-cv-02841 (D. Md. Oct. 7, 2025); *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765, at 10 (E.D.N.Y. Sept. 29, 2025).

B. The Revocation Violated Petitioner's Fifth Amendment Right to Due Process

54. Because Petitioner had been released on an OREC, he acquired a protected liberty interest in his continued freedom. The summary revocation of that liberty without any process whatsoever violates the Fifth Amendment's Due Process Clause. The governing standard for procedural due process is the three-part balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), which weighs the private interest, the risk of erroneous deprivation, and the government's interest. Every factor weighs decisively in Petitioner's favor.

55. Petitioner's years of supervised release under § 1226(a) OREC or parole placed him squarely within the conditional-liberty framework recognized in *Morrissey v. Brewer*, 408 U.S. 471 (1972). Once DHS affirmatively released him into the community and supervised him on stated conditions, he acquired a substantial liberty interest in remaining at liberty so long as he complied, analogous to the interests of parolees and probationers. The Fifth Amendment protects "all persons" within the United States—regardless of immigration status—from arbitrary physical confinement, and that protection applies fully to noncitizens whom the INA deems "applicants for admission." See, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Landon v. Plasencia*, 459 U.S. 21, 32–33 (1982). Courts applying *Morrissey* and *Mathews* in the immigration re-detention context have therefore held that once DHS has conferred conditional liberty through an

OREC, bond, or parole and allowed a noncitizen to live and work in the community for an extended period, the agency may not summarily revoke that liberty and re-incarcerate the person without advance notice, a statement of reasons, and a pre-deprivation custody hearing before a neutral decisionmaker—and that a later bond hearing cannot cure the core violation where, as here, the initial revocation occurred with "no process at all."

56. First, Petitioner's private liberty interest is paramount. He has lived in the United States for years on supervised release, fully complied with all conditions, and built deep family and community ties. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The abrupt, unexplained deprivation of this liberty constitutes a profound intrusion.

57. Applying the *Mathews* framework in this precise posture, courts in this Circuit have consistently held that noncitizens who have been living in the community on bond or parole are entitled to a pre-deprivation hearing before an immigration judge prior to re-detention. In *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019), the court granted habeas and permanently enjoined ICE from re-arresting the petitioner "unless and until a hearing, with adequate notice, is held in Immigration Court" to decide whether bond revocation was

justified. In *Vargas v. Jennings*, the court issued injunctive relief after concluding that the petitioner had raised serious questions on the merits of his claim "that he has a protectable liberty interest in his conditional release under *Morrissey* and that he must be afforded a pre-deprivation hearing if respondents seek to re-arrest him." Likewise, in *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050 (N.D. Cal. 2021), and *Romero v. Kaiser*, 2022 WL 1443250 (N.D. Cal. May 6, 2022), the courts held that due process, as articulated in *Morrissey* and *Mathews*, requires a pre-detention hearing before an IJ when DHS seeks to revoke bond and re-detain a previously released noncitizen. More recent decisions—including *Rodriguez Diaz v. Kaiser*, 2025 WL 3011852 (N.D. Cal. Sept. 16, 2025), *Aguilar Garcia v. Kaiser*, No. 3:25-cv-05070 (N.D. Cal. June 14, 2025), and the Eastern District of California's orders in *D.L.C. v. Wofford* and *Pineda v. Chestnut*—have reaffirmed that re-detention without such a pre-deprivation bond or custody hearing violates due process where the noncitizen has a substantial conditional liberty interest and has complied with supervision. More recent cases such as *Perera v. Jennings*, 598 F. Supp. 3d 736 (N.D. Cal. 2022), and *Pham v. Becerra*, 717 F. Supp. 3d 877 (N.D. Cal. 2024), which likewise apply Morrissey and Mathews to hold that long-released noncitizens are entitled to pre-deprivation IJ hearings before re-detention.

58. The government cannot diminish this liberty interest by mischaracterizing Petitioner as an arriving alien at the 'threshold of initial entry.' Unlike the noncitizen in *Department of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), who was apprehended moments after crossing the border, **Petitioner was released into the United States and lived here for a while under supervision. Once released, Petitioner acquired a significant, constitutionally protected liberty interest in enjoying continued freedom**. Petitioner's situation is therefore governed by the Supreme Court's decision in *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972), which recognized that the revocation of conditional liberty inflicts a 'grievous loss' that triggers robust due process protections. The government's decision to release Petitioner created an 'implicit promise' that his liberty would 'be revoked only if [he] fail[ed] to live up to the... conditions [of release].' *Pinchi v. Noem*, 792 F. Supp. 3d 1025 (N.D. Cal. 2025) (quoting *Morrissey*, 408 U.S. at 482). The government cannot now ignore the liberty interest it created. See also *Chavarria v. Chestnut*, No. 25-cv-01755-DAD-AC, 2025 WL 3533606, at *3 (E.D. Cal. Dec. 9, 2025).

59. Second, the risk of erroneous deprivation from the procedures used—which were no procedures at all—is exceptionally high. Detaining a compliant individual without advance notice, an individualized assessment, or an opportunity to be heard creates a near-certainty of error. The procedural

safeguards required by regulation and affirmed by federal courts—notice, a hearing, and a decision by an authorized official—are the "substitute procedural safeguards" that would eliminate this risk. Their complete absence here makes the due process violation manifest. See, e.g., *J.U. v. Maldonado*, 2025 WL 2772765, at 10 (holding that "ongoing detention of Petitioner with no process at all... violates his due process rights"); *Pinchi v. Noem*, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at 5 (N.D. Cal. July 24, 2025); *Kelly v. Almodovar*, No. 25 Civ. 6448 (AT), 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025).

60. Third, the government's interest does not justify this lawless conduct. While the government has an interest in detaining noncitizens who pose a flight risk or danger, that interest is nonexistent here, as evidenced by Respondents' own years-long determination that Petitioner was suitable for release on supervision. The administrative burden of providing notice and a hearing is minimal compared to the severe harm of arbitrary detention. The government's failure to provide these basic procedural protections before re-detaining Petitioner renders his redetention unconstitutional under the Due Process Clause and mandates his immediate release.

C. Respondents Are Estopped From Re-Characterizing Petitioner's Detention Status

61. Petitioner was released on a Form I-220A, Order of Release on Recognizance (OREC), which documents a custody determination made under 8 U.S.C. § 1226(a) and its implementing regulation, 8 C.F.R. § 236.1. Both federal courts and the Board of Immigration Appeals have repeatedly recognized that an OREC constitutes a release under § 1226(a) pending removal proceedings—not parole under 8 U.S.C. § 1182(d)(5)(A). *See, e.g., Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115-16 (9th Cir. 2007) (holding that a noncitizen released on an "Order of Release on Recognizance" necessarily must have been detained and released under § 1226, including because he was not an "arriving alien" under the regulations governing § 1225 examinations); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 485 (S.D.N.Y. 2025) (Release on one's own recognizance is done pursuant to § 1226; it is a form of "conditional parole" from detention, authorized under § 1226); *Martinez v. Hyde*, 792 F. Supp. 3d 211, 215 (D. Mass. 2025) (explaining that petitioner's release on her own recognizance "does not indicate that she was examined or detained under section 1225 but instead explicitly premises her release on section 1226 ('[i]n accordance with section 236 of the Immigration and Nationality Act.'");[1] *Cruz-Miguel v. Holder*, 650 F.3d

[1] As the district court in *Martinez v. Hyde*, explained, individuals detained following examination under section 1225 can only be paroled into the United States "for urgent humanitarian reasons or significant public benefit". 792 F. Supp. 3d at 215, (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018) (quoting 8 U.S.C. § 1182(d)(5)(A) ("section 1182(d)(5)(A)"))). Tellingly, release on recognizance is not "humanitarian" or "public benefit" "parole into the United States" under section 1182(d)(5)(A) but rather a form of "conditional parole" from detention upon a charge of

189, 191 (2d Cir. 2011); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023) (This binding precedent on Respondents held that release on one's own recognizance is a release under INA 236(a)(2)(B), 8 U.S.C. § 1226(a)(2)(B), therefore § 1225(b) could not possibly apply to Petitioner's case.

62. Here, DHS's consistent treatment of Petitioner as subject to detention on a discretionary basis under § 1226(a), "is fatal to Respondents' claim that he is now subject to mandatory detention under § 1225(b))." *Lopez Benitez*, 795 F. Supp. 3d at 483–84. Respondents' own evidence clearly demonstrates their determination throughout Petitioner's entire immigration journey that he is—and always has been—subject to only 8 U.S.C. § 1226. Thus, in determining that Petitioner was eligible for release under § 1226 and issuing him an OREC, the government necessarily included the legal findings that he was not subject to mandatory detention under § 1225, and that he was not a danger or a flight risk.

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removability, authorized under § 1226. *Id.* This distinction reflects more than an officer's choice of paperwork because, although both styled as "parole," these two mechanisms serve fundamentally different purposes. *Id.* Parole "into the United States," under section 1182(d)(5)(A), permits a non-citizen to physically enter the country, subject to a reservation of rights by the Government that it may continue to treat the non-citizen "as if stopped at the border." *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). Section 1226 governs a separate (non-mandatory) detention scheme applicable when an individual is "already in the country" and Conditional parole, under section 1226(a)(2)(B), instead releases a non-citizen already in the country from domestic detention. *Martinez*, 792 F. Supp. 3d at 215, citing *Jennings*, 583 U.S. at 289.

63. Respondents are barred by the doctrine of collateral estoppel from re-characterizing the statutory basis for Petitioner's detention. This eleventh-hour attempt to retroactively apply § 1225(b) is an impermissible post hoc rationalization that the Court must reject. Cf. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 22 (2020) (holding an agency must defend its actions based on the reasons it gave when it acted, not on subsequent justifications). By releasing Petitioner on an Order of Release on Recognizance (OREC) explicitly under the authority of 8 U.S.C. § 1226(a), the government made a binding legal determination that it cannot now abandon simply because it has changed its litigation posture.

64. The doctrine of collateral estoppel, or issue preclusion, bars a party from re-arguing an issue of fact or law if four elements are met: (1) the issue is identical to one decided in a prior proceeding; (2) the issue was actually litigated and determined; (3) the determination was a critical and necessary part of the prior decision; and (4) the party against whom estoppel is asserted had a full and fair opportunity to litigate the issue. All four elements are satisfied here.

65. **First, the issue is identical.** The question then, as now, is whether Petitioner's custody is governed by the discretionary release framework of 8 U.S.C. § 1226(a) or the mandatory detention framework of 8 U.S.C. § 1225(b).

66. **Second, the issue was actually determined by DHS.** The government's own evidence will confirm that it issued Petitioner an Order of Release on Recognizance (OREC). That OREC explicitly premised the release on "section 236 of the Immigration and Nationality Act"—8 U.S.C. § 1226. This was a formal agency adjudication of Petitioner's custody status, not a procedural oversight. The government considered the applicable law, made a definitive choice, and issued a formal order based on that determination.

67. Third, the determination was critical and necessary to the release. A decision to release a noncitizen on their own recognizance is a discretionary act authorized only under § 1226(a). Conversely, § 1225(b) mandates detention. Therefore, the legal finding that § 1226(a) was the governing statute was a prerequisite for the OREC to be lawfully issued. Without that determination, Petitioner's release would have been contrary to law.

68. Fourth, the party against whom estoppel is asserted—the government—is the same party that made the original determination. DHS had a full and fair opportunity to assess the facts and law when it chose to proceed under § 1226(a). It is now bound by that decision.

69. For years, Petitioner relied on the government's formal determination, scrupulously complying with all conditions of his release. To permit Respondents to unilaterally reverse their position now—without any change in

facts or law, and for the first time in this litigation—would be fundamentally unfair and would render the agency's own custody adjudications meaningless. Having made its choice, the government is estopped from claiming § 1226 never applied. *Labrada Hechavarria* confirms that DHS may not defend an otherwise unlawful present custody decision by simply relabeling the governing detention statute years after the fact; where the agency has treated a noncitizen as detained and released under § 1226(a), it is bound by that choice and cannot retroactively convert the person into a mandatory § 1225(b)(2)(A) detainee to avoid bond jurisdiction. 2026 WL 496486 (11th Cir. Feb. 23, 2026).

70. This estoppel principle is reinforced by longstanding retroactivity doctrine. In *INS v. St. Cyr*, 533 U.S. 289 (2001), the Supreme Court held that the Executive may not retroactively attach new, more onerous immigration consequences to past conduct where a noncitizen reasonably relied on the prior legal framework. The Eleventh Circuit has applied similar reasoning in *Rendon v. U.S. Att'y Gen.*, 972 F.3d 1252 (11th Cir. 2020), and *Sarmiento Cisneros v. U.S. Att'y Gen.*, 381 F.3d 1277 (11th Cir. 2004), making clear that when the government confers a particular statutory status and a noncitizen orders his affairs in reliance on that status, it cannot later re-cast the statutory scheme to impose harsher consequences. Here, DHS affirmatively chose to detain and release Petitioner under the § 1226(a)/OREC (or parole) framework,

supervised him in the community for an extended period, and gave him every reason to rely on that treatment; it cannot now retroactively characterize him as a § 1225(b)(2)(A) "mandatory" detainee solely to avoid bond eligibility and judicial review.

IX. IN THE ALTERNATIVE: § 1182(D)(5)(A) PAROLE THEORY

71. In the alternative, if the Court concludes that Petitioner's initial release from DHS custody was granted pursuant to 8 U.S.C. § 1182(d)(5)(A) rather than as an OREC under 8 U.S.C. § 1226(a), Petitioner alleges the following.

72. Under 8 U.S.C. § 1182(d)(5)(A), DHS is authorized, in its discretion, to "parole into the United States temporarily under such conditions as [it] may prescribe" any applicant for admission. DHS exercised that authority and allowed Petitioner to live and work in the community for a substantial period while his asylum application remained pending, subject to routine ICE check-ins and other parole conditions. Under these circumstances—where DHS has affirmatively conferred conditional liberty and permitted Petitioner to structure his life around it, subject to routine ICE check ins and other conditions, it thereby created a protected liberty interest. Therefore, Petitioner retains a protected liberty interest in remaining free from immigration detention that is cognizable under the Fifth Amendment's Due Process Clause.

73. There are only two categories of noncitizen lacking valid entry documents who are amenable to expedited removal: (1) certain individuals who are "arriving in the United States," and (2) subject to the designation by the Secretary of Homeland Security, "certain other" noncitizens who have "not been admitted or paroled" into the United States, and who cannot establish two years continuous physical presence. 8 U.S.C. § 1225(b)(1)(A)(i), (A)(iii).

74. The statute does not define the term "arriving." *CHIRLA v. Noem*, --- F. Supp. 3d ---, 2025 WL 2192986, at *27 (D.D.C. Aug. 1, 2025). The plain language and historical context demonstrate, though, that "arriving" in § 1225(b)(1)(A)(i) refers to individuals in the process of coming into the United States at a port of entry. First, the ordinary meaning of "arriving" supports the conclusion that the noncitizen is in the process of reaching the United States. The dictionary definition of "arriving" includes "to reach a destination," "to make an appearance" and "to be near in time." Merriam-Webster Dictionary, available at https://www.merriam-webster.com/dictionary/arriving. Thus, "[r]ead according to its plain meaning, a noncitizen 'arriving' in the United States would be one who is in the process of reaching his or her destination (the United States) and making an appearance here." *CHIRLA*, 2025 WL 2192986, at *28. "Arriving in" would not, however "be read to refer to someone who previously reached the United States via port of entry, underwent inspection

at that port of entry, and then was paroled into the United States[.]" Id. Additionally, the present-progressive tense connotes continuation, rendering "is arriving in the United States" a phrase referring to people actively in that process, which necessarily ends once the destination (the United States) is reached. Consistent with that construction, other provisions of the INA use the term "'arrive,' or some conjugation thereof, to reference physical arrival at a port of entry." Id. (citing 8 U.S.C. §§ 1225(b)(1)(F), (b)(2)(C), (d)(2)); accord *Doe v. Noem*, 152 F.4th 272, 288 (1st Cir. 2025). Thus, the plain language of the statute is best read to mean that the "arriving in" provision only applies to noncitizens who are physically in the process of coming into the United States at a port of entry. *CHIRLA*, 2025 WL 2192986, at *27-29. Clearly, Petitioner was not "arriving in" the United States when ICE detained him but rather was apprehended in the interior more than two years after he already entered.

75. The regulations support this result. 8 C.F.R. § 235.3(b)(1)(i) provides that "arriving aliens, as defined in 8 C.F.R. § 1.2" are subject to expedited removal. Section 1.2 defines an "arriving alien" to include "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or a [noncitizen] seeking transit through the United States at a port-of-entry," or a noncitizen interdicted at sea. The regulation continues: "An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the

Act, [8 U.S.C. § 1182(d)(5)] and even after any such parole is terminated or revoked." 8 C.F.R. § 1.2. This is because a parole is not an admission into the United States, it is instead temporary authorization to be present in the United States. 8 U.S.C. § 1182(d)(5)(A). Accordingly, a noncitizen is an arriving alien under the regulation while in the process of "coming or attempting to come into the United States," while paroled, or at the time such parole is terminated or revoked. Id. At the point the parole ends and the government may process for admission or pursue available removal efforts. *CHIRLA*, 2025 WL 2192986, at *26 (discussing 8 C.F.R. § 212.5(e)(2)(i)).

76. The parole statute reinforces that result. The statute provides that a noncitizen "shall continue to be dealt with in the same manner as that of any other applicant for admission" when the parole ends. 8 U.S.C. § 1182(d)(5)(A). But "applicant for admission" is necessarily broader than § 1225(b)(1)'s application to a noncitizen who is "arriving in the United States." An applicant for admission is either an individual "present in the United States who has not been admitted or [an individual] who arrives in the United States." 8 U.S.C. § 1225(a)(1). Under this definition, a parolee is always an applicant for admission, including when they have parole status. So it makes sense that the government would "continue to" deal with a parolee's case like any other applicant for admission, as the operative fact-presence in the United States without

admission-did not change from the time the noncitizen was allowed into the United States through the time the parole ended. But that does not mean Petitioner is always "arriving in" the United States. Once Petitioner was inspected and paroled into the United States, he was no longer arriving aliens and § 1225(b) could not apply to him.

77. Any argument that the parole froze Petitioner's "status" to that of an arriving alien forever, such that he remained as-if he was at the border, seemingly for perpetuity, even though he had been allowed to come into the United States fails. This argument is grounded in the so-called "entry fiction" doctrine, under which a paroled noncitizen was considered in the same position as if they were still standing at the border. See *Ibragimov v. Gonzales*, 476 F.3d 125, 136-38 (2d Cir. 2007); *CHIRLA*, 2025 WL 2192986, at *23. The current statutory scheme does not support a conclusion that entry fiction should apply to render parolees amenable to expedited removal. See e.g., *American-Arab Anti-Discrimination Committee v. Ashcroft*, 272 F. Supp. 2d 650, 668 (E.D. Mich. 2003) (concluding that expedited removal cannot lawfully be applied to a noncitizen whose parole had expired or terminated under the theory that the noncitizen was an "arriving alien" despite having "resid[ed] in the interior of the United States for some time"). The parole statute does not provide a noncitizen with a specific status at the expiration of the parole, but DHS has no authority to detain such

noncitizens under 8 U.S.C. 1225(b), since they are far removed from "seeking admission" or trying to enter the country.

X. LEGAL AND STATUTORY FRAMEWORK

A. Statutory Structure Governing Civil Immigration Detention

78. It is a bedrock principle of constitutional law that the Fifth Amendment's Due Process Clause protects all "persons" within the United States from deprivation of liberty without due process, a protection that extends to all noncitizens, regardless of whether their presence is "lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see also Landon v. Plasencia*, 459 U.S. 21, 32 (1982); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690.

79. This Court has fundamental authority and a constitutional duty under 28 U.S.C. § 2241 to remedy Petitioner's unlawful detention. The Supreme Court has consistently affirmed that the Great Writ is the primary instrument for challenging the legality of civil immigration detention. *See Zadvydas*, 533 U.S. at 687; *I.N.S. v. St. Cyr*, 533 U.S. 289, 314 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 285–86 (2018). As "perhaps the most important writ known to the

constitutional law," habeas corpus is an equitable tool that empowers this Court not just to review custody, but to "dispose of the matter as law and justice require" under 28 U.S.C. § 2243. *Fay v. Noia*, 372 U.S. 391, 400 (1963). That power explicitly includes ordering a petitioner's immediate release. *Boumediene v. Bush*, 553 U.S. 723, 787 (2008). This Court's jurisdiction is secure, as the concept of "custody" is broad, attaching at the time of filing and persisting despite subsequent release due to the significant ongoing restraints on Petitioner's liberty. *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).

80. The Immigration and Nationality Act creates two distinct detention frameworks for noncitizens facing removal: 8 U.S.C. § 1225, which governs the inspection and detention of "applicants for admission," and 8 U.S.C. § 1226, which governs apprehension and detention of noncitizens in the United States pending a removal decision. Section 1226(a) authorizes DHS to arrest and detain "on a warrant issued by the Attorney General" and, except for specified mandatory categories in § 1226(c), to continue detention or release the person on bond or conditional parole.

81. Section 1225(a) provides that any alien "present in the United States who has not been admitted or who arrives in the United States" is deemed an "applicant for admission" and must be inspected by immigration officers. Subsection (b)(1) authorizes expedited removal for certain recently-arrived applicants for

admission, while subsection (b)(2)(A) provides that, except for specified exceptions, an applicant for admission "seeking admission" who is not clearly and beyond a doubt entitled to be admitted "shall be detained for a proceeding under section 1229a."

82. Interpreting these provisions, the Supreme Court has recognized that §§ 1225(b)(1) and (b)(2) "mandate detention of aliens throughout the completion of applicable proceedings," and that § 1226 "applies to certain aliens already in the country" and authorizes detention only "[o]n a warrant issued by the Attorney General." *Jennings v. Rodriguez*, 583 U.S. 281 (2018). These provisions thus establish a border-focused mandatory detention regime under § 1225(b) and a separate, warrant-based, discretionary detention regime for interior arrests under § 1226(a).

83. DHS's own regulations reinforce this distinction. The term "arriving alien" is defined as "an applicant for admission coming or attempting to come into the United States at a port-of-entry," certain aliens seeking transit at a port of entry, and certain interdicted aliens. 8 C.F.R. § 1.2. By contrast, 8 C.F.R. §§ 236.1 and 1236.1 implement § 1226 by prescribing arrest, custody, and bond procedures for noncitizens apprehended in the United States, including release on recognizance, bond, and revocation of release.

B. Warrant Requirement and Narrow Warrantless-Arrest Exception

84. Section 1226(a) conditions civil immigration arrest and detention in the United States on "a warrant issued by the Attorney General." [38.3]. Separately, 8 U.S.C. § 1357(a)(2) authorizes immigration officers to arrest a person without a warrant only if the officer has "reason to believe" the person is removable and "is likely to escape before a warrant can be obtained for his arrest."

85. Courts have held that the "likely to escape" language in § 1357(a)(2) is a mandatory, individualized prerequisite for warrantless immigration arrests, and that ICE exceeds its statutory authority when it arrests or causes detention without such a determination. See, e.g., *Creedle v. Miami-Dade County*, 349 F. Supp. 3d 1276, 1308–10 (S.D. Fla. 2018) (holding that ICE acts "in excess of statutory jurisdiction" under 5 U.S.C. § 706(2)(C) when it invokes § 1357(a)(2) without any individualized finding that the person is "likely to escape before a warrant can be obtained"). Other courts applying § 1357(a)(2) have likewise held that warrantless ICE arrests without a concrete likelihood-of-escape finding exceed statutory authority and cannot be justified merely because the person is removable. *United States v. Bautista-Ramos*, No. 18-CR-4066-LTS (N.D. Iowa Oct. 15, 2018).

86. Read together, § 1226(a) and § 1357(a)(2) establish that: (1) for noncitizens already in the United States, the default mode of civil immigration arrest is by warrant issued under § 1226(a); and (2) the warrantless-arrest authority in §

1357(a)(2) is a narrow exigency that applies only where the government can make—and actually does make—an individualized "likely to escape" finding before a warrant can be obtained.

(1) ***The Plain Language and Statutory Definitions Show § 1225 Does Not Apply to Petitioner.***

87. An analysis of the INA's plain text, structure, and definitions confirms that § 1225 is exclusively a border statute. The provision is titled "Inspection of applicants for admission." Heading of a section are "tools available for the resolution of a doubt about the meaning of a statute" and can provide important cues about congressional intent, especially where the operative text is ambiguous or subject to competing interpretations. See *Yates v. United States*, 574 U.S. 528, 539–40 (2015); *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998); *Trainmen v. Baltimore & Ohio R. Co.*, 331 U.S. 519, 528–29 (1947). The heading of INA § 1225—"**Inspection of applicants for admission**"—signals that Congress intended this section to govern the process of inspecting individuals who are seeking entry into the United States **at a designated inspection point**, such as a border crossing or port of entry, not those who entered years ago and are apprehended in the interior.

88. The INA's definitional and structural clues are powerfully confirmed by the plain text of the specific provision Respondents invoke, 8 U.S.C. § 1225(b)(2)(A), which definitively forecloses its application to Petitioner. The

statute reads:

> "[I]n the case of an alien who is an applicant for admission, if the **examining immigration officer determines** that an alien **seeking admission** is not clearly and beyond a doubt **entitled to be admitted**, the alien shall be detained..."

This language describes a specific and singular scenario: a formal inspection at a physical port of entry. The function of an "**examining immigration officer**" making a real-time determination about whether an individual is "**entitled to be admitted**" occurs exclusively at the border, an airport, or a seaport during the inspection process. It is a term of art for the threshold screening of a person who is literally and physically "seeking admission" into the country.

89. The statute's operative terms are consistently temporal and geographical, focused on the moment of entry. An "arriving alien" is defined by regulation as "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2. The use of the present participles "arriving," "coming," and "seeking" demonstrates that this status applies only to those at the threshold of entry. As the court in *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025), explained, "'seeking admission' implies action–something that is currently occurring, and in this instance, would most logically occur at the border upon inspection."

90. The term "admission" is defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8

U.S.C. § 1101(a)(13)(A). "Entry" has long been understood to mean "a crossing into the territorial limits of the United States." *Matter of Ching and Chen*, 19 I&N Dec. 203, 205 (BIA 1984) (citing *Matter of Pierre*, 14 I & N Dec. 467, 468 (BIA 1973)).

91. The statute's focus on the present tense—using terms like "arriving" and "seeking admission"—is consistent with the long-standing "entry fiction," which applies only at the border. Once an individual has entered the United States and established presence, they are no longer "arriving" or "seeking admission" in the present sense. Respondents' recent attempt to reclassify long-term residents as perpetual "arriving aliens" ignores this plain, present-progressive meaning of the term and the statutory context in which it appears. To interpret it otherwise would distort both the ordinary meaning of the language and the entire statutory structure Congress enacted.

92. The statutory text confirms that 8 U.S.C. § 1225(b)(2)(A) does not transform every noncitizen deemed an "applicant for admission" into an "alien seeking admission" subject to mandatory detention. Section 1225(a)(1) provides that certain noncitizens "shall be deemed … an applicant for admission" as a legal fiction, but § 1225(b)(2)(A) narrows mandatory detention to "an alien seeking admission" whom the examining officer determines is not clearly and beyond a doubt entitled to be admitted. District courts in this Circuit have adopted the

common-sense view that "alien seeking admission" is a present-progressive phrase describing someone actively attempting to obtain lawful entry at or incident to inspection, not anyone who has simply been present in the United States for years without admission. See, e.g., *Rojano Gonzalez v. Sterling*, No. 1:25-cv-6080, 2025 WL 3145764 (N.D. Ga. Nov. 3, 2025); *Ortega Jimenez v. Warden, FCI Atlanta*, No. 25-cv-5650, (N.D. Ga. Nov. 6, 2025); *Lima v. Warden et al.*, No. 1:25-cv-06304-ELR (N.D. Ga.); *Hernandez v. Udzinski*, No. 2:25-cv-00373-RWS (N.D. Ga. Nov. 24, 2025); *M.C.H.L. v. Roberson*, No. 4:25-cv-00329-WMR (N.D. Ga. Dec 16, 2025); *Ortiz De Leon v. Pierce*, No. 4:25-cv-00315-WMR (N.D. Ga. Dec. 9, 2025); *H.F.S.R. v. Francis*, No. 1:26-cv-00238-AT (N.D. Ga. Jan. 20, 2025).

93. In *J.A.M. v. Streeval*, No. 4:25-CV-342 (CDL), 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025), the court explained that if Congress had intended § 1225(b)(2)(A) to apply to all applicants for admission, it could have said so directly, and that the government's broader reading "would make an experienced grammarian, or even a rookie 7th-grade English teacher, wince." Likewise, in *Aguirre Villa v. Warden*, No. 5:25-cv-89, 2025 WL 3095969, at *7 (S.D. Ga. Nov. 4, 2025), the court held that the expression "alien seeking admission" plainly describes present, border-inspection conduct and, read together with 8 C.F.R. § 1.2's definition of

"arriving alien," limits § 1225(b)(2) to individuals coming to or attempting to come into the United States—not long-present interior residents like Petitioner.

94. Petitioner, having entered the United States a long time ago, is not "seeking admission." As one court poignantly articulated in rejecting the government's theory, someone who has already entered a movie theater without a ticket is described as being "already present there," not as "seeking admission." *Lopez Benitez v. Francis*, --- F.Supp.3d at ----, 2025 WL 2371588, at *7. Petitioner was never brought before an "examining immigration officer" to determine if he was "entitled to be admitted" because that process occurs only at the border. He is already here.

95. Moreover, an "application for admission" refers to the physical act of requesting entry, not to the act of contesting removability years later. See *Jose Alejandro v. Olson*, No. 1:25-cv-02027-JPH-MKK, 2025 WL 2896348 (S.D. Ind., October 11, 2025) (rejecting the government's argument that a petitioner is "seeking admission" merely because he has not agreed to depart or conceded removability).

96. The statutory definition in 8 U.S.C. § 1101(a)(4) makes clear that the term "application for admission" refers **specifically to the act of seeking entry into the United States at a physical border or port of entry, and not to the process of applying for an immigrant or nonimmigrant visa abroad**. The statute

provides: "The term 'application for admission' has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa." This language underscores that Congress intended "applicant for admission" to mean individuals who are at the threshold of entry, **actively seeking to be inspected and admitted by immigration authorities.** It does not encompass those who entered the country unlawfully years ago and have since established residence in the interior.

97. Furthermore, Petitioner is statutorily barred from "seeking admission" due to his unlawful presence, which triggers a 10-year bar to reentry if he departs. *See* 8 U.S.C. § 1182(a)(9)(B)(i)(II). The relief Petitioner intends to seek, Cancellation of Removal under 8 U.S.C. § 1229b(b), is available only to those already present in the U.S. and is distinct from seeking admission.

98. The Ninth Circuit in *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020), held unequivocally that an "application for admission" is a discrete, temporal event, not a continuous status that attaches to a person indefinitely after entry. *Id.* at 926. The court clarified that while 8 U.S.C. § 1225(a)(1) may "deem" certain individuals as applicants for admission for procedural purposes, this legal fiction does not transform their status for substantive purposes like mandatory detention. *Id.* at 928. Similarly, the Fifth Circuit in *Marques v. Lynch*, 834 F.3d 549 (5th Cir. 2016), held that inadmissibility and related detention provisions

do not apply retroactively to long-term residents apprehended in the interior. *Id.* at 553–54.

(2) ***Respondents' Interpretation Renders § 1226 and Other INA Provisions Superfluous.***

99. Respondents' novel interpretation violates the fundamental canon of statutory construction that courts must "give effect, if possible, to every clause and word of a statute." *Duncan v. Walker*, 533 U.S. 167, 174 (2001). If, as Respondents contend, every person who entered without inspection is perpetually an "applicant for admission" subject to mandatory detention under § 1225, then the INA's carefully crafted detention scheme collapses into incoherence.

100. First, it would render § 1226(a)'s discretionary bond framework, which the Supreme Court has called the "default" detention provision, almost entirely superfluous. *Jennings*, 583 U.S. at 288. There would be no clear circumstances under which it would apply, aside from the small subset of noncitizens who overstayed a visa. There is no indication Congress intended § 1226 to have such a narrow reach. *See Lopez Benitez*, 2025 WL 2371588, at *8.

101. Second, it would make the mandatory detention provision for certain criminals in § 1226(c) redundant. Congress would not have needed to create a specific list of criminal offenses that trigger mandatory detention if all individuals who entered without inspection—criminal or not—were already subject to mandatory detention under § 1225. Likewise, the 2025 Laken Riley Act, which

expanded the categories of crimes under § 1226(c), would have been a pointless legislative exercise if Respondents' theory were correct. The existence and amendment of § 1226(c) only make sense if there is a large population of noncitizens, including those who entered without inspection, who are otherwise eligible for a bond hearing under § 1226(a).

102. Third, it would nullify the distinction between separate grounds of inadmissibility. The INA has long distinguished between inadmissibility for entry without inspection under 8 U.S.C. § 1182(a)(6) and inadmissibility for lack of valid documents at a port of entry under 8 U.S.C. § 1182(a)(7). The existence of these separate charges reflects Congress's intent to treat border cases and interior apprehensions differently.

C. The Very Structure of 8 U.S.C. § 1226 Forecloses Respondents' Interpretation and Confirms Discretionary Release Is the Default

103. The architecture of 8 U.S.C. § 1226, the statute titled "Apprehension and detention of aliens," provides the clearest rebuttal to Respondents' legal theory. The relationship between its subsections demonstrates a deliberate legislative choice by Congress: discretionary, individualized bond review is the default for noncitizens apprehended in the interior, while mandatory detention is the narrow exception. Respondents' attempt to erase this distinction not only defies the statute's plain text but also violates fundamental principles of statutory construction.

104. First, **§ 1226(a) establishes discretionary detention and a presumption of liberty.** It expressly states that, pending a removal decision, the Attorney General *may* continue to detain an arrested noncitizen or *may* release them on bond or conditional parole. This use of permissive language reflects a deliberate legislative choice to create a system of individualized custody determinations based on flight risk or danger to the community, not a system of automatic detention.

105. Second, **§ 1226(c) is the narrow exception that proves the rule.** In sharp contrast to the discretionary framework of § 1226(a), subsection (c) *mandates* detention ("The Attorney General *shall* take into custody..."). However, it does so only for a meticulously defined subset of noncitizens with specific criminal convictions or security-related grounds. This proves that Congress knows precisely how to require mandatory detention when it so intends. By creating a specific, limited list of criminal noncitizens subject to mandatory detention, Congress implicitly confirmed that all other noncitizens apprehended in the interior—including non-criminal individuals who entered without inspection like Petitioner—fall under the discretionary framework of § 1226(a).

106. Third, **Respondents' theory renders § 1226(c) superfluous, violating a core canon of statutory interpretation.** If, as Respondents argue, every noncitizen

who entered without inspection is already subject to mandatory detention under § 1225, then the detailed categories of criminal aliens subject to mandatory detention in § 1226(c) would be largely redundant and meaningless. Congress does not enact superfluous legislation. This structural argument is reinforced by the recent passage of the Laken Riley Act, which expanded the categories of mandatory detention under § 1226(c). Congress would not have bothered to amend and expand this narrow category if a much broader rule already subjected all of these individuals to mandatory detention under § 1225.

107. Finally, **this statutory structure dictates that the government must bear the burden of proof to justify detention**. Because § 1226(a) establishes a framework where release is the default, it is both logical and constitutionally required for the government—the party seeking to deprive an individual of their fundamental liberty—to bear the burden of proving that detention is necessary. Placing the burden on the government to prove dangerousness or flight risk ensures that detention is an exception justified by specific, individualized findings, rather than the default. This is essential to safeguard due process and give meaning to the statutory promise of individualized review.

D. <u>The Government's New Policy is an Unlawful Reversal of Decades of Settled Law and Agency Practice</u>

108. Respondents' reinterpretation of § 1225 is not a clarification of existing law but a radical departure from over 70 years of consistent agency practice, legislative history, and judicial interpretation. Historically, noncitizens apprehended in the interior were afforded individualized bond hearings before an Immigration Judge to determine flight risk and dangerousness.

109. Following the enactment of the IIRIRA in 1996, the government itself confirmed this understanding. In an interim rule, the agency explained that, "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination" under § 1226. *Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). For decades, this remained the "longstanding practice." *Rosado v. Figueroa*, No. CV-25-02157 PHX DLR (CDB), 2025 WL 2337099, at *10 (D. Ariz. Aug. 11, 2025).

110. This established framework was abruptly dismantled in mid-2025. First, in July 2025, ICE issued a "stealth" internal memorandum, without public notice or comment, directing that all noncitizens who entered without inspection be treated as "applicants for admission" subject to mandatory detention under § 1225(b)(2). The clandestine nature of this policy shift suggests the agency recognized it was a controversial reinterpretation, not a faithful application of

the law.

111. Then, on September 5, 2025, the Board of Immigration Appeals (BIA) adopted this flawed reasoning in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In that decision, the BIA overturned decades of its own precedent (e.g., *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006)) and held that all individuals who entered without inspection are subject to mandatory detention, stripping Immigration Judges of jurisdiction to conduct bond hearings for them. In so doing, the BIA itself acknowledged that for years it had done the opposite. *Yajure Hurtado*, 29 I&N Dec. at 225, n.6. This new, binding administrative precedent makes any attempt by Petitioner to seek a bond hearing from an Immigration Judge an exercise in futility.

E. Respondents' Interpretation Creates an Unconstitutional and Unworkable System of Indefinite Detention

112. Even if this Court were to entertain Respondents' flawed statutory interpretation for the sake of argument, its application would be unconstitutional. The government's theory—that § 1225(b) mandates detention for all noncitizens who entered without inspection—creates a system of prolonged, indefinite detention without any individualized bond hearing. This result collides with the bedrock Fifth Amendment principle that prolonged civil detention without an individualized assessment of flight risk or dangerousness is an arbitrary deprivation of liberty forbidden by the Due

Process Clause.

113. The Supreme Court's reasoning in *Demore v. Kim*, 538 U.S. 510 (2003), established that even the congressionally mandated detention of *criminal* aliens under § 1226(c) becomes constitutionally suspect when it is prolonged without an individualized hearing. That principle applies with even greater force to the detention of non-criminals like Petitioner. While the Supreme Court in *Jennings v. Rodriguez* interpreted the statutory text of § 1225(b), it did not—and could not—bless a system of indefinite mandatory detention that offends core constitutional protections.

114. The unconstitutional consequences of Respondents' theory are not hypothetical; they are a certainty. Given the immigration court system's backlog of millions of cases and multi-year wait times for appeals, "brief" detention is an impossibility. Under the government's reading, countless long-term residents with deep ties to the United States—the vast majority of whom are non-criminals—would be subject to mandatory, unreviewable imprisonment for the entire multi-year duration of their legal proceedings. Such an outcome is not only constitutionally indefensible but reveals the inherent absurdity of the government's position. Congress did not intend to create a system that mandates the mass, multi-year detention of non-dangerous people, and this Court should reject an interpretation that leads to such an

unworkable and fundamentally unjust result.

F. Federal Courts Nationwide Have Uniformly Rejected Respondents' New Interpretation

115. Since Respondents adopted this unlawful policy, they have been rebuked by a tidal wave of federal court decisions. Dozens, if not hundreds, of district courts across the country have rejected the government's new interpretation and granted habeas relief, holding that § 1226(a), not § 1225, governs the detention of long-term residents apprehended in the interior.

116. The consensus is overwhelming. These courts have consistently ordered the immediate release of petitioners, finding that a bond hearing is an inadequate remedy for a detention predicated on a baseless legal theory. *See, e.g., Savane v. Francis*, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Ye v. Maldonado*, No. 25-CV-6417, 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025); *Ibarra v. Warden of the Federal Detention Center Philadelphia*, No. 25-cv-6312, 2025 WL 3294726 (E.D. Pa. Nov. 25, 2025); *Anirudh v. McShane*, No. 25-6458, 2025 WL 3527528 (E.D. Penn. Dec. 9, 2025); *Quijaba Cordoba v. Knight*, --- F.Supp.3d ----, 2025 WL 3228945 (D. Id., Nov. 19, 2025). District courts in other circuits have reached the same conclusion, including the District of Nevada's recent decision in *Maldonado*

Jovel v. Noem, No. 2:26-cv-00360-RFB-EJY (D. Nev. Feb. 23, 2026), which held that noncitizens apprehended in the interior are detained under 8 U.S.C. § 1226(a), not § 1225(b)(2), and rejected DHS's effort to reclassify long-present residents as § 1225(b)(2) "applicants for admission." See also additional cases at Exhibit 2. This nationwide judicial repudiation confirms that Respondents' position is contrary to law.

XI. LEGAL FRAMEWORK FOR THE RELIEF SOUGHT

A. Habeas Jurisdiction

117. This Court has fundamental authority and a constitutional duty under 28 U.S.C. § 2241 to remedy Petitioner's unlawful detention. The Supreme Court has consistently affirmed that the Great Writ is the primary instrument for challenging the legality of civil immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *I.N.S. v. St. Cyr*, 533 U.S. 289, 314 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 285–86 (2018). As "perhaps the most important writ known to the constitutional law," habeas corpus is an equitable tool that empowers this Court not just to review custody, but to "dispose of the matter as law and justice require" under 28 U.S.C. § 2243. *Fay v. Noia*, 372 U.S. 391, 400 (1963); *Schlup v. Delo*, 513 U.S. 298, 319 (1995). That power explicitly includes ordering a petitioner's immediate release. *Boumediene v. Bush*, 553 U.S. 723, 787

(2008). This Court's jurisdiction is secure, as the concept of "custody" is broad, attaching at the time of filing and persisting despite subsequent release due to the significant ongoing restraints on Petitioner's liberty. *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).

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

119. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000).

B. The Administrative Procedure Act (APA)

120. Petitioner's detention is predicated on two agency actions—ICE's July 2025 "Interim Guidance" and the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)—that are subject to this Court's review. These policies

represent the "consummation of the agency's decision-making process" and are the direct cause of Petitioner's unlawful confinement, qualifying them as reviewable "final agency action" under the APA. See *Bennett v. Spear*, 520 U.S. 154, 178 (1997); 5 U.S.C. § 704.

121. Both the ICE memo referenced herein and *Matter of Yajure Hurtado* led ICE to detain Petitioner in violation of due process rights under the Constitution, statutes, and regulations.

C. The *Accardi* Doctrine Requires Agencies to Follow Their Own Rules

122. Respondents' actions also violate the bedrock principle of administrative law that agencies are bound by their own rules. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). This doctrine is not limited to formal regulations but extends to internal procedures and instructions that affect individual rights. *See Morton v. Ruiz*, 415 U.S. 199, 235 (1974); *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). By abandoning their long-standing regulations and practices that have historically afforded bond hearings for interior apprehensions, Respondents have acted unlawfully, and their actions must be set aside. *See U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969).

XII. CAUSES OF ACTION AND CLAIMS FOR RELIEF

COUNT ONE

Unlawful Arrest and Seizure in Violation of the Fourth Amendment and the INA (8 U.S.C. §§ 1226(a), 1357(a)(2))

123. Petitioner's seizure and detention are unlawful *ab initio* because his arrest violated the clear statutory framework established by Congress and the Fourth Amendment's prohibition on unreasonable seizures. The primary authority for a civil immigration arrest in the interior of the United States requires that it be conducted **"[o]n a warrant."** 8 U.S.C. § 1226(a). The narrow exception for a warrantless arrest under 8 U.S.C. § 1357(a)(2) demands a showing that the individual is "likely to escape before a warrant can be obtained".

124. Respondents failed to meet either requirement. It was a factual impossibility for Petitioner to be "likely to escape" in that situation as described in the facts and procedural history above. The reasonableness of a seizure depends on the totality of the circumstances. Here, the seizure was of an individual who had already been granted a form of supervised release by the government, who was fully compliant with all conditions of that release, and who was buying food at a gas station. Having failed to satisfy the statute's mandatory exigency requirement, Respondents' only lawful path to arrest Petitioner was to obtain a warrant under 8 U.S.C. § 1226(a), which they have failed to do. Such a seizure, devoid of individualized suspicion or exigent circumstances, is constitutionally unreasonable and renders Petitioner's resulting detention unlawful.

125. An arrest conducted without any statutory authority is an unreasonable seizure in violation of the Fourth Amendment. Because the initial seizure was void, the government's custody over Petitioner's person is the direct "fruit of the poisonous tree" and is incurably tainted. A subsequent bond hearing cannot remedy a detention that never had a lawful beginning. The only proper remedy for this fundamental statutory and constitutional violation is immediate and unconditional release.

COUNT TWO
Unlawful Re-Detention in Violation of the Fifth Amendment Due Process Clause and Agency Regulations

126. Petitioner's re-arrest and detention are unlawful ab initio because Respondents summarily revoked his supervised release in violation of his protected liberty interest under the Fifth Amendment's Due Process Clause and in direct defiance of their own mandatory regulations.

127. By releasing Petitioner on an Order of Release on Recognizance (OREC) under 8 U.S.C. § 1226(a), Respondents granted him a protected liberty interest in his continued freedom from physical custody. The summary revocation of that liberty without any process whatsoever fails the three-part balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976). Petitioner's private liberty interest is paramount; the risk of erroneous deprivation from the procedures used—which

were no procedures at all—is exceptionally high; and the government's interest is nonexistent, as its own years-long supervision of Petitioner demonstrated he was neither a flight risk nor a danger.

128. The re-detention is also ultra vires because it violated binding federal regulations. The authority to revoke an OREC is strictly limited by 8 C.F.R. § 236.1(c)(9) to a handful of designated officials and cannot be redelegated. Furthermore, any change in custody status requires a new custody determination, written notice, and advice of the right to seek review by an Immigration Judge. 8 C.F.R. § 236.1(d)(1)–(3). Respondents followed none of these mandatory procedures. Petitioner was summarily arrested without notice, a statement of reasons, or identification of an authorized official who ordered the revocation. Failure to comply with these substantive safeguards renders the revocation invalid. See *J.U. v. Maldonado*, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025).

129. Finally, having made a binding determination to release Petitioner under the discretionary framework of 8 U.S.C. § 1226(a), Respondents are now estopped from reversing their position to claim he is subject to mandatory detention under 8 U.S.C. § 1225(b). Because the re-detention violated due process and was executed without regulatory authority, it is void, and Petitioner is entitled to immediate release. This estoppel is precisely the kind of unfairness that

collateral estoppel and equitable-estoppel doctrines are designed to prevent, and it is incompatible with the Eleventh Circuit's recognition in *Labrada Hechavarria* that courts must police such retroactive shifts between § 1226 and § 1225 to prevent the Executive from attaching new, harsher custody consequences to prior § 1226(a) release decisions. 2026 WL 496486 (11th Cir. Feb. 23, 2026).

COUNT THREE
Unlawful Revocation of Petitioner's Parole in Violation of Due Process

130. Count Three is pled in the alternative and applies only if the Court concludes that Petitioner's initial release was immigration parole under 8 U.S.C. § 1182(d)(5)(A), rather than an OREC under 8 U.S.C. § 1226(a).

131. If the Court concludes that Petitioner's initial release was immigration parole under 8 U.S.C. § 1182(d)(5)(A), then that release constituted "parole into the United States" within the meaning of the statute, which authorizes DHS, in its discretion, to "parole into the United States temporarily under such conditions as [it] may prescribe" any applicant for admission. In that event, DHS allowed Petitioner to live and work in the community for a substantial period, subject to routine ICE check-ins and other parole conditions. Under these circumstances—where DHS affirmatively conferred conditional liberty and permitted Petitioner

to structure his life around it—Petitioner retains a protected liberty interest in remaining free from immigration detention cognizable under the Fifth Amendment's Due Process Clause.

132. Even if the Court were to accept Respondents' alternative narrative that Petitioner was previously released on parole under 8 U.S.C. § 1182(d)(5)(A) rather than on an OREC, his re-detention is still unlawful. Under 8 C.F.R. § 212.5(e)(2)(i), DHS may terminate parole only by providing written notice and restoring the noncitizen "to the status that he or she had at the time of parole," unless and until the agency makes a new, individualized determination that the purpose of parole has been accomplished or that humanitarian reasons and the public benefit no longer warrant parole. Those parole-revocation procedures, like the OREC-revocation rules in § 236.1, are binding "Accardi" safeguards, not hortatory suggestions. Courts have treated DHS's failure to comply with § 212.5(e)(2)(i) as both an Accardi violation and a due process violation, and have ordered release or barred re-detention absent pre-deprivation notice and a neutral custody hearing. See, e.g., *Singh v. Taylor*, 2026 WL 360913 (W.D. Tex. Feb. 9, 2026); *Loaiza Arias v. LaRose*, 2025 WL 3295385 (S.D. Cal. Nov. 25, 2025); *Madestras v. Raycraft*, 2026 WL 522956 (W.D. Mich. Feb. 25, 2026). Here, Respondents never issued written notice terminating Petitioner's parole, never restored him to his prior status with an individualized custody reassessment,

and never afforded him a pre-deprivation hearing before a neutral decisionmaker. Accordingly, even under Respondents' own parole theory, the revocation and resulting custody are unlawful, and the appropriate remedy is to restore Petitioner to his prior release posture—through immediate and unconditional release, not a bond hearing that assumes a lawful parole-termination decision that never occurred.

133. If Petitioner was so paroled, termination of that parole and his re-detention were required to comply with 8 C.F.R. § 212.5(e)(2)(i), including written notice and restoration only to the status he held at the time of parole. Respondents did not provide such notice or process, rendering any termination of parole and resulting re-detention unlawful. Under 8 C.F.R. § 212.5(e)(2)(i), when "in the opinion" of the authorized DHS official neither humanitarian reasons nor public benefit warrant continued parole, parole is terminated by written notice and the noncitizen is "restored to the status that he or she had at the time of parole." Here, Respondents effectively terminated Petitioner's parole and restored him to "applicant for admission" status by serving a Notice to Appear and taking him into immigration custody, without: (a) advance written notice that his parole would be terminated; (b) any statement of reasons for termination; or (c) any pre deprivation custody redetermination hearing before a neutral

decisionmaker to determine whether revocation of parole and re detention were necessary to serve any legitimate regulatory purpose.

134. As *Morrissey v. Brewer*, 408 U.S. 471 (1972), and *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), recognize, individuals living at liberty on parole or probation enjoy a significant "conditional" liberty interest and may not be re incarcerated without basic procedural safeguards, including notice, an opportunity to be heard, and a neutral decisionmaker. Courts have applied the same logic in the immigration context, holding that noncitizens who have been released from detention on bond or parole and allowed to live and work in the community cannot be summarily re detained without a pre deprivation hearing.

135. In *Aviles Mena v. Kaiser*, No. 25 cv 06783 RFL, 2025 WL 2578215, at *3, *5 (N.D. Cal. Sept. 5, 2025), the court emphasized that "even individuals who face significant constraints on their liberty or over whose liberty the government wields significant discretion retain a protected interest in their liberty," and treated immigration parole under 8 U.S.C. § 1182(d)(5)(A) as a form of conditional liberty analogous to criminal parole or probation for purposes of the *Mathews v. Eldridge* due process analysis.

136. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), the "specific dictates of due process" are evaluated by considering: (1) the private interest affected; (2) the risk of erroneous deprivation and the value of additional safeguards; and (3) the

government's interests and the burdens of additional procedures.

137. First, Petitioner's private interest in remaining out of custody is weighty. He has been lawfully paroled into the United States under § 1182(d)(5)(A), has resided with his family, worked as a commercial truck driver and complied with all immigration requirements. As *Aviles Mena* recognized, where DHS has already found a parolee suitable for release and allowed him to live and work in the United States for years, the liberty interest in continued freedom from detention is substantial. *Aviles Mena v. Kaiser*, No. 25-cv-06783-RFL, 2025 WL 2578215 (N.D. Cal., Sep. 5, 2025).

138. Second, the risk of an erroneous deprivation of that liberty is high under Respondents' current practice. By definition, DHS's prior decision to grant Petitioner parole and permit his continued residence in the community reflected a determination, under § 1182(d)(5)(A) and 8 C.F.R. § 212.5, that he was not a danger or flight risk. Respondents have identified no materially changed circumstances—no new criminal conduct, no violation of parole conditions, no failure to appear—that would justify re detention. A brief pre-deprivation custody hearing before a neutral adjudicator, at which the government bears the burden to show that termination of parole and re-detention are necessary to prevent flight or danger, would substantially reduce the risk that Petitioner is re-incarcerated for reasons unrelated to any valid statutory purpose.

139. Third, the government's interest in re detaining Petitioner without any pre deprivation hearing is minimal. Providing advance written notice and a prompt individualized custody hearing would not diminish DHS's ability to effect removal or protect the public; it would simply require the agency to articulate and substantiate the basis for revoking parole and returning Petitioner to custody, and to do so before rather than after the deprivation occurs. The automatic termination of parole does not grant the government "carte blanche" to re-detain a noncitizen where no valid statutory purpose is served. Civil immigration detention must be nonpunitive and bear a reasonable relation to statutory purposes, such as preventing flight or danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Given Petitioner's demonstrated lack of flight risk or danger and the absence of any changed circumstances justifying re-detention, the government's actions appear arbitrary and lack a legitimate non-punitive purpose.

140. As *Aviles Mena* held on materially similar facts, the incremental administrative burden of a brief pre deprivation hearing is slight compared to the severe deprivation of liberty imposed by renewed civil detention. A series of California decisions—*Moises V.A. v. Wofford*, No. 1:25-cv-01419-SKO (HC), 2026 WL 252237 (E.D. Cal. Jan. 30, 2026); *Elias C.M. v. Warden of the Golden State Annex Detention Facility*, No. 1:25-cv-02043-TLN-EFB, 2026 WL 127612 (E.D. Cal. Jan. 16,

2026); *Kervis v. Chestnut*, No. 1:25-cv-02066-KES-SAB (HC), 2026 WL 88983 (E.D. Cal. Jan. 12, 2026); *Ericka P.S. v. Chestnut*, No. 1:25-cv-02049-TLN-CKD, 2025 WL 3764211 (E.D. Cal. Dec. 30, 2025); *Peralta Ayala v. Wofford*, No. 1:26-cv-00555-DJC-AC, 2026 WL 249567 (E.D. Cal. Jan. 21, 2026); *Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO (HC), 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); and *Pineda v. Chestnut*, No. 1:25-cv-01566-DAD-AC (HC), 2025 WL 3251083 (E.D. Cal. Nov. 21, 2025)—have likewise held that noncitizens re-detained after years on parole, bond, or OREC are entitled to robust procedural protections, including notice and a pre-deprivation custody hearing before a neutral decisionmaker.

141. Balancing the *Mathews* factors, Respondents' revocation of Petitioner's parole and detention without advance notice and a pre deprivation hearing before a neutral decisionmaker violate the procedural component of the Fifth Amendment's Due Process Clause. See *Aviles Mena v. Kaiser*, Case No. 25 cv 06783 RFL, 2025 WL 2578215, at *5–7 (N.D. Cal. Sept. 5, 2025) (enjoining ICE from re detaining a long paroled asylum seeker "without notice and a pre deprivation hearing before a neutral decisionmaker").

142. Petitioner is therefore entitled to declaratory and injunctive relief prohibiting Respondents from terminating Petitioner's parole or re-detaining Petitioner in ICE custody absent: (a) advance written notice of the proposed termination and

the factual basis for re detention; and (b) a prompt pre deprivation custody hearing before a neutral decisionmaker at which the government bears the burden to demonstrate that revocation of parole and detention are necessary to serve legitimate, nonpunitive statutory purposes.

COUNT FOUR
Statutory Violation of the Immigration and Nationality Act, Agency Regulations And the Accardi Doctrine

143. Petitioner's detention is the direct result of a cascade of unlawful agency actions that violate the plain text of the Immigration and Nationality Act (INA), contravene decades of binding agency regulations, and therefore constitute a flagrant violation of the *Accardi* doctrine. Respondents are unlawfully detaining Petitioner by misclassifying him as an "arriving alien" subject to mandatory detention under 8 U.S.C. § 1225(b) when the statutes and the agency's own rules unambiguously require Petitioner's case to be processed under 8 U.S.C. § 1226(a), which provides for discretionary release on bond.

144. First, Respondents' actions defy the clear statutory scheme established by Congress. The INA creates two distinct detention frameworks: § 1225 governs the inspection and mandatory detention of aliens "arriving in the United States," while § 1226(a) governs the discretionary detention of aliens arrested "in the United States" on a warrant. Petitioner, a long-term resident apprehended in the

interior, falls squarely within the latter category. By applying the "arriving alien" framework to him, Respondents unlawfully erase this critical statutory distinction.

145. Second, Respondents' actions violate their own binding regulations and long-standing practice. For over two decades, agency regulations have implemented the statutory distinction by explicitly providing for bond eligibility for interior apprehensions. After Congress amended the INA in 1996, the agency issued an interim rule clarifying that noncitizens "present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination" under 8 U.S.C. § 1226. This policy is enshrined in regulations such as 8 C.F.R. §§ 236.1 and 1236.1. The new policy articulated in the July 2025 ICE memorandum and the *Yajure Hurtado* decision represents a radical and unlawful departure from these established rules.

146. Respondents' attempt to justify Petitioner's current custody solely under 8 U.S.C. § 1225(b)(2)(A), notwithstanding their prior decision to detain and release him under 8 U.S.C. § 1226(a), is precisely the sort of statutory misclassification and retroactive relabeling that courts have rejected. Under the plain text of the INA, the government's detention authority over noncitizens in removal proceedings is governed either by § 1225 (for certain applicants "seeking admission") or by §

1226 (for those arrested and detained in the interior), and that choice of statute carries concrete legal consequences for custody and bond eligibility. In *Labrada Hechavarria*, 2026 WL 496486 (11th Cir. Feb. 23, 2026), the Eleventh Circuit held that this statutory question—whether detention is under § 1225 or § 1226—is itself judicially reviewable, and it refused to accept DHS's post-hoc effort to re-cast long-time § 1226(a) releasees as § 1225 detainees simply to impose mandatory, no-bond detention. Because DHS initially exercised its § 1226(a) authority to arrest and then release Petitioner on an OREC or parole, and supervised him in the community for an extended period, it cannot now retroactively reclassify him as detained under § 1225(b)(2)(A) without violating the INA and the basic requirement that agencies adhere to the statutory framework they themselves invoked.

147. Finally, by defying their own statutes and regulations, Respondents have violated the *Accardi* doctrine, a bedrock principle of administrative law that commands that federal agencies are bound by their own rules. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). The *Accardi* doctrine applies with full force not only to formal regulations but also to internal policies and guidance that confer "important procedural benefits upon individuals," such as the right to a bond hearing. *Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 521, 538 (1970); *see also Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991).

148. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service (now DHS) issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] **who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.**" 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

149. This is not a mere procedural error; it is a fundamental breach of the rule of law. Respondents cannot simply ignore decades of their binding procedures to achieve a policy goal of mass mandatory detention. Because Respondents' actions were taken in direct contravention of the INA and their own established rules, those actions are invalid, rendering Petitioner's resulting detention unlawful and requiring this Court to set it aside.

150. Respondents can no longer invoke *Matter of Yajure Hurtado* as a purported justification for their departure from the text of the INA and from 8 C.F.R. §§ 236.1 and 1236.1. The *Maldonado Bautista* court has now vacated *Yajure Hurtado*

under the APA as contrary to law, on the ground that it merely repackages the same unlawful theory previously embodied in the July 2025 Interim Guidance. *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Feb. 18, 2026). Continued reliance on *Yajure Hurtado* after its vacatur is itself arbitrary, capricious, and "not in accordance with law" under 5 U.S.C. § 706(2)(A), and further underscores Respondents' ongoing *Accardi* violations.

COUNT FIVE
Violation of the Fifth Amendment of the U.S. Constitution
Procedural and Substantive Due Process

151. Petitioner's detention is a profound offense to the Fifth Amendment, violating his rights to both substantive and procedural due process. It is axiomatic that the Due Process Clause applies to all persons within the United States, regardless of immigration status, and that "freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Respondents' actions trample upon this fundamental right.

152. **Substantive Due Process:** The detention is substantively unconstitutional because it is arbitrary and serves no legitimate, non-punitive purpose. Civil immigration detention is permissible only to prevent flight or danger to the community. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 846 (2018). As

established, Petitioner is neither a flight risk nor a danger. Petitioner's mandatory detention, without any individualized assessment, bears no reasonable relation to any legitimate government purpose and is therefore arbitrary deprivation of liberty, excessive, and unconstitutional.

153. **Procedural Due Process:** Even if a legitimate purpose for detention existed, the procedures used to effectuate it are constitutionally rotten. Due process demands a "meaningful opportunity to be heard at a meaningful time and in a meaningful manner" before a neutral decision-maker. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). The current scheme—whereby Respondents unilaterally subject Petitioner to mandatory detention based on an unlawful policy—entirely lacks these fundamental safeguards and fails the three-part balancing test set forth in *Mathews*:

154. **The Private Interest**: Petitioner's liberty interest is paramount; the risk of erroneous deprivation is extreme considering that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c), is not a flight risk, and does not pose a danger to the community. Being free from physical detention by one's own government "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The right to be free of detention of indefinite duration pending a bail determination, is "without question, a weighty one." *Landon v. Plasencia.* Petitioner is being held in jail in the same conditions as criminal

inmates, unable to work and is far from family. At minimum, the government must come forward with concrete, case-specific reasons that outweigh Petitioner's substantial liberty interest in continued release.

155. **The risk of erroneous deprivation** of liberty is extreme. The system lacks any neutral adjudicator, as ICE is acting as both prosecutor and judge, a structural defect that creates a constitutionally intolerable risk of wrongful deprivation, as highlighted in *Marcello v. Bonds*, 349 U.S. 302, 305-306 (1955). Respondents are effectuating prolonged detention based on their own self-serving interpretation of the law, with no check on their power. This risk is exacerbated by the coordinated actions of both DHS and EOIR, which operate under a unified approach that effectively denies bond to noncitizens in Petitioner's situation, thereby unilaterally depriving them of their liberty.

156. **The Government's Interest**: The government's interest in enforcing its detention policy is minimal, if not entirely illegitimate. There is no valid government interest in enforcing an interpretation of the law that is contrary to the plain text of the INA, that conflicts with its own regulations providing for bond hearings under 8 U.S.C. § 1226(a), and that is based on a policy (*Matter of Yajure Hurtado*) that has been judicially declared untenable. The government has no cognizable interest in violating the law or wasting taxpayer resources on the unnecessary detention of individuals who are neither dangerous nor flight risks.

157. All three *Mathews* factors weigh decisively in Petitioner's favor. The current scheme is fundamentally unfair, unconstitutional, and deprives Petitioner of liberty without the process that is, and has always been, due.

XIII. REMEDIES

THE PRIMARY CONSTITUTIONALLY APPROPRIATE REMEDY IS IMMEDIATE AND UNCONDITIONAL RELEASE

158. When a person's liberty is taken without any lawful authority, the only effective and constitutionally sufficient remedy is to restore that liberty immediately and unconditionally. A subsequent bond hearing cannot cure a detention that was void from its inception (*ab initio*). Federal courts possess broad equitable power under 28 U.S.C. § 2243 to "dispose of the matter as law and justice require," which includes ordering immediate release when the government's custody is illegal. See *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987); *Rosado v. Figueroa*, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025). Here, law and justice demand nothing less than Petitioner's release, as his detention is a legal nullity built upon a foundation of statutory and constitutional violations.

159. Petitioner's detention is unlawful at its core because the arrest itself was executed in open defiance of the Immigration and Nationality Act's clear commands. Whether viewed as an arrest under 8 U.S.C. § 1225 or 8 U.S.C. § 1226(a), the seizure was illegal. Respondents claim authority under § 1225, but

that statute applies to arriving aliens at the border, not long-term interior residents like Petitioner. The correct statute for an interior apprehension, § 1226(a), unequivocally requires that an arrest be made **"[o]n a warrant."** Respondents had no such warrant.

160. A bond hearing is a wholly inadequate remedy for such a fundamental violation. The purpose of a bond hearing is to assess the propriety of *continued* detention following a *lawful* arrest. It presupposes that the government's custody was, at some point, legitimate. That is not the case here. To order a bond hearing would be to retroactively sanitize an illegal seizure and give the government a "pass for not securing a warrant." *Javier De Jesus Aguilar v. English*, No. 3:25-CV-898 DRL-SJF, 2025 WL 3280219 (N.D. Ind., Nov. 25, 2025). As that court correctly reasoned when ordering immediate release under similar facts, "[t]he simple matter is this: the government has not established a lawful basis for detention... and the government must live by the rules that Congress has instituted." *Id.* Federal courts have ordered outright release, rather than a bond hearing, where detention under § 1225(b) was unlawful and the government did not (or could not) justify custody under § 1226. See, e.g., *Flores-Boziere v. Bondi*, No. 5:24-cv-1853-JKP, 2026 U.S. Dist. LEXIS 1859 (W.D. Tex. Jan. 5, 2026) (ordering release where DHS could not rely on § 1225(b)(2) and had not asserted § 1226 authority).

161. This requested remedy is squarely in line with the relief ordered by district courts throughout the Ninth Circuit in re-detention cases, which has the most caselaw on the subject. In *Ortega v. Bonnar*, the court granted habeas, permanently enjoined ICE from re-arresting the petitioner absent a pre-deprivation hearing in immigration court, and thus "restor[ed] the liberty that was unlawfully taken." In *Vargas v. Jennings* and *Jorge M.F. v. Jennings*, the courts issued injunctive relief prohibiting re-detention without a pre-deprivation IJ hearing applying the *Mathews* factors. *Romero v. Kaiser* likewise held that a noncitizen released on bond has a protectable liberty interest and that "due process requires a hearing before an IJ prior to re-detention." More recently, Eastern District of California decisions such as *D.L.C. v. Wofford* and *Pineda v. Chestnut* have ordered immediate release and barred any future re-detention "unless and until" the government first provides notice and a pre-deprivation bond hearing before a neutral arbiter, while *R.A.N.O. v. Wofford* and *R.F.G.Z. v. Wofford* have enjoined re-detention unless DHS proves flight risk or danger by clear and convincing evidence at such a pre-deprivation hearing.

162. Numerous courts—including multiple Ninth Circuit district courts—have granted immediate and unconditional release, or have categorically prohibited re-detention absent a pre-deprivation bond hearing, in identical circumstances

of unlawful bond/OREC revocation and re-arrest. See, e.g., *Pineda v. Chestnut*, No. 1:25-cv-01970-DC-JDP (HC), 2026 WL 25510 (E.D. Cal. Jan. 5, 2026); *D.L.C. v. Wofford*, No. 1:25-cv-01996-DC-JDP, 2026 U.S. Dist. LEXIS 1007 (E.D. Cal. Jan. 5, 2026); *R.A.N.O. v. Wofford*, No. 1:25-cv-01535-KES-EPG (HC), 2026 U.S. Dist. LEXIS 1963 (E.D. Cal. Jan. 6, 2026); *R.F.G.Z. v. Wofford*, No. 1:25-cv-01995-KES-EPG (HC), 2026 U.S. Dist. LEXIS 1971 (E.D. Cal. Jan. 6, 2026); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, Case No. 20-cv-5785-PJH (N.D. Cal. Sept. 14, 2020); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050 (N.D. Cal. 2021); *Romero v. Kaiser*, 2022 WL 1443250 (N.D. Cal. May 6, 2022); *Rodriguez Diaz v. Kaiser*, 2025 WL 3011852 (N.D. Cal. Sept. 16, 2025); and *Aguilar Garcia v. Kaiser*, No. 3:25-cv-05070 (N.D. Cal. June 14, 2025).[2]

163. See also case law from other circuits: *Arizmendi v. Noem*, No. 25-CV-7056, 2025 WL 3723960 (E.D. NY Dec. 24, 2025) (immediate release granted in a TRO); *Ye v. Maldonado*; 25-CV-6417; 2025 WL 3521298 (EDNY Dec. 8, 2025) (Court grants

[2] *Pineda v. Chestnut*, No. 1:25-CV-01970-DC-JDP (HC), 2026 WL 25510, at *4-6 (E.D. Cal. Jan. 5, 2026) (Petitioner "shall be released immediately from the Respondents' custody with the same conditions she was subject to immediately prior to her detention." "Respondents shall not impose any additional restriction on her, such as electronic monitoring, unless that is determined to be necessary at a future pre-deprivation/custody hearing;" and "[i]f the government seeks to re-detain Petitioner, it [] must hold a pre-deprivation bond hearing before a neutral arbiter, at which Petitioner's eligibility for bond must be considered"); *Barrientos v. Chestnut*, No. 1:25-CV-01490-SKO (HC), 2025 WL 3677319, at *5 (E.D. Cal. Dec. 18, 2025) (court ordered immediate release and forbade re-detention unless the government could prove at a pre-deprivation bond hearing before a neutral decisionmaker by clear and convincing evidence at a hearing that the petitioner was a flight risk or danger to the community such that her physical custody is legally justified). This Court should order the same relief here.

habeas, orders immediate release.); *Ibarra v. Warden of the Federal Detention Center Philadelphia;* 25-cv-6312; 2025 WL 3294726, (E.D. Pa. Nov. 25, 2025). (Grants habeas and orders release.); *Buele Morocho v. Jaminson;* 5:25-cv-05930; 2025 WL 3296300 (E.D. Pa. Nov. 26, 2025). (Grants habeas and orders immediate release. If re-detained, government must afford him due processing, including a bond hearing upon request.); *Ousmane Soumare v. Jamal L. Jamison;* CV 25-6490; 2025 WL 3461542 (E.D. Pa. Dec. 2, 2025). (Grants habeas, orders immediate release.) *Yilmaz v. Warden of Fed. Det. Ctr. Philadelphia;* CV 25-6572; 2025 WL 3459484 (E.D. Pa. Dec. 2, 2025). (Court orders immediate release, finding no flight risk or danger); *Anirudh v. McShane,* No. 25-6458, 2025 WL 3527528 (E.D. Penn. Dec. 9, 2025). (Grants habeas and order release); *Alberto Picon v. O'Neill;* CV 25-6731, 2025 WL 3634212 (E.D. Pa. Dec. 15, 2025). (Grants habeas and orders immediate release) *see also Mendes v. Hyde,* No. 25-CV-627-JJM-AEM, 2025 WL 3496546, at *2 (D.R.I. Dec. 5, 2025) (Finding that Mr. Mendes is constitutionally entitled to a bond hearing but also holding that "because the Government has put forth no evidence to suggest that Mr. Mendes poses a flight risk or is a danger to the community, the Court finds that his **immediate release is appropriate.**") (emphasis added); *Barrera Rodriguez v. Hyde,* No. 25-cv-607-JJM-PAS, 2025 WL 3274606, at *2 (D.R.I. Nov. 25, 2025) (same).

164. Granting a bond hearing would not only fail to cure the violation, it would

compound the harm. It would force Petitioner to languish in unlawful custody for weeks longer while awaiting a hearing, spend additional money on a bond (if one is even granted, as bonds grants are diminishing even after habeas grants) all while Respondents have failed to produce a single shred of evidence that Petitioner is a flight risk or a danger to the community. This Court should not reward the government's disregard for the law by prolonging the very illegal detention it created. When the government's custody over a person is the "fruit of the poisonous tree"—the poisonous tree being the illegal arrest itself—the only just remedy is to sever the connection by ordering immediate and unconditional release.

165. Furthermore, should this Court nonetheless order a bond hearing as an alternative to immediate release, it is critical that the order contain specific procedural safeguards to make that remedy meaningful. There is a troubling trend of immigration judges denying bond after a habeas grant based on rote assertions of flight risk or danger, often without the government presenting any actual evidence. To counteract this and ensure Petitioner is afforded a constitutionally adequate hearing so we do not have to return to this Court and **to prevent a perfunctory and meaningless hearing that would only prolong Petitioner's unlawful detention, any order for a bond hearing must explicitly direct that the government bears the burden of establishing by clear and**

convincing evidence that Petitioner's detention is necessary.

166. Finally, to ensure the remedy of release is not rendered illusory, the Court must explicitly ENJOIN Respondents from immediately substituting physical custody with another form of unlawful restraint: electronic monitoring. There is a now-common agency practice of subjecting virtually every noncitizen released from custody to GPS ankle monitoring—a blanket policy applied without the individualized assessment of flight risk required by due process. This reflects a de facto agency policy of imposing GPS monitoring, even after an immigration judge has made a finding that a bond is sufficient to mitigate flight risk. This practice allows the agency to unilaterally subvert a judicial release order by replacing one form of custody with another. To provide a truly meaningful remedy and prevent Petitioner from being forced to return to this Court to challenge these new custody-like restraints, the Court should exercise its broad equitable power under 28 U.S.C. § 2243 to "dispose of the matter as law and justice require." Accordingly, Petitioner requests that the Court's order specify that his release is unconditional and enjoin Respondents from imposing any conditions of supervision, such as electronic monitoring, unless they first demonstrate to this Court, with five days' advance notice, that significantly changed circumstances and a new, particularized assessment of risk justify such a severe restraint on Petitioner's liberty.

167. Because Respondents' actions violate both the INA and the Constitution at the threshold, there is no lawful statutory footing for continuing to detain Petitioner. His warrantless interior arrest violated 8 U.S.C. § 1226(a)'s warrant requirement and the narrow exigency exception in 8 U.S.C. § 1357(a)(2), and Respondents' summary revocation of his long-standing § 1226(a) OREC/parole violated the mandatory custody-revocation regulations and the Fifth Amendment's Due Process Clause. Having conceded that they are detaining him under 8 U.S.C. § 1225(b)(2)(A), Respondents have never identified any valid authority to detain him under 8 U.S.C. § 1226, nor can they do so consistent with their own prior custody determinations and the statutory text. In this posture, neither § 1225(b)(2) nor § 1226 provides a lawful basis for Petitioner's ongoing confinement. Under 28 U.S.C. § 2243's command that habeas courts "dispose of the matter as law and justice require," the appropriate remedy for a detention that lacks any valid statutory anchor is immediate and unconditional release, not a bond hearing that would presuppose a lawful arrest and a concededly inapplicable detention statute.

If Court Grants Bond Hearing – Ensure Burdens Are Met

168. Should this Court nonetheless order a bond hearing as an alternative to immediate release, it is critical that the order contain specific procedural safeguards to make that remedy meaningful. There is a troubling trend of

immigration judges denying bond after a habeas grant based on rote assertions of flight risk or danger, often without the government presenting any actual evidence. To counteract this and ensure Petitioner is afforded a constitutionally adequate hearing so we do not have to return to this Court, this Court should follow the sound reasoning of other Circuit Courts. The 11th Circuit has not yet addressed this question specifically in relation to noncitizens detained pursuant to § 1226(a), however, the circuits who have addressed it all stated that the government bears the burden to prove that detention is warranted, i.e., that the noncitizen is either a danger to the community or a flight risk. No circuit court to have addressed the issue has placed the burden on the noncitizen to prove that they are *not* a flight risk or a danger. The Second Circuit in *Velasco Lopez v. Decker*, 978 F.3d 842, 853–56 (2d Cir. 2020), also held that the government must prove a noncitizen is a danger to the community or a flight risk to deny bond under § 1226(a) **(both require clear and convincing evidence)**. Furthermore, the First Circuit in *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021), stated that a noncitizen must be released under § 1226(a) if the government cannot meet its burden of proving they are a danger or flight risk (the only difference is the standard: clear and convincing evidence for dangerousness or preponderance of the evidence for flight risk determinations). The Third Circuit, in *German Santos v. Warden Pike Cnty. Corr.*

Facility, 965 F.3d 203, 210 (3d Cir. 2020), places the burden also on the government to justify detention once it becomes prolonged. In any event, the government has not claimed that Petitioner is a danger nor a flight risk, let alone proved it. "Circuit courts considering the standard of proof in the immigration bond context have also adopted the clear and convincing standard. See *Lopez*, 2020 U.S. App. LEXIS 33752, 2020 WL 6278204, at *9-10 ("[C]lear and convincing standard was appropriate [at subsequent bond hearing]."); *Singh*, 638 F.3d at 1203 ("[T]he government must prove by clear and convincing evidence that an alien is a flight risk . . . to justify denial of bond . . . ."). This Court will do the same." *J.G. v. Warden, Irwin Cty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1341 (M.D. Ga 2020). The Court should follow the burden of proof outlined in this case and the 3 circuit courts who have decided the issue and determine that the **government must prove, by clear and convincing evidence, that Petitioner is not a flight risk or danger.** The reason for that is the Congress's assumption was that for non-criminal noncitizens who are detained pursuant to § 1226(a) the default is release, not detention (in contrast to § 1226(c) that deals with mandatory detention for criminal aliens). **Therefore, to prevent a perfunctory and meaningless hearing that would only prolong Petitioner's unlawful detention, any order for a bond hearing must explicitly direct that the government bears the burden of establishing by clear and**

convincing evidence that Petitioner's detention is necessary.

169. However, federal courts confronting materially similar unlawful re-detention have ordered immediate release, rather than a belated § 1226(a) bond hearing, where the government both (1) could not lawfully detain under § 1225(b)(2), and (2) failed to assert any independent § 1226 authority. In *Flores-Boziere v. Bondi*, No. 5:24-cv-01853-JKP, 2026 U.S. Dist. LEXIS 1859 (W.D. Tex. Jan. 5, 2026), the court ordered outright release because DHS could not rely on § 1225(b)(2) and did not claim to be detaining the petitioner under § 1226 at all. In *De Jesus Aguilar v. English*, No. 3:25-cv-00898-DRL-SJF, 2025 WL 3280219 (N.D. Ind. Nov. 25, 2025), the court declined to "give the government a pass" for failing to obtain a § 1226(a) arrest warrant by ordering a late bond hearing, and instead granted immediate release. And in *Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), the court ordered a long-released noncitizen's immediate release after finding that her warrantless arrest and summary re-detention violated the Fourth Amendment. These decisions confirm that where, as here, the government cannot ground detention in any lawful statutory authority and the initial arrest and revocation are themselves unlawful, § 2243's "law and justice" standard requires restoration of liberty, not a bond hearing that would retroactively legitimize an ab initio illegal custody.

XIV. CONCLUSION AND PRAYER FOR RELIEF

170. The continued detention of Petitioner violates due process rights. But for intervention by this Court, Petitioner has no means of release from ICE custody. Petitioner faces ongoing and irreparable harm as a result of unlawful detention, including deprivation of liberty, loss of employment, and separation from family. These injuries cannot be remedied by monetary damages and will continue absent immediate judicial intervention. The balance of equities and the public interest strongly favor expedited consideration and equitable relief, including immediate release or a prompt bond hearing. Without such relief, Petitioner will continue to suffer irreparable harm, and the constitutional and statutory violations at issue will persist.

171. Petitioner's fact pattern is similar to *Barco Mercado v. Francis*, No. 25-cv-6582 (LAK), 2025 WL 3295903, (S.D. NY, Nov. 26, 2025) where Petitioner was previously released on bond, applied for asylum and rearrested recently by the government under § 1225(b) and held without bond. The Court granted his writ of habeas returning him to his previous bond conditions ("Mr. Barco shall remain free of detention or any other restraint under the immigration laws of the United States to which he was not subject upon his release on bond in 2022"). See also numerous cases cited by that court in Appendix A to its

decision warranting immediate release.

172. See also *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787 (N.D. IL., Oct. 24, 2025) – where the Petitioner entered on foot, got caught at the border upon entry and released on his own recognizance to apply for asylum. The Court granted the writ of habeas and ordered the government to either: (1) provide Petitioner with a bond hearing before an immigration judge, at which the Government shall bear the burden of justifying his continued detention by clear and convincing evidence of dangerous or risk of flight; or (2) release Petitioner from custody, under reasonable conditions of supervision. Id; *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. October 21, 2025) (Petitioner previously released on OREC granted bond hearing before an Immigration Judge, at which the Government shall bear the burden of justifying, by clear and convincing evidence of dangerousness or flight risk; or (2) release from custody, under reasonable conditions of supervision). There are many more authorities ordering immediate release or shifting the burden to the government when Petitioner has been previously granted release on OREC or bond and complied with the conditions of release.

173. Given the egregious constitutional and statutory violations underlying Petitioner's arrest and continued detention, the only effective and constitutionally sufficient remedy is immediate and unconditional release.

Federal courts possess broad authority under 28 U.S.C. § 2243 to "dispose of the matter as law and justice require," which includes ordering immediate release when detention is found to be unlawful. See *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987).

WHEREFORE, Petitioner prays that this Court grant the following relief. Petitioner respectfully requests expedited consideration of this Petition due to the ongoing deprivation of liberty and irreparable harm:

(1) **Grant the Petition for Writ of Habeas Corpus** and, pursuant to its authority under 28 U.S.C. § 2243, order Respondents to **immediately and unconditionally release** Petitioner from custody pursuant to his OREC terms that were unlawfully revoked, because his detention is unlawful ab initio under both 8 U.S.C. § 1225 (misclassification as an "arriving alien") and 8 U.S.C. § 1226(a) (failure to obtain the statutorily required warrant for an interior arrest), and rests solely on agency actions that are contrary to the INA, ultra vires, arbitrary and capricious, and adopted and applied in violation of the Accardi doctrine, as set forth in the APA/*Accardi* claim.

(2) **Enjoin** Respondents from re-detaining Petitioner or revoking his Order of Release on Recognizance absent strict compliance with all

governing regulations, including a showing of specific, individualized changed circumstances making his removal significantly likely in the reasonably foreseeable future, supported by a written decision from a duly authorized official;

(3) **In the alternative**, should the Court decline to order immediate unconditional release, issue an order directing Respondents to provide Petitioner with a bond hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a) and its implementing regulations at 8 C.F.R. §§ 236.1 and 1236.1 within forty-eight (48) hours of the Court's order, and further specifying that at any such hearing: (a) the **government bears the burden** of proving that Petitioner is either a flight risk or a danger to the community; and (b) the government must satisfy that burden by **clear and convincing evidence**, consistent with circuit precedent adopting this standard in the immigration bond context, in order to prevent the recurring problem of perfunctory bond denials based on unsupported assertions of risk rather than actual evidence;

(4) **Enjoining Respondents**, upon Petitioner's release, from subjecting Petitioner to any form of electronic monitoring, GPS ankle bracelet, ISAP enrollment, or other alternative-to-detention program that

functions as a custody-like restraint, absent prior leave of this Court. Respondents shall be prohibited from imposing such conditions unless, at least five (5) days in advance, they file notice with this Court and demonstrate—based on a new, particularized assessment of significantly changed circumstances and a concrete, evidence-based showing of flight risk or danger—that such conditions are necessary, and the Court expressly authorizes them pursuant to its authority under 28 U.S.C. § 2243 to dispose of the matter as law and justice require.

(5) **Issue an Order to Show Cause** directing Respondents to file a return within three (3) days, pursuant to 28 U.S.C. § 2243, justifying in fact and law why the writ should not be granted;

(6) Pending final resolution of this Petition, issue a temporary order pursuant to 28 U.S.C. §§ 1651(a) and 2241 prohibiting Respondents from transferring Petitioner outside the Northern District of Georgia, or otherwise changing Petitioner's immediate custodian, absent prior leave of this Court, so as to preserve this Court's habeas jurisdiction under the district of confinement and immediate custodian rule recognized in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004);

(7) **ENJOIN** Respondents from re-detaining Petitioner in the future

under 8 U.S.C. § 1225 or the DHS policy vacated by the *Maldonado Bautista* court;

(8) **Award** Petitioner reasonable attorney's fees and costs including under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and any other applicable fee-shifting statute; and

(9) **Grant** such other and further relief as this Court deems just, proper or equitable under the circumstances.

Respectfully Submitted,

This 18th day of March, 2026.

/s/ Karen Weinstock
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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with Petitioner's friend and have reviewed various documents for Petitioner. On the basis of those discussions, I hereby verify that I have reviewed the foregoing Petition and that the facts and statements made in this Petition and Complaint are true and correct to the best of my knowledge or belief pursuant to 28 USC § 2242.

This 18th Day of March, 2026.

/s/ Karen Weinstock
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