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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

Jose PALOMARES ZAPATA, Petitioner, v. Jason STREEVAL, *in official capacity* as Warden of Stewart Detention Center; George STERLING, *in his official capacity* as Deputy Field Office Director of the Atlanta Field Office, U.S. Immigration and Customs Enforcement; Todd LYONS, *in his official capacity* as Acting Director of U.S. Immigration and Customs Enforcement; Kristi NOEM, *in her official capacity* as Secretary of U.S. Department of Homeland Security; Pamela BONDI, *in her official capacity* as Attorney General of the United States; and Daren MARGOLIN, Director for Executive Office for Immigration Review, Respondents.	CASE No. 4:26-cv-443 PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF **HEARING REQUESTED** **A #** [redacted]

INTRODUCTION

1. Petitioner-Plaintiff ("Petitioner") ([redacted] is a native and citizen of Mexico who entered the United States without inspection in about 1995, left voluntarily, and then re-entered—again without inspection—in 2008, all while a minor.
2. Petitioner is married and maintains strong family ties in the United States to his wife and stepson to whom he provides emotional and financial support.
3. Petitioner has current employment authorization approved by the U.S. Citizenship and Immigration Service ("USCIS") through April 23, 2030.
4. On February 24, 2026, at about 6:30 a.m., Petitioner was driving to work with coworkers when U.S. Immigration and Customs Enforcement ("ICE") stopped them and detained Petitioner. He has remained in ICE custody since that date the Stewart Detention Center in Lumpkin, Georgia. He was not charged with any criminal conduct but was detained solely as a part of immigration enforcement actions.
5. He has no disqualifying criminal record that would make him ineligible for immigration relief or place him into mandatory detention.
6. In his bond proceedings before the Executive Office of Immigration Review ("EOIR"), he provided letters of support from friends and family, including his bond sponsor and nephew, a U.S. citizen. He also included a letter from the pastor of his church.
7. He has a pending Form I-589 application for asylum and withholding of removal based on his fear stemming from threats and violence he suffered in Mexico.
8. Prior to detention, he owned and operated a concrete company he established in 2017 through which he served his community and supported his family.
9. Petitioner is currently detained at the Stewart Detention Center, 146 CCA Road, Lumpkin,

Georgia 31815. *See* ICE Detainee Locator Results, Exhibit 1.

10. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision that unlawfully reinterpreted the Immigration and Nationality Act ("INA"). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Prior to this decision, noncitizens like Petitioner who had lived in the U.S. for many years and were apprehended by ICE in the interior of the country were detained pursuant to 8 U.S.C. § 1226(a) and eligible to seek bond hearings before Immigration Judges ("IJs"). Instead, in conflict with nearly thirty years of legal precedent, Petitioner is now considered subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and has no opportunity for release on bond while his removal proceedings are pending.

11. On March 10, 2026, Petitioner's immigration counsel requested that he be released on bond through a custody redetermination under 8 C.F.R. § 1236. The Immigration Judge ("IJ") denied his request on March 13, 2026, holding that the Immigration Court lacked jurisdiction pursuant to *Matter of Yajure-Hurtado* under which "the Court lacks authority to hear bond requests or to grant bond to noncitizens who are present in the United States without admission." *See* Order of the Immigration Judge Denying Bond, Exhibit 2.

12. On March 13, 2026, Petitioner appealed the IJ's decision to the BIA.

13. Petitioner's detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who has resided in the U.S. without interruption since 2008 and who was apprehended in the interior of the U.S., should not be considered an "applicant for admission" who is "seeking admission." Rather, he should be detained pursuant 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond.

14. Petitioner seeks declaratory relief that he is subject to detention under § 1226(a) and its implementing regulations and asks that this Court either order Respondents to release Petitioner from custody immediately or provide him with a bond hearing at which the U.S. Department of Homeland Security ("DHS") bears the burden of proof by clear and convincing evidence.

15. Importantly, this Court has already found that individuals like Petitioner are eligible for bond because they are detained pursuant to § 236(a), and ordered immigration courts subject to this court's jurisdiction to hold bond hearings to determine whether such individuals are eligible for discretionary bond. *J.A.M. v. Streeval*, No. 4:25- CV-342 (CDL), 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025).

CUSTODY

16. Petitioner is currently in the custody of Immigration and Customs Enforcement ("ICE") at the Steward Detention Center in Lumpkin, Georgia. *See* ICE Detainee Locator Results, Exhibit 1. He is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

17. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.*

18. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

19. Petitioner is presently in custody under color of the authority of the United States and

challenges his custody as in violation of the Constitution, laws, or treaties of the United States.

20. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

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

22. Petitioner is "in custody" for the purpose of § 2241 because Petitioner was arrested and detained by Respondents.

VENUE

23. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because Petitioner is currently detained in Lumpkin, Georgia, at the Stewart Detention Center. *See* Exhibit 1.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

24. Administrative exhaustion is unnecessary as it would be futile. *See, e.g., Arias v. Mia. Immigr. & Customs Enforcement Field Office Dir.*, S.D.Fla. No. 26-20494-CIV, 2026 U.S.

Dist. LEXIS 31864, at *4 (Feb. 17, 2026); *Puga v. Assistant Field Office Dir.*, S.D.Fla. No. 25-24535-CIV, 2025 U.S. Dist. LEXIS 203222, at *6–7 (Oct. 15, 2025) ("Generally, 'exhaustion is not required where no genuine opportunity for adequate relief exists . . . or an administrative appeal would be futile[.]' *Linfors v. United States*, 673 F.2d 332, 334 (11th Cir. 1982) (alterations added; citations omitted); *see also United States v. Barbieri*, No. 18-cr-20060, 2021 U.S. Dist. LEXIS 119726, 2021 WL 2646604, at *2 (S.D. Fla. June 28, 2021) ('The Court recognizes . . . that administrative exhaustion may be unnecessary where the administrative process would be incapable of granting adequate relief.' (alteration added; citation omitted)).").

25. The BIA issued *Matter of Yajure Hurtado* as a published decision, and such decisions "serve as precedents in all proceedings involving the same issue or issues." *Puga*, S.D.Fla. No. 25-24535-CIV, 2025 U.S. Dist. LEXIS 203222, at *7 (quoting 8 C.F.R. § 1003.1(g)(2)). "Thus, considering *Matter of Yajure Hurtado*, it appears evident that a noncitizen like Petitioner, who has resided in the United States for years but has not been admitted or paroled, will be subject to mandatory detention without bond under section 1225(b)(2) upon review by the BIA." *See id.* (citing *Matter of Yajure Hurtado*, 29 I&N Dec. at 221).

26. Additionally, the agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

PARTIES

27. Petitioner is a citizen and national of Mexico and has resided in the U.S. since 2008 when he entered as a minor. He is currently detained at the Stewart Detention Center in Lumpkin, Georgia. ICE has held him in custody since February 24, 2026. He is not subject to a final order of removal. He has been categorically denied access to a bond hearing under the DHS July 2025 policy and BIA decision in *Yajure Hurtado* that immigration judges no longer have jurisdiction to redetermine custody for individuals like Petitioner.

28. Respondent Jason Streeval is the warden of the Stewart Detention Center and controls the detention center where Petitioner is confined under the authority of ICE. Mr. Streeval has direct physical custody of Petitioner and is his immediate custodian. Mr. Streeval is sued in his official capacity.

29. Respondent George Sterling is the Acting Director of ICE's Atlanta Field Office, which has jurisdiction over ICE detention facilities in Georgia, including the Stewart Detention Center. He exercises authority over Petitioner's detention and is sued in his official capacity.

30. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

31. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.

32. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

33. Respondent Daren Margolin is the Director of the Executive Office for Immigration Review (EOIR). He has ultimate responsibility for overseeing the operation of the immigration courts and the BIA, including the conduct of bond hearings. Director Margolin is sued in his official capacity.

FACTS

34. Petitioner is a native and citizen of Mexico who entered the United States without inspection in 2008 as a minor. Since that time, he has made his life in this country. He is married and, prior to detention, lived with his wife and stepson in Powder Springs, Georgia.
35. He ran his own business with valid work authorization and Social Security number.
36. He has a pending Form I-589 application for asylum and withholding of removal based on his fear stemming from threats and violence he suffered in Mexico.
37. On February 24, 2026, he was detained pursuant to non-criminal immigration enforcement actions. Petitioner is currently detained at the Stewart Detention Center, 146 CCA Road, Lumpkin, Georgia 31815. *See* Exhibit 1.
38. In his bond proceedings, he provided letters of support from friends and family, including his bond sponsor and nephew, a U.S. citizen. He also included a letter from the pastor of his church.
39. He has no disqualifying criminal record that would make him ineligible for immigration relief or place him into mandatory detention.
40. On March 13, 2026, IJ Bianca Brown denied Petitioner's request for custody redetermination, holding that the Immigration Court lacked jurisdiction pursuant to *Matter of Yajure-Hurtado*. Exhibit 2. On March 13, 2026, Petitioner appealed the IJ's decision to

the BIA.

41. Petitioner has no criminal convictions that render him ineligible for bond. He has never been convicted of any crime that would subject him to mandatory detention under INA § 236(c). He is not subject to a final order of removal.

42. Historically, individuals like Petitioner, long-time residents apprehended in the interior of the United States and charged as inadmissible for entering without inspection—were detained under INA § 236(a), 8 U.S.C. § 1226(a), which provides for release on bond or conditional parole.

43. In July 2025, however, DHS adopted a new policy instructing that all noncitizens inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) are to be detained under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), and deemed ineligible for bond.

44. On September 5, 2025, the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting DHS's position and holding that noncitizens present in the United States without inspection are "applicants for admission" subject to mandatory detention under § 235(b)(2)(A).

45. As a result of this policy and decision, IJs find they lack jurisdiction to conduct custody redeterminations for individuals like Petitioner. He has been categorically denied the opportunity to seek bond, despite his long residence in the United States, his strong family ties, and his minimal record.

46. Federal district courts across the country, including this Court, have rejected DHS's new interpretation of § 235(b)(2), finding instead that detention of long-time residents like Mr. must proceed under § 236(a). Nonetheless, ICE continues to hold him without access to a bond hearing.

LEGAL BACKGROUND AND ARGUMENT

47. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.

48. First, individuals detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a bond hearing, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (immigration judges may review custody determinations made by DHS), 1236.1(d) (same).

49. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) as well as other recent arrivals deemed to be "seeking admission" under § 1225(b)(2).

50. Third, the INA authorizes detention of noncitizens who have received a final order of removal, including those in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

51. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208. Div. C, §§ 302-03, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

52. Following the enactment of the IIRIRA, the U.S. Department of Justice's Executive Office of Immigration Review ("EOIR") drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite 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").

53. Thus, in the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an Immigration Judge ("IJ"), unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

54. For decades, long-term residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.

55. In July 2025, however, ICE began asserting that all individuals who entered without inspection should be considered "seeking admission" and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

56. On September 5, 2025, the BIA issued a precedential decision adopting this interpretation, departing from the INA's text, federal precedent, and existing regulations. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

57. Defendants' new legal interpretation is plainly contrary to the statutory framework and its

implementing regulations. Indeed, for decades, Defendants had applied § 1226(a) to people like the Petitioner. Defendants' new policies are thus not only contrary to law, but are also arbitrary and capricious in violation of the Administrative Procedure Act ("APA"). They were also adopted without complying with the procedural requirements of the APA.

58. This Court has already determined that individuals like Petitioner were detained pursuant to § 1226(a) and therefore eligible for bond, thus ordering bond hearings in those cases. *See J.A.M. v. Streeval,* No. 4:25- CV-342 (CDL), 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025).

59. Numerous other federal courts have also rejected DHS's interpretation and instead have consistently found that § 1226, not § 1225(b)(2), authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country. *See e.g.*, *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court's disagreement with BIA's analysis in *Yajure Hurtado*); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025); *see also Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC) (E.D. Cal. Sept. 23, 2025), attached hereto as Exhibit F, *Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM (M.D. Fla. Sept. 25, 2025), attached hereto as Exhibit G, and *Chafla v. Scott*, No. 2:25-cv-00437-SDN (D. Maine Sept. 21, 2025), attached hereto as Exhibit H.

60. Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, this Court should independently interpret the statute and give the BIA's expansive interpretation of §

1225(b)(2) no weight, as it conflicts with the statute, regulations, and precedent. 603 U.S. 369 (2024).

61. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Following IIRIRA, the Executive Office for Immigration Review ("EOIR") issued regulations clarifying that individuals who entered the country without inspection were not considered detained under § 1225, but rather under § 1226(a). *See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite 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").

62. The statutory context and structure also make clear that § 1226 applies to individuals who have not been admitted and entered without inspection. In 2025, Congress added new mandatory detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted. *See* The Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025) (8 U.S.C. § 1226(c)(1)(E)).

63. By specifically referencing inadmissibility for entry without inspection under 8 U.S.C. § 1182(6)(A), Congress made clear that such individuals are otherwise covered by § 1226(a). Thus, § 1226 plainly applies to noncitizens charged as inadmissible, including those present without admission or parole.

64. The Supreme Court has explained that § 1225(b) is concerned "primarily [with those]

seeking entry," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 297, 2987 (2018). In contrast, Section 1226 "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Id.* at 289 (emphases added).

65. Furthermore, § 1225(b)(2) specifically applies only to those "seeking admission," and the implementing regulations at 8 C.F.R. § 1.2 address noncitizens who are "coming or attempting to come into the United States." The use of the present progressive tense would exclude noncitizens like Petitioner who are apprehended in the interior years after they entered, as they are no longer "seeking admission" or "coming [...] into the United States." *See Martinez v. Hyde*, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); *see also Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing "is arriving" in INA § 235(b)(1)(A)(i) and observing that "[t]he use of the present progressive, like use of the present participle, denotes an ongoing process").

66. This approach is consistent with Eleventh Circuit precedent. In *Ortiz-Bouchet v. U.S. Att'y General*, 714 F.3d 1353 (11th Cir. 2013), the court held noncitizens already present in the U.S. seeking to adjust status were not "applicants for admission." The Supreme Court likewise recognized mandatory detention under § 1225(b) applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is inadmissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). The mandatory detention provision of § 1225(b)(2) does not apply to Petitioner.

COUNT I
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

67. Petitioner restates and realleges all paragraphs as if fully set forth here.

68. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

69. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

70. Petitioner has not been, and will not be, provided with a bond hearing as required by law.

71. Petitioner's continuing detention is therefore unlawful.

COUNT II
Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19 Unlawful Denial of Release on Bond

72. Petitioner restates and realleges all paragraphs as if fully set forth here.

73. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service ("INS") 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. 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.

74. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III
Violation of the Administrative Procedure Act Contrary to Law and Arbitrary and Capricious Agency Policy

75. Petitioner restates and realleges all paragraphs as if fully set forth here.

76. Mandatory detention under § 1225(b)(2) does not apply to long-time residents apprehended in the interior of the United States. Such noncitizens, including Petitioner are detained under § 1226(a) and eligible for release on bond.

77. Respondents' application of § 1225(b)(2) to Petitioner contradicts the statutory scheme and departs from decades of consistent agency interpretation. This policy is arbitrary, capricious, and not in accordance with law, in violation of the APA, 5 U.S.C. § 706(2)(A).

COUNT IV
Violation of the Administrative Procedure Act
Failure to Observe Required Procedures

78. Petitioner restates and realleges all paragraphs as if fully set forth here.

79. Under the APA, a reviewing court must set aside agency action "without observance of procedure required by law." 5 U.S.C. § 706(2)(D). The APA requires agencies to engage in public notice-and-comment rulemaking before promulgating new rules or amending existing ones. 5 U.S.C. § 553(b), (c).

80. Respondents failed to comply with the APA by adopting and enforcing a new policy that reclassified individuals like Petitioner as subject to mandatory detention under § 1225(b)(2), without any rulemaking, notice, or opportunity to comment. This unlawful departure from prior regulations violates the APA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

1. Assume jurisdiction over this matter;

2. Order Respondents to show cause why the writ should not be granted within **three days**, pursuant to 28 U.S.C. § 2243;

3. Grant a writ of habeas corpus declaring that Petitioner's detention is governed by INA § 236(a), 8 U.S.C. § 1226(a), and order Petitioner's immediate release from custody under reasonable conditions of supervision if Respondents fail to provide such a bond hearing;

4. In the alternative, order Respondents treat Petitioner as detained pursuant to INA § 236(a) and that the IJ exercise jurisdiction over Petitioner's custody redetermination hearing(s) at which DHS shall bear the burden of proof by clear and convincing evidence;

5. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under chapter 153 (habeas corpus) of Title 28;

6. In the event the Court determines a genuine dispute of material fact exists regarding Petitioner's entitlement to habeas relief, schedule an evidentiary hearing pursuant to 28 U.S.C. § 2243;

7. Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Petitioner;

8. Declare that Petitioner's detention violates the INA;

9. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

10. Declare that Petitioner's detention is arbitrary, capricious, and in violation of the Administrative Procedure Act;

COUNT V
Violation of the Fifth Amendment
Due Process

81. Petitioner restates and realleges all paragraphs as if fully set forth here.

82. Under the Fifth Amendment of the Constitution, no person shall be deprived of liberty without due process of law. Freedom from imprisonment and government custody lies at the core of the liberty protected by the Due Process Clause. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The protections of the Due Process Clause extend to all persons within the United States, regardless of immigration status. *Id.* at 693.

83. Respondents' detention of Mr. under § 1225(b)(2), without the possibility of release on bond or a meaningful custody redetermination, violates his right to due process under the Fifth Amendment.

11. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

12. Grant such further relief as this Court deems just and proper.

Dated: March 20, 2026

Respectfully submitted,

/s/ Margaret W. Wong

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Attorney for the Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent the Petitioner and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Dated this 20th day of March, 2026.

/s/ Margaret W. Wong