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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

JOSE ISMAEL OLIVERA PEREZ,

Petitioner,

v.

JASON STREEVAL, Warden of Stewart
Detention Center;

GEORGE STERLING, Field Office Director
of Enforcement and Removal Operations,
Atlanta Field Office (ERO Atlanta);

TODD M. LYONS, Senior Official Performing
the Duties of Director, Immigration and
Customs Enforcement;

DAREN K. MARGOLIN, Director, Executive
Office For Immigration Review (EOIR);

KRISTI NOEM, Secretary, U.S. Department
of Homeland Security(DHS); and

PAMELA BONDI, U.S. Attorney General; in
their official capacities,

Respondents.

Case No. 4:26-CV-00474

**PETITION FOR WRIT OF
HABEAS CORPUS**

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INTRODUCTION

1. Petitioner, Mr. JOSE ISMAEL OLIVERA PEREZ is a citizen of Mexico who entered the United States without inspection (EWI) over 15 years ago and was not apprehended upon arrival. Mr. Olivera Perez was apprehended by immigration authorities in January 2026. The Respondents keep Mr. Olivera Perez detained at the Stewart Detention Center in Lumpkin, Georgia.

2. Mr. Olivera Perez is a member of a nationwide class of noncitizens who are in immigration detention and being denied access to a bond hearing based on the government’s allegation that they entered the United States without admission or inspection (colloquially referred to as “entered without inspection” or “EWI”).

3. On November 25, 2025, the U.S. District Court for the Central District of California granted declaratory relief to the entire class in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.),¹ (*See, Exhibit. 1*) holding that the government is unlawfully subjecting them to mandatory (meaning no-bond) detention and that class members are eligible for release on bond under the immigration laws. Under the Court’s order, class

¹ On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs holding that the government’s policy is inconsistent with the plain language of the *Immigration and Nationality Act* (“INA”), and that petitioners are properly subject to § 1226(a); and on November 25, 2025, , the Court certified a nationwide class and expressly “extend[ed] the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.” *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *9, 11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners’ proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners’ Motion for Partial Summary Judgment). The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a) and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

1 members should be able to request a bond hearing in immigration court before an immigration
2 judge (IJ) who must consider whether they are suitable for release on bond while their removal
3 proceedings are pending.

4 4. Because the Department of Homeland Security (DHS) and the Executive Office
5 for Immigration Review (EOIR) have refused to abide by the declaratory judgment issued on
6 behalf of the certified class in *Maldonado Bautista v. Santacruz*, Mr. Olivera Perez is likely to
7 face many additional months in detention. Mr. Olivera Perez has no other option but to bring
8 this petition for a writ of habeas corpus to enforce his rights as a member of the Bond Eligible
9 Class certified in *Maldonado Bautista v. Santacruz, id.*

10 5. Mr. Olivera Perez also seeks relief from this Court, as a detainee under INA §
11 1226(a), independent of any claim to class membership, because his continued, lengthy
12 immigration related detention is anyhow unconstitutional due to the violation of his
13 constitutional right to due process under the Fifth Amendment, the violation of the
14 *Administrative Procedure Act* (APA) unlawful denial of bond, and the violation of statutory
15 rights under the INA for unlawful denial of bond hearings

16 6. Accordingly, to vindicate Mr. Olivera Perez's rights, as a member of the Bond
17 Eligible Class in *Maldonado Bautista*, as well as under the Constitution of the United States, and
18 his statutory rights under INA, this Court should grant the instant petition for a writ of habeas
19 corpus.

20 7. Therefore, the Court should order Petitioner's release unless Respondents provide
21 a bond hearing under 8 U.S.C. § 1226(a) within seven days.

JURISDICTION

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2 8. This action arises under the Constitution and the *Immigration and Nationality Act*,
3 8 U.S.C. § 1101 *et seq*

4 9. This Court has jurisdiction under 28 U.S.C. § 2241 (the general grant of habeas
5 authority to the district court); 28 U.S.C. § 1331 (federal question), and Article I, section 9,
6 clause 2 of the United States Constitution (the Suspension Clause) as Mr. Olivera Perez is
7 presently in custody at the Stewart Detention Center under or by color of the authority of the
8 United States, and such custody is in violation of the U.S. Constitution, laws, or treaties of the
9 United States.

10 10. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory
11 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

12 11. Federal district courts have jurisdiction to hear habeas claims by non-citizens
13 challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678 (2001).

14 12. Federal courts also have federal question jurisdiction, through the *Administrative*
15 *Procedure Act* (APA), to “hold unlawful and set aside agency action” that is “arbitrary,
16 capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. 706(2)(A).

VENUE

17 13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
18 500 (1973), venue lies in the United States District Court for the Middle District of Georgia, the
19 judicial district in which Petitioner currently is detained.

20 14. Venue is also properly in this Court pursuant to 228 U.S.C. § 2241(c)(3) and 8
21 U.S.C. § 1391(b)(2) and 1391(e) because the Petitioner is in the physical custody of Respondents
and Immigration and Customs Enforcement, an agency within the Department of Homeland

1 Security Petitioner. Mr. Olivera Perez is detained at the Stewart Detention Center in Lumpkin,
2 Georgia and is under the direct control of Respondents and their agents.

3 15. Furthermore, Respondents are employees, officers, and agencies of the United
4 States, and because a substantial part of the events or omissions giving rise to the claims
5 occurred and continue to occur at the Atlanta Field Office of ICE's Enforcement and Removal
6 Operations division (ERO Atlanta) within the Middle District of Georgia's District and Division.

7 **REQUIREMENTS OF 28 U.S.C. § 2243**

8 16. The federal habeas corpus statute provides that "[a] court, justice or judge
9 entering a writ of habeas corpus shall forthwith award the writ or issue an order directing the
10 respondent to show cause why the writ should not be granted, unless it appears from the
11 application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

12 17. Courts have long recognized the significance of the habeas statute in protecting
13 individuals from unlawful detention. Habeas corpus is "perhaps the most important writ known
14 to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of
15 illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The
16 application for the writ usurps the attention and displaces the calendar of the judge or justice who
17 entertains it and receives prompt action from him within the four corners of the application."
18 *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

19 18. Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests, and this Court
20 should grant the petition for writ of habeas corpus "forthwith," as the legal issues have already
21 been resolved for class members in *Maldonado Bautista*.

1 19. However, if pursuant to Section 2243, this Court issues an order to show cause
2 (OSC), it must direct the respondents to file a return showing why the petition for a writ of
3 habeas corpus filed by Mr. Olivera Perez pursuant to 28 U.S.C. § 2241 should not be granted.

4 20. As provided by Section 2243, the writ or order to show cause must be returned by
5 the respondents “within *three days* unless for good cause additional time, not exceeding twenty
6 days, is allowed.” 28 U.S.C. § 2243 (emphasis added).

7 21. Nonetheless, giving the Respondents additional time to respond is inappropriate
8 in this case because Mr. Olivera Perez faces unjustified detention for an extended period of time
9 without being able to challenge his detention at a bond hearing in immigration court while the
10 immigration proceedings are pending. It is important to note, that should Mr. Olivera Perez
11 continue to fight his case, Respondents will not offer the opportunity for pre-removal release.

12 22. Thus, Mr. Olivera Perez’s period of detention is uncertain and can also increase
13 because of the backlog in the immigration courts. Mr. Olivera Perez’s ongoing, and prolonged
14 detention carries the separation from his minor United States citizen child and other close family
15 members. Additionally, the harshness of detention could not only affect his physical health or
16 expose him to psychological trauma, but it could also be used to pressure him to accept
17 abandonment of any claims of immigration relief and accept deportation.

18 23. Absent a grant of this petition for writ of habeas corpus or an issuance of an Order
19 to show cause, the respondents will cause irreparable harm to Mr. Olivera Perez by subjecting
20 him to an indefinite deprivation of his liberty and other fundamental rights.
21

PARTIES

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2 24. Mr. Olivera Perez is a citizen of Mexico that has resided in the United States
3 since 2008. Mr. Olivera Perez was arrested by Respondents when he was illegally pulled over
4 and registered without probable cause. He has been in immigration detention since January 2026.

5 25. Respondent, Mr. **GEORGE STERLING**, Field Office Director of Enforcement
6 and Removal Operations, is the Director of the, Atlanta Field Office of ICE's Enforcement and
7 Removal Operations division (ERO Atlanta). As such, Mr. Sterling, Field Office Director of
8 Enforcement and Removal Operations, is Petitioner's immediate custodian and is responsible for
9 Petitioner's detention and removal. He is named in his official capacity.

10 26. Respondent, **TODD M. LYONS**, is the Senior Official Performing the Duties of
11 Director of the U.S. Immigration Customs Enforcement, is the federal agency responsible for
12 custody decisions relating to non-citizens charged with being removable from the United States,
13 including the arrest, detention, and custody status of non-citizens. Mr. Lyons has responsibility
14 for the administration of the immigration laws pursuant to 8 U.S.C. § 1103 and is a legal
15 custodian of Mr. OLIVERA PEREZ. He is sued in his official capacity.

16 27. Respondent, **JASON STREEVAL**, is on information and belief, an employee of
17 CoreCivic the private corporation which runs the Stewart Detention Center in Lumpkin, Georgia,
18 contract facility where Petitioner is detained. On information and belief, Mr. Streeval's job title
19 is Warden of the Stewart Detention Center. He has immediate physical custody of Mr.
20 OLIVERA PEREZ. He is sued in his official capacity.

21 28. Respondent, **DAREN K. MARGOLIN**, is the Director of the Executive Office
for Immigration Review (EOIR), is the federal agency responsible for implementing and

1 enforcing the INA in removal proceedings, including for custody redeterminations in bond
2 hearings.

3 29. Respondent, **KRISTI NOEM**, is the Secretary of the Department of Homeland
4 Security. She is responsible for the implementation and enforcement of the Immigration and
5 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms.
6 **Noem** has ultimate custodial authority over Petitioner and is sued in her official capacity.

7 30. Respondent, **PAMELA BONDI**, is the Attorney General of the United States.
8 She is responsible for the Department of Justice, of which the Executive Office for Immigration
9 Review and the immigration court system it operates is a component agency. She is sued in her
10 official capacity.

11 STATEMENT OF FACTS

12 31. Mr. Olivera Perez is a 40-year-old male who was born in Mexico.

13 32. Mr. Olivera Perez entered the United States without inspection (EWI) back in
14 2008.

15 33. Mr. Olivera Perez is an business owner his minimal criminal history.

16 34. Mr. Olivera Perez has a minor child that were born in the United States.

17 35. Mr. Olivera Perez has other family members living in the United States.

18 36. In January 2026, Mr. Olivera Perez was wrongfully detained by ICE agents.

19 37. Mr. Olivera Perez is in the physical custody of Respondents at the Stewart
20 Detention Center in Lumpkin Georgia.

21 38. Mr. Olivera Perez is a member of the Bond Eligible Class, as he:

- a. **Does not have lawful status in the United States** and is currently detained at the Stewart Detention Center.

- 1 b. Mr. Olivera is purported to have **entered the United States without inspection**
2 over 15 years ago and **was not apprehended upon arrival**, *cf. id.*; and
- 3 c. **is not subject nor detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.**

4 39. After apprehending Petitioner in January 2026, the DHS placed him in removal
5 proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible
6 under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection.

7 40. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full
8 “force and effect of a final judgment.” 28 U.S.C. § 2201(a). Nevertheless, Respondents continue
9 to flagrantly defy the judgment in that case and continue to subject Mr. Olivera Perez to
10 unlawful detention despite his clear entitlement to consideration for release on bond as a Bond
11 Eligible Class member.

12 41. Mr. Olivera Perez is scheduled to have a Master Hearing, which is merely the
13 commencement of the removal proceedings, on April 7, 2026, at 1:00 p.m. It is important to note
14 that the Executive Office for Immigration Review and its subagency the Immigration Court and
15 the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory
16 relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on
17 bond.

18 42. With this in mind, it is of extreme urgency that this Court issue a decision as early
19 as practicable. This will allow the undersigned attorney to effectively argue for Mr. Olivera
20 Perez’s release and ensure that the Immigration Judge affords Mr. Olivera Perez a bond hearing
21 as ordered in the judgment in *Maldonado Bautista* and in accordance with his due process right.
Therefore, the Court should expeditiously grant this petition.

LEGAL FRAMEWORK

A. HABEAS CORPUS

43. “Habeas relief is available when a person is ‘in custody in violation of the Constitution or laws or treaties of the United States.’” *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379, at *3 (E.D. Mich. Aug. 29, 2025) (quoting 28 U.S.C. § 2241(c)(3)).

44. The right to file a petition for a writ of habeas corpus is intended to, at a minimum, provide “a means of reviewing the legality of Executive detention.” *Rasul v. Bush*, 542 U.S. 466, 474 (2004) (quoting *INS v. St. Cyr*, 533 U.S. 289, 301 (2001)).

45. In the context of immigration, there are two main sources of authority for habeas corpus petition. The first, is the civil habeas statute, 28 U.S.C. § 2241. It provides that:

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(c) The writ of habeas corpus shall not extend to a prisoner unless—

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

...

(3) He is in custody in violation of the Constitution or laws or treaties of the United States 28 U.S. Code § 2241 - Power to grant writ.

46. The second basis of jurisdiction, is the Suspension Clause of the U.S. Constitution, also known as the Great Writ. *See* U.S. Const. art. I, § 9, cl. 2 (“The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.”).

B. DUE PROCESS CLAUSE, US CONSTITUTION

1 47. The Fifth Amendment of the U.S. Constitution protects every person from being
2 “deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V § 2.

3 48. In the immigration context, the Supreme Court extended these constitutional
4 protections to all noncitizens within the United States, including those who entered unlawfully,
5 declaring that “[noncitizens] who have once passed through our gates, even illegally, may be
6 expelled only after proceedings conforming to traditional standards of fairness encompassed in
7 due process of law.” *See, Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953);
8 *see also Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (There are literally millions of aliens within
9 the jurisdiction of the United States. The Fifth Amendment, as well as the Fourteenth
10 Amendment, protects every one of these persons from deprivation of life, liberty, or property
11 without due process of law.); *Plyler v. Doe*, 457 U.S. 202, 215 (1982) (holding that unlawfully
12 present aliens were entitled to both due process and equal protection under the Fourteenth
13 Amendment).

14 49. The Court reasoned that noncitizens physically present in the United States,
15 regardless of their legal status, are recognized as persons guaranteed due process of law by the
16 Fifth and Fourteenth Amendments. *Plyler*, 457 U.S. at 210 (citing *Mezei*, 345 U.S. at 212; *Wong*
17 *Wing v. United States*, 163 U.S. 228, 238 (1896); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886)).
18 Thus, the Court determined, [e]ven one whose presence in this country is unlawful, involuntary,
19 or transitory is entitled to that constitutional protection. *Mathews*, 426 U.S. at 77; *see also*
20 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (explaining that the Due Process Clause applies to
21 all ‘persons’ within the United States, including aliens, whether their presence here is lawful,
unlawful, temporary, or permanent). “The Due Process Clause extends to all ‘persons’ regardless
of status, including non-citizens (whether here lawfully, unlawfully, temporarily, or

1 permanently.” *Lopez-Campos*, 2025 WL 2496379, at *9 (citing *Zadvydas v. Davis*, 533 U.S.
2 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S.
3 292, 306 (1993)).

4 50. Accordingly, notwithstanding Congress’s indisputably broad power to regulate
5 immigration, fundamental due process requirements notably constrained that power with respect
6 to aliens within the territorial jurisdiction of the United States. *See Kwong Hai Chew*, 344 U.S.
7 590, 596–97 (1953) (explaining that a lawful permanent resident may not be deprived of his life,
8 liberty or property without due process of law, and thus cannot be deported without notice of the
9 nature of the charge and a hearing at least before an executive or administrative tribunal).

10 51. This fundamental due process protection applies to all noncitizens, including both
11 removable and inadmissible noncitizens. *See Zadvydas v. Davis*, 533 U.S. 678, 721 (2001)
12 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be
13 free from detention that is arbitrary or capricious”). It also protects noncitizens who have been
14 ordered removed from the United States and who face continuing detention, *Diouf v. Napolitano*,
15 634 F.3d 1081, 1086-87 (9th Cir. 2011), as well as those noncitizens deemed “arriving” under
16 the INA, *Jennings v. Rodriguez*, 138 S.Ct. 830, 862 (2018). (Breyer, J., dissenting) (stating that
17 “arriving” noncitizens enjoy due process protections against prolonged detention because they
18 are “are held within the territory of the United States at an immigration detention facility” (citing
19 *Wong Wing v. United States*, 163 U.S. 228, 238 (1896)); *see also Kwai Fun Wong v. United*
20 *States*, 373 F.3d 952, 973-74 (9th Cir. 2004) (concluding that the “entry fiction” does not
21 preclude substantive constitutional protection for noncitizens considered “arriving”).

22 52. As a matter of context, in the last two decades, the Supreme Court has addressed
several challenges to the immigration detention scheme. For instance, in *Zadvydas v. Davis*, 533

1 U.S. 678, 721 (2001), the Supreme Court explained that “Freedom from imprisonment—from
2 government custody, detention, or other forms of physical restraint—lies at the heart of the
3 liberty” that the Due Process Clause protects. *Id.* at 690. The Supreme Court then held that the
4 government must demonstrate that a noncitizen’s removal is reasonably likely to occur if the
5 noncitizen remains detained for six months after the removal period specified in 8 U.S.C. §
6 1231(a)(6). 533 U.S. at 701. In doing so, the Court recognized a presumption that detention
7 longer than six months following a noncitizen’s removal period violates that noncitizen’s due
8 process right to liberty. *Id.*

9 53. In *Demore v. Kim*, 538 U.S. 510, 523 (2003), the Supreme Court upheld the
10 mandatory detention of a noncitizen under 8 U.S.C. § 1226(c) based on the petitioner’s
11 concession of deportability and the Court’s understanding that detention under § 1226(c) is
12 typically “brief.” *Demore*, 538 U.S. at 522 n.6, 528. Nevertheless, the Supreme Court’s decision
13 in *Demore* did not foreclose a noncitizen’s right to challenge prolonged detention that does not
14 provide protections that permit a noncitizen to challenge continued confinement.

15 54. To guarantee against such arbitrary detention and to guarantee the right to liberty,
16 due process requires “adequate procedural protections” that ensure the government’s asserted
17 justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally
18 protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation
19 marks omitted).

20 55. Following *Zadvydas* and *Demore*, circuit court of appeals that confronted the
21 issue found either that the INA or due process require a bond hearing or release for noncitizens
subject to unreasonably prolonged detention pending removal proceedings. *See, e.g., Sopo v.*
U.S. Attorney Gen., 825 F.3d 1199 (11th Cir. 2016), *vacated as moot*, 890 F.3d 952 (11th Cir.

1 2018); *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016); *Lora v. Shanahan*, 804 F.3d 601 (2d Cir.
2 2015); *Rodriguez v. Robbins (Rodriguez III)*, 804 F.3d 1060 (9th Cir. 2015); *Diop v.*
3 *ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. 2011); *Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003).

4 56. Later, in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court held that
5 the Ninth Circuit erred by interpreting 8 U.S.C. §§ 1226(c) and 1225(b) to require bond hearings
6 as a matter of statutory construction. The Supreme Court concluded that §§1225(b), 1226(a), and
7 1226(c) do not give detained [noncitizens] the right to periodic bond hearings during the course
8 of their detention. Because the Ninth Circuit had not decided whether the Constitution itself
9 requires bond hearings in cases of prolonged detention, the Court remanded for the Ninth Circuit
10 to address the issue. *Id.* at 851. The Court’s majority opinion did not express any views on the
11 constitutional question and left it to the lower courts to address the issue in the first instance.

12 57. In his dissent, Justice Breyer expressed that “to hold a [person] without bail is to
13 deprive him of bodily “liberty...” “...where there is no bail proceeding, there has been no bail-
14 related “process” at all.” citing *United States v. Salerno*, 481 U. S. 739 –751 (1987). Justice
15 Breyer also mentioned that “[f]reedom from bodily restraint has always been at the core of the
16 liberty protected by the Due Process Clause from arbitrary governmental action.”
17 citing *Foucha v. Louisiana*, 504 U. S. 71, 80 (1992); *Demore v. Kim*, 538 U. S. 510, 532 (2003)
18 (Kennedy, J., concurring); *Zadvydas*, 533 U. S., at 718 (Kennedy, J., dissenting). To Justice
19 Breyer “[t]he Due Process Clause foresees eligibility for bail as part of due process” because
20 “[b]ail is basic to our system of law.” *Jennings*, at 862, (citing *Salerno, supra*, at 748–
21 751; *Schilb v. Kuebel*, 404 U. S. 357, 365 (1971); *Stack v. Boyle*, 342 U. S. 1, 4 (1951)).

58. Since the Supreme Court’s *Jennings* decision, lower courts have expressed that
“...any statute that allows for arbitrary prolonged detention without any process is

1 unconstitutional or that those who founded our democracy precisely to protect against the
2 government's arbitrary deprivation of liberty would have thought so." *See. e.g., Rodriguez v.*
3 *Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

4 59. In immigration cases, civil detention has been found to only permissible where it
5 bears a "reasonable relation to the purpose for which the individual was committed." *Jackson v.*
6 *Indiana*, 406 U.S. 715, 738 (1972). As concluded in *Zadvydas v. Davis*, 533 U.S. at 690, due
7 process thus requires "adequate procedural protections" to ensure that the government's asserted
8 justification for a noncitizen's physical confinement "outweighs the individual's constitutionally
9 protected interest in avoiding physical restraint." *Id.* at 690 (internal quotation marks omitted).

10 60. Also, and relevant here, in the immigration context, the Supreme Court has
11 recognized only two valid purposes for civil detention: to mitigate the risks of danger to the
12 community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528. The government may not detain a
13 noncitizen based on any other justification.

14 61. Thus, where the government detains a noncitizen for a prolonged period or where
15 the noncitizen pursues a substantial defense to removal or claim to relief, due process requires an
16 individualized hearing before a neutral decisionmaker to determine whether such a significant
17 deprivation of liberty is reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy, J.,
18 concurring) (stating that an "individualized determination as to [a noncitizen's] risk of flight and
19 dangerousness" may be warranted "if the continued detention became unreasonable or
20 unjustified"); *cf. Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the "initial
21 commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-
50 (1972) (noting that "lesser safeguards may be appropriate" for "short-term confinement");
Hutto v. Finney, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment context, that

1 “the length of confinement cannot be ignored in deciding whether [a] confinement meets
2 constitutional standards”).

3 62. To determine if the prolonged detention of a noncitizen is reasonable, Courts have
4 applied a reasonableness test, which involves three main factors. First, courts have evaluated
5 whether the noncitizen has raised a “good faith” challenge to removal—that is, the challenge is
6 “legitimately raised” and presents “real issues.” *Chavez-Alvarez v. Warden York Cty. Prison*, 783
7 F.3d 469, 476 (3d Cir. 2015). Second, reasonableness is a “function of the length of the
8 detention,” with detention presumptively unreasonable if it lasts six months to a year. *Id.* at 477-
9 78; *accord Sopo*, 825 F.3d at 1217-18. In assessing the length of detention, delay attributable to
10 the government weighs against finding the detention reasonable. *Sopo*, 825 F.3d at 1218. Third,
11 courts consider the likelihood that detention will continue pending future proceedings. *Chavez-*
12 *Alvarez*, 783 F.3d at 478 (finding detention unreasonable after ninth months of detention, when
13 the parties could “have reasonably predicted that Chavez-Alvarez’s appeal would take a
14 substantial amount of time, making his already lengthy detention considerably longer”); *Sopo*,
15 825 F.3d at 128; *Reid*, 819 F.3d at 500.

14 63. Due process also requires certain minimal bond hearing procedures. First, the
15 government must bear the burden of proof by clear and convincing evidence to justify continued
16 detention. Second, the decisionmaker must consider available alternatives to detention. Finally, if
17 the government cannot meet its burden, a decisionmaker must assess a noncitizen’s ability to pay
18 a bond must when determining the appropriate conditions of release.

18 64. The requirement that the government bear the burden of proof by clear and
19 convincing evidence is also supported by application of the three-factor balancing test from
20 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Under the *Mathews* test, Courts consider (1)

1 “the private interest that will be affected by the official action.” (2) “the risk of an erroneous
2 deprivation of such interest,” and (3) “the Government’s interest, including the function involved
3 and the fiscal and administrative burdens that the additional or substitute procedural requirement
4 would entail.” *Mathews v. Eldridge*, 424 U.S. at 335.

5 65. Due process also requires that a neutral decisionmaker consider alternatives to
6 detention. A primary purpose of immigration detention is to ensure a noncitizen’s appearance
7 during removal proceedings. Detention is not reasonably related to this purpose if there are
8 alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S.
9 520, 538 (1979).

10 66. Courts have ruled that automatically stayed release from detention is a violation of
11 the Fifth Amendment. *See, e.g., Mohammed H. v. Trump*, 781 F. Supp. 3d 886, 895 (D. Minn.
12 2025) (finding that it “does not require any showing of dangerousness or flight risk. Nor is it
13 subject to immediate review by an immigration judge. It operates by fiat and has the effect of
14 prolonging detention even after a judicial officer has determined that release on bond is
15 appropriate. That mechanism’s operation here—in the absence of any individualized
16 justification—renders the continued detention arbitrary as applied. *Cf. Zadvydas*, 533 U.S. at
17 699–700, 121 S.Ct. 2491.

18 67. The “recent shift to use the mandatory detention framework under Section
19 1225(b)(2)(A) is not only wrong but also fundamentally unfair. In a nation of laws vetted and
20 implemented by Congress, we don’t get to arbitrarily choose which laws we feel like following
21 when they best suit our interests.” *Lopez-Campos*, 2025 WL 2496379, at *10.

68. It is important to consider that detention is often lengthy and that immigration
detainees face severe hardships while incarcerated. Immigration detainees are held in lock-down

1 facilities, with limited freedom of movement and access to their families: “the circumstances of
2 their detention are similar, so far as we can tell, to those in many prisons and jails.” *Jennings*,
3 138 S. Ct. at 861 (Breyer, J., dissenting); accord *Chavez-Alvarez*, 783 F.3d at 478; *Ngo v. INS*,
4 192 F.3d 390, 397-98 (3d Cir. 1999); *Sopo*, 825 F.3d at 1218, 1221. “And in some cases[,] the
5 conditions of their confinement are inappropriately poor.” *Jennings*, 138 S. Ct. at 861 (Breyer, J.,
6 dissenting) (citing Dept. of Homeland Security (DHS), Office of Inspector General (OIG), *DHS*
7 *OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE Detention Facilities*
8 (2017) (reporting instances of invasive procedures, substandard care, and mistreatment, *e.g.*,
9 indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case
10 of one detainee, a multiday lock down for sharing a cup of coffee with another detainee)).

11 69. These conditions and obstacles only further underscore the serious due process
12 concerns that prolonged immigration detention entails for Mr. Olivera Perez. While in detention
13 Mr. Olivera Perez is separated from his United States Citizen children, who will also endure
14 hardship as Mr. Olivera Perez is unable to help provide for them.

15 70. Upon weighing the *Mathews* factors this Court should find that the Government’s
16 interest in fewer bond hearings (the efficient processing on noncitizens for removal) is
17 diminished. Additionally, since Mr. Olivera Perez’s detention will continue pending future
18 immigration proceedings, this Court should find that the Government’s interest in denying her
19 the opportunity for a bond hearing does not outweigh Mr. Olivera Perez’s liberty interest and it
20 will also create a high risk of erroneous deprivation to said right.

21 71. The government’s decision that all noncitizens, like Mr. Olivera Perez, are to be
mandatorily detained is arbitrary and affords to individuals like him no process, let alone due
process. Therefore, it should be unconstitutional. *See Mathews v. Eldridge*, 424 U.S. 319 (1976).

1 **C. The Immigration and Nationality Act of 1952 (“INA”)**

2 72. The Immigration and Nationality Act of 1952 (“INA”), codified in Chapter 12 of
3 Title 8 of the United States Code, governs all aspects of immigration law. *See* 8 U.S.C. §§ 1101
4 *et seq.* Forming the basis of current immigration laws of the United States, the INA addresses
5 issues of admission qualifications for noncitizens, naturalization and loss of nationality, refugee
6 assistance, and removal procedures for noncitizen terrorists. *Id. See also* Margaret C. Jasper,
7 *The Immigration and Nationality Act of 1952*, Legal Almanac: The Law of Immigration (2012).

8 73. Sections 8 U.S.C. §§ 1225, 1226 of the *Immigration and Nationality Act* (“INA”) govern how the executive branch evaluates inadmissible noncitizens. Logically speaking,
9 inspection or apprehension of the noncitizen is a necessary precondition of removal. Only after
10 a noncitizen is identified as inadmissible can removal proceedings happen.² The Supreme Court
11 has already distinguished these two provisions in *Jennings v. Rodriguez*. *See* 583 U.S. 281, 289
12 (2018). The *Jennings* Court determined that the government may “detain certain aliens seeking
13 admission into the country” under § 1225(b) while § 1226 “authorizes the Government to detain
14 certain aliens *already in the country* pending the outcome of removal proceedings.” *Id.*
(emphasis added).

15 74. Under § 1225, an “applicant for admission” is a noncitizen “present in the United
16 States who has not been admitted or who arrives in the United States.” 8 U.S.C. § 1225(a)(1).

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18
19 ² *See also, Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr et al.* 5:25-cv-01873-SSS-BFM, ---
20 *F. Supp. 3d* ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). Amended Order Consolidating The
21 Court’s Orders On Motion For Partial Summary Judgment, Class Certification, And Application For
Reconsideration Or Clarification.

1 “[A]dmission” and “admitted” are defined as “the lawful entry of the alien into the United States
2 after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A).

3 75. Section 1225(b)(1) of INA authorizes expedited removal for certain “applicants
4 for admission” in two categories. First, noncitizens “arriving in the United States” that are
5 determined by an immigration officer to be inadmissible due to misrepresentation or failure to
6 meet documents requirements. *Id.* at § 1225(b)(1)(A)(i); *see also id.* at § 1182(a)(6)(C), (a)(7).

7 76. Second, noncitizens that (a) are inadmissible because of misrepresentation or
8 failure to meet documents requirements; (b) have not “been admitted or paroled into the United
9 States”; (c) have not “affirmatively shown, to the satisfaction of an immigration officer, that
10 [they have] been physically present in the United States continuously for the 2-year period
11 immediately prior to the date of the determination of inadmissibility”; and (d) have been
12 designated by the Attorney General for expedited removal. *Id.* at § 1225(b)(1)(A)(iii).

13 77. These two categories of noncitizens subject to § 1225(b)(1) are subject to
14 mandatory detention “until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297.
15 Individuals that fall into § 1225(b)(1) are “normally ordered removed ‘without further hearing or
16 review’ pursuant to an expedited removal process” unless claiming asylum or a fear of
17 persecution. *Jennings*, 53 U.S. at 287 (first quoting § 1225(b)(1)(A)(i); then citing §
18 1225(b)(1)(A)(ii)).

19 78. Noncitizens who are “seeking admission” and not covered by the expedited
20 removal provisions in § 1225(b)(1) are subject to Section 1225(b)(2). *See id.* at 287. This
21 category would include, for example, noncitizens who are arriving in the United States, seek
admission, and are inadmissible for some reason other than misrepresentation or failure to meet
documents requirements. *See* 8 U.S.C. § 1182(a)(2)–(3).

1 79. Section 1225(b)(2)(A) governs mandatory detention of applicants for admission.
 2 Subject to limited exceptions, Section 1225(b)(2) provides that such noncitizens “shall be
 3 detained” for full removal proceedings under § 1229a “if the examining immigration officer
 4 determines” that the noncitizen “is not clearly and beyond a doubt entitled to be admitted.” *Id.* at
 5 § 1225(b)(2)(A).³

6 80. On the other hand, Section 1226(a) “provides the general process for arresting and
 7 detaining aliens who are present in the United States and eligible for removal.” This Section
 8 provides for discretionary detention. 8 U.S.C. §1226(a). *See, e.g., Rodriguez Diaz v. Garland*, 53
 9 F.4th 1189, 1196 (9th Cir. 2022).

10 81. Under § 1226(a), a noncitizen “may be arrested and detained” “[o]n a warrant
 11 issued by the Attorney General” if their removal proceedings are pending, 8 U.S.C. § 1226(a).⁴
 12 Detention pursuant to § 1226(a) is not mandatory. If the noncitizen was not charged with,
 13 arrested for, or convicted of certain criminal offenses enumerated in § 1226(c),⁵ the government

13 ³ (b) Inspection of applicants for admission

14 (2) Inspection of other aliens

15 (A) In general

16 Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the
 17 examining immigration officer determines that an alien seeking admission is not clearly and beyond a
 18 doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.
 19 8 U.S.C. § 1225(b)(2)(A).

20 ⁴ (a) Arrest, detention, and release

21 On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision
 on whether the alien is to be removed from the United States. Except as provided in subsection (c) and
 pending such decision, the Attorney General—

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least \$1,500 with security approved by, an containing conditions
 prescribed by, the Attorney General... 8 U.S.C. § 1226(a).

⁵ Known as the *Laken Riley Act*, subsection (c) of § 1226, provides for mandatory detention of
 noncitizens found inadmissible or deportable under certain provisions and who have been “charged with,”

1 has discretion to release them on “bond of at least \$1,500 with security approved by, and
2 containing conditions prescribed by, the Attorney General; or ... conditional parole.” *Id.* at §
3 1226(a)(2)(A)–(B).

4 82. Beyond how noncitizens are identified as inadmissible, the one key distinction
5 between these two Sections is that noncitizens detained under § 1226(a) are entitled to receive
6 bond hearings at the outset of detention. 8 C.F.R. §§ 236.1(d)(1). *See also Jennings v. Rodriguez*,
7 583 U.S. 281, 306 (2018).

8 83. Not only does § 1226(a) provide several layers of review of the agency’s initial
9 custody determination, but it also confers “an initial bond hearing before a neutral
10 decisionmaker, the opportunity to be represented by counsel and to present evidence, the right to
11 appeal, and the right to seek a new hearing when circumstances materially change.” *See, e.g.,*
12 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022) (observing that § 1226(a) and its
13 implementing regulations “provide extensive procedural protections that are unavailable under
14 other detention provision”).

15 84. For decades the DHS had applied § 1226(a) and its discretionary release and
16 review of detention “to the vast majority of noncitizens allegedly in this country without valid
17 documentation”—a practice codified by regulation. *See, e.g., Salcedo Aceros*, 2025 WL
18 2737503, at *3. However, last year the Government upended this long-held understanding of the
19 law.

20 _____
21 “arrested for,” “convicted of,” or admit “having committed” certain listed crimes. 8 U.S.C. § 1226(c).
“[N]oncitizens arrested and detained under § 1226 have a right to request a custody redetermination (i.e.,
a bond hearing) before an Immigration Judge.” *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL
2496379, at *4 (citing 8 C.F.R. 1236.1(c)(8), (d)(1)). “The IJ evaluates whether there is a risk of
nonappearance or danger to the community.” *Id.* (citing *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA
2006)).

1 85. First, on July 8, 2025, U.S. Immigration and Customs Enforcement (“ICE”) issued
2 an interim guidance memo stating that anyone who entered without inspection was ineligible for
3 release on bond and could not challenge their detention at a bond hearing in immigration court,
4 regardless of how long an individual has lived in the United States. ⁶ As result, DHS attorneys
5 started arguing, and some IJs started finding, that such individuals were not eligible for bond
6 hearings in immigration court.

7 86. Then, on September 5, 2025, the Board of Immigration Appeals (“BIA”) issued a
8 precedential decision binding on all IJs, holding that an IJ had no authority to consider bond
9 requests for any person who entered the United States without inspection. *See Matter of Yajure*
10 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The BIA determined that such individuals are subject
11 to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible for release on
12 bond. In practice, DHS is not exercising this authority. As a result, thousands of people are
13 facing months or years in detention without any individualized consideration for whether they
14 should be detained.

15 87. As discussed above, mandatory detention of applicants for admission applies after
16 an immigration officer has determined that they will not be entitled to admission if the
17 examining immigration officer determines that [a noncitizen] seeking admission is not clearly
18 and beyond a doubt entitled to be admitted. 8 U.S.C. § 1225(b)(2)(A). But the Government is
19 now contending that anyone who entered without inspection remains an “applicant for
20 admission” who is “seeking admission” and thus subject to mandatory detention under Section
21

⁶ See, AILA Doc. No. 25071607, accessible through <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (last accessed on Friday, January 16, 2026 at 6:27 pm.)

1 1225(b)(2). *See e.g., Rodriguez Vasquez v. Bostock, et al.* 3:25-CV-05240-TMC, 2025 WL
 2 2782499 (W.D. Wash. Sept. 30, 2025) (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)).

3 88. However, it is important to note, that individuals who have not been inspected and
 4 authorized by an immigration officer lack the trait to be categorized as “applicants for
 5 admission” since statutory language of § 1225(b)(2) contemplates a determination by an
 “examining immigration officer” regarding a noncitizen’s admissibility. *See* § 1225(b)(2).⁷

6 89. In regard to this new interpretation, as of late 2025, several district courts have
 7 held that the Government’s new, and more expansive interpretation of mandatory detention
 8 under the INA is either incorrect or likely incorrect on the basis that this reading of the statute
 9 would render 1226(c) inoperable or moot. Several Courts have then rejected the government’s
 10 position and have held that such individuals are subject to § 1226(a) and thus eligible for a bond
 11 hearing. *See also e.g., Rodriguez Vasquez v. Bostock, et al.* 3:25-CV-05240-TMC, 2025 WL
 12 2782499 (W.D. Wash. Sept. 30, 2025); *See e.g., Aguilar Merino v. Ripa*, 25-23845-CIV, 2025
 13 WL 2941609 (S.D. Fla. Oct. 15, 2025), and *J.Y.L.C., v. Bostock, et al.*, 3:25-cv-02083-AB, (D.
 Or. Nov. 12, 2025) (collecting cases rejecting *Matter of Yajure Hurtado*).

14 90. One of those recent cases where the Court rejected the government’s position, and
 15 relevant here, is *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp.

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 17 ⁷ “...based on a plain reading of the language and aided by these standard canons of statutory
 18 construction, § 1225(b)(2)(A) applies to aliens in the United States who have not been admitted
 (“applicants for admission” definition) AND who are attempting to obtain lawful admission to the United
 19 States. This interpretation is also consistent with the framework of § 1225, which focuses on the
 admission of aliens upon their arrival to the United States or upon an attempt to obtain admission after
 20 arrival...” *See J.A.M. v. Streeval*, No. 4:25-CV-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025)
 citing *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (Kennedy, J.) (“In ascertaining the
 plain meaning of the statute, the court must look to the particular statutory language at issue, *as well as*
the language and design of the statute as a whole.”) (emphasis added).

1 *3d* ----, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). On November 20, 2025, the District
2 Court granted partial summary judgment for the four petitioners, holding that the government’s
3 policy is inconsistent with the plain language of the *Immigration and Nationality Act* (“INA”),
4 and that petitioners are properly subject to § 1226(a). See e.g., *J.A.M. v. Streeval*, No. 4:25-CV-
5 342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025) and *P.R.S. v. Streeval*, No. 4:25-cv-330-
6 CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025).

7 91. Then, on November 25, 2025, the Court certified all noncitizens in the United
8 States without lawful status who (1) have entered or will enter the United States without
9 inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be
10 subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department
11 of Homeland Security makes an initial custody determination as “the Bond Eligible Class.” and
12 expressly “extend[ed] the same declaratory relief granted to Petitioners to the Bond Eligible
13 Class as a whole.” *Id.*, at *9 (emphasis added).

14 92. As expressed above, Mr. Olivera Perez is a member of the *Maldonado Bautista*
15 Bond Eligible Class.

16 **D. THE ADMINISTRATIVE PROCEDURE ACT (APA), 5 U.S.C. § 706(2)(A)**

17 93. Section 706(2)(A) of the APA commands a reviewing court to “hold unlawful *and*
18 *set aside* agency action, findings, and conclusions” that are found to be “arbitrary, capricious, . . .
19 or otherwise not in accordance with law.” § 706(2)(A) (emphasis added).

20 94. APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial
21 review of agency action under the APA may proceed by “any applicable form of legal action,
including actions for declaratory judgments or writs of prohibitory or mandatory injunction or

1 habeas corpus”). The APA affords a right of review to a person who is “adversely affected or
2 aggrieved by agency action.” 5 U.S.C. § 702.

3 95. Respondents’ continued detention of Mr. Olivera Perez for a prolonged or
4 otherwise indefinite period of time without a review of his custody or a bond hearing is adversely
5 and severely affecting his liberty and freedom.

6 **E. EXHAUSTION**

7 96. Section 706(2)(A) of the APA commands a reviewing court to “hold unlawful *and*
8 *set aside* agency action, findings, and conclusions” that are found to be “arbitrary, capricious, . . .
9 or otherwise not in accordance with law.” § 706(2)(A) (emphasis added).

10 97. Under the doctrine of exhaustion of administrative remedies, ‘a party may not
11 seek federal judicial review of an adverse administrative determination until the party has first
12 sought all possible relief within the agency itself.’” *Howell v. INS*, 72 F.3d 288, 291 (2d Cir.
13 1995) (quoting *Guitard v. U.S. Sec’y of Navy*, 967 F.2d 737, 740 (2d Cir. 1992)).

14 98. However, a party need not exhaust administrative remedies, however, when the
15 available remedies would “provide no genuine opportunity for adequate relief” or when
16 “administrative appeal would be futile.” *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003)
17 (Sotomayor, J.) (quoting *Able v. United States*, 88 F.3d 1280, 1288 (2d Cir. 1996)). *See also*
18 *McCarthy v. Madigan*, 503 U.S. 140, 146-49 (1992), *superseded by statute on other grounds as*
19 *stated in Booth v. Churner*, 532 U.S. 731 (2001) (noting that traditional exceptions include where
20 exhaustion would cause “undue prejudice to subsequent assertion of a court action” or
21 “irreparable harm” to the petitioner, where there is “some doubt as to whether the agency was
empowered to grant effective relief,” or where it would be futile because “the administrative

1 body is shown to be biased or has otherwise predetermined the issue before it”) (internal
2 quotation marks omitted).

3 99. In the context of immigration, Congress has not explicitly mandated exhaustion.
4 Where Congress has not explicitly spoken, requiring the exhaustion of administrative remedies
5 lies within “sound judicial discretion.” *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). In
6 exercising that discretion, the Supreme Court has stated that “federal courts must balance the
7 interest of the individual in retaining prompt access to a federal judicial forum against
8 countervailing institutional interests favoring exhaustion.” *Id.* at 146. Those institutional interests
9 are “protecting administrative agency authority and promoting judicial efficiency.” *Id.* at 145.

10 100. The *McCarthy* Court also identified situations in which the interest of the
11 individual weighs heavily against the institutional interests. *See id.* at 146–49. Relevant here, “an
12 administrative remedy may be inadequate where the administrative body . . . has otherwise
13 predetermined the issue before it.” *Id.* at 148 (citing *Gibson v. Berryhill*, 411 U.S. 564, 575, n.14
14 (1973)).

15 101. Further, constitutional challenges have been found exempt from administrative
16 exhaustion requirements. *See Khan v. Atty. Gen. of U.S.*, 448 F.3d 226, 236 n.8 (3d Cir. 2006)
17 (internal alterations and quotations omitted) (“[D]ue process claims generally are exempt from
18 the exhaustion requirement because the BIA does not have jurisdiction to adjudicate
19 constitutional issues.”); *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002)
20 (“[T]he BIA does not have jurisdiction to adjudicate constitutional issues” (quoting
21 *Vargas v. U.S. Dep’t of Immigration & Naturalization*, 831 F.2d 906, 908 (9th Cir. 1987))).

22 102. As mentioned above, on July 8, 2025, the U.S. Immigration and Customs
Enforcement (“ICE”) was instructed, via an interim guidance memo, that anyone deemed to have

1 entered without inspection (EWIs) is ineligible for release on bond. Then, on September 5, 2025,
2 the Board of Immigration Appeals (“BIA”) held that “[b]ased on the plain language of section
3 235(b)(2)(A) of the [INA], Immigration Judges lack authority to hear bond requests or to grant
4 bond to aliens who are present in the United States without admission.” *See Matter of Yajure*
Hurtado, 29 I. & N. Dec. 216 (BIA 2025).

5 103. In accordance with the July 8, 2025 interim guidance memo and the Board of
6 Immigration Appeals (BIA) decision in *Matter of Yajure Hurtado*, DHS’ attorneys have the
7 practice of arguing, and Immigration Court IJs throughout the country, including those stationed
8 at Stewart Detention Center, have started finding that individuals, such as Mr. Olivera Perez,
9 could not challenge their detention at a bond hearing in immigration court, regardless of how
10 long an individual has lived in the United States. As result, individuals, such as Mr. Olivera
11 Perez, are denied bond hearings in immigration court.

12 104. Since the Board of Immigration Appeals (BIA) is an administrative body located
13 in the DOJ, which, of course, is part of the executive branch of the government. Its members are
14 appointed by the Attorney General, and its decisions are binding on all immigration judges,
15 *Yajure Hurtado* thus precludes an IJ from finding jurisdiction over noncitizens like Mr. Olivera
16 Perez, to hold a custody redetermination hearing. As such, this Court should find that the
17 agency's position is already set and recourse to administrative remedies is very likely futile.

18 105. Additionally, Immigration judges have informed class members in bond hearings
19 that they have been instructed by “leadership” that the declaratory judgment in *Maldonado*
20 *Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound
21 to follow the agency’s prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA
2025).

1 106. Since the government has already predetermined that anyone who they
2 determined entered without inspection (EWIs) is ineligible for release on bond, established a no-
3 bond for EWIs policy, and has resorted to an across-the-board application of § 1225(b)(2), Mr.
4 Olivera Perez had to proceed directly to filing this petition for writ of habeas corpus based on
5 *Maldonado Bautista* class membership and for the violation to his statutory and constitutional
6 rights.

7 107. Requiring exhaustion, in this case, would not further the ends of judicial
8 efficiency and protecting administrative authority because it would simply delay the resolution of
9 Mr. Olivera Perez's legal questions. It is important to consider that in detention cases, appeals to
10 the Board of Immigration Appeals (BIA) can take months or years. Thus, requiring habeas
11 petitioners, such as Mr. Olivera Perez, to appeal to the BIA to prudentially exhaust is not
12 efficient, would cause irreparable harm by continuing to deprive him of his liberty. Additionally,
13 while in detention Mr. Olivera Perez is separated from his United States Citizen daughter, who
14 will also endure hardship as Mr. Olivera Perez is unable to help provide or care for her.

15 108. Thus, Mr. Olivera Perez's individual interest in having prompt access to this
16 forum outweighs any institutional interests at stake.

17 109. Therefore, the Court should consider the merits of the Petition. This Court
18 intervention, to enjoin the Respondents from preventing Mr. Olivera Perez from having a bond
19 hearing pursuant to the holding in *Hurtado*, is necessary to enable him to avail himself of his
20 administrative remedies.

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CLAIM FOR RELIEF

**COUNT 1: REQUEST FOR RELIEF PURSUANT
TO MALDONADO BAUTISTA**

110. Petitioner, Mr. Olivera Perez, repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

111. As a member of the Bond Eligible Class, Mr. Olivera Perez is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

112. The Order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.

113. The Order granting class certification in *Maldonado Bautista* further orders that “[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.”

114. Respondents are parties to *Maldonado Bautista* and bound by the Court’s declaratory judgment, which has the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a).

115. By denying Mr. Olivera Perez a bond hearing under § 1226(a) and wrongly asserting that she is subject to mandatory detention under § 1225(b)(2), Respondents violate Mr. Olivera Perez’s statutory rights under the INA and the Court’s judgment in *Maldonado Bautista*.

**COUNT 2: UNCONSTITUTIONAL DETENTION IN
VIOLATION OF THE FIFTH AMENDMENT**

116. Petitioner, Mr. Olivera Perez, repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

1 117. “Freedom from imprisonment—from government custody, detention, or other
2 forms of physical restraint—lies at the heart of the liberty that [the] Clause protects.” *Zadvydas*
3 *v. Davis*, 533 U.S. 678, 690 (2001).

4 118. Civil immigration detention is only permissible where it bears a “reasonable
5 relation to the purpose for which the individual was committed.” *Jackson v. Indiana*, 406 U.S.
6 715, 738 (1972); *Zadvydas*, 533 U.S. at 690. Those purposes are limited: preventing flight and
protecting the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

7 119. Mr. Olivera Perez’s immigration proceedings at an early stage, and he could raise
8 a “good faith” challenge to removal. There is no removal order. His removal is not imminent or
9 reasonably foreseeable.

10 120. Mr. Olivera Perez continued and prolonged detention does not bear a reasonable
11 relation to the purpose for which it was committed until the government satisfies its burden of
12 proof to show by clear and convincing evidence that community protection or flight risk
13 concerns apply to him. This can only happen in a bond hearing, which the Respondents are not
14 affording to Mr. Olivera Perez. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Zadvydas*, 533
U.S. at 690.

15 121. Furthermore, the mandatory detention provision at 8 U.S.C. § 1225(b)(2) does
16 not apply to noncitizens, such as Mr. Olivera Perez, residing in the United States who are subject
17 to the grounds of inadmissibility only because they previously entered the country without being
admitted.

18 122. Petitioner is detained under § 1226(a) and is not subject to another detention
19 provision, such as 1225(b)(1), § 1226(c), or § 1231.

1 123. However, in accordance with the BIA decision in *Matter of Yajure Hurtado*, DHS
2 attorneys have the practice of arguing and IJs throughout the country, including those stationed
3 the Stewart Detention Center, have started finding that individuals, such as Mr. Olivera Perez,
4 could not challenge their detention at a bond hearing in immigration court, regardless of how
5 long an individual has lived in the United States. As result, individuals such as, Mr. Olivera
6 Perez, are denied bond hearings in immigration court.

7 124. These cumulative actions render his detention even more constitutionally suspect,
8 as they reflect punitive conduct rather than civil processing.

9 125. Respondents lack statutory authority to detain Mr. Olivera Perez under Section
10 1225(b)(2) because that statute does not apply to noncitizens in his circumstances. Accordingly,
11 Mr. Olivera Perez’s continued detention constitutes a deprivation of liberty without due process
12 of law. The Court should order his release.

13 **COUNT 3: VIOLATION OF INA AND ITS**
14 **IMPLEMENTING REGULATIONS; 8 U.S.C. § 1226(A)**
15 **UNLAWFUL DENIAL OF BOND HEARINGS**

16 126. Petitioner, Mr. Olivera Perez, herein incorporates all allegations and facts set
17 forth in the paragraphs above.

18 127. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to
19 noncitizens, such as Mr. Olivera Perez, residing in the United States who are only subject to the
20 grounds of inadmissibility because they previously entered the country without being admitted.

21 128. It is important to note that, individuals who have not been inspected and
authorized by an immigration officer lack the trait to be categorized as “applicants for
admission” since statutory language of § 1225(b)(2) contemplates a determination by an
“examining immigration officer” regarding a noncitizen’s admissibility. *See* § 1225(b)(2). Such

1 noncitizens are detained under § 1226(a), unless they are subject to another detention provision,
2 such as 1225(b)(1), § 1226(c), or § 1231.

3 129. That Mr. Olivera Perez is detained under § 1226(a) and is not subject to the
4 detention provisions proscribed in 1225(b)(1), § 1226(c), or § 1231.

5 130. The government’s no-bond for purported EWIs policy and the incorrect, willful,
6 and capricious application of § 1225(b)(2) to Mr. Olivera Perez violates the *Immigration and*
7 *Nationality Act*.

8 **COUNT 4: UNLAWFUL DENIAL OF BOND HEARING IN**
9 **VIOLATION OF EIGHTH AMENDMENT RIGHT TO BAIL**

10 131. Petitioner, Mr. Olivera Perez, re-alleges and incorporates by reference the
11 paragraphs above.

12 132. The Eighth Amendment of the United States Constitution prohibits “cruel and
13 unusual punishments.” U.S. Const. amend. VIII cl. 4.2.

14 133. Bail is “basic to our system of law.” It not only “permits the unhampered
15 preparation of a defense,” but also “prevent[s] the infliction of punishment prior to
16 conviction.” *Jennings*, at 862, (Breyer, J., dissenting) citing *Salerno, supra*, at 748–
17 751; *Schilb v. Kuebel*, 404 U. S. 357, 365 (1971); *Stack v. Boyle*, 342 U. S. 1, 4 (1951).

18 134. The government’s categorical, incorrect, willful, and capricious application of §
19 1225(b)(2) to Mr. Olivera Perez and continued detention without a bond hearing results in
20 indefinite and unconstitutional imprisonment which surmounts to a cruel and unusual
21 punishment in violation of the Eighth Amendment

135. For these reasons, Mr. Olivera Perez’s ongoing and prolonged detention without a
bond hearing violates the Eighth Amendment.

**COUNT 5: CONTINUED DETENTION WITHOUT BOND
HEARING IN VIOLATION OF THE ADMINISTRATIVE
PROCEDURE ACT, 5 U.S.C. § 706(2)(A)**

136. Petitioner, Mr. Olivera Perez, herein incorporates all allegations and facts set forth in the paragraphs above.

137. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens, such as Mr. Olivera Perez, residing in the United States who are only subject to the grounds of inadmissibility because they are purported to have originally entered the United States without inspection. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

138. That Mr. Olivera Perez is detained under § 1226(a) and is not subject to any detention provisions proscribed in 1225(b)(1), § 1226(c), or § 1231.

139. Nonetheless, IJs stationed at Stewart Detention Center have a policy and practice of applying § 1225(b)(2) and denying bond hearings to detainees, such as Mr. Olivera Perez.

140. Respondents continue to keep Mr. Olivera Perez detained under the wrong provision of INA. Such action against Mr. Olivera Perez is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

WHEREFORE, Petitioner, Jose Ismael Olivera Perez, prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;

- 1 c. Issue a declaration that Respondents are detaining Petitioner in violation of the
2 declaratory judgment issued in *Maldonado Bautista*;
- 3 d. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an
4 action brought under chapter 153 (habeas corpus) of Title 28;
- 5 e. Issue a Writ of Habeas Corpus requiring that within one day, Respondents release
6 Petitioner; on her own recognizance, under parole, or on low bond or any other
7 reasonable conditions of supervision;
- 8 f. Alternatively, issue a Writ of Habeas Corpus, hold a hearing before this Court if
9 warranted to determine if the Petitioner should be subject to mandatory detention
10 under 8 U.S.C. § 1225(b)(2); require Respondents to release Petitioner unless they
11 provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;
- 12 a. Issue a declaration that Petitioner's ongoing prolonged detention violates the Due
13 Process Clause of the Fifth Amendment and the Eighth Amendment.
- 14 a. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
15 (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under
16 law; and
- 17 b. Grant any other and further relief that this Court deems just and proper.

16 Respectfully submitted,

17 /s/ Michael Urbina

18 Michael Urbina

19 michael@urbina.law

20 Counsel for Petitioner

21 Dated: 26th day of March, 2026

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

I represent Petitioner, JOSE ISMAEL OLIVERA PEREZ, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 26th day of March, 2026.

/s/Michael Urbina
Michael Urbina
Counsel for Petitioner
michael@urbina.law