**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF GEORGIA**
**COLUMBUS DIVISION**

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| L.F.N.B.<br><br>Petitioner,<br><br>vs.<br><br>JASON STREEVAL, in his official capacity as *Warden of Stewart Detention center*; and LADEON FRANCIS, *Field Office Director for ICE Atlanta Field Office*, and TODD LYONS, in his official capacity as *Acting Director of Immigration and Customs Enforcement*; and MARKWAYNE MULLIN, *Secretary of Homeland Security*; and PAMELA BONDI, *U.S. Attorney General*.<br><br>Respondents. | CASE NO.:<br>4:26-cv-501 |

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

## I. INTRODUCTION

1. This Petition challenges the ongoing and unlawful detention of Petitioner, L.F.N.B. (Petitioner), A# [redacted] by U.S. Immigration and Customs Enforcement (ICE) at the Stewart Detention Center, Georgia. This detention, unlawful from its inception, began with a warrantless arrest that lacked statutory authority and is perpetuated by Respondents' misapplication of mandatory detention statutes meant only for noncitizens arriving at the border. Petitioner is neither a flight risk nor a danger to the community. See Exhibit 1 (ICE Locator).

2. For security reasons, the Petitioner is seeking the Court's leave to proceed under a pseudonym (his initials) throughout this Complaint since he is an applicant for Asylum

and Withholding of Removal and he fears retaliation for himself and his family members abroad. This case fits within this Court's Standing Order No. 2026-01 regarding the treatment of immigration detainees entitled to relief under *J.A.M. v. Streeval* and *P.R.S. v. Streeval* available at: https://www.gamd.uscourts.gov/sites/gamd/files/general-ordes/2241StandingOrder.pdf

3. Petitioner's detention is unlawful on two independent grounds. First, ICE's warrantless interior arrest violated the statutory arrest framework. Section 1226(a) requires an arrest "on a warrant," and the narrow warrantless-arrest exception in 8 U.S.C. § 1357(a)(2) applies only where an officer has reason to believe the person is likely to escape before a warrant can be obtained. Petitioner was calmly buying breakfast, had fully complied with his OREC/parole and reporting obligations, and there was no individualized determination that he was "likely to escape." Section 1225(b) cannot be used to retrofit that interior seizure into a border-style "arriving alien" detention. The arrest and ensuing custody are therefore void ab initio.

4. Even assuming § 1226(a) applies, DHS unlawfully revoked Petitioner's prior release on an Order of Release on Recognizance (OREC), or in the alternative on immigration parole, without complying with mandatory custody regulations or basic due process. The revocation decision was not made by an authorized official, was not accompanied by a new written custody determination or notice, and was not preceded by any pre-deprivation hearing before a neutral decisionmaker, despite Petitioner's substantial conditional liberty interest created by his prior release and long-standing compliance.

5. Petitioner's current mandatory-detention classification also rests on a vacated legal

theory. In July 2025, ICE adopted, and on September 5, 2025 the Board of Immigration Appeals endorsed in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), a new interpretation treating virtually all noncitizens who entered without inspection as "arriving aliens" subject to § 1225(b) and ineligible for bond. That policy and its BIA counterpart have since been set aside under the Administrative Procedure Act in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Feb. 18, 2026), which vacated both the July 2025 Interim Guidance and *Yajure Hurtado* as contrary to law and restored the prior § 1226(a) bond framework. Nevertheless, Respondents continue to apply the vacated policy to Petitioner.

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

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

position. See also the landmark case from this Court rejecting the government's position and agreeing with Petitioner's that is entitled to a bond hearing, See also the landmark case from this Court rejecting the government's position and agreeing with Petitioner's that is entitled to a bond hearing, *J.A.M. v. Streeval*, No. 4:25-cv-342 (CDL), 2025 WL 3050094 (M.D. Ga., Nov. 1, 2025) and *P.R.S. v. Streeval*, No. 4:25-cv-330, 2025 WL 3269947 (M.D. Ga., Nov. 24, 2025). Since habeas relief is individualized and cannot be brought as a class action, each case has to be litigated separately.

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

## II. JURISDICTION

### A. <u>This Court Has Jurisdiction Under 28 U.S.C. § 2241 and § 1331</u>

9. This Court has jurisdiction over Petitioner's habeas claim pursuant to 28 U.S.C. § 2241 because Petitioner is in custody within this District under color of federal authority and challenges the legality of his detention under the Constitution and laws of the United States. Jurisdiction over Petitioner's non-habeas claims for declaratory and injunctive

relief arises under 28 U.S.C. § 1331, the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–706, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

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

11. Petitioner's claims fall within the core of habeas review preserved by statute and the Suspension Clause. They challenge only the statutory and constitutional basis for his civil immigration detention and the procedures used to effect and prolong that detention—not the merits of removability or any final order of removal. Habeas remains available to raise such custody-only claims notwithstanding jurisdiction-channeling provisions enacted in 8 U.S.C. § 1252.

12. This Court possesses federal question jurisdiction under the APA to "hold unlawful and set aside agency action" deemed "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," as outlined in 5 U.S.C. § 706(2)(A). In the absence of a specific statutory review process, APA review of final agency actions can proceed through "any applicable form of legal action," which includes actions for declaratory judgments, writs of prohibitory or mandatory injunction, or habeas corpus, in a court of competent jurisdiction, as specified in 5 U.S.C. § 703.

13. In *I.N.S. v. St. Cyr*, the Supreme Court held that federal courts retain *habeas corpus* jurisdiction under 28 USC § 2241, despite restrictions on judicial review enacted under

the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). 533 U.S. 289 (2001). Consequently, section 2241 habeas review remains available to Petitioner.

14. The U.S. Supreme Court has recognized district courts' jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law. Even though the government may detain individuals during removal proceedings, *Demore v. Kim*, 538 U.S. 510 (2003), (although that case involved detention under §1226(c) of certain criminal aliens) there are limitations to this power of the executive branch. Limitations like the Due Process Clause restrict the Government's power to detain noncitizens. It is well settled that individuals in deportation proceedings are entitled to due process of law under the Fifth Amendment. *Reno v. Flores*, 507 U.S. 292, 306, (1993). Courts must review immigration procedures and ensure that they comport with the Constitution.

15. Federal courts have retained the statutory authority to grant writs of habeas corpus since enactment of the Judiciary Act of 1789. In *Felker v. Turpin*, 518 U.S. 651 (1996), the Supreme Court declined to find a repeal of § 2241 by implication as to its original habeas corpus jurisdiction. See also *Boumediene v. Bush*, 553 U.S. 723 (2008). In addition to the Supreme Court in many cases, all Circuit Courts of Appeals have recognized district courts' jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law.

16. In this case, Petitioner asserts substantial constitutional violations—including

deprivation of liberty without due process, arbitrary and capricious agency action, violations of the *Accardi* doctrine, and other injuries without notice or opportunity to be heard. These claims fall squarely within the scope of habeas review preserved by statute and recognized by controlling precedent. Accordingly, this Court has both the authority and the obligation to adjudicate the constitutional and statutory claims presented in this Petition and to grant appropriate relief to remedy ongoing violations of Petitioner's rights.

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

17. Petitioner's claims challenge only the Petitioner's civil immigration detention and the procedures used to prolong it—not the merits of removability or any final order of removal—and therefore fall outside 8 U.S.C. § 1252(b)(9)'s channeling provision. *See Jennings v. Rodriguez*, 583 U.S. 281, 291-292 (2018) (detention challenges are not "questions of law or fact arising from" removal proceedings). Consistent with that framing, any injunctive relief sought here is strictly as-applied to Petitioner—for example, directing Petitioner's release under § 1226(a) or barring application of § 1225 as to Petitioner —and does not "enjoin or restrain the operation" of any statute within § 1252(f)(1)'s bar. In any event, § 1252(f)(1) permits individualized, as-applied relief for a single noncitizen, even while prohibiting class-wide injunctions. *See Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–49 (2022).

18. Section 1252(f)(1) does not bar the individualized injunctive relief sought here. That provision limits lower courts' authority to "enjoin or restrain the operation" of the INA's detention and removal provisions on a class-wide or programmatic basis but expressly preserves injunctive relief "with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated."

8 U.S.C. § 1252(f)(1); *Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–50 (2022). Petitioner seeks only as applied relief tailored to Petitioner —e.g., directing Petitioner's release under § 1226(a) or precluding DHS from enforcing the "arriving alien" definition of § 1225 toward Petitioner. That relief neither halts the general operation of any INA provision nor provides class-wide relief and thus falls squarely within § 1252(f)(1)'s carveout.

19. Section 1252(g) is likewise inapplicable. It is a "narrow" jurisdictional bar that applies only to three discrete decisions or actions: "to commence proceedings, adjudicate cases, or execute removal orders." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Petitioner does not challenge any such decision. Petitioner challenges ongoing civil detention and DHS's use of an unlawful interpretation to nullify the plain language of the INA and its regulations as applicable to these agencies. Such detention related claims and challenges to custody procedures fall outside § 1252(g). *See id.* at 482–83; cf. *Jennings v. Rodriguez*, 583 U.S. 281, 381-32 (2018) (§ 1252(b)(9) does not channel detention claims).

20. Section 1252(e)(3) is likewise inapplicable as it is narrowly tailored to channel systemic or facial challenges to the validity of the expedited removal "system" or its implementing regulations and written policies to the U.S. District Court for the District of Columbia, and only within 60 days of implementation. It does not bar as-applied, individualized habeas challenges to the legality or constitutionality of a particular noncitizen's detention under § 1225(b)(2) or whether § 1225 governs Petitioner's detention or § 1226. The text of § 1252(e)(3) is explicit: it covers "[c]hallenges on the validity of the system" and review of "whether such a regulation, or a written policy

directive, written policy guideline, or written procedure ... is not consistent with applicable provisions of this title or is otherwise in violation of law." It does not preclude review of the legality of detention as applied to a specific individual, nor does it bar habeas review of constitutional claims or claims that the government is misapplying the statute in a particular case.

21. To prevent ouster of this Court's habeas jurisdiction, the Court should, pursuant to 28 U.S.C. § 1651(a) (All Writs Act) and 28 U.S.C. § 2241, issue an immediate limited order prohibiting Respondents from transferring Petitioner outside the court's District or otherwise changing Petitioner's immediate custodian without prior leave of Court while this action is pending. Such relief is necessary in aid of jurisdiction because habeas is governed by the district-of-confinement/immediate-custodian rule, and transfer can frustrate effective review. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441–42 (2004); *Ex parte Endo*, 323 U.S. 283, 307 (1944); *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966).

## III. VENUE

22. Venue is proper in the United States District Court for the Middle District of Georgia because Petitioner is currently detained at the Stewart Detention Center, Lumpkin, Georgia, under the custody of the Department of Homeland Security (DHS). Respondent Jason Streeval, as the Warden of Stewart Detention Center, is the Petitioner's immediate custodian and Respondents exercise authority over Petitioner's custody in this jurisdiction, as supported by *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). Habeas petitions generally are filed in the district court with jurisdiction over

the filer's place of custody, also known as the district of confinement, pursuant to 28 U.S.C. § 2241. Additionally, with respect to Petitioner's non-habeas claims seeking prospective declaratory and injunctive relief against federal officials (agencies and officers of the United States) sued in their official capacities, venue is proper under 28 U.S.C. § 1391(e)(1)(B) because a substantial part of the events or omissions giving rise to these claims, including the initial arrest and continued detention of Petitioner and the enforcement of the mandatory detention agency interpretation, occurred in this District. Furthermore, the Respondents are officers of United States agencies, the Petitioner is detained within this District, and there is no real property involved in this action.

## IV. PARTIES

23. Petitioner L.F.N.B. is a 55-year-old noncitizen who entered the United States on or about January 10, 2023, near Lukeville, Arizona, where he was encountered by U.S. Customs and Border Protection and placed in removal proceedings. After processing, Petitioner was released on an **Order of Release on Recognizance** and complied with all reporting requirements with ICE. *See* Exhibit 4 (NTA). During a subsequent check-in appointment with ICE in Atlanta, Georgia, Petitioner was taken into custody and later transferred to the Stewart Detention Center in Lumpkin, Georgia, where he is currently detained by the Department of Homeland Security ("DHS") and ICE pending the outcome of his removal proceedings and his pending asylum application.

24. Respondent Jason Streeval is the Jailer/Warden of Stewart Detention Center, Lumpkin Georgia. As such, Respondent Jason Streeval is responsible for the operation of the

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

25. Respondent Ladeon Francis is the Field Office Director for the ICE Atlanta Field Office. As such, Respondent Francis is responsible for the oversight of ICE operations at the Stewart Detention Center. Respondent Francis is being sued in his official capacity. He is the head of the ICE office that unlawfully arrested Petitioner, and such arrest took place under his direction and supervision. He is the immediate *legal* custodian of Petitioner.

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

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

28. Respondent Pamela Bondi is the Attorney General of the United States and is sued in her official capacity since U.S. government agencies are Respondents in this complaint. Furthermore, the Immigration Judges who decide removal cases and applications for

bond and relief from removal do so as her designees at the Executive Office for Immigration Review (EOIR).

29. Petitioner names certain federal officials in their official capacities solely to preserve alternative, non-habeas avenues for prospective relief—such as as-applied declaratory and injunctive orders under 28 U.S.C. § 1331, the APA's waiver of sovereign immunity, 5 U.S.C. § 702, the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, and the All Writs Act, 28 U.S.C. § 1651—necessary to enjoin enforcement of DHS regulations and their interpretation as applied to Petitioner, ensure compliance with DHS/EOIR custody regulations, prevent transfer or removal of Petitioner, and effectuate any release the Court orders at the agency level where policy and implementation authority reside. See, e.g., *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949); *Dugan v. Rank*, 372 U.S. 609 (1963). 1

## V. STATEMENT OF FACTS AND PROCEDURAL HISTORY

30. Petitioner **L.F.N.B.** is a 55-year-old noncitizen who entered the United States on or about January 10, 2023, near Lukeville, Arizona, where he was encountered by U.S. Customs and Border Protection ("CBP"). Shortly thereafter, on January 11, 2023, immigration authorities served Petitioner with a Notice to Appear ("NTA"), initiating

[1] Petitioner acknowledges, consistent with *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that the proper respondent to the habeas claim is the immediate custodian, and does not rely on the federal officials as "habeas respondents." Rather, Petitioner names these federal officials in their official capacities solely to ensure that the Court can issue effective relief on non-habeas claims, such as declaratory and injunctive relief, and to direct agency action to those with actual authority to implement it. Should the Court find these officials improper as respondents to the habeas count, Petitioner respectfully requests that any dismissal be limited to that claim and without prejudice to their continued status as respondents for the non-habeas claims. Maintaining these officials as parties is necessary to ensure that, if relief is granted, the responsible agency officials cannot simply re-arrest Petitioner or otherwise frustrate the Court's order by invoking their erroneous interpretation of the INA. This approach is consistent with *Padilla* and ensures that the Court's orders are both effective and enforceable.

removal proceedings against him. *See* Exhibit 4 (NTA). Following processing, Petitioner was released on an Order of Release on Recognizance ("OREC"), permitting him to remain in the community while his immigration proceedings continued.

31. Petitioner has since complied with all supervision requirements imposed by U.S. ICE, including regularly attending scheduled check-in appointments with his supervising officer in Atlanta, Georgia. Within one year of his arrival in the United States, Petitioner also filed an application for asylum (Form I-589), which remains pending in his immigration proceedings.

32. Prior to his detention, Petitioner resided in Snellville, Georgia, where he was an active member of his community and maintained strong ties. Petitioner regularly complied with ICE reporting requirements and sought permission from his supervising officer whenever he needed to travel outside the state of Georgia. At a recent routine ICE check-in appointment, Petitioner was fitted with an ankle monitor, but he was not informed that he was prohibited from leaving the state. Relying on the guidance of his ICE supervisor, Petitioner later sought and received confirmation that he could travel outside Georgia. Petitioner retains text message communications from his supervisor confirming that such travel was permitted.

33. Shortly thereafter, Petitioner was instructed to report again to ICE. When Petitioner appeared for this appointment as directed, ICE officers took him into custody, informing him that his supervisor allegedly did not have the authority to authorize his interstate travel. Petitioner was subsequently transferred into the custody of the Department of Homeland Security ("DHS") and transported to the Stewart Detention Center in Lumpkin, Georgia, where he remains detained pending the outcome of his

immigration proceedings.

34. Notably, prior to this incident, Petitioner had never been arrested and has no criminal history. Since entering the United States, he has consistently complied with all immigration requirements, including attending all ICE check-in appointments and following the instructions provided by immigration officials. Petitioner also maintains significant positive equities in the United States.

35. Petitioner is an active member of his church, where he has served as an elder for approximately one year, and he has complied with his civic responsibilities, including filing his 2025 tax return. In addition, Petitioner has family members in the United States, including a U.S. citizen grandmother, one U.S. citizen child, and another child who is a lawful permanent resident.

36. Despite his compliance with immigration supervision, lack of criminal history, and strong ties to the community, Petitioner remains detained at Stewart Detention Center while his removal proceedings and asylum application remain pending. Petitioner has not received any meaningful individualized determination that his continued detention is necessary. *See* Exhibit 3 (EOIR). Under these circumstances, Petitioner's continued confinement, particularly after relying on the instructions provided by his ICE supervisor, serves no legitimate governmental interest and raises serious concerns under the Due Process Clause of the Fifth Amendment.

37. Petitioner was arrested in the interior of the United States three years after entry and is therefore improperly detained under 8 U.S.C. § 1226(a), ICE having not issued a warrant for their arrest. Had they issued a warrant, their arrest under 8 U.S.C. § 1226(a), which provides for discretionary bond or release on recognizance, may have been

proper. Nevertheless, Respondents have classified him as an "arriving alien" and detained them under 8 U.S.C. § 1225(b)(2)—rendering them ineligible for bond under their new, unlawful policy.

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

39. Petitioner is neither a danger to the community nor a flight risk. Petitioner has resided continuously in the same community for over three years, has substantial family ties in the United States. Less-restrictive alternatives remain available and adequate, such as release on recognizance or posting a low bond.

40. Any detention under these circumstances imposes unnecessary hardship on Petitioner family and his U.S. citizen children, depriving their financial, emotional support and caregiver responsibilities, violating Petitioner's right to due process and freedom from arbitrary detention.

41. As of the time of filing of this Writ of Habeas, Petitioner remains confined to the Stewart Detention Center, Lumpkin, Georgia, solely because of ICE's invocation of its new interpretation that Petitioner is an "arriving alien" or "applicant for admission" and is therefore subject to mandatory detention. Even Petitioner were to file for a bond redetermination with the immigration judge, they would deny it pursuant to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). Accordingly, it would be futile for

Petitioner to request a bond for release from an Immigration Judge. Due to the binding nature of *Matter of Yajure Hurtado*, all immigration courts known to counsel are denying bond requests for similarly situated noncitizens, making habeas the only effective remedy. Similarly, even in cases an Immigration Judge would grant bond, ICE would appeal it which would leave Petitioner incarcerated through the appeal, which would take months and end up dismissed based on *Yajure Hurtado*.

## VI. EXHAUSTION OF REMEDIES

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

43. Furthermore, even if applied, the doctrine of exhaustion of administrative remedies

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

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

## VII. RESPONDENTS' UNLAWFUL REVOCATION OF RELEASE AND RE-DETENTION

45. Following his apprehension by CBP near the border after entry, Petitioner was issued a written Order of Release on Recognizance (Form I-220A) and released from DHS custody into his father's care. That order imposed conditions of supervision, with which Petitioner fully complied with before his sudden re-arrest in March 2026.

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

47. Petitioner's detention is not the result of an initial custody determination but an

unlawful re-arrest executed in violation of mandatory federal regulations, his constitutional right to due process, and the agency's own prior binding finding that he was eligible for discretionary release. As such, his detention was unlawful ab initio and must be remedied by immediate release.

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

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

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

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

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

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

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

52. Because Petitioner had been released on an OREC, he acquired a protected liberty interest in his continued freedom. The summary revocation of that liberty without any process whatsoever violates the Fifth Amendment's Due Process Clause. The governing standard for procedural due process is the three-part balancing test

from *Mathews v. Eldridge*, 424 U.S. 319 (1976), which weighs the private interest, the risk of erroneous deprivation, and the government's interest. Every factor weighs decisively in Petitioner's favor.

53. Petitioner's years of supervised release under § 1226(a) OREC or parole placed him squarely within the conditional-liberty framework recognized in *Morrissey v. Brewer*, 408 U.S. 471 (1972). Once DHS affirmatively released him into the community and supervised him on stated conditions, he acquired a substantial liberty interest in remaining at liberty so long as he complied, analogous to the interests of parolees and probationers. The Fifth Amendment protects "all persons" within the United States—regardless of immigration status—from arbitrary physical confinement, and that protection applies fully to noncitizens whom the INA deems "applicants for admission." See, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Landon v. Plasencia*, 459 U.S. 21, 32–33 (1982). Courts applying *Morrissey* and *Mathews* in the immigration re-detention context have therefore held that once DHS has conferred conditional liberty through an OREC, bond, or parole and allowed a noncitizen to live and work in the community for an extended period, the agency may not summarily revoke that liberty and re-incarcerate the person without advance notice, a statement of reasons, and a pre-deprivation custody hearing before a neutral decisionmaker—and that a later bond hearing cannot cure the core violation where, as here, the initial revocation occurred with "no process at all."

54. First, Petitioner's private liberty interest is paramount. He has lived in the United States for years on supervised release, fully complied with all conditions, and built deep family and community ties. "Freedom from imprisonment—from government custody,

detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The abrupt, unexplained deprivation of this liberty constitutes a profound intrusion.

55. Applying the *Mathews* framework in this precise posture, courts in this Circuit have consistently held that noncitizens who have been living in the community on bond or parole are entitled to a pre-deprivation hearing before an immigration judge prior to re-detention. In *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019), the court granted habeas and permanently enjoined ICE from re-arresting the petitioner "unless and until a hearing, with adequate notice, is held in Immigration Court" to decide whether bond revocation was justified. In *Vargas v. Jennings*, the court issued injunctive relief after concluding that the petitioner had raised serious questions on the merits of his claim "that he has a protectable liberty interest in his conditional release under *Morrissey* and that he must be afforded a pre-deprivation hearing if respondents seek to re-arrest him." Likewise, in *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050 (N.D. Cal. 2021), and *Romero v. Kaiser*, 2022 WL 1443250 (N.D. Cal. May 6, 2022), the courts held that due process, as articulated in *Morrissey* and *Mathews*, requires a pre-detention hearing before an IJ when DHS seeks to revoke bond and re-detain a previously released noncitizen. More recent decisions—including *Rodriguez Diaz v. Kaiser*, 2025 WL 3011852 (N.D. Cal. Sept. 16, 2025), *Aguilar Garcia v. Kaiser*, No. 3:25-cv-05070 (N.D. Cal. June 14, 2025), and the Eastern District of California's orders in *D.L.C. v. Wofford* and *Pineda v. Chestnut*—have reaffirmed that re-detention without such a pre-deprivation bond or custody hearing violates due process where the noncitizen has a substantial conditional liberty interest and has complied with

supervision. More recent cases such as *Perera v. Jennings*, 598 F. Supp. 3d 736 (N.D. Cal. 2022), and *Pham v. Becerra*, 717 F. Supp. 3d 877 (N.D. Cal. 2024), which likewise apply *Morrissey* and *Mathews* to hold that long-released noncitizens are entitled to pre-deprivation IJ hearings before re-detention.

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

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

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

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

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

59. Petitioner was released on a Form I-220A, Order of Release on Recognizance (OREC), which documents a custody determination made under 8 U.S.C. § 1226(a) and its implementing regulation, 8 C.F.R. § 236.1. Both federal courts and the Board of Immigration Appeals have repeatedly recognized that an OREC constitutes a release under § 1226(a) pending removal proceedings—not parole under 8 U.S.C. § 1182(d)(5)(A). See, e.g., *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115-16 (9th Cir. 2007) (holding that a noncitizen released on an "Order of Release on

Recognizance" necessarily must have been detained and released under § 1226, including because he was not an "arriving alien" under the regulations governing § 1225 examinations); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 485 (S.D.N.Y. 2025) (Release on one's own recognizance is done pursuant to § 1226; it is a form of "conditional parole" from detention, authorized under § 1226); *Martinez v. Hyde*, 792 F. Supp. 3d 211, 215 (D. Mass. 2025) (explaining that petitioner's release on her own recognizance "does not indicate that she was examined or detained under section 1225 but instead explicitly premises her release on section 1226 ('[i]n accordance with section 236 of the Immigration and Nationality Act.'");[2] *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023) (This binding precedent on Respondents held that release on one's own recognizance is a release under INA 236(a)(2)(B), 8 U.S.C. § 1226(a)(2)(B), therefore § 1225(b) could not possibly apply to Petitioner's case.

60. Here, DHS's consistent treatment of Petitioner as subject to detention on a discretionary basis under § 1226(a), "is fatal to Respondents' claim that he is now subject to mandatory detention under § 1225(b))." Lopez Benitez, 795 F. Supp. 3d at

[2] As the district court in *Martinez v. Hyde*, explained, individuals detained following examination under section 1225 can only be paroled into the United States "for urgent humanitarian reasons or significant public benefit". 792 F. Supp. 3d at 215, (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018) (quoting 8 U.S.C. § 1182(d)(5)(A) ("section 1182(d)(5)(A)"))). Tellingly, release on recognizance is not "humanitarian" or "public benefit" "parole into the United States" under section 1182(d)(5)(A) but rather a form of "conditional parole" from detention upon a charge of removability, authorized under § 1226. *Id.* This distinction reflects more than an officer's choice of paperwork because, although both styled as "parole," these two mechanisms serve fundamentally different purposes. *Id.* Parole "into the United States," under section 1182(d)(5)(A), permits a non-citizen to physically enter the country, subject to a reservation of rights by the Government that it may continue to treat the non-citizen "as if stopped at the border." *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). Section 1226 governs a separate (non-mandatory) detention scheme applicable when an individual is "already in the country" and Conditional parole, under section 1226(a)(2)(B), instead releases a non-citizen already in the country from domestic detention. *Martinez*, 792 F. Supp. 3d at 215, citing *Jennings*, 583 U.S. at 289.

483–84. Respondents' own evidence clearly demonstrates their determination throughout Petitioner's entire immigration journey that he is—and always has been—subject to only 8 U.S.C. § 1226. Thus, in determining that Petitioner was eligible for release under § 1226 and issuing him an OREC, the government necessarily included the legal findings that he was not subject to mandatory detention under § 1225, and that he was not a danger or a flight risk.

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

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

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

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

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

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

67. For years, Petitioner relied on the government's formal determination, scrupulously complying with all conditions of his release. To permit Respondents to unilaterally reverse their position now—without any change in facts or law, and for the first time

in this litigation—would be fundamentally unfair and would render the agency's own custody adjudications meaningless. Having made its choice, the government is estopped from claiming § 1226 never applied.

68. This estoppel principle is reinforced by longstanding retroactivity doctrine. In *INS v. St. Cyr*, 533 U.S. 289 (2001), the Supreme Court held that the Executive may not retroactively attach new, more onerous immigration consequences to past conduct where a noncitizen reasonably relied on the prior legal framework. Here, DHS affirmatively chose to detain and release Petitioner under the § 1226(a)/OREC (or parole) framework, supervised him in the community for an extended period, and gave him every reason to rely on that treatment; it cannot now retroactively characterize him as a § 1225(b)(2)(A) "mandatory" detainee solely to avoid bond eligibility and judicial review.

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

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

70. Under 8 U.S.C. § 1182(d)(5)(A), DHS is authorized, in its discretion, to "parole into the United States temporarily under such conditions as [it] may prescribe" any applicant for admission. DHS exercised that authority and allowed Petitioner to live and work in the community for a substantial period while his asylum application remained pending. Under these circumstances—where DHS has affirmatively conferred conditional liberty and permitted Petitioner to structure his life around it,

subject to routine ICE check ins and other conditions, it thereby created a protected liberty interest. Therefore, Petitioner retains a protected liberty interest in remaining free from immigration detention that is cognizable under the Fifth Amendment's Due Process Clause.

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

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

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

73. The regulations support this result. 8 C.F.R. § 235.3(b)(1)(i) provides that "arriving aliens, as defined in 8 C.F.R. § 1.2" are subject to expedited removal. Section 1.2 defines an "arriving alien" to include "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or a [noncitizen] seeking transit through the United States at a port-of-entry," or a noncitizen interdicted at sea. The regulation continues: "An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, [8 U.S.C. § 1182(d)(5)] and even after any such parole is terminated or revoked." 8 C.F.R. § 1.2. This is because a parole is not an admission into the United States, it is instead temporary authorization to be present in the United States. 8 U.S.C. § 1182(d)(5)(A). Accordingly, a noncitizen is an arriving alien under the regulation while in the process of "coming or attempting to come into

the United States," while paroled, or at the time such parole is terminated or revoked. Id. At the point the parole ends and the government may process for admission or pursue available removal efforts. *CHIRLA*, 2025 WL 2192986, at *26 (discussing 8 C.F.R. § 212.5(e)(2)(i)).

74. The parole statute reinforces that result. The statute provides that a noncitizen "shall continue to be dealt with in the same manner as that of any other applicant for admission" when the parole ends. 8 U.S.C. § 1182(d)(5)(A). But "applicant for admission" is necessarily broader than § 1225(b)(1)'s application to a noncitizen who is "arriving in the United States." An applicant for admission is either an individual "present in the United States who has not been admitted or [an individual] who arrives in the United States." 8 U.S.C. § 1225(a)(1). Under this definition, a parolee is always an applicant for admission, including when they have parole status. So it makes sense that the government would "continue to" deal with a parolee's case like any other applicant for admission, as the operative fact-presence in the United States without admission-did not change from the time the noncitizen was allowed into the United States through the time the parole ended. But that does not mean Petitioner is always "arriving in" the United States. Once Petitioner was inspected and paroled into the United States, he was no longer arriving aliens and § 1225(b) could not apply to him.

75. Any argument that the parole froze Petitioner's "status" to that of an arriving alien forever, such that he remained as-if he was at the border, seemingly for perpetuity, even though he had been allowed to come into the United States fails. This argument is grounded in the so-called "entry fiction" doctrine, under which a paroled noncitizen was considered in the same position as if they were still standing at the border. See

*Ibragimov v. Gonzales*, 476 F.3d 125, 136-38 (2d Cir. 2007); *CHIRLA*, 2025 WL 2192986, at *23. The current statutory scheme does not support a conclusion that entry fiction should apply to render parolees amenable to expedited removal. See e.g., *American-Arab Anti-Discrimination Committee v. Ashcroft*, 272 F. Supp. 2d 650, 668 (E.D. Mich. 2003) (concluding that expedited removal cannot lawfully be applied to a noncitizen whose parole had expired or terminated under the theory that the noncitizen was an "arriving alien" despite having "resid[ed] in the interior of the United States for some time"). The parole statute does not provide a noncitizen with a specific status at the expiration of the parole, but DHS has no authority to detain such noncitizens under 8 U.S.C. 1225(b), since they are far removed from "seeking admission" or trying to enter the country.

## IX. LEGAL AND STATUTORY FRAMEWORK

### A. Noncitizens Are Entitled to Due Process

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

### B. This Court's Holding in *J.A.M. v. Streeval: Interior Apprehensions Are Governed by § 1226(a)*

77. This Court has already rejected the government's attempt to subject long-term residents apprehended in the interior to the mandatory detention provisions of 8 U.S.C. §

1225(b)(2). In *J.A.M. v. Streeval*, No. 4:25-cv-342 (CDL), 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025), a case with nearly identical facts, this Court harmonized the INA's distinct detention schemes. It held that § 1225, which applies to aliens "seeking admission," does not cover individuals already present in the U.S., as "seeking admission" requires an active attempt to enter, not mere presence. *Id.* The court therefore concluded that noncitizens apprehended in the interior, like Petitioner, are properly detained under 8 U.S.C. § 1226(a) and are entitled to a bond hearing. As Petitioner's circumstances are legally indistinguishable from those in *J.A.M.*, the same statutory analysis compels the same conclusion.

### C. Recent Federal Court Cases Rejecting DHS' and EOIR's New Interpretation

78. This Court's holding in *J.A.M.* aligns with a tidal wave of recent decisions from hundreds of district courts that have repudiated the government's novel reinterpretation of the INA (See Ex. 2). These courts consistently find that applying the "arriving alien" framework of § 1225 to interior apprehensions defies the statute's plain language.[3] As

[3] *Savane v. Francis*, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Petitioner arrested pursuant to 1225 which was improper; habeas petition granted and immediate release ordered within one business day); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) (**Petitioner unlawfully detained pursuant to 1225, government ordered to transport Petitioner back to EDNY within 24 hours and immediately upon effectuating his transfer, to release him from custody**); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025), (petitioner entered without inspection more than 30 years ago, detained pursuant to 1225, **court found 1226(a) applied based on statutory language; PI granted and court ordered release**); *Echevarria v. Bondi*, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025), entered without inspection in 2001, arrested in 2025 under 1225(b); **the 24 year period petitioner resided in the U.S. made the plain language of 1225(b) was inapplicable to him, at the time of arrest an immigration officer was not "examining" him and he was not "seeking" admission; Based on *Jennings* and *Nielsen*, statutory scheme of 1226(a) applies**); *Maldonado Vazquez v. Feeley*, 2025 WL 2676082 (D. Nev. Sept. 17, 2025) (entered without inspection over 20 years ago; detained July 2025; **court help petitioner held pursuant to 1226(a) not as the government contends 1225(b)(2); Yajure Hurtado renders requiring prudential exhaustion futile;** PI granted and release ordered on IJ bond); *Rodriguez Vazquez v. Bostock*, 2025 WL 2782499 (W.D. Wash Sept. 30, 2025) (**court granted summary judgment** on behalf of a class of people without lawful status held in Tacoma who entered without inspection and not apprehended upon arrival, court held plain text of **1226(a) applies rather than 1225(b) and issues a detailed statutory analysis**); *Guzman Alfaro v. Wamsley, 2025 WL 2822113* (W.D. Wash. Oct. 2, 2025) (court granted similar relief as a class member of *Rodriguez Vasquez; Garcia Cortes v. Noem*, 2025 WL

one court memorably explained, a person who sneaks into a movie theater is described as being "already present there," not as "seeking admission." *Lopez Benitez v. Francis*, —— F.Supp.3d at ——, 2025 WL 2371588, at *7. The government's position would also render § 1226(a) —the statute governing discretionary bond for interior arrests— a near nullity, a result Congress could not have intended. *Id.* at *8. While these cases confirm the illegality of Petitioner's detention, habeas relief is individualized, necessitating this petition to vindicate Petitioner's rights.

## X. LEGAL FRAMEWORK FOR THE RELIEF SOUGHT

### A. Habeas Jurisdiction

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

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2652880 (D. Colo. Sept. 16, 2025) (**Court held 1226(a) and not 1225(b)(2) authorizes detention; procedural due process violated under Mathews, habeas granted**); *Lopez-Campos v. Raycroft*, No. 2:25-cv-12486, 2025 WL 2496379, at *5-6 (E.D. Mich. Aug. 29, 2025) (granting petition for writ of habeas corpus ordering immediate release or bond hearing, where, for 30 years, **courts have applied section 1226(a) to noncitizens like the petitioner who was already in the United States but facing removal, rejecting the government's argument that section 1225 applied so no bond hearing was required**.

U.S. 723, 787 (2008). This Court's jurisdiction is secure, as the concept of "custody" is broad, attaching at the time of filing and persisting despite subsequent release due to the significant ongoing restraints on Petitioner's liberty. See *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).

### B. The Administrative Procedure Act (APA)

80. Petitioner's detention is predicated on two agency actions—ICE's July 2025 "Interim Guidance" and the BIA's decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025)—that are subject to this Court's review. These policies represent the "consummation of the agency's decisionmaking process" and are the direct cause of Petitioner's unlawful confinement, qualifying them as reviewable "final agency action" under the APA. See *Bennett v. Spear*, 520 U.S. 154, 178 (1997); 5 U.S.C. § 704.

### C. The Accardi Doctrine Requires Agencies to Follow Internal Rules

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

## XI. CAUSES OF ACTION AND CLAIMS FOR RELIEF

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

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

83. Respondents failed to meet either requirement. It was a factual impossibility for Petitioner to be "likely to escape" in that situation as described in the facts and procedural history above. Having failed to satisfy the statute's mandatory exigency requirement, Respondents' only lawful path to arrest Petitioner was to obtain a warrant under 8 U.S.C. § 1226(a), which they have failed to do.

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

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

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

86. By releasing Petitioner on an Order of Release on Recognizance (OREC) under 8 U.S.C. § 1226(a), Respondents granted him a protected liberty interest in his continued freedom from physical custody. The summary revocation of that liberty without any process whatsoever fails the three-part balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976). Petitioner's private liberty interest is paramount; the risk of erroneous deprivation from the procedures used—which were no procedures at all—is exceptionally high; and the government's interest is nonexistent, as its own years-long supervision of Petitioner demonstrated he was neither a flight risk nor a danger.

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

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

## COUNT THREE

### Unlawful Revocation of Petitioner's Parole in Violation of Due Process

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

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

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

92. If Petitioner was so paroled, termination of that parole and his re-detention were required to comply with 8 C.F.R. § 212.5(e)(2)(i), including written notice and

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

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

94. In *Aviles Mena v. Kaiser*, No. 25 cv 06783 RFL, 2025 WL 2578215, at *3, *5 (N.D. Cal. Sept. 5, 2025), the court emphasized that "even individuals who face significant constraints on their liberty or over whose liberty the government wields significant discretion retain a protected interest in their liberty," and treated immigration parole

under 8 U.S.C. § 1182(d)(5)(A) as a form of conditional liberty analogous to criminal parole or probation for purposes of the Mathews due process analysis.

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

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

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

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

99. As *Aviles Mena* held on materially similar facts, the incremental administrative burden of a brief pre deprivation hearing is slight compared to the severe deprivation of liberty imposed by renewed civil detention. A series of California decisions—*Moises V.A. v. Wofford*, No. 1:25-cv-01419-SKO (HC), 2026 WL 252237 (E.D. Cal. Jan. 30, 2026); *Elias C.M. v. Warden of the Golden State Annex Detention Facility*, No. 1:25-cv-02043-TLN-EFB, 2026 WL 127612 (E.D. Cal. Jan. 16, 2026); *Kervis v. Chestnut*, No. 1:25-cv-02066-KES-SAB (HC), 2026 WL 88983 (E.D. Cal. Jan. 12, 2026); *Ericka P.S. v. Chestnut*, No. 1:25-cv-02049-TLN-CKD, 2025 WL 3764211 (E.D. Cal. Dec. 30, 2025); *Peralta Ayala v. Wofford*, No. 1:26-cv-00555-DJC-AC, 2026 WL 249567 (E.D. Cal. Jan. 21, 2026); *Guzman v. Andrews*, No.

1:25-cv-01015-KES-SKO (HC), 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); and *Pineda v. Chestnut*, No. 1:25-cv-01566-DAD-AC (HC), 2025 WL 3251083 (E.D. Cal. Nov. 21, 2025)—have likewise held that noncitizens re-detained after years on parole, bond, or OREC are entitled to robust procedural protections, including notice and a pre-deprivation custody hearing before a neutral decisionmaker.

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

101. Petitioner is therefore entitled to declaratory and injunctive relief prohibiting Respondents from terminating Petitioner's parole or re-detaining Petitioner in ICE custody absent: (a) advance written notice of the proposed termination and the factual basis for re detention; and (b) a prompt pre deprivation custody hearing before a neutral decisionmaker at which the government bears the burden to demonstrate that revocation of parole and detention are necessary to serve legitimate, nonpunitive statutory purposes.

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

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

103. First, Respondents' actions defy the clear statutory scheme established by Congress. The INA creates two distinct detention frameworks: § 1225 governs the inspection and mandatory detention of aliens "arriving in the United States," while § 1226(a) governs the discretionary detention of aliens arrested "in the United States" on a warrant. Petitioner, a long-term resident apprehended in the interior, falls squarely within the latter category. By applying the "arriving alien" framework to her, Respondents unlawfully erase this critical statutory distinction.

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

memorandum and the *Yajure Hurtado* decision represents a radical and unlawful departure from these established rules. Both have now been VACATE under the APA.

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

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

107. This is not a mere procedural error; it is a fundamental breach of the rule of law. Respondents cannot simply ignore decades of their binding procedures to achieve a policy goal of mass mandatory detention. Because Respondents' actions were taken in

direct contravention of the INA and their own established rules, those actions are invalid, rendering Petitioner's resulting detention unlawful and requiring this Court to set it aside.

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

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

109. **Substantive Due Process**: The detention is substantively unconstitutional because it is arbitrary and serves no legitimate, non-punitive purpose. Civil immigration detention is permissible only to prevent flight or danger to the community. See *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). As established, Petitioner is neither a flight risk nor a danger. Petitioner's mandatory detention, without any individualized assessment, bears no reasonable relation to any legitimate government purpose and is therefore arbitrary deprivation of liberty, excessive, and unconstitutional.

110. **Procedural Due Process**: Even if a legitimate purpose for detention existed, the procedures used to effectuate it are constitutionally rotten. Due process demands a "meaningful opportunity to be heard at a meaningful time and in a meaningful manner" before a neutral decision-maker. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

*Landon v. Plasencia*, 459 U.S. 21, 32 (1982). The current scheme—whereby Respondents unilaterally subject Petitioner to mandatory detention based on an unlawful policy—entirely lacks these fundamental safeguards and fails the three-part balancing test set forth in *Mathews*:

111. **The Private Interest**: Petitioner's liberty interest is paramount; the risk of erroneous deprivation is extreme considering that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c), is not a flight risk, and does not pose a danger to the community. Being free from physical detention by one's own government "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The right to be free of detention of indefinite duration pending a bail determination, is "without question, a weighty one." *Landon v. Plasencia*. Petitioner is being held in jail in the same conditions as criminal inmates, unable to work and is far from family. At minimum, the government must come forward with concrete, case-specific reasons that outweigh Petitioner's substantial liberty interest in continued release.

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

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

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

## XII. REMEDY

### THE ONLY CONSTITUTIONALLY SUFFICIENT REMEDY IS IMMEDIATE AND UNCONDITIONAL RELEASE

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

their detention is a legal nullity built upon a foundation of statutory and constitutional violations.

116. Petitioner's detention is unlawful at its core because the arrest itself was executed in open defiance of the Immigration and Nationality Act's clear commands. Whether viewed as an arrest under 8 U.S.C. § 1225 or 8 U.S.C. § 1226(a), the seizure was illegal. Respondents claim authority under § 1225, but that statute applies to arriving aliens at the border, not long-term interior residents like Petitioner. The correct statute for an interior apprehension, § 1226(a), unequivocally requires that an arrest be made "**[o]n a warrant**." Respondents had no such warrant.

117. A bond hearing is a wholly inadequate remedy for such a fundamental violation. The purpose of a bond hearing is to assess the propriety of continued detention following a lawful arrest. It presupposes that the government's custody was, at some point, legitimate. That is not the case here. To order a bond hearing would be to retroactively sanitize an illegal seizure and give the government a "pass for not securing a warrant." *Javier De Jesus Aguilar v. English*, No. 3:25-CV-898 DRL-SJF, 2025 WL 3280219 (N.D. Ind., Nov. 25, 2025). As that court correctly reasoned when ordering immediate release under similar facts, "[t]he simple matter is this: the government has not established a lawful basis for detention... and the government must live by the rules that Congress has instituted." *Id.*

118. Numerous courts—including multiple Ninth Circuit district courts—have granted immediate and unconditional release, or have categorically prohibited re-detention absent a pre-deprivation bond hearing, in identical circumstances of unlawful bond/OREC revocation and re-arrest. See, e.g., *Pineda v. Chestnut*, No.

1:25-cv-01970-DC-JDP (HC), 2026 WL 25510 (E.D. Cal. Jan. 5, 2026); *D.L.C. v. Wofford*, No. 1:25-cv-01996-DC-JDP, 2026 U.S. Dist. LEXIS 1007 (E.D. Cal. Jan. 5, 2026); *R.A.N.O. v. Wofford*, No. 1:25-cv-01535-KES-EPG (HC), 2026 U.S. Dist. LEXIS 1963 (E.D. Cal. Jan. 6, 2026); *R.F.G.Z. v. Wofford*, No. 1:25-cv-01995-KES-EPG (HC), 2026 U.S. Dist. LEXIS 1971 (E.D. Cal. Jan. 6, 2026); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, Case No. 20-cv-5785-PJH (N.D. Cal. Sept. 14, 2020); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050 (N.D. Cal. 2021); *Romero v. Kaiser*, 2022 WL 1443250 (N.D. Cal. May 6, 2022); *Rodriguez Diaz v. Kaiser*, 2025 WL 3011852 (N.D. Cal. Sept. 16, 2025); and *Aguilar Garcia v. Kaiser*, No. 3:25-cv-05070 (N.D. Cal. June 14, 2025).[4]

119. See also case law from other circuits: *Arizmendi v. Noem*, No. 25-CV-7056, 2025 WL 3723960 (E.D. NY Dec. 24, 2025) (immediate release granted in a TRO); *Ye v. Maldonado*; 25-CV-6417; 2025 WL 3521298 (EDNY Dec. 8, 2025) (Court grants habeas, orders immediate release.); *Ibarra v. Warden of the Federal Detention Center Philadelphia*; 25-cv-6312; 2025 WL 3294726, (E.D. Pa. Nov. 25, 2025). (Grants habeas and orders release.); *Buele Morocho v. Jaminson*; 5:25-cv-05930; 2025 WL 3296300 (E.D. Pa. Nov. 26, 2025). (Grants habeas and orders immediate release. If re-

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

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

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

arrest itself—the only just remedy is to sever the connection by ordering immediate and unconditional release.

121. Furthermore, should this Court nonetheless order a bond hearing as an alternative to immediate release, it is critical that the order contain specific procedural safeguards to make that remedy meaningful. There is a troubling trend of immigration judges denying bond after a habeas grant based on rote assertions of flight risk or danger, often without the government presenting any actual evidence. To counteract this and ensure Petitioner is afforded a constitutionally adequate hearing so we do not have to return to this Court, this Court should follow the sound reasoning of another court in this District and place the burden of proof squarely on the government. In *J.G. v. Warden, Irwin Cty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1341 (M.D. Ga., 2020), the court, observing that "Circuit courts considering the standard of proof in the immigration bond context have also adopted the clear and convincing standard," held that "the government must prove by clear and convincing evidence that an alien is a flight risk . . . to justify denial of bond." **Therefore, to prevent a perfunctory and meaningless hearing that would only prolong Petitioner's unlawful detention, any order for a bond hearing must explicitly direct that the government bears the burden of establishing by clear and convincing evidence that Petitioner's detention is necessary**.

122. Finally, to ensure the remedy of release is not rendered illusory, the Court must explicitly ENJOIN Respondents from immediately substituting physical custody with another form of unlawful restraint: electronic monitoring. There is a now-common agency practice of subjecting virtually every noncitizen released from custody to GPS ankle monitoring—a blanket policy applied without the individualized assessment of

flight risk required by due process. This reflects a de facto agency policy of imposing GPS monitoring, even after an immigration judge has made a finding that a bond is sufficient to mitigate flight risk. This practice allows the agency to unilaterally subvert a judicial release order by replacing one form of custody with another. To provide a truly meaningful remedy and prevent Petitioner from being forced to return to this Court to challenge these new custody-like restraints, the Court should exercise its broad equitable power under 28 U.S.C. § 2243 to "dispose of the matter as law and justice require." Accordingly, Petitioner requests that the Court's order specify that their release is unconditional and enjoin Respondents from imposing any conditions of supervision, such as electronic monitoring, unless they first demonstrate to this Court, with five days' advance notice, that significantly changed circumstances and a new, particularized assessment of risk justify such a severe restraint on Petitioner's liberty.

## XIII. CONCLUSION AND PRAYER FOR RELIEF

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

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

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

(2) **Enjoin** Respondents from re-detaining Petitioner or revoking his Order of Release on Recognizance absent strict compliance with all governing regulations, including a showing of specific, individualized changed circumstances making his removal significantly likely in the reasonably foreseeable future, supported by a written decision from a duly authorized official;

(3) **In the alternative**, should the Court decline to order immediate unconditional release, issue an order directing Respondents to provide Petitioner with a bond hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a) and its implementing regulations at 8 C.F.R. §§ 236.1 and 1236.1 within forty-eight (48) hours of the Court's order, and further specifying that at any such hearing: (a) the

**government bears the burden** of proving that Petitioner is either a flight risk or a danger to the community; and (b) the government must satisfy that burden by **clear and convincing evidence**, consistent with *J.G. v. Warden, Irwin Cty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1341 (M.D. Ga. 2020), which followed circuit precedent adopting this standard in the immigration bond context (including *Singh* and *Lopez*), in order to prevent the recurring problem of perfunctory bond denials based on unsupported assertions of risk rather than actual evidence;

(4) **Enjoining Respondents**, upon Petitioner's release, from subjecting Petitioner to any form of electronic monitoring, GPS ankle bracelet, ISAP enrollment, or other alternative-to-detention program that functions as a custody-like restraint, absent prior leave of this Court. Respondents shall be prohibited from imposing such conditions unless, at least five (5) days in advance, they file notice with this Court and demonstrate—based on a new, particularized assessment of significantly changed circumstances and a concrete, evidence-based showing of flight risk or danger—that such conditions are necessary, and the Court expressly authorizes them pursuant to its authority under 28 U.S.C. § 2243 to dispose of the matter as law and justice require.

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

(6) **ENJOIN** Respondents from re-detaining Petitioner in the future under 8 U.S.C. § 1225 or the DHS policy vacated by the *Maldonado Bautista* court;

(7) **Award** Petitioner reasonable attorney's fees and costs; and

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

Respectfully Submitted,

This 28th day of March, 2026.

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

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

This 28th day of March, 2026.

*/s/ Karen Weinstock*
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