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

EMILIO LOPEZ ESCALON



Petitioner,

v.

PAMELA BONDI, U.S. Attorney General

MARKWAYNE MULLIN, U.S.
Secretary of Homeland Security ("DHS"),

TODD LYONS, Acting
Director U.S. Immigration and Customs
Enforcement,

GEORGE STERLING, Acting Atlanta
Field Office Director,

JASON STREEVAL, Warden of Stewart
Detention Center

IN THEIR OFFICIAL
CAPACITIES

Respondents.

Case No.

**PETITION FOR A WRIT OF
HABEAS CORPUS**

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INTRODUCTION

1. Petitioner, Emilio Lopez Escalon, is in the physical custody of Respondents at the Stewart Detention Center. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.
2. Petitioner has been detained for almost three (3) months.
3. The Fourteenth Amendment declares that no person may be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1. The Fourth Amendment forbids unreasonable seizures. U.S. Const. amend. IV. The Fifth Amendment binds the federal government to the same core constitutional command: no person shall be deprived of liberty without due process of law. U.S. Const. amend. V. Those guarantees do not evaporate at the edge of the immigration statutes, nor do they disappear when the Executive relabels a person physically present in the United States as an “applicant for admission” for detention purposes. They protect all persons’ liberty against precisely what has occurred here: prolonged civil imprisonment without lawful authority and without the meaningful process the Constitution demands.
4. This case concerns an immigration detainee whom the Government is unlawfully confining under its new interpretation of 8 U.S.C. § 1225(b), as amplified by the Board’s recent decision in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). In *Yajure-Hurtado*, the Board concluded that Immigration Judges lack authority to conduct bond hearings for noncitizens “present in the United States without admission” because, in the Board’s view, such persons fall within the mandatory-detention command of § 1225(b)(2)(A). *Id.* at 216. That interpretation stretches the statute beyond its text,

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collapses the longstanding distinction between recent applicants for admission and persons already arrested within the interior of the United States, and attempts to place broad categories of human beings beyond any meaningful access to an individualized custody determination. Habeas exists precisely to test the legality of that imprisonment.

5. The modern architecture of immigration detention took shape after Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), which expanded mandatory detention in certain circumstances and revised the inspection and removal framework now codified in 8 U.S.C. §§ 1225, 1226, and 1231. After IIRIRA, courts repeatedly confronted the constitutional limits of civil immigration detention. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court upheld mandatory detention for a narrow class of noncitizens under § 1226(c), while emphasizing the sharply limited context of that holding. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court treated § 1225(b) as a distinct detention regime for applicants for admission at the threshold of entry, in contrast to § 1226, which governs detention of noncitizens arrested after entry and already present within the interior of the United States. And well before that, in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court made clear that immigration power, though substantial, remains constrained by the Constitution, because the Due Process Clause applies to all “persons” within the United States, including noncitizens, “whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693.

6. The *Jennings* principle controls here. Once a person is physically present in this country, the Constitution’s protection of liberty is not a matter of executive grace. The Government may not seize a person, hold him in civil detention, and then insulate that

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2 detention from meaningful judicial review by invoking an overbroad reading of § 1225(b)
3 and a newly minted administrative decision. The writ of habeas corpus remains available
4 to test whether the government has lawful authority for the restraint. Here, it does not.

5 7. At stake is more than a technical dispute over detention labels. This case concerns the
6 oldest promise of our law: that government must answer when it imprisons a human
7 being. In this country, even in immigration matters, the government's power over borders
8 does not extinguish the individual's right to life and liberty, or the Nation's foundational
9 promise that government exists to secure the conditions in which human beings may live
10 freely and pursue happiness. Petitioner has set foot in the United States. He is here. He is
11 a person. And because he is a person, the Constitution protects him from unlawful
12 detention.

13 8. While 8 U.S.C. § 1225 does not explicitly state that its application is limited to ports of
14 entry (POEs) or their immediate vicinity, this was without question the Supreme Court's
15 understanding in *Jennings*. The Court's conclusions regarding the statute's interpretation
16 and constitutionality relied heavily on the historically limited rights afforded to aliens at
17 the country's borders. This was not an incidental assumption; the Supreme Court is fully
18 cognizant of the limited constitutional rights at the border, and the government itself
19 argued this precise distinction in support of its interpretation of § 1225 and § 1226.

20 9. Indeed, the Court presented the precise question this Court is being asked to answer now
21 to the Solicitor General more than once. For example, Justice Sotomayor asked,
22 "Clarifying question. For an alien who is found in the United States illegally, has not been
23 admitted, are they held under 1225(b) or are they held under 1226(a)?"¹

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¹ See Exhibit A, Jennings Oral Transcript at p. 7.

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2 10. The Solicitor General responded, "So they are held under – if they are not – if they are
3 not detained within 100 miles of the border or within 14 days... then they are under
4 1226(a) and not (c)."²

5 11. Seeking further clarity, Justice Sotomayor posed a hypothetical of an EWI alien stating,
6 "I'm talking about an alien who has come into the United States illegally without being
7 admitted who takes up residence 50 miles from the border."³

8 12. Without hesitation, the Solicitor General confirmed: "The answer is they are held under
9 1226(a) and that they get a bond hearing under it - - and this is at page 156a of the
0 appendix."⁴

1 13. As will be discussed further below, the simple reality is that the Supreme Court and all
2 the litigants in *Jennings* recognized that § 1225 is a statute applicable at or near the
3 border, and therefore, the warrant requirement of the Fourth Amendment and the due
4 process clause of the Fifth Amendment have little or no application.

5 14. The Fifth Amendment protects "persons" – not just citizens – from being deprived of
6 liberty without due process of law. As established in *Zadvydas v. Davis*, 533 U.S. 678
7 (2001), and reaffirmed in *Demore v. Kim*, 538 U.S. 510 (2003), non-citizens in removal
8 proceedings are entitled to constitutional due process, especially where physical liberty is
9 at stake.

0 15. In *Mathews v. Eldridge*, 424 U.S. 319 (U.S. 1976), the Supreme Court acknowledged that
1 due process is flexible and calls for such procedural protections as the particular situation
2 demands. Accordingly, resolution of the issue whether the administrative procedures are
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1 ² (*Id.* at pp. 7-8.)

2 ³ (*Id.* at p. 8.)

3 ⁴ (*Id.* at p. 8-9.)

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2 constitutionally sufficient requires analysis of the governmental and private interests that
3 are affected:

- 4 a. **The private liberty interest that is affected by the official action.** Here, a
5 30-year-old family man and father of one young child has been detained for over
6 80 days—without an opportunity for bond. His mother, Teresa Alfaro, and his
7 eighteen-month-year-old child, have suffered the absence of their son and father.
8 Petitioner is gainfully employed, has filed his taxes in the United States, and
9 enjoys heartfelt and positive references from his network of family and friends.
1 The private interest at stake here is great, and each day that Petitioner misses with
2 his family creates an additional irreparable harm.
- 3 b. **The risk of an erroneous deprivation of such interest through the procedures
4 used, and the probable value of additional procedural safeguards.** Here, the
5 risk of erroneous deprivation is great in an agency that is compromised by
6 political actions over adherence to the rule of law. Time and again policy
7 overrides law in this administration and people like Petitioner suffer the
8 consequences. Petitioner’s three-month detention is a policy choice that broke the
9 law. The agencies administering these decisions are headed by political
1 appointees: the attorney general, Pam Bondi, and the secretary of homeland
2 security. The BIA will not acknowledge these legal errors because they are a part
3 of that same politically compromised agency.
- 4 c. **The government’s interest, including the fiscal and administrative burden of
5 additional procedural safeguards.** Here, additional procedural safeguards would
6 not be a costly or time-consuming additional expense to the government’s agency
7 that is in the business of providing hearings. It is no great additional cost to add
8 additional procedural safeguards, especially when compared against the grave
9 private interest of Petitioner who has been detained for nearly months.

1 16. He now faces unlawful detention because the Department of Homeland Security (“DHS”)
2 and the Executive Office of Immigration Review (“EOIR”) have concluded that
3 Petitioner is subject to mandatory detention.

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

6 18. Based on this allegation in Petitioner’s removal proceedings, DHS will deny Petitioner’s
7 release from immigration custody, consistent with a new DHS policy issued on July 8,
8 2025, instructing all ICE employees to consider anyone inadmissible under §
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2 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or
3 inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore
4 ineligible to be released on bond. See **Exhibit B**, *ICE Memo: Interim Guidance
Regarding Detention Authority for Applications for Admission*.

5 19. In addition, Petitioner brings this petition for a writ of habeas corpus to seek enforcement
6 of his rights as a member of the Bond Eligible Class certified in *Maldonado Bautista v.*
7 *Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.). See **Exhibit C**, *Copy of Order*.

8 20. He now faces unlawful detention because the DHS and the EOIR have refused to abide
9 by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista*
10 *v. Santacruz*.

11 21. Notably, the vast majority of federal courts to consider this issue, including this Court.
12 See, e.g., *Villa v. Normand*, No.5:25-CV-100, 2025 WL 3188406 (S.D. Ga. Nov. 14,
13 2025) (granting habeas relief and ordering a bond hearing for similar petitioners who
14 never received bond hearing because of Yajure-Hurtado); see also *J.A.M. v. Streeval*, No.
15 4:25-cv-342-CDL, 2025 WL 3050094 (M.D.Ga. Nov. 1, 2025); *P.R.S. v. Streeval*, No.
16 4:25-cv-343-CDL, 2025 WL 3269947 (M.D. Ga. Nov.24, 2025).

17 22. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless
18 Respondents provide a bond hearing under § 1226(a) within three (3) days.

19 JURISDICTION

20 23. This action arises under the Constitution of the United States and the Immigration and
21 Nationality Act (INA), 8 U.S.C. § 1101 et seq.

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2 24. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28
3 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution
(Suspension Clause).

4 25. The Court's jurisdiction extends to challenges involving immigration-related detention.
5 See *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

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

8 **VENUE**

9 27. Venue is proper in this District, the judicial district in which the Petitioner is detained. 28
10 U.S.C. § 1391(c).

11 28. Venue is proper in this District under 28 U.S.C. § 1391(e) and 28 U.S.C. § 2241 because
12 a substantial part of the events giving rise to these claims occurred in this district.
13 Petitioner's removal proceedings are currently before the Lumpkin Georgia Immigration
14 Court and he is currently detained at the Stewart Detention Center, in Lumpkin, GA.

15 29. In the event of jurisdictional error, the district court wherein such an application is filed
16 in the exercise of its discretion and in furtherance of justice may transfer the application
17 to the other district court for hearing and determination.


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

19 30. The Court must grant the petition for writ of habeas corpus "forthwith" unless the
20 petitioner is not entitled to relief. 28 U.S.C. § 2243.

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2 37. Respondent, MARKWAYNE MULLIN, in their official capacity as Secretary of the U.S.
3 Department of Homeland Security, is the head of DHS, which oversees ICE and is
ultimately responsible for the unlawful detention of Petitioner.

4 38. Respondent, PAM BONDI, in their official capacity as Attorney General of the United
5 States, is charged with the administration and enforcement of the immigration laws and is
6 a proper respondent under 28 U.S.C. § 2243.

7 **STATEMENT OF FACTS**


8 39. Emilio is a citizen and national of Honduras, born on  See, **Exhibit D**,
Respondent's Identification Documents.

9 40. On or about the year 2019, the Petitioner entered the United States without being
inspected or paroled and has been residing in the United States continuously since.

1 41. On or about January 8, 2026, Petitioner was stopped while being a passenger in a vehicle
0 in Fort Pierce, Florida, where he was subsequently arrested and detained by ICE.

1 42. Petitioner was originally sent to the LaSalle Detention facility in Louisiana and thereafter
1 transferred to the Stewart Detention Center in Georgia, where he currently is detained.

1 43. Prior to his detention, Petitioner applied for Asylum and his application for asylum is
1 currently pending with the United States Citizenship and Immigration Services (USCIS).
2 See, **Exhibit E**, Copy of Asylum Application.

1 44. Prior to his detention, Petitioner was gainfully employed with  and was
1 a responsible member of society.

3 45. Petitioner was living with his girlfriend, Luisa Perez, a legal permanent resident before
1 his arrest and detention.

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2 46. After his detention, the Department of Homeland Security commenced removal
3 proceedings by filing a Notice to Appear. See, **Exhibit F**, Notice to Appear.

4 47. Emilio is not a danger to the community or the United States. To counsel's knowledge, he
5 has no criminal history or arrests.

6 48. Petitioner is currently being detained without the possibility of bond under 8 U.S.C. §
7 1225(b)(2)(A), based on DHS's argument that he is "an Applicant seeking Admission
8 under the provisions of Sec. 235(b)(2)(A) of the Immigration and Nationality Act
9 ('INA')."

10 EXHAUSTION

11 49. Petitioner remains detained without any opportunity for release on bond. Exhaustion
12 under 28 U.S.C. § 2241 is prudential, not jurisdictional, and other courts have repeatedly
13 excused it where administrative review is inadequate, futile, or would cause irreparable
14 harm. *F-G. v. Noem*, No. 25-CV-0243-CVE-MTS, 2025 U.S. Dist. LEXIS 111539 (N.D.
15 Okla. June 12, 2025) (declining to require exhaustion where immigration detainee was
16 "trapped in prolonged detention without a meaningful opportunity for bond"); *Quintana*
17 *Casillas v. Sessions*, No. 17-cv-01395, slip op. at 9–11 (D. Colo. 2018) (explaining that
18 when "the question presented is purely legal and has been repeatedly mishandled
19 administratively, exhaustion serves no useful purpose."). Here, the appellate body is the
20 Board of Immigration Appeals, the same body that issued the decision stripping
21 immigration judges of their jurisdiction to hear bonds.

22 50. Other districts have held that habeas corpus relief was available despite a pending BIA
23 appeal, because "[e]ach additional day of detention without a bond hearing constitutes
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2 irreparable harm that cannot be remedied after the fact” *LG v. Choate*, No. 23-cv00611,
3 slip op. at 14 (D.N.M. 2024)

4 51. The BIA appeal process here exemplifies why exhaustion is unnecessary. As *Rodriguez v.*
5 *Bostock* explained, while the BIA has occasionally remanded bond denials where
6 immigration judges misapplied § 1225(b), it has declined to issue a precedential ruling.
7 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025).

8 52. Consequently, many immigration judges continue to deny bond altogether, and appeals
9 typically take six months or more, during which noncitizens remain detained unlawfully,
10 with severe consequences for their health, families, and ability to defend against removal.
11 *Id.*

12 53. Because Petitioner’s injury is the very fact of unlawful detention without a bond hearing,
13 administrative remedies are neither timely nor effective. Habeas corpus is the only
14 adequate remedy.

15 LEGAL FRAMEWORK

16 54. Petitioner is cognizant of the Fifth Circuit’s recent decision in *Buenrostro-Mendez v.*
17 *Bondi*. That being said, Petitioner believes *Buenrostro-Mendez* was incorrectly decided
18 and has included arguments in the instant petition in support of this position to ensure no
19 such arguments are waived in the event of an appeal by either party. In so doing, it is
20 important to point out that *Buenrostro-Mendez*’ holding was limited to the facts and issues
21 presented by that case. Indeed, the noncitizens in that case were detained after their very
22 first encounter with immigration officials, (allegedly such detention was pursuant to §
23 1225(b)(2)(A)), and had never been inspected, released, or otherwise come to DHS’
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2 attention. Accordingly, *Buenrostro-Mendez*' holding is limited to finding that §
3 1225(b)(2)(A) is applicable to noncitizens detained under those specific facts.
4 Notwithstanding *Buenrostro-Mendez*, however, it is Petitioner's position that he is subject
5 to detention under U.S.C. § 1226(a), and thus, is entitled to a bond hearing. Petitioner's
6 interpretation of this issue is consistent with nearly three decades of settled agency
7 practice and judicial interpretation. Critically, Petitioner's reading gives full effect to all
8 the INA's provisions, including the statutory definitions given to the terms "admission,"
9 "admitted," and "application for admission," and it harmonizes the statutes, regulations,
10 decades of agency practice, and case law with the U.S. Constitution.

11 55. Similarly, the Eight Circuit's decision in *Avila v. United States*, No. 25-3248, is not
12 binding on this Court. The Eight Circuit's decision, finding those who have never been
13 encountered at the border subject to mandatory detention is erroneously decided, but
14 rather those detained and arrested within the interior of the United States, were not
15 "seeking admission," and thus should not be subject to mandatory detention.

16 56. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal
17 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are
18 generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§
19 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or
20 convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

21 57. Second, the INA provides for mandatory detention of noncitizens subject to expedited
22 removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission
23 referred to under § 1225(b)(2).
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2 58. Last, the INA also provides for detention of noncitizens who have been ordered removed,
3 including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

4 59. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

5 60. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
6 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub.
7 L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583,
8 3009–585. Section 1226(a) was most recently amended earlier this year by the *Laken*
9 *Riley Act*, Pub. L. No.119-1, 139 Stat. 3 (2025).

10 61. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that,
11 in general, people who entered the country without inspection were not considered
12 detained under § 1225 and that they were instead detained under § 1226(a). *See*
13 *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens;*
14 *Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323
15 (Mar. 6, 1997).

16 62. Thus, in the decades that followed, most people who entered without inspection and were
17 placed in standard removal proceedings received bond hearings, unless their criminal
18 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was
19 consistent with many more decades of prior practice, in which noncitizens who were not
20 deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer.
21 *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996)
22 (noting that § 1226(a) simply “restates” the detention authority previously found at §
23 1252(a)).
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2 63. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected
3 well-established understanding of the statutory framework and reversed decades of
4 practice.

5 64. The new policy, entitled “Interim Guidance Regarding Detention Authority for
6 Applicants for Admission,”⁵ claims that all persons who entered the United States without
7 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A).
8 The policy applies regardless of when a person is apprehended, and affects those who
9 have resided in the United States for months, years, and even decades.

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

14 66. Since Respondents adopted their new policies, dozens of federal courts have rejected
15 their new interpretation of the INA’s detention authorities. Courts have likewise rejected
16 *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

17 67. Even before ICE or the BIA introduced these nationwide policies, immigration judges in
18 the Tacoma, Washington, immigration court stopped providing bond hearings for persons
19 who entered the United States without inspection and who have since resided here. There,
20 the U.S. District Court in the Western District of Washington found that such a reading of
21 the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who
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⁵ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

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2 are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779
3 F. Supp. 3d 1239 (W.D. Wash. 2025).

4 68. Subsequently, court after court has adopted the same reading of the INA's detention
5 authorities and rejected ICE and EOIR's new interpretation. *See e.g., Cerro Perez v.*
6 *Parra*, 1:25-cv-24820, (S.D. Fla.) (compiling the following list of decisions); *Gil-Paulino*
7 *v. Sec'y of the U.S. Dep't of Homeland Sec.*, 25-cv-24292, DE 41, (S.D. Fla. Oct. 10,
8 2025). (respondent's interpretation of the INA "directly contravenes the statute" and
9 "disregards decades of settled precedent"); *see also Pizarro Reyes*, 2025 WL 2609425, at
10 *7 ("Finally, the BIA's decision to pivot from three decades of consistent statutory
11 interpretation and call for Pizarro Reyes' detention under § 1225(b)(2)(A) is at odds with
12 every District Court that has been confronted with the same question of statutory
13 interpretation."); *Puga*, No. 25-24535, 2025 WL 2938369, at *3–6; *Merino v. Ripa*, No.
14 25-23845, 2025 WL 2941609, at *3 (S.D. Fla. Oct. 15, 2025); *Lopez v. Hardin*, No.
15 25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sep. 25, 2025); *Harsh Patel v. Crowley*,
16 No. 25-11180, 2025 U.S. Dist. LEXIS 209958, at *9–12 (N.D. Ill. Oct. 24, 2024);
17 *Esquivel-Ipina v. Larose*, No. 25-cv-2672, 2025 U.S. Dist. LEXIS 210275, at *9–12
18 (C.D. Cal. Oct. 24, 2025); *Carmona v. Noem*, No. 25-cv-1131, 2025 U.S. Dist. LEXIS
19 209629, at *14–17 (W.D. Mich. Oct. 24, 2025); *Lopez v. Hyde*, 25-12680, 2025 U.S. Dist.
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5 *Aguilar v. Moniz*, No. 25-cv-12706, 2025 WL 2987656, at *3 (D. Mass. Oct. 22, 2025);
6 *Rivera v. Moniz*, 25-cv-12833, 2025 WL 2977900, at *1–2 (D. Mass. Oct. 22, 2025);
7 *Avila v. Bondi*, No. 25-3741, 2025 WL 2976539, at *5–7 (D. Minn. Oct. 21, 2025);
8 *Contreras-Lomeli v. Raycraft*, No. 25-cv-12826, 2025 U.S. Dist. LEXIS 207162, at *22
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2 U.S. Dist. LEXIS 207165, at *12, 16–17 (E.D. Mich. Oct. 21, 2025); *Miguel v. Noem*,
3 25-11137, 2025 WL 2976480, at *6 (N.D. Ill. Oct. 21, 2025); *Pineda v. Simon*, No.
4 25-cv-01616, 2025 WL 2980729, at *2 (E.D. Va. Oct. 21, 2025); *Matheus Araujo DA*
5 *Silva v. Bondi*, No. 25-cv-12672, 2025 WL 2969163, at *2 (D. Mass. Oct. 21, 2025);
6 *Barahona v. Hyde*, No. 25-cv-12551, 2025 U.S. Dist. LEXIS 205964, at *4–5 (D. Mass.
7 Oct. 20, 2025); *H.G.V.U. v. Smith*, No. 25-cv-10931, 2025 WL 2962610, at *4–6 (N.D.
8 Ill. Oct. 20, 2025); *Gonzalez v. Hyde*, No. 25-8250, 2025 U.S. Dist. LEXIS 208578, at
9 *10–11 (S.D.N.Y. Oct. 19, 2025); *Polo v. Chestnut*, No. 25-cv-01342, 2025 WL 2959346,
1 at *11 (E.D. Cal. Oct. 17, 2025); *Sanchez v. Minga Wofford, Warden, Mesa Verde Immigr.*
2 *Processing Ctr.*, No. 25-cv-01187, 2025 WL 2959274, at *3 (E.D. Cal. Oct. 17, 2025);
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5 25-cv-284, 2025 U.S. Dist. LEXIS 191101, at *6–7 (D.N.H. Sep. 29, 2025); *Barrios v.*
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15 25-cv-12094, 2025 WL 2576819, at *5 (D. Mass. Sep. 5, 2025); *Garcia v. Noem*, No.
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17 No. 25-cv-03219, 2025 WL 2629839, at *2–4 (D. Minn. Aug. 29, 2025); *Lopez-Campos*
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8 *5–8; *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256–61 (W.D. Wash. 2025).

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10 69. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it defies
11 the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the
12 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like
13 Petitioner.

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15 70. Section 1226(a) applies by default to all persons “pending a decision on whether the
16 [noncitizen] is to be removed from the United States.” These removal hearings are held
17 under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].” *See*
18 *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

19
20 71. The text of § 1226 also explicitly applies to people charged as being inadmissible,
21 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E).
22 Subparagraph (E)’s reference to such people makes clear that, by default, such people are
23 afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained,
24 “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that
25 absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp.
26 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S.
27 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

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2 72. Section 1226 therefore leaves no doubt that it applies to people who face charges of being
3 inadmissible to the United States, including those who are present without admission or
4 parole.

5 73. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently
6 entered the United States. The statute's entire framework is premised on inspections at
7 the border of people who are "seeking admission" to the United States. 8 U.S.C. §
8 1225(b)(2)(A).

9 74. Indeed, the Supreme Court has explained that this mandatory detention scheme applies
10 "at the Nation's borders and ports of entry, where the Government must determine
11 whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v.*
12 *Rodriguez*, 583 U.S. 281, 287 (2018).

13 75. The courts have distilled two central principles:

14 a. Geographic/temporal limits: § 1225 applies only to noncitizens apprehended at or
15 near the border and in the act of entry (*see Thuraissigiam*, 591 U.S. 103, 114, 139
16 (2020)), not to those apprehended years later in the interior.

17 b. Statutory structure: Reading § 1225 as covering all noncitizens who were never
18 lawfully "admitted" would render § 1226 largely meaningless, contrary to the rule
19 against surplusage. *See Martinez*, 2025 WL 2084238, at *7; *Gomes v. Hyde*, No.
20 25-cv-11571, 2025 WL 1869299, at *6–8 (D. Mass. July 7, 2025).

21 76. A contrary reading renders superfluous recent amendments in the *Laken Riley Act*, Pub.
22 L. No. 119-1, 139 Stat. 3 (2025), which added INA § 236(c)(1)(E) mandating detention
23 for noncitizens inadmissible under § 212(a)(6)(A)(present without admission) who are
24 implicated in enumerated crimes. If all such noncitizens were already mandatorily

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2 detained under § 235(b)(2)(A), Congress's addition would be meaningless. *See Corley v.*
3 *United States*, 556 U.S. 303, 314 (2009) (statutes must be construed to give effect to all
4 provisions).

5 77. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to
6 people like Petitioner, who have already entered and were residing in the United States at
7 the time they were apprehended.

8 78. Congress may expand procedural protections through statute, but it cannot legislate away
9 fundamental constitutional guarantees. The Fourth Amendment's protection against
10 unreasonable seizures applies to all persons within the territory of the United States,
11 including noncitizens. Immigration officials may not § 1225(b)(2)(A) detain individuals
12 encountered in the interior indefinitely or without probable cause; the Fourth Amendment
13 simply does not permit it. Likewise, the constitution's due process clause protections
14 must be afforded to all those living in the U.S. before being deprived of their liberty.

15 79. At the nation's borders, however, the constitution's protections are lowered and almost
16 nonexistent for those who are not in the U.S. (including those who are at the border still
17 under the legal fiction of parole). The absence of a warrant requirement in 8 U.S.C §
18 1225, therefore, is in line with the longstanding principle that the search and seizure of
19 persons at our country's borders are not subject to the Fourth Amendment's warrant
20 requirement.⁶

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23 ⁶ See *United States v. Flores-Montano*, 541 U.S. 149, 153 (2004) ("Congress, since the beginning of our
24 Government, has granted the Executive Plenary authority to conduct routine searches and seizures at the border,
25 without probable cause or a warrant . . .") (internal citations omitted); *United States v. Cotterman*, 637 F.3d 1068,
26 1076 (9th Cir. 2011) ("[T]here is [no] room for disagreement over the compelling underpinnings of the doctrine"
27 exempting border searches and seizures from the Fourth Amendment's warrant requirement. "It is well established
28 that the sovereign need not make any special showing to justify its search of persons and property at the
29 international border.").

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2 80. Just as established as the border exception to the Fourth Amendment is the fact that
3 immigration stops and arrests elsewhere are subject to the Fourth Amendment's
4 protections. Indeed, "[l]ongstanding precedent establishes that '[t]he Fourth Amendment
5 applies to all seizures of the person, including seizures that involve only a brief detention
6 short of traditional arrest.'" The law in this area is not grey. Rather, since at least 2009, it
7 has been "clearly established . . . that immigration stops and arrests [are] subject to the
8 same Fourth Amendment requirements that apply to other stops and arrests—reasonable
9 suspicion for a brief stop, and probable cause for any further arrest and detention."⁷

10 81. The clarity of the law in this area is bolstered by the proscriptions of 8 U.S.C. § 1357,
11 which "[c]ourts have consistently held" the inclusion of the phrase "reason to believe" in
12 § 1357 "must be read in light of constitutional standards, so that 'reason to believe' must
13 be considered the equivalent of probable cause."⁸

14 82. Despite the abundantly clear requirements of the Fourth Amendment, the government
15 now argues that a statute with no warrant requirement (§ 1225(b)(2)(A)), historically
16 applied at or near the border, allows DHS to arrest or detain aliens in the interior of the
17 United States without any concern for the Fourth Amendment's protections. Such an
18 interpretation is unconstitutional and any interpretation that would have such a result
19 must be avoided.

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⁷ *Morales v. Chadbourne*, 793 F.3d 208, 215 (2015) (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, (1975) (citing *Davis v. Mississippi*, 394 U.S. 721 (1969); *Terry v. Ohio*, 392 U.S. 1, 16–19, (1968)); see also *Dunaway v. New York*, 442 U.S. 200, 216 (1979) (“[D]etention for custodial interrogation—regardless of its label—intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest.”).

⁸ *Id.* at 216–17 (citing *Au Yi Lau*, 445 F.2d at 222; see, e.g., *Tejeda–Mata v. Immigration & Naturalization Serv.*, 626 F.2d 721, 725 (9th Cir.1980) (“The phrase ‘has reason to believe’ [in § 1357] has been equated with the constitutional requirement of probable cause.”); *United States v. Cantu*, 519 F.2d 494, 496 (7th Cir.1975) (“The words [in § 1357] of the statute ‘reason to believe’ are properly taken to signify probable cause.”); see also *United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir.2010) (“Because the Fourth Amendment applies to arrests of illegal aliens, the term ‘reason to believe’ in § 1357(a)(2) means constitutionally required probable cause.”).

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2 83. The Supreme Court has explained the critical distinction between those outside the U.S.
3 and those within it when it comes to the due process required before they may be
4 deprived of their liberty:

5 The distinction between an alien who has effected an entry into the United
6 States and one who has never entered runs throughout immigration law. It
7 is well established that certain constitutional protections available to
8 persons inside the United States are unavailable to aliens outside of our
9 geographic borders. But once an alien enters the country, the legal
10 circumstance changes, for the Due Process Clause applies to all “persons”
11 within the United States, including aliens, whether their presence here is
12 lawful, unlawful, temporary, or permanent. Indeed, this Court has held that
13 the Due Process Clause protects an alien subject to a final order of
14 deportation, though the nature of that protection may vary depending upon
15 status and circumstance.⁹

16 84. Moreover, *Zadyvdas* left no doubt that civil detention, including in the immigration
17 context, requires a sufficient justification—namely preventing flight or danger to the
18 community. *Id.* Where no such justification exists detention without due process is
19 unconstitutional. *Id.*

20 85. Finally, *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) is a landmark
21 decision overruling *Chevron* deference thereby permitting this Honorable Court to come
22 to its own conclusion on the interpretation of the relevant statutes without relying on
23 Board precedent in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which was
24 wrongly decided.

25 **Maldonado Bautista v. Santacruz**

26 86. On November 20, 2025, the district court granted partial summary judgment on behalf of
27 individual plaintiffs and on November 25, 2025, certified a nationwide class and
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⁹ *Zadyvdas v. Davis*, 533 U.S. 678, 693–94 (2001).

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extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

87. The declaratory judgment held that the Bond Eligible Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

88. Nonetheless, the EOIR and its subagency, the Immigration Court, and the DHS have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.

89. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member. *Id.*

90. Immigration judges have informed class members in bond hearings that they have been instructed by "leadership" that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to

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2 follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA
3 2025).

4 91. Because Respondents are detaining Petitioner in violation of the declaratory judgment
5 issued in *Maldonado Bautista*, the Court should accordingly order that within one day,
6 Respondent DHS must release Petitioner.

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

9 **CLAIMS FOR RELIEF**

10 **COUNT I**

11 **Unlawful Detention Under 8 U.S.C. § 1225; Custody Properly Governed By 8 U.S.C. § 1226**
12 **(Misapplication of Mandatory Detention Statute)**

13 93. Petitioner incorporates by reference the allegations of fact set forth in the preceding
14 paragraphs.

15 94. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
16 noncitizens residing in the United States who are subject to the grounds of
17 inadmissibility. As relevant here, it does not apply to those who previously entered the
18 country and have been residing in the United States prior to being apprehended and
19 placed in removal proceedings by Respondents. Such noncitizens are detained under §
20 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

21 95. Petitioner is currently being detained without the possibility of bond under 8 U.S.C. §
22 1225(b)(2)(A), based on DHS's argument that he is "an Applicant seeking Admission
23 under the provisions of Sec. 235(b)(2)(A) of the Immigration and Nationality Act
24 ('INA')." 25

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2 96. This argument is legally erroneous. Section 1225 applies to noncitizens actively “seeking
3 admission” at the border or its immediate functional equivalent. By contrast, § 1226
4 governs the arrest and detention of those “already in the country” pursuant to a warrant
5 issued by the Attorney General. The two provisions are mutually exclusive. *See Jennings*
6 *v. Rodriguez*, 583 U.S. 281, 288–89 (2018); *Matter of M-S-*, 27 I. & N. Dec. 509, 516
(A.G. 2019).

7 97. Petitioner plainly falls within § 1226. He has resided in the United States for over seven
8 (7) years, with established community ties, sponsorship and available relief, and no
9 criminal history since he began living in the United States in 2019. He was stopped on
10 January 8, 2026, as a passenger in a vehicle, detained by ICE, and then transferred to the
11 Stewart Detention Center, where DHS proceeded to issue the charging documents
12 including a Notice to Appear.

13 98. The charging document itself expressly alleges that Petitioner is “present in the United
14 States without admission or parole,” language that presumes residence in the interior and
15 confirms that he was not in the process of seeking admission. Taken together, these
16 contradictions underscore the arbitrariness of Petitioner’s detention and the government’s
17 mischaracterization of his case.

18 99. To hold otherwise would effectively erase the statutory line between §§ 1225 and 1226,
19 converting virtually all noncitizens present without admission into mandatory detainees
20 and rendering § 1226(a) a dead letter. Courts have consistently rejected this outcome. See
21 *Martinez*, 2025 WL 2084238, at *7 (rejecting interpretation that would “nullify”
22 Congress’s amendment to § 1226(c)); *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL
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2 1869299, at *7 (D. Mass. July 7, 2025) (noting that §§ 1225 and 1226 “apply to different
3 classes” of noncitizens).

4 100. In sum, Petitioner was not “seeking admission” within the meaning of § 1225(b) but
5 was “already in the country” within the meaning of Jennings, 583 U.S. at 288–89. His
6 custody is governed by § 1226(a), under which detention is discretionary and subject to
7 individualized bond hearings. DHS’s argument is contrary to law, unsupported by the
8 record, and must be set aside.

9 101. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued
10 detention and violates the INA.

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COUNT II
Violation of the Due Process Clause of the Fifth Amendment to the United States
Constitution (Procedural Due Process); 5 U.S.C. §§ 702, 706

102. Petitioner re-alleges the allegations contained in all preceding paragraphs of this
Petition-Complaint as if fully set forth herein.

103. The government may not deprive a person of life, liberty, or property without due
process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government
custody, detention, or other forms of physical restraint—lies at the heart of the liberty that
the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

104. Petitioner has a fundamental interest in liberty and being free from official restraint.

105. The government’s detention of Petitioner without a bond redetermination hearing to
determine whether he is a flight risk or danger to others violates his right to due process.

106. Here, Respondents have made no finding that Petitioner is a danger to the community
as an individual with no criminal history. In fact, he has had no opportunity whatsoever to

1
2 present the equities of his case because the judge declined to hear his custody
3 redetermination request.

4 107. Respondents have made no finding that Petitioner is a flight risk.

5 **COUNT III**
6 **Violation of the INA:**
7 **Request for Relief Pursuant to *Maldonado Bautista***

8 108. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation
9 in the preceding paragraphs as if fully set forth herein.

10 109. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for
11 release on bond under 8 U.S.C. § 1226(a).

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

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

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

20 113. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject
21 to mandatory detention under § 1225(b)(2), Respondents violate Petitioner’s statutory
22 rights under the INA and the Court’s judgment in *Maldonado Bautista*.

23 **COUNT IV**
24 **Violation of the Fourth Amendment**

25 114. Petitioner re-alleges and incorporates by reference all the foregoing paragraphs above.

1
2 115. Petitioner's arrest by Respondents without the issuance of a warrant is unlawful and
3 constitutes a violation of the Fourth Amendment. Petitioner's detention is thus unlawful,
4 and his immediate release is appropriate.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Petitioner respectfully requests this Court to grant the following:

- 7 a. Assume jurisdiction over this matter;
- 8 b. Order that Petitioner shall not be transferred outside the Middle District of Georgia;
- 9 c. Issue an Order to Show Cause Ordering Respondents to show cause why this Petition
10 should not be granted within three days.
- 11 d. Declare that the Petitioner's detention violates the Due Process Clause of the Fifth
12 Amendment.
- 13 e. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner
14 immediately or, in the alternative, provide Petitioner with a bond hearing pursuant to
15 8 U.S.C. § 1226(a) within three (3) days;
- 16 f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
17 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law;
18 and
- 19 g. Grant any further relief this Court deems just and proper.

20 DATED this 30th of March, 2026

21 Respectfully submitted,

22 /s/ Karla Verma
23 Karla Verma, Esq.
24 karla@mikalawfirm.com
25 Counsel for Petitioner

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VERIFICATION

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that the facts set forth in the foregoing Petition for Habeas Corpus are true and correct.

Executed this 30th of March, 2026.

Respectfully submitted,

/s/ Karla Verma
Karla Verma, Esq.
karla@mikalawfirm.com
Counsel for Petitioner