UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

B.A.M.A. Petitioner, vs. CODY YOUGHN, *in his official capacity as Sheriff of Irwin 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*) PAMELA BONDI, *U.S. Attorney General* Respondents.	CASE NO.: 7:26-cv-00095

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

I. INTRODUCTION

1. Petitioner B.A.M.A. ("Petitioner"), A# [redacted] is a 31-year-old noncitizen who was inspected and paroled at Eagle Pass, Texas on August 19, 2022 under 8 U.S.C. § 1182(d)(5)(A), placed into § 240 removal proceedings, and allowed to live and work in the interior with his U.S.-citizen wife and child in Charlotte, North Carolina. He is currently detained by U.S. Immigration and Customs Enforcement ("ICE") at the Irwin County Detention Center in Ocilla, Georgia, where Respondents claim to hold him as an "arriving alien" subject to mandatory detention under 8 U.S.C. § 1225(b) rather than as an interior arrest under 8 U.S.C. § 1226(a). *See* Exhibit 1 (ICE Locator).

Petitioner's detention is unlawful under every conceivable statutory theory, trapping Respondents in a legal "Catch-22" of their own making. The detention is void *ab initio* because it began with an illegal warrantless arrest and is now perpetuated under a statute that has no application to him. The Immigration and Nationality Act (INA) provides only two potential authorities for a civil immigration arrest in the interior of the country, and Respondents satisfied neither. Petitioner is requesting leave to proceed under his initials as a pseudonym in order to protect his identity as part of asylum protections as he is an asylum applicant who fears harm and retaliation.

2. This Petition challenges both the legality of Petitioner's initial civil arrest and the statutory authority for his continued detention. First, ICE arrested him in a Walmart parking lot in Charlotte without a warrant and without satisfying the narrow "likely to escape before a warrant can be obtained" exigency required for a warrantless civil immigration arrest under 8 U.S.C. § 1357(a)(2), even though § 1226(a) requires that interior arrests be made "on a warrant issued by the Attorney General." Second, after previously inspecting and paroling Petitioner at the border and routing him into § 240 removal proceedings, DHS now misclassifies him as an "arriving alien" and invokes 8 U.S.C. § 1225(b) to deny him any bond hearing, collapsing Congress's distinct front-end (§ 1225) and back-end (§ 1226) detention schemes and depriving him of due process.

3. Petitioner's initial and continued detention by ICE is unlawful and unconstitutional. The government's recent policy shift—reclassifying noncitizens who entered without inspection as "arriving aliens" subject to mandatory detention under 8 U.S.C. § 1225(b)—contradicts the statute, decades of established statutory interpretation,

agency regulations and practice, and binding precedent. Petitioner, apprehended in the interior years after entry, is entitled to discretionary bond hearings under 8 U.S.C. § 1226(a), not mandatory detention without judicial review. *See* Exhibit 2, a current list of over 300 district courts from around the country agreeing with Petitioner, all rejecting Respondent's position. See also the landmark case from this Court rejecting the government's position and agreeing with Petitioner's that he 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). Since habeas relief is individualized and cannot be brought as a class action, each case has to be litigated separately.

4. Although Petitioner was apprehended within the interior of the United States long after his lawful entry, the government now asserts that he is ineligible for bond by treating him as an arriving alien, contrary to the prior record.

5. This stems from a controversial policy shift by ICE in July 2025, which aligns with a recent Board of Immigration Appeals (BIA) decision. This decision disrupts decades of established legal precedent by introducing a novel interpretation of the Immigration and Nationality Act (INA). This interpretation, which contradicts both the statute's clear language and constitutional principles, reclassifies all noncitizens who entered without inspection, including the Petitioner, as "arriving aliens" or "applicants for admission." Consequently, they are subject to mandatory detention under 8 U.S.C. § 1225(b), rendering them ineligible for bond hearings by immigration judges. However, this policy has now been VACATED under the Administrative Procedure Act (APA) through a final, binding court order yet Respondents still continue to follow that policy, despite a final, binding judgment. *Maldonado Bautista v. Santacruz*,

No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). See below full discussion regarding this case and its implications.

6. While § 1225 mandates detention without bond for noncitizens apprehended at the border as "seeking admission," it does not apply to those like the Petitioner, who were detained within the United States long after arrival here. Therefore, the Petitioner seeks a declaratory judgment from this Court affirming that his detention should be under 8 U.S.C. § 1226(a). Additionally, the Petitioner requests that Respondents be prohibited from re-detaining him or putting any restraints on his liberty unless they can meet the same evidentiary standard.

7. Respondents' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution by depriving Petitioner of liberty without individualized assessment or a meaningful opportunity to be heard before a neutral decisionmaker. The agencies' interpretation also contravenes the INA and its implementing regulations, the Administrative Procedure Act (APA), and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions. Numerous federal courts have rejected the government's novel reading of the detention statutes, reaffirming that interior apprehensions are governed by § 1226(a) and entitled to bond review.

8. Petitioner seeks immediate habeas, declaratory, and injunctive relief, ordering Respondents to be directed to immediately release Petitioner from custody. A detailed statement of facts and procedural history follows, supporting Petitioner's claims for relief.

II. JURISDICTION

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

9. This Court has jurisdiction under several legal provisions, including 28 U.S.C. § 2241, which grants federal courts the authority to issue writs of habeas corpus, and 28 U.S.C. § 1331, which provides for federal question jurisdiction. Jurisdiction over habeas claims is conferred by 28 U.S.C. § 2241, while non-habeas claims for declaratory and injunctive relief arise under 28 U.S.C. § 1331, the APA, and the Declaratory Judgment Act.

10. Additionally, jurisdiction is supported by Article I, § 9, cl. 2 of the Constitution, known as the Suspension Clause, and Article III, Section 2, which addresses the Court's authority to hear constitutional issues raised by the Petitioner. The Petitioner seeks immediate judicial intervention to address ongoing violations of constitutional rights by the Respondents. This action is grounded in the United States Constitution, the Immigration & Nationality Act of 1952, as amended (INA), 8 U.S.C. § 1101 *et seq*., and the APA, 5 U.S.C. § 551 *et seq*. Furthermore, the Court may also exercise jurisdiction under 28 U.S.C. § 1331, as the action arises under federal law, and may grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

11. The Court has authority to issue a declaratory judgment and to grant temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure (FRCP), as well as 28 U.S.C. §§ 2201-2202. Additionally, the Court can utilize the All Writs Act and its inherent equitable powers to provide such relief. Furthermore, the Court has the authority to issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

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. Federal courts routinely exercise § 2241 jurisdiction over habeas petitions that, like this one, challenge only the statutory and constitutional basis for civil immigration detention and do not seek review of any final order of removal.

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

17. Petitioner's claims challenge only 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*, 138 S. Ct. 830, 840–41 (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. As the Supreme Court recently confirmed, § 1252(f)(1) prohibits only class-wide injunctions that "enjoin or restrain the operation" of the INA's detention provisions, and expressly permits individualized, as-applied relief for a single noncitizen. *Garland v. Aleman Gonzalez*, 142 S. Ct. 2057, 2063–65 (2022).

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*, 138 S. Ct. 830, 840–41 (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 Irwin County Detention Center in Ocilla, Georgia under the custody of the Department of Homeland Security (DHS). Cody Youghn, as the Warden of Irwin 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, B.A.M.A., is a 31-year-old noncitizen who has resided in the United States for several years. He has lawfully resided in the United States since his initial admission on parole, on August 19, 2022. He is married to a U.S. citizen wife. Petitioner is currently detained at the Irwin County Detention Center.

24. Respondent Cody Youghn is the responsible Warden of Irwin County Detention Center. As such, Respondent Youghn 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 Youghn 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 Irwin 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]

[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

V. STATEMENT OF FACTS AND PROCEDURAL HISTORY

30. Petitioner, B.A.M.A., is a 31-year-old noncitizen who has resided continuously in the United States since his lawful inspection and parole on August 19, 2022, pursuant to 8 U.S.C. § 1182(d)(5)(A). Since his entry through Eagle Pass, **he has been in the country in a period of stay authorized by the attorney general and was legally paroled into the U.S. He filed several immigration applications to remain legally in the country, including a pending Form I-589. He is also the beneficiary of a Form I-130** filed by his U.S. citizen spouse, with adjustment of status available upon approval. Petitioner is the husband of a U.S. citizen and the father of a 21-month-old U.S. citizen child. Because Petitioner was inspected and paroled under 8 U.S.C. § 1182(d)(5)(A), he remains an "applicant for admission" under 8 U.S.C. § 1225(a)(1); however, once DHS placed him into § 240 removal proceedings and allowed him to reside and work in the interior, any later interior arrest pending a removal decision had to proceed under the back-end detention authority in 8 U.S.C. § 1226(a), not the front-end border-inspection provisions of 8 U.S.C. § 1225(b).

31. In this context, Petitioner's detention has imposed compounding hardship on his U.S. citizen spouse, who is currently undergoing medical treatment for a precancerous condition affecting her uterus. Petitioner has been her primary source of emotional

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"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.

and logistical support throughout this treatment process, including attending medical appointments and assisting with her care and recovery. His continued detention leaves her to navigate this condition alone while also caring for their 21-month-old child. Petitioner's wife has a scheduled follow-up appointment on May 14, 2026, which is critical to monitoring her condition. The absence of Petitioner during this period has significantly increased her emotional distress and physical burden, undermining her ability to manage both her health and parental responsibilities, and further exacerbating the severe hardship caused by his detention.

32. Petitioner has no criminal history, no prior arrests, and no history of immigration violations, and has complied with all requirements imposed by immigration authorities since his entry.

33. Petitioner's most recent entry to the U.S. in August 2022 was pursuant to an approved Humanitarian Parole while his Form I-589 Application for Asylum and for Withholding of Removal remains pending. In addition, he is the beneficiary of a pending Form I-130 filed by his U.S.-citizen spouse and will be eligible to seek adjustment of status by filing Form I-485 upon approval of that petition. In addition, he is the beneficiary of a pending Form I-130 filed by his U.S.-citizen spouse and will be eligible to seek adjustment of status by filing Form I-485 upon approval of that petition. The I-94 is granted under § 1182(d)(5)(A) and constitutes "parole into the United States." Longstanding government policy, including the current USCIS Policy Manual Vol. 7, Part M, Ch. 3 notes that certain pending applications, including a pending application for adjustment of status is treated as a "period of stay authorized by the Attorney General" under INA § 212(a)(9)(B) or 8 U.S.C. § 1182(a)(9)(B).

34. On January 28, 2026, Petitioner was unlawfully arrested by ICE agents while parked in his vehicle in a Walmart parking area in Charlotte, North Carolina, where he was working as a delivery driver. He has a valid employment authorization document and a valid driver's license. Petitioner was seated in the driver's seat of his vehicle, lawfully present, and in possession of a valid driver's license. ICE agents approached his vehicle, knocked on the window, requested identification, and, after reviewing his information, acknowledged that he had no criminal history, no prior removal order, and no outstanding warrant. Nevertheless, agents stated that because his immigration court proceedings were scheduled for 2028, they intended to detain him to accelerate his case, and he was taken into custody without a warrant. Although Petitioner himself was not the subject of any enforcement action, there was no warrant for his arrest or exigent circumstances or proof that he was "likely to escape", he was nevertheless taken into custody. At first, Petitioner was initially held at an ICE facility in Charlotte, North Carolina, and subsequently transferred to the Irwin County Detention Center, where he remains detained. Petitioner was not provided with written notice explaining the grounds for his detention, nor any statement of reasons, nor any opportunity to contest his detention before a neutral decisionmaker. Despite repeated inquiries, immigration officers failed to provide Petitioner with any information regarding the justification for his detention.

35. ICE proceeded to initiate removal proceedings against Petitioner by filing a Notice to Appear (NTA) with the immigration court. To the extent the NTA revoked Petitioner's parole, ICE acted unlawfully. Petitioner's first Master Calendar Hearing is scheduled for April 23, 2026 at 8:30 AM before Immigration Judge Hewitt, Andrew. *See* Exhibit

3 (EOIR Automated Case Information System).

36. By issuing the NTA and re-arresting Petitioner on January 28, 2026, Respondents in substance terminated Petitioner's parole and his period of stay authorized by the Attorney General, and reclassified him as an "arriving alien" subject to expedited or mandatory detention, without providing any advance written notice of parole termination, any statement of reasons, or any pre-deprivation opportunity to contest that termination before a neutral decisionmaker.

37. Petitioner was arrested in the interior of the United States years after entry and is therefore improperly detained under 8 U.S.C. § 1226(a), ICE having not issued a warrant for his arrest. Had they issued a warrant, his arrest under 8 U.S.C. § 1226(a), which provides for discretionary bond or release on recognizance, may have been proper (Petitioner maintains his arrest is improper). Nevertheless, Respondents have classified him as an "arriving alien" and detained him under 8 U.S.C. § 1225(b)(2)—rendering him 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 is futile, as demonstrated by the Immigration Judge's prior denial of bond based on the exact unlawful policy challenged herein. 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. He has resided continuously in Charlotte, North Carolina, in the same community for years and has substantial ties in the United States. Less-restrictive alternatives remain available and adequate, such as release on recognizance or posting a low bond.

40. Prolonged detention under these circumstances imposes unnecessary hardship on Petitioner, 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 Irwin Detention Center, 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. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). Accordingly, administrative proceedings are futile, as demonstrated by the Immigration Judge's prior denial of bond based on the exact unlawful policy challenged herein. 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. 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 his administrative remedies to the extent required by law, and Petitioner's only remedy is by way of this judicial action.

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

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

46. The warrantless seizure of Petitioner was statutorily invalid because Respondents could not possibly meet the exigency requirement of 8 U.S.C. § 1357(a)(2). The "likely to escape" determination is a mandatory prerequisite, not mere surplusage. *See United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 878 (S.D. Ohio 2016). Here, it was a factual impossibility for Petitioner to pose a risk of escape, as he was **peacefully seated in his vehicle in a Walmart parking lot, fully compliant with officers' instructions, when ICE agents chose to arrest him rather than seek a warrant**. Courts interpreting 8 U.S.C. § 1357(a)(2) have repeatedly held that the "likely to escape" clause imposes a mandatory, individualized flight-risk prerequisite that cannot be satisfied by a categorical assumption that any removable noncitizen is per se likely to abscond. See, e.g., *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d

863, 878–79 (S.D. Ohio 2016); *Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1007–08 (N.D. Ill. 2016); *Orellana v. Nobles Cnty.*, 230 F. Supp. 3d 934, 944–46 (D. Minn. 2017); *Creedle v. Miami-Dade Cnty.*, 349 F. Supp. 3d 1276, 1298–1300 (S.D. Fla. 2018). As courts have recognized, the government cannot justify a warrantless arrest under this exception without an "individualized assessment" of flight risk, and the argument that any person in local custody is inherently likely to escape upon release has been rejected. Since the exception for a warrantless arrest is inapplicable, Respondents' only remaining authority was 8 U.S.C. § 1226(a), which required a warrant that Respondents did not possess. Having failed under both statutory provisions, the arrest was void *ab initio*.

47. An arrest conducted without statutory authority is an unreasonable seizure under the Fourth Amendment. The constitutional violation here may be compounded if the initial stop was predicated on impermissible racial profiling rather than specific, articulable facts suggesting unlawful activity. The Supreme Court has repeatedly held that "Mexican appearance" alone is insufficient to justify an immigration stop. *United States v. Brignoni-Ponce*, 422 U.S. 873, 886–87 (1975). The Court recently reaffirmed this principle in *Noem v. Vasquez Perdomo*, --- S.Ct. ----, 2025 WL 2585637, at *3 (2025), and clarified in *Trump v. Illinois*, No. 25A443, 607 U.S. ____ (2025) (footnote 4, pages 6-7), that the prohibition on racial profiling remains fully intact. Therefore, to the extent the initial law enforcement contact that led to Petitioner's transfer to ICE custody was based on nothing more than his appearance, it would represent a distinct violation of the Fourth Amendment. The court affirmed the long-standing prohibition on racial profiling under the Fourth Amendment remains

fully intact, and an officer's *subjective* belief that an individual "looks Hispanic" is, by itself, **insufficient to establish the reasonable suspicion required for a lawful stop or arrest**.

48. Because the arrest was fundamentally unlawful, the only constitutionally sufficient remedy is immediate and unconditional release. A subsequent administrative bond hearing is wholly inadequate, as it cannot cure the initial violation of Petitioner's liberty. The government's continued custody of Petitioner is the direct "fruit of the poisonous tree"—the poisonous tree being the illegal arrest itself. *See Wong Sun v. United States*, 371 U.S. 471, 484–88 (1963); *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920). Allowing subsequent proceedings, like a bond hearing, to continue would improperly legitimize a detention that never had a lawful basis. Ordering such a hearing would treat the detention as if it were lawfully initiated under 8 U.S.C. § 1226(a), rewarding Respondents for bypassing the statute's explicit warrant requirement. As other courts have concluded, where detention is based on an unlawful arrest and derivative evidence is suppressed, the appropriate remedy is immediate release. *See Rosado v. Figueroa*, No. CV-25-02157-PHX DLR, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025). Law and justice require restoring the liberty that was unlawfully taken. Even if this Court were to conclude that the exclusionary rule does not apply in full civil habeas fashion, it should at minimum decline to order a bond hearing premised on an arrest that violated both 8 U.S.C. § 1226(a)'s warrant requirement and § 1357(a)(2)'s exigency requirement, rather than retroactively normalizing a seizure Congress made unlawful.

49. Petitioner's detention is thus unlawful under any statutory theory Respondents could

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

VIII. PETITIONER'S § 1182(d)(5)(A) PAROLE WAS UNLAWFULLY REVOKED; HE IS NOT "SEEKING ADMISSION"

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

interest. Therefore, Petitioner retains a protected liberty interest in remaining free from immigration detention that is cognizable under the Fifth Amendment's Due Process Clause.

51. 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).

52. 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.

53. 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)).

54. 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.

55. The Board has recently reiterated this distinction between humanitarian parole under 8 U.S.C. § 1182(d)(5)(A) and "conditional parole" (release from custody) under 8 U.S.C. § 1226(a)(2)(B). In *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 747–49 (B.I.A. 2023), the Board held that release on conditional parole under § 1226(a)(2)(B) is legally distinct from humanitarian parole under § 1182(d)(5)(A), and that applicants for admission who are released under § 1226(a) have not been

"inspected and admitted or paroled" for adjustment-of-status purposes. That clarification confirms what the INA and regulations already indicate: § 1182(d)(5)(A) parole is a status device that authorizes physical presence "temporarily" for urgent humanitarian reasons or significant public benefit, while § 1226(a) governs the later "arrest and detain[ing]" of persons already in the interior pending a removal decision, with its own bond and conditional-parole regime. See *Texas v. Biden*, 20 F.4th 928, 943–44, 981–82 (5th Cir. 2021) (reversed on other grounds). Federal appellate courts have likewise emphasized that "parole into the United States" under 8 U.S.C. § 1182(d)(5)(A) is a narrow, case-by-case humanitarian or public-benefit device distinct from the "conditional parole" authority in 8 U.S.C. § 1226(a)(2)(B). In *Cruz-Miguel v. Holder*, 650 F.3d 189, 199–200 (2d Cir. 2011), the Second Circuit explained that § 1182(d)(5)(A) "parole into the United States" permits DHS to allow "any alien applying for admission" to enter or remain temporarily "for urgent humanitarian reasons or significant public benefit," and that IIRIRA deliberately narrowed that authority to prevent its use to circumvent congressionally-established admission categories.

56. The Fifth Circuit similarly held in *Texas v. Biden* that § 1182(d)(5)(A) authorizes only "case-by-case" parole determinations and cannot be used to parole broad classes of noncitizens as a substitute for the detention/return scheme codified in § 1225(b). Recent litigation over large-scale parole programs confirms that understanding: courts have recognized both that § 1182(d)(5)(A) parole is a lawful, meaningful "type of entry" that carries collateral consequences (such as work authorization) and that Congress, in IIRIRA, constrained its use to individualized grants "for urgent

humanitarian reasons or significant public benefit." See *Texas v. United States Dep't of Homeland Sec.*, No. 6:24-cv-00306 (E.D. Tex. Nov. 7, 2024) (slip op. at 21–25, 48–50) (describing parole's statutory role and IIRIRA's case-by-case limitation). In *S.A. v. Trump*, 363 F. Supp. 3d 1048, 1062–63 (N.D. Cal. 2018), the court quoted the House Report explaining that the parole authority "was intended to be used on a case-by-case basis to meet specific needs, and not as a supplement to Congressionally-established immigration policy," and that using parole "to admit entire categories of aliens" contravenes § 1182(d)(5)'s intent. Respondents' categorical revocation of Petitioner's § 1182(d)(5)(A) parole and mass re-detention under § 1225(b) is the mirror-image of the overbroad use of parole that Congress sought to prohibit—now used not to confer liberty en masse but to withdraw it en masse, without the individualized, case-specific findings the statute and regulations require.

57. 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. That conclusion is reinforced by decisions recognizing that § 1182(d)(5)(A) parole, while "not regarded as an admission," is nonetheless a distinct legal mechanism that (1) interrupts unlawful-presence accrual and (2) provides a lawful "type of entry" that can unlock collateral benefits and adjustment pathways when used as Congress prescribed. See *Cruz-Miguel,* 650 F.3d at 199–200; *Texas v. United States Dep't of Homeland Sec.*, No. 6:24-cv-00306 (E.D. Tex. Nov. 7, 2024) (slip op. at 22–26, 42–48). Reading the parole statute to authorize perpetual border-style § 1225(b) detention of former parolees living in the interior would nullify those carefully drawn limits and collapse the front-end § 1225 scheme into the back-end § 1226(a) custody track.

58. Petitioner entered legally with parole that the government approved and timely applied for asylum. He never sought admission to the United States since he applied for parole and parole is not an admission by the definitions in the statute. He is not "seeking admission" now either because he applied for asylum and asylum is not an admission. By detaining him without cause, ICE unlawfully revoked his parole. He should not be detained.

IX. LEGAL AND STATUTORY FRAMEWORK

A. Noncitizens Are Entitled to Due Process

59. 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. The § 1225 / § 1226 Divide and the Two-Track Detention Scheme

60. Congress created a front-end detention scheme in 8 U.S.C. § 1225(b) for "applicants for admission" encountered and processed at or just after the border, and a separate back-end scheme in 8 U.S.C. § 1226(a) governing the "arrest[ ] and detain[ing]" of noncitizens already inside the United States "pending a decision on whether the alien is to be removed." See *Texas v. Biden*, 20 F.4th 928, 943–44, 981–82 (5th Cir. 2021) (describing § 1225(b)(2)(A) as the general, mandatory-detention rule for aliens "seeking admission" and § 1226(a) as the "parallel detention-and-parole scheme that applies to aliens who have already entered the United States. As alleged in this Petition, Petitioner fits only the interior, § 1226(a) track: he was inspected and paroled at a port of entry, placed into § 240 removal proceedings, allowed to reside and work in the interior for an extended period, and only later arrested unlawfully by ICE in North Carolina. Treating him, years after inspection and parole, as if he were still "arriving" for purposes of § 1225(b)(2) collapses the very front-end / back-end distinction Congress and the courts have drawn. Thus, although a parolee technically remains an "applicant for admission" under 8 U.S.C. § 1225(a)(1), once DHS has

completed the front-end inspection process, served a Notice to Appear initiating § 240 proceedings, and allowed the person to live in the interior, any later civil arrest and custody pending a removal decision falls squarely within 8 U.S.C. § 1226(a)'s general detention scheme.

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

61. 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.

62. Where DHS (1) inspects a noncitizen at a port of entry, (2) serves a Notice to Appear initiating § 240 removal proceedings, and (3) paroles the noncitizen into the United States to live in the interior, any later interior arrest must proceed under 8 U.S.C. § 1226(a), not § 1225(b), regardless of the person's technical "applicant for admission" classification under § 1225(a)(1). This rule follows directly from the statutory structure just described, in which § 1225(b) governs front-end inspection and detention of persons "arriving in the United States," while § 1226(a) "generally

governs the process of arresting and detaining" noncitizens already "inside the United States." See *Texas v. Biden*, 20 F.4th at 943–44, 981–82. It provides a clear, administrable line for CBP and ICE: once DHS has chosen to route a person from a port-of-entry inspection into § 240 removal proceedings and has paroled that person to reside in the interior, any subsequent enforcement action based on a new interior arrest belongs in the § 1226(a) interior-custody track, with its bond and conditional-parole mechanisms, not in the § 1225(b) border-inspection track.

63. Petitioner's case squarely fits that rule. DHS inspected him at the Eagle Pass, Texas port of entry pursuant to 8 U.S.C. § 1182(d)(5)(A), issued him an NTA placing him into § 240 removal proceedings, and affirmatively paroled him into the United States to live with his U.S.-citizen family in Charlotte, North Carolina, where he lawfully worked and remained in compliance until ICE arrested him years later in the interior. Under the INA's two-track detention scheme, that sequence necessarily places his present custody under § 1226(a), not § 1225(b).

D. <u>Recent Federal Court Cases Rejecting DHS' and EOIR's New Interpretation</u>

64. 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.[2] As one court memorably explained, a person who sneaks into a

[2] *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

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.

E. Re-detention Following Revocation of Immigration Parole Requires a Pre-Deprivation Hearing

65. In *Aviles-Mena v. Kaiser*, 2025 WL 2578215 (N.D. Cal. Sept. 5, 2025), the court held that a noncitizen released on parole under 8 U.S.C. § 1182(d)(5)(A), who has lived and worked in the community for years, possesses a protected liberty interest in remaining free from immigration detention and is entitled to procedural due process before DHS may revoke that parole and re-detain him. Applying *Mathews v. Eldridge*, the court found that a pre-deprivation custody redetermination hearing before a neutral

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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 judgement** 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 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**.

decisionmaker was constitutionally required, and it enjoined DHS from re-detaining the petitioner "without notice and a pre-deprivation hearing before a neutral decisionmaker."

66. Petitioner is similarly situated: DHS granted his parole, allowed him to live and work in the community under color of lawful presence, and then terminated that status and re-detained him without any *Mathews*-compliant process. For the same reasons articulated in *Aviles-Mena*, the Fifth Amendment requires that Respondents provide notice and a pre-deprivation hearing before terminating Petitioner's parole and returning him to custody.

X. LEGAL FRAMEWORK FOR THE RELIEF SOUGHT

A. Habeas Jurisdiction

67. This Court has fundamental authority and a constitutional duty under 28 U.S.C. § 2241 to remedy Petitioner's unlawful detention. The Supreme Court has consistently affirmed that the Great Writ is the primary instrument for challenging the legality of civil immigration detention. See *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *I.N.S. v. St. Cyr*, 533 U.S. 289, 314 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 285–86 (2018). As "perhaps the most important writ known to the constitutional law," habeas corpus is an equitable tool that empowers this Court not just to review custody, but to "dispose of the matter as law and justice require" under 28 U.S.C. § 2243. *Fay v. Noia*, 372 U.S. 391, 400 (1963); *Schlup v. Delo*, 513 U.S. 298, 319 (1995). That power explicitly includes ordering a petitioner's immediate release. *Boumediene v. Bush*, 553 U.S. 723, 787 (2008). This Court's jurisdiction is secure, as the concept of "custody" is broad, attaching at the

time of filing and persisting despite subsequent release due to the significant ongoing restraints on Petitioner's liberty. See *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).

B. The Administrative Procedure Act (APA)

68. 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

69. 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))

70. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

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

72. 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. Courts analyzing 8 U.S.C. § 1357(a)(2) have consistently held that this "likely to escape" language is a mandatory, individualized prerequisite for any warrantless civil immigration arrest and that ICE exceeds its statutory authority when it dispenses with that particularized flight-risk finding. See, e.g., *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 878–79 (S.D. Ohio 2016); *Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1007–08 (N.D. Ill.

2016); *Orellana v. Nobles Cnty.*, 230 F. Supp. 3d 934, 944–46 (D. Minn. 2017); *Creedle v. Miami-Dade Cnty.*, 349 F. Supp. 3d 1276, 1298–1300 (S.D. Fla. 2018).

73. 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 Revocation of Petitioner's Parole in Violation of Due Process

74. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

75. Petitioner's July 2025 entry pursuant to his approved humanitarian parole was a grant of parole into the United States under 8 U.S.C. § 1182(d)(5)(A), which authorizes DHS, 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 adjustment application remained pending, subject to routine ICE check-ins and other parole conditions. Under these circumstances—where DHS has affirmatively conferred conditional liberty and permitted him to structure his life around it—Petitioner retains a protected liberty interest in remaining free from immigration detention that is cognizable under the Fifth Amendment's Due Process Clause.

76. 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. Under 8 C.F.R. § 212.5(e)(2)(i), in non-automatic cases "parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole," after which any further inspection or hearing proceeds under section 235 or 240. Courts applying § 212.5(e)(2)(i) have treated this written-notice and "restore[d] to the status that he or she had at the time of parole" language as a mandatory prerequisite for discretionary termination of § 1182(d)(5)(A) parole in non-automatic cases. In *Martinez v. U.S. Attorney General*, 602 F. App'x 569, 574–75 (11th Cir. 2014), the Eleventh Circuit explained that advance parole is a form of § 1182(d)(5)(A) parole "not regarded as an admission," and held that "[w]hen a charging document is served on the alien, the charging document constitutes written notice of termination of parole," after which "the paroled alien is restored to the status that he or she had at the time of parole." Likewise, in *Oudom v. Tritten*, Civil No. 17-1991, 2017 WL 5598217, at *4–5 (D. Minn. Nov. 15, 2017), the court recognized that under DHS's own

regulations, credible-fear parolees "may have been paroled pursuant to § 1182(d)(5)(A)," and relied on 8 C.F.R. § 212.5(e)(2) to conclude that a Form I-862 serves as written notice of termination of parole when properly used. District courts have similarly described § 212.5(e)(2)(i) as imposing a binding notice requirement and restoration-of-status rule when DHS elects to terminate § 1182(d)(5)(A) parole rather than allow it to expire automatically. See *United States v. Ortiz-Diaz*, 849 F. Supp. 734, 738–40 (E.D. Cal. 1994). Under the *Accardi* doctrine, DHS's failure to provide Petitioner with any written termination notice or contemporaneous explanation—in circumstances where § 212.5(e)(2)(i) squarely applies—renders the purported termination ultra vires. Here, DHS terminated Petitioner's parole," and identifies no written notice of termination and no contemporaneous statement of reasons provided to Petitioner. That omission, against the backdrop of § 212.5(e)(2)(i)'s mandatory "upon written notice" language, is direct evidence that DHS failed to comply with its own regulation in revoking parole and therefore acted ultra vires under the *Accardi* doctrine.

77. 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. Consistent with this framework, courts have understood

decisions like *Ibragimov v. Gonzales*, 476 F.3d 125 (2d Cir. 2007), not as eliminating § 212.5(e)(2)(i)'s procedural protections, but as confirming that when parole is lawfully terminated in compliance with that regulation, the noncitizen's legal posture reverts to that of an "applicant for admission"—with detention authority then determined by the correct statutory track (§ 1225 or § 1226), not by administrative fiat. Over six decades ago, the Second Circuit reached the same conclusion in the specific context of immigration parole. In *United States ex rel. Paktorovics v. Murff*, 260 F.2d 610, 613–14 (2d Cir. 1958), the court construed the predecessor to § 1182(d)(5) "into harmony with the Constitution" by holding that a hearing is required "prior to the revocation of parole" when the statute is applied to persons physically present in the United States, reasoning that due process demands "a hearing which will give assurance that the discretion of the Attorney General shall be exercised against a background of facts fairly contested in the open." That historic understanding of parole revocation underscores why DHS could not lawfully terminate Petitioner's § 1182(d)(5)(A) parole and return him to custody without any advance notice, reasons, or opportunity to contest the decision before a neutral adjudicator.

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

79. 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.

80. 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), 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).

81. 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.

82. 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.

83. 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.

84. Balancing the *Mathews* factors, Respondents' revocation of Petitioner's parole and his 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"). Other courts have likewise held that DHS's internal parole

process under § 1182(d)(5)(A) and 8 C.F.R. § 212.5 does not, by itself, satisfy due process once civil detention becomes prolonged. In *Flores v. Sessions*, 394 F. Supp. 3d 1041, 1078–81 (C.D. Cal. 2017), the court recognized that although § 1225(b) "generally mandates the detention of aliens seeking admission," the regulations create a discretionary parole regime for certain detainees, including juveniles, and require case-by-case, individualized parole decisions under § 212.5(b) rather than blanket detention. And in *Padilla v. Immigration & Customs Enf't*, 953 F.3d 1134, 1151–54 (9th Cir. 2020), the Ninth Circuit held that the § 1182(d)(5)(A)/§ 212.5 parole process is not an adequate substitute for a bond hearing: by its terms, parole "does not test the necessity of detention" and contains "no mechanisms for ensuring that a noncitizen will be released from detention if his or her detention does not bear a reasonable relation" to the government's interests, so due process requires individualized bond hearings before a neutral decisionmaker once detention is prolonged. Those decisions confirm that unreviewable, discretionary parole cannot constitutionally replace a *Mathews*-compliant custody hearing for parolees like Petitioner who have already been living in the interior.

85. Petitioner is therefore entitled to declaratory and injunctive relief prohibiting Respondents from terminating his parole or re-detaining him 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 THREE
Statutory Violation of the Immigration and Nationality Act, Agency Regulations And the Accardi Doctrine

86. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

87. Petitioner's detention is the direct result of a cascade of unlawful agency actions that violate the plain text of the Immigration and Nationality Act (INA), contravene decades of binding agency regulations, and therefore constitute a flagrant violation of the *Accardi* doctrine. Respondents are unlawfully detaining Petitioner by misclassifying him as an "arriving alien" subject to mandatory detention under 8 U.S.C. § 1225(b) when the statutes and the agency's own rules unambiguously require his case to be processed under 8 U.S.C. § 1226(a), which provides for discretionary release on bond. One core violation is DHS's failure to follow 8 C.F.R. § 212.5(e)(2)(i)'s requirement that discretionary parole "shall be terminated upon written notice to the alien." No written notice or individualized explanation ever served on Petitioner, in plain disregard of DHS' own binding regulations.

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

89. 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.

90. 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).

91. 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. Congress's 1996 amendments to § 1182(d)(5)(A) confirm that the parole authority is hemmed in by these same case-by-case constraints. IIRIRA struck the prior "for emergent reasons or for reasons deemed strictly in the public interest" language and replaced it with the current requirement that parole be granted "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit," specifically to stop the Executive from using parole "to admit entire categories of aliens who do not qualify for admission under any other category in immigration law." See *Cruz-Miguel*, 650 F.3d at 199 & n.15 (quoting H.R. Rep. No. 104-469, pt. 1, at 140–41 (1996)); S.*A. v. Trump*, 363 F. Supp. 3d 1048, 1062–63 (N.D. Cal. 2018). Respondents' current policy of categorically revoking § 1182(d)(5)(A) parole for CBP One parolees and re-detaining them under § 1225(b) without individualized "urgent humanitarian" or "significant public benefit" findings is irreconcilable with that statutory command and therefore arbitrary, capricious, and contrary to law under the APA.

92. 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 FOUR
Violation of the Fifth Amendment of the U.S. Constitution
Procedural and Substantive Due Process

93. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

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

Liberty Interest Created by Parole

95. Petitioner's claim arises at the intersection of the Fifth Amendment and the government's discretionary parole authority under 8 U.S.C. § 1182(d)(5)(A), which permits DHS to "parole into the United States temporarily under such conditions as [it] may prescribe" noncitizens applying for admission. Implementing regulations confirm that such parole is a grant of conditional freedom: DHS may parole individuals only where they present neither a security risk nor a risk of absconding, and provides that parole terminates either automatically upon expiration or, "when in the opinion" of the authorized official humanitarian reasons or public benefit no longer

warrant continued presence, by written notice restoring the person "to the status that he or she had at the time of parole." 8 C.F.R. § 212.5(b), (e)(2)(i). The Board's decision in *Matter of Cabrera-Fernandez* underscores that this humanitarian parole authority under § 1182(d)(5)(A) is distinct from mere release on conditional parole under § 1226(a)(2)(B), and that only the former confers the "paroled into the United States" status Petitioner received here. 28 I. & N. Dec. 747, 747–49 (B.I.A. 2023).

96. Although § 1182(d)(5)(A) does not itself create a substantive entitlement to be granted or to retain parole, because the statute commits the parole decision to the Attorney General's discretion, *Kwai Fun Wong v. United States*, 373 F.3d 952, 971–72 (9th Cir. 2004), courts have repeatedly held that once the government has actually exercised that discretion to release a noncitizen into the community, the resulting conditional freedom gives rise to a protected liberty interest in remaining free from immigration detention. In *Aviles-Mena v. Kaiser*, the court held that a noncitizen paroled under § 1182(d)(5)(A) who had been "lawfully living and working in the United States" for years possessed a "substantial private interest in remaining out of custody once he has been granted parole and has spent a significant time lawfully and freely residing in the United States," and therefore retained a liberty interest that had to be evaluated under *Mathews v. Eldridge* before detention.

97. Parallel decisions hold that a DACA recipient must be provided with due process before their DACA is terminated. See *Inland Empire - Immigrant Youth Collective v. Nielsen*, No. 17-cv-2048, 2018 WL 4998230, at *19 (C.D. Cal. Apr. 19, 2018); *Medina v. U.S. Dep't of Homeland Sec.*, No. 17-cv-218, 2017 WL 5176720, at *9 (W.D. Wash. Nov. 8, 2017); *DHS v. Regents of the University of California*, 591 U.S.

1 (2020). Although DACA is a discretionary benefit, not an entitlement, once DACA is conferred, a recipient has a protected property interest in retaining that benefit. See *Inland Empire*, 2018 WL 4998230, at *19. A core benefit of DACA is that it allows recipients to live, study, and work in the United States without fear of arrest or deportation. It would be incongruous to find that DACA recipients acquire a constitutionally protected interest in their DACA benefit, but not one of its essential facets: their liberty.

98. This position also finds support in the longstanding principle in the criminal context that due process requires a pre-deprivation hearing before the revocation of parole. See *Espinoza v. Kaiser*, 2025 WL 2581185, at *9 (citing *Young v. Harper*, 520 U.S. 143, 147–49 (1997)). "The parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." Id. (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). Parolees thus have a protected liberty interest in their "continued liberty." Id. (citation omitted). A number of district courts have extended this reasoning to the immigration context and held that once released from immigration custody, noncitizens acquire "a protectable liberty interest in remaining out of custody on bond." *Diaz v. Kaiser*, No. 25-cv-5071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025) (collecting cases); accord *M.S.L.*, 2025 WL 2430267, at *8 ("Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond." (quoting *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099, at *12 (D. Ariz. Aug. 11, 2025) (same). Likewise, *Aviles-Mena*

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 as a form of conditional liberty analogous to criminal parole or probation for purposes of due process analysis.

99. Accordingly, where DHS has paroled a noncitizen under § 1182(d)(5)(A), allowed that person to live and work in the community subject to reporting and other conditions, and later seeks to terminate parole and re-detain him, due process protects Petitioner's liberty interest in remaining free from physical custody. Petitioner does not claim a statutory right to parole itself; rather, he invokes the Fifth Amendment liberty interest that arises once the government has conferred conditional freedom and now seeks to revoke it by returning him to immigration detention.

100. **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. Courts addressing prolonged detention of § 1225(b) detainees have stressed that civil confinement must remain tethered to specific, articulable purposes and accompanied by meaningful procedures testing necessity. See *Flores*, 394 F. Supp. 3d at 1078–81 (requiring individualized parole determinations for minors under § 212.5(b)); *Padilla*, 953 F.3d at 1151–54 (holding that parole review does not, by itself, ensure that detention "bear[s] a reasonable relation" to the government's interests and thus cannot substitute for bond hearings once detention is prolonged). Respondents' blanket re-detention of former parolees like Petitioner under § 1225(b), untethered to any individualized finding of flight risk, danger, or statutory purpose, is precisely the kind

of arbitrary confinement the Fifth Amendment forbids. Se *Jennings v. Rodriguez*, 138 S. Ct. 830, 846 (2018). As established, Petitioner is neither a flight risk nor a danger. Petitioner's mandatory detention, without any individualized assessment, bears no reasonable relation to any legitimate government purpose and is therefore arbitrary deprivation of liberty, excessive, and unconstitutional.

101. **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*:

102. **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.

103. **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.

104. **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.

105. 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

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

107. 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.

108. 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.*

109. 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 he 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.

110. 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**.

111. 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

Petitioner's 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

112. 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 and severe hardship on his U.S. citizen family, including his wife and their 21-month-old baby, who depend on him for financial and emotional support. The sudden loss of Petitioner's income and presence has placed significant strain on the family's stability and well-being, causing emotional distress and economic insecurity, as well as deprivation of his liberty, and loss of employment. 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, 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) **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;

(3) **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.

(4) **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;

(5) **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;

(6) **REINSTATE** Petitioner's parole unlawfully revoked and **ENJOIN** Respondents from terminating Petitioner's parole or re-detaining him in ICE custody (including for purposes of executing any removal order) without: (a) advance written notice of the proposed parole 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 termination of parole and detention are necessary to serve a legitimate regulatory purpose, as required by the Fifth Amendment's Due Process Clause and consistent with *Aviles-Mena v. Kaiser*, 2025 WL 2578215 (N.D. Cal. Sept. 5, 2025).

(7) **Award** Petitioner reasonable attorney's fees and costs as permitted by law; and

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

the circumstances.

Respectfully Submitted,

This 3rd day of April, 2026.

/s/ Karen Weinstock
Karen Weinstock
Attorney for Petitioner
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com

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 friends and/or 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 USC § 2242.

This 3rd day of April, 2026.

/s/ Karen Weinstock

Karen Weinstock
Attorney for Petitioner
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
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Fax: (770) 913-0888
kweinstock@visa-pros.com