

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT ALABAMA

JOSE MANUEL SILVA ANTONIO, )  
)  
Petitioner, )  
)  
vs. )  
)  
FRANCISCO AYALA, *ICE Alabama Assistant Field* )  
*Office Director* )  
MELLISSA HARPER, *ICE New Orleans* )  
*Field Office Director;* )  
TODD LYONS, *in his official capacity as Acting* )  
*Director of Immigration and Customs* )  
*Enforcement; and* )  
MARKWAYNE MULLIN, *Secretary* )  
*of Homeland Security; and* )  
TODD BLANCHE, *U.S. Attorney General.* )  
)  
)  
Respondents. )  
\_\_\_\_\_ )

CASE NO.:

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

**I. INTRODUCTION**

1. This habeas petition challenges the ongoing civil immigration detention of Petitioner Jose Manuel Silva Antonio, who is detained by U.S. Immigration and Customs Enforcement (ICE) at the Montgomery County Jail in Alabama. Petitioner was apprehended in the interior of the United States after a local traffic stop, years after his entry, and DHS is treating him as subject to mandatory detention without bond under 8 U.S.C. § 1225(b)(2)(A). Petitioner is believed, based on family confirmation, to be

detained at the Montgomery County Jail in Alabama. Counsel has been unable to verify his A-number or obtain confirmation through the ICE online locator, which did not display Petitioner's location minutes before filing. See Exhibit 1.

2. Binding Eleventh Circuit precedent forecloses that detention theory. In *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, --- F.4th ---, 2026 WL 1243395 (11th Cir. 2026), the Eleventh Circuit held that § 1225(b)(2)(A) does not impose no-bond mandatory detention on interior noncitizens who previously entered without inspection but were not seeking lawful entry when arrested.
3. The Eleventh Circuit held that § 1225(b)(2)(A) is limited to applicants for admission who are "seeking admission," and that neither petitioner there was seeking lawful entry when arrested after a traffic stop.
4. The Eleventh Circuit further explained that § 1226 generally governs the arrest and detention of noncitizens present in the country pending removal proceedings, while § 1225 governs arriving noncitizens seeking entry at the border or port of entry.
5. Petitioner is materially situated like the petitioners in *Hernandez Alvarez*: he entered without inspection years ago, was later encountered in the interior after a traffic stop, and is being denied bond based solely on DHS's erroneous application of § 1225(b)(2)(A).
6. The Seventh Circuit's decision in *Castañon-Nava v. U.S. Department of*

*Homeland Security*, --- F.4th ----, 2026 WL 1223250 (7th Cir. 2026), provides persuasive support for the same reading of the INA. In *Castañon-Nava*, the Seventh Circuit concluded that § 1225(b)(2)(A) applies to applicants for admission seeking lawful entry at the border or ports of entry, not to noncitizens living in the interior.

7. Respondents' principal detention theory is foreclosed by binding Eleventh Circuit precedent. Petitioner was apprehended in the interior of the United States years after entry and was not seeking lawful entry at a border, port of entry, or other inspection point when ICE assumed custody. In *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, --- F.4th ----, 2026 WL 1243395 (11th Cir. 2026), the Eleventh Circuit held that 8 U.S.C. § 1225(b)(2)(A) does not authorize no-bond mandatory detention for interior noncitizens who previously entered without inspection but were not "seeking admission" when arrested. Petitioner's custody therefore must proceed, if at all, under 8 U.S.C. § 1226, unless DHS proves that a specific mandatory-detention provision applies.
8. Independently, Petitioner also challenges the legality of ICE's warrantless seizure. Section 1226(a) authorizes arrest and detention "[o]n a warrant issued by the Attorney General," while 8 U.S.C. § 1357(a)(2) permits a warrantless civil immigration arrest only when the officer has reason to believe the person is unlawfully present and likely to escape before a warrant can be obtained. In *Castañon-Nava v. U.S. Department of Homeland*

*Security*, --- F.4th ----, 2026 WL 1223250 (7th Cir. 2026), the Seventh Circuit recognized that release may be appropriate where an immigration arrest violates § 1357(a)(2), but emphasized the need for an individualized determination that the arrest was unlawful. Here, upon information and belief, Petitioner was already secured by local law enforcement when ICE assumed custody, and ICE had no individualized basis to conclude that he was likely to escape before a warrant could be obtained.

9. Petitioner seeks a writ of habeas corpus as well as declaratory, and injunctive relief, ordering Respondents to cease detaining him under § 1225(b)(2)(A), to treat his custody under § 1226, and to provide immediate release or, at minimum, a prompt bond hearing before an immigration judge under § 1226 and its implementing regulations. 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

10. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in custody and challenges the legal authority for his civil immigration detention.
11. This Court also has federal question jurisdiction under 28 U.S.C. § 1331 because Petitioner raises claims arising under the Constitution and laws of

the United States.

12. In *Hernandez Alvarez*, the Eleventh Circuit reviewed § 2241 habeas petitions challenging detention under § 1225(b)(2)(A) and affirmed habeas relief where the district court concluded that § 1226 governed the petitioners' detention.
13. Petitioner challenges only the legal basis and procedures for his detention; he does not ask this Court to decide removability, terminate removal proceedings, or review any final order of removal.
14. Section 1252(f)(1) does not bar individualized relief for Petitioner. The Eleventh Circuit in *Hernandez Alvarez* affirmed habeas relief for two individual petitioners challenging their detention under § 1225(b)(2)(A).
15. To preserve this Court's habeas jurisdiction, Petitioner requests an order prohibiting Respondents from transferring him outside the Middle District of Alabama or changing his immediate custodian while this case is pending.

### III. VENUE

16. Venue is proper in the United States District Court for the Middle District of Alabama because Petitioner is currently detained at the Montgomery County Jail, Alabama, under the custody of the Department of Homeland Security (DHS). 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

17. Petitioner, Jose Manuel SILVA ANTONIO, is a 51-year-old noncitizen from Mexico who entered the United States several years ago without inspection. Petitioner currently resides in Alabama. On or about May 12, 2026, Petitioner was stopped by local law enforcement in Millbrook, Alabama while driving a work vehicle hauling landscaping equipment. ICE was immediately contacted and subsequently assumed custody of Petitioner. He was thereafter transferred to Montgomery, Alabama and, upon information and belief, is subject to imminent transfer to Louisiana. Petitioner is currently detained by ICE. Upon information and belief, Petitioner poses no danger to the community and presents no meaningful risk of flight.

18. Respondent Francisco Ayala is the ICE Alabama Assistant Field Office Director. As such, Respondent Ayala 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 Francisco Ayala has immediate physical custody of the Petitioner and is sued in his official capacity.
19. Respondent Mellissa Harper is the New Orleans Field Office Director (FOD) for ICE. As such, Respondent Harper is responsible for the oversight of ICE operations throughout Alabama. Respondent Harper is being sued in her official capacity. She is the head of the ICE office responsible for Petitioner's arrest and continued detention. She is sued as the immediate *legal* custodian of Petitioner.
20. 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.
21. 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.

22. Respondent Todd Blanche is the Attorney General of the United States and is sued in his 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 his designees at the Executive Office for Immigration Review (EOIR).
23. 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).
24. Petitioner acknowledges, consistent with *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that the proper respondent to the habeas claim is the immediate custodian, and does not rely on the federal officials as “habeas respondents.” Rather, Petitioner names these federal officials in their

official capacities solely to ensure that the Court can issue effective relief on non-habeas claims, such as declaratory and injunctive relief, and to direct agency action to those with actual authority to implement it. Should the Court find these officials improper as respondents to the habeas count, Petitioner respectfully requests that any dismissal be limited to that claim and without prejudice to their continued status as respondents for the non-habeas claims. Maintaining these officials as parties is necessary to ensure that, if relief is granted, the responsible agency officials cannot simply rearrest 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.

#### V. STATEMENT OF FACTS AND PROCEDURAL HISTORY

25. Petitioner, Jose Manuel Silva Antonio, is a 51-year-old noncitizen from Mexico who entered the United States at an unknown date many years ago, without inspection. Upon information and belief, Petitioner has resided in the United States for a substantial period of time prior to his arrest in this case. Upon information and belief, he has never been encountered by immigration authorities at the time of entry and has never been placed in removal proceedings, subject to a prior order of removal, or the beneficiary of any immigration petition.

26. Petitioner is employed in landscaping and believed to have his own business. He has several U.S. citizen relatives living here. Upon information and belief, Petitioner has no criminal history. He has no history of arrests, convictions, or any conduct suggesting that he poses a danger to the community.
27. On or about May 12, 2026, Petitioner was stopped by local law enforcement in Millbrook, Alabama while operating a work vehicle hauling landscaping equipment. Although Petitioner did not commit any driving offense and was not charged with any crime, local Millbrook police called ICE officers upon stopping Petitioner and ICE thereafter assumed custody of Petitioner after the local law enforcement stop. Based upon information and belief, the officers engaged in an unlawful stop of the vehicle, including impermissible racial profiling. He was subsequently transferred into the Montgomery County Jail in Alabama on May 12, 2026, based on information provided by his family and he is believed to still be there upon filing of this Petition. *See* Exhibit 1 (ICE locator), which does not show Petitioner's location, a few minutes prior to filing this Petition. Since the moment of his arrest, Petitioner has remained continuously detained. Upon information and belief, he is subject to imminent transfer to a detention facility in Louisiana.
28. Upon information and belief, Petitioner has no record of absconding, no outstanding criminal matters, and no prior immigration violations beyond his initial entry into the United States.

29. At no point between Petitioner's arrest on or about May 12<sup>th</sup>, 2026 and ICE's assumption of physical custody was Petitioner released from custody, stemming from an unlawful arrest.
30. ICE officers first assumed physical custody of Petitioner and transferred him to the Montgomery County Jail on or about May 12<sup>th</sup>, 2026, by taking him directly from local law enforcement officers and placing him into immigration custody. ICE did not encounter Petitioner in a public place or under circumstances where he was capable of absconding; rather, ICE's seizure occurred while Petitioner was already detained under the control of other law enforcement officers.
31. DHS is detaining Petitioner as if he were an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), even though he was not apprehended while seeking entry at the border or port of entry.
32. Petitioner was encountered in the interior of the United States years after entry, following a local traffic stop in Alabama.
33. Petitioner is not an arriving alien seeking lawful entry into the United States, and he was not taking any cognizable step to obtain admission when he was seized.
34. Under *Hernandez Alvarez*, that factual posture places Petitioner outside § 1225(b)(2)(A)'s no-bond detention regime.
35. Under *Hernandez Alvarez*, Petitioner's detention is governed by § 1226 unless another specific mandatory detention provision applies.

36. Upon information and belief, Petitioner is not subject to mandatory detention under § 1226(c), and DHS has not identified any criminal conviction, terrorism-related ground, or other statutory basis requiring mandatory detention.

## VI. EXHAUSTION OF REMEDIES

37. **No statutory exhaustion requirement applies to habeas cases.** Exhaustion is not required, or should be excused, because Petitioner presents a pure legal question controlled by binding Eleventh Circuit precedent: whether § 1225(b)(2)(A) authorizes his no-bond detention. In *Hernandez Alvarez*, the Eleventh Circuit resolved that issue on habeas review and affirmed relief for interior EWI petitioners detained under DHS's § 1225(b)(2)(A) theory. Any administrative bond request would be inadequate if DHS or EOIR treats Petitioner as categorically ineligible for bond under § 1225(b)(2)(A). To the extent Petitioner seeks procedural protections at any court-ordered § 1226(a) bond hearing, exhaustion should also be excused because that issue presents a constitutional due process question not within the BIA's authority to finally resolve.
38. Petitioner has exhausted administrative remedies to the extent required by law, and Petitioner's only remedy is by way of this judicial action.

**VII. PETITIONER'S WARRANTLESS ARREST WAS UNLAWFUL AB INITIO**

39. On information and belief, Petitioner's arrest violated the Fourth Amendment to the Constitution. He was operating a work vehicle hauling landscaping equipment when he was stopped by local law enforcement officers in Millbrook, Alabama under circumstances that show the stop was unlawful, without any probable cause or any crime or offense committed. After the local police stop, ICE officers were immediately contacted and thereafter assumed custody of Petitioner. Upon information and belief, there exists video evidence showing ICE officers present during or immediately following the stop. Upon information and belief, ICE assumed custody of Petitioner without a Form I-200 warrant or other administrative arrest warrant. Petitioner will seek to subpoena the involved officers and any body camera or related video footage concerning the stop and arrest.
40. Prior to and at the time ICE assumed physical custody of Petitioner at the Montgomery County Jail, no Form I-200 (Warrant for Arrest of Alien) or any other administrative arrest warrant authorized by the Attorney General or the Secretary of Homeland Security was issued for Petitioner. No such warrant was ever served on Petitioner or on the local jailers who transferred him to ICE.
41. Petitioner's detention is unlawful from its very inception because his arrest by police followed 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, as further detailed above, rendering the seizure of Petitioner a legal nullity from the outset.

42. 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 secured in the custody of other law enforcement. 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.

43. In *Castañon-Nava v. U.S. Department of Homeland Security*, --- F.4th ----, 2026

WL 1223250 (7th Cir. 2026), the Seventh Circuit described § 1357(a)(2) as governing warrantless immigration arrests and requiring probable cause that the subject is likely to escape before a warrant can be obtained.

44. Petitioner was already secured by local law enforcement when ICE assumed custody, so there was no individualized basis to conclude that he was likely to escape before a warrant could be obtained. The absence of any warrant and the absence of exigency independently render Petitioner's seizure unlawful.
45. *Castañon-Nava* recognized release as an available remedy for class members whose warrantless arrests violated § 1357(a)(2), but it required an individualized determination that the person was actually arrested contrary to the governing legal standard.
46. 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.

47. Petitioner's detention is thus unlawful under any statutory theory Respondents could possibly advance. Petitioner's detention was initiated under 8 U.S.C. § 1225, a statute district Courts around the country have repeatedly found inapplicable to interior apprehensions in dozens of cases involving similarly situated petitioners. Yet, even if Respondents had attempted to detain him 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. LEGAL FRAMEWORK AND ARGUMENT

### A. Binding Eleventh Circuit precedent establishes that § 1225(b)(2)(A) does not govern Petitioner's detention

48. In *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, --- F.4th ---, 2026 WL 1243395 (11th Cir. 2026), the Eleventh Circuit rejected DHS's new interpretation of § 1225(b)(2)(A).
49. The Eleventh Circuit held that § 1225(b)(2)(A) limits no-bond detention to applicants for admission who are "seeking admission."
50. The Eleventh Circuit held that interior noncitizens who entered without inspection years earlier and were later arrested after traffic stops were not "seeking admission" when detained.
51. The Eleventh Circuit further held that seeking relief from removal or contesting removal proceedings is not the same as seeking admission under § 1225(b)(2)(A).
52. Petitioner's case falls within *Hernandez Alvarez* because Petitioner was arrested in the interior after a traffic stop and was not seeking lawful entry into the United States when seized.
53. Accordingly, DHS cannot lawfully deny Petitioner bond eligibility by classifying him as subject to mandatory detention under § 1225(b)(2)(A).

**B. Section 1226 governs Petitioner's custody unless DHS proves a specific mandatory-detention provision applies**

55. In *Hernandez Alvarez*, the Eleventh Circuit explained that § 1226 provides the general detention framework for noncitizens present in the United States pending removal proceedings.

56. The Eleventh Circuit also explained that § 1226(a) authorizes DHS either to continue detention or to release the noncitizen on bond or conditional parole, while § 1226(c) limits that discretion only for enumerated categories.

57. The Eleventh Circuit relied on *Jennings v. Rodriguez*, 583 U.S. 281 (2018), for the distinction between § 1225 detention of noncitizens seeking admission and § 1226 detention of noncitizens already present in the country.

58. The Eleventh Circuit also reasoned that DHS's reading would create serious redundancy with § 1226(c), including Congress's 2025 addition of § 1226(c)(1)(E) through the Laken Riley Act.

59. Petitioner is not alleged to fall within § 1226(c), so he must receive the custody process available under § 1226(a).

**C. Castañon-Nava confirms the same statutory reading**

60. In *Castañon-Nava v. U.S. Department of Homeland Security*, --- F.4th ----, 2026 WL 1223250 (7th Cir. 2026), the Seventh Circuit held that § 1225(b)(2)(A) applies to noncitizens seeking lawful entry at the border or ports of entry, not to noncitizens living in the interior.

61. The Seventh Circuit found that the text, statutory context, legislative

history, and longstanding Executive practice supported that conclusion.

62. The Seventh Circuit also explained that Congress's 2025 amendment to § 1226(c) would be redundant if all interior EWI noncitizens were already subject to mandatory detention under § 1225(b)(2)(A).

63. Although *Castañon-Nava* is persuasive rather than binding in this Court, its reasoning accords with the now-binding rule of *Hernandez Alvarez*.

### IX. LEGAL FRAMEWORK FOR THE RELIEF SOUGHT

64. 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.

65. 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).

66. The Court must grant the petition for writ of habeas corpus or order Respondent to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondent must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*
67. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000).

## X. CAUSES OF ACTION AND CLAIMS FOR RELIEF

**COUNT ONE**

**Unlawful Detention Under the INA and 28 U.S.C. § 2241**

68. Respondents are detaining Petitioner under § 1225(b)(2)(A) even though he was arrested in the interior years after entry and was not seeking lawful entry when seized.
69. In *Hernandez Alvarez*, the Eleventh Circuit held that § 1225(b)(2)(A) does not authorize no-bond detention of similarly situated interior EWI petitioners who were not seeking admission when arrested.
70. Respondents' continued classification of Petitioner as subject to § 1225(b)(2)(A) is contrary to binding Eleventh Circuit law.
71. Petitioner's detention must instead proceed, if at all, under § 1226.
72. Petitioner is entitled to habeas relief requiring Respondents to cease detaining him under § 1225(b)(2)(A) and to provide release or a prompt custody hearing under § 1226.

**COUNT TWO**

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

73. 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”.

74. Castañon-Nava confirms that § 1357(a)(2) governs warrantless immigration arrests and requires an individualized likelihood-of-escape basis. Petitioner was already secured by local law enforcement when ICE assumed custody, so Respondents lacked a valid basis to conclude that he was likely to escape before a warrant could be obtained. 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.
75. 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 THREE**  
**Violation of the Fifth Amendment of the U.S. Constitution**

### Procedural and Substantive Due Process

76. 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). Petitioner has a protected liberty interest in freedom from physical detention. Respondents' actions trample upon this fundamental right.
77. Respondents have deprived Petitioner of liberty through a categorical no-bond detention regime that binding Eleventh Circuit law does not authorize. Because Petitioner is not subject to § 1225(b)(2)(A), continued detention without an individualized custody determination violates due process. At minimum, due process requires a prompt hearing at which the government must justify continued detention based on individualized evidence of flight risk or danger.
78. **Substantive Due Process:** The detention is substantively unconstitutional because it is arbitrary and serves no legitimate, non-punitive purpose. Civil immigration detention is permissible only to prevent flight or danger to the community. See *Jennings v. Rodriguez*, 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.

79. **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*:
80. **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.

81. **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.
82. **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.

83. 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. REMEDIES

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

84. 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.
85. 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.

86. 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.*
87. Granting a bond hearing would not only fail to cure the violation, it would compound the harm. It would force Petitioner to languish in unlawful custody for weeks longer while awaiting a hearing, spend additional money on a bond (if one is even granted, as bonds grants are diminishing even after habeas grants) all while Respondents have failed to produce a single shred of evidence that Petitioner is a flight risk or a danger to the community. This Court should not reward the government’s disregard for

the law by prolonging the very illegal detention it created. When the government's custody over a person is the "fruit of the poisonous tree" – the poisonous tree being the illegal arrest itself – the only just remedy is to sever the connection by ordering immediate and unconditional release.

88. 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 his 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.

**If Court Grants Bond Hearing - Ensure Burdens Are Met**

89. 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 other Circuit Courts. The 11th Circuit has not yet addressed this question specifically in relation to noncitizens detained pursuant to § 1226(a), however, the circuits who have addressed it all stated that the government bears the burden to prove that detention is warranted, i.e., that the noncitizen is either a danger to the community or a flight risk. No circuit court to have addressed the issue has placed the burden on the noncitizen to prove that they are *not* a flight risk or a danger. The Second Circuit in *Velasco Lopez v. Decker*, 978 F.3d 842, 853-56 (2d Cir. 2020), also held that the government must prove a noncitizen is a danger to the community or a flight risk to deny bond under § 1226(a) (**both require clear and convincing evidence**). Furthermore, the First Circuit in *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021), stated that a

noncitizen must be released under § 1226(a) if the government cannot meet its burden of proving they are a danger or flight risk (the only difference is the standard: clear and convincing evidence for dangerousness or preponderance of the evidence for flight risk determinations). Similarly, in *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 213–14 (3d Cir. 2020), even for criminal noncitizens who are mandatorily detained under 8 U.S.C. § 1226(c), once their detention becomes unreasonable, the Government bears the burden of proof at the bond hearing, and must justify continued detention by clear and convincing evidence that the noncitizen is a flight risk or a danger to the community. In any event, the government has not claimed that Petitioner is a danger nor a flight risk, let alone proved it. “Circuit courts considering the standard of proof in the immigration bond context have also adopted the clear and convincing standard. The 11<sup>th</sup> Circuit has not addressed who should carry the burden but *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1341 (M.D. Ga. 2020) squarely puts it on the government.

90. *D.Y.E.H. v. Warden, Irwin Detention Center*, No. 7:25-cv-201, 2026 WL 1230386 (M.D. Ga. Apr. 6, 2026) is particularly persuasive here because it arose within this Circuit and addressed the exact practical problem presented by this Petition: a court-ordered bond hearing is not an adequate remedy if the immigration judge may simply place the burden on the detained noncitizen and require him to disprove danger or flight risk while

he remains in custody. In *D.Y.E.H.*, the court held that § 1226(e) does not bar habeas review of a constitutional challenge to the procedures used at a § 1226(a) bond hearing, because such a claim challenges the legality of the process rather than the immigration judge's discretionary custody determination. The court also excused exhaustion because the burden-allocation issue was a constitutional due process question and because the BIA lacks authority to decide constitutional challenges.

91. The Mathews factors support the same result here. In *D.Y.E.H.*, the court held that the private interest favored the petitioner because freedom from detention is a fundamental liberty interest and § 1226(a) detention is civil rather than criminal. The court held that the risk of erroneous deprivation was substantial where the burden remained on the detained noncitizen, who faces practical barriers to gathering evidence, communicating with witnesses, and building a complete record while incarcerated. The court further held that the government has no legitimate interest in unnecessary detention of a noncitizen who is not shown to be dangerous or a flight risk, and that placing the burden on the government does not impose an undue administrative burden.
92. The Court should follow the burden of proof outlined in this case and the 3<sup>rd</sup> circuit courts who have decided the issue and determine that the **government must prove, by clear and convincing evidence, that Petitioner is either a flight risk or a danger to the community.** The

reason for that is the Congress's assumption was that for non-criminal noncitizens who are detained pursuant to § 1226(a) the default is release, not detention (in contrast to § 1226(c) that deals with mandatory detention for criminal aliens). **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.**

### **XIII. CONCLUSION AND PRAYER FOR RELIEF**

93. The continued detention of Petitioner violates due process rights. But for intervention by this Court, Petitioner has no means of release from ICE custody. Petitioner faces ongoing and irreparable harm as a result of unlawful detention, including deprivation of liberty, loss of employment, and separation from family. 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.

94. Given the egregious constitutional and statutory violations underlying

Petitioner's arrest and continued detention, the only effective and constitutionally sufficient remedy is immediate and unconditional release. Federal courts possess broad authority under 28 U.S.C. § 2243 to "dispose of the matter as law and justice require," which includes ordering immediate release when detention is found to be unlawful. See *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987).

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).**
- (2) **In the alternative, order Respondents to provide Petitioner with a bond hearing before an Immigration Judge under 8 U.S.C. § 1226(a) within forty-eight (48) hours, at which DHS shall bear the burden of proving by clear and convincing evidence that Petitioner is either a danger to the community or a flight risk; the**

Immigration Judge shall make an individualized determination based on the evidence presented; and the Immigration Judge shall consider non-bond alternatives to detention and, if setting bond, Petitioner's financial circumstances and ability to pay;

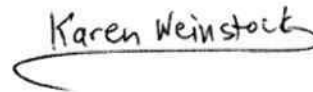
- (3) Order that any release conditions must be individualized and reasonably related to a demonstrated risk of flight or danger, and may not be imposed categorically or as a substitute for unlawful detention;
- (4) **Issue an Order to Show Cause** directing Respondents to file a return within three (3) days, pursuant to 28 U.S.C. § 2243, justifying in fact and law why the writ should not be granted;
- (5) Pending final resolution of this Petition, and consistent with the emergency relief requested in Section II above, issue a temporary order pursuant to 28 U.S.C. §§ 1651(a) and 2241 prohibiting Respondents from transferring Petitioner outside the Middle District of Alabama, or otherwise changing Petitioner's immediate custodian, and from removing Petitioner from the United States, absent prior leave of this Court, so as to preserve this Court's habeas jurisdiction under the district-of-confinement and immediate-custodian rule recognized in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004);
- (6) **Award** Petitioner reasonable attorney's fees and costs including

under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and any other applicable fee-shifting statute; and

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

Respectfully Submitted,

This 12<sup>th</sup> Day of May, 2026.

Handwritten signature of Karen Weinstock in black ink, underlined with a curved line.

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**28 U.S.C. § 2242 VERIFICATION STATEMENT**

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

This 12<sup>th</sup> Day of May, 2026.

/s/ Karen Weinstock  
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