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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARWUIN JOSE LOZADA ESCOBAR,

Petitioner,

v.

CHRISTOPHER J. LaROSE, Senior Warden, Otay Mesa Detention Center; DANIEL A. BRIGHTMAN, Field Office Director, San Diego Field Office, U.S. Immigration and Customs Enforcement; TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of Homeland Security; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; TODD BLANCHE, Acting Attorney General of the United States; *in their official capacities,*

Respondents.

CASE NO.: '26CV3036 JES MSB

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

IMMIGRATION HABEAS
(Immediate Custodian:
Otay Mesa Detention Center)

I. INTRODUCTION

1. Petitioner Darwuin Jose Lozada Escobar is a native of Venezuela who has resided continuously in the United States for over five years. He was granted Temporary Protected Status by U.S. Citizenship and Immigration Services in May 2024. He owns and operates a Florida small business, files federal income tax returns, has no criminal history of any kind, and lives openly in the community under U.S. Department of Homeland Security supervision pending the resolution of his removal proceedings. He is HIV-positive and depends on daily antiretroviral medication.

2. On April 5, 2026, Respondents arrested Petitioner in Florida without prior notice, without any individualized determination, and without identifying any changed circumstance from the more than thirty months during which the United States Government acknowledged Petitioner in pending removal proceedings, granted him Temporary Protected Status, and made the considered decision not to detain him. Respondents then transferred Petitioner approximately 2,500 miles across the country to the Otay Mesa Detention Center in San Diego, California, far from his removal proceedings, his Lawful Permanent Resident sponsor, and his treating HIV provider.

3. On May 4, 2026, Immigration Judge Stuart A. Siegel of the Miami Krome Immigration Court denied Petitioner's request for a custody redetermination on two grounds, each of them unlawful. First, the Immigration Judge held that the

immigration court "lacks jurisdiction to set a bond" based on Petitioner's "manner of entry (EWI)," relying on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), a Board of Immigration Appeals decision that the United States District Court for the Central District of California had vacated on February 18, 2026, two and a half months before the bond hearing. *Maldonado Bautista v. Noem*, 2026 WL 468284 (C.D. Cal. Feb. 18, 2026). Second, the Immigration Judge alternatively conducted an individualized analysis under *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006), but expressly placed the burden of proof on Petitioner, contrary to controlling Ninth Circuit authority under 8 U.S.C. § 1226(a), which assigns that burden to the Government by clear and convincing evidence. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022); *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

4. Two days after the bond denial, on May 6, 2026, the United States Court of Appeals for the Eleventh Circuit, the circuit governing the Miami Krome Immigration Court at the time it issued the bond order under review, issued a published opinion holding that 8 U.S.C. § 1225(b)(2)(A) does not apply to noncitizens "simply present" in the interior of the United States and that 8 U.S.C. § 1226(a) governs their detention. *Hernandez Alvarez v. Warden*, Nos. 25-14065 & 25-14075 (11th Cir. May 6, 2026). The Second Circuit reached the same conclusion the previous month. *Cunha v. Freden*, No. 25-3141 (2d Cir. Apr. 28,

2026). These decisions squarely reject the statutory premise of Petitioner's continued detention.

5. Petitioner is detained pursuant to 8 U.S.C. § 1226(a). He is entitled to a bond hearing before a neutral decisionmaker at which the Government bears the burden of justifying his continued detention by clear and convincing evidence. He has not received such a hearing. Petitioner brings this petition under 28 U.S.C. § 2241 seeking immediate release or, in the alternative, an order directing that Respondents provide him with a constitutionally adequate bond hearing within seven days.

II. JURISDICTION

6. This Court has jurisdiction under 28 U.S.C. § 2241, which empowers federal district courts to grant the writ of habeas corpus to any person held "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). The writ extends to executive detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Demore v. Kim*, 538 U.S. 510, 517 (2003).

7. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because Petitioner's claims arise under the Constitution and laws of the United States, including the Fifth Amendment; the Immigration and Nationality Act, 8 U.S.C. §§ 1226 and 1229a; and implementing regulations at 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

8. Petitioner's challenge to his unlawful detention is also grounded in the Suspension Clause of the United States Constitution, Article I, § 9, cl. 2. See *Zadvydas*, 533 U.S. at 689.

9. The Court has further authority to grant declaratory relief under 28 U.S.C. § 2201 and to issue all writs necessary or appropriate in aid of its jurisdiction under 28 U.S.C. § 1651.

III. VENUE

10. Venue lies in this District. Petitioner is detained at the Otay Mesa Detention Center, 7488 Calzada de la Fuente, San Diego, California, which is located within the Southern District of California. His immediate custodian, Respondent Christopher J. LaRose, Senior Warden of the Otay Mesa Detention Center, performs his official duties within this District. *Rumsfeld v. Padilla*, 542 U.S. 426, 442–47 (2004); *Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 494–95 (1973); 28 U.S.C. § 1391(e).

IV. REQUIREMENTS OF 28 U.S.C. § 2243

11. Title 28, United States Code, section 2243 provides that "[a] court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the

applicant or person detained is not entitled thereto." The statute further requires that the respondent "make a return" within "three days unless for good cause additional time, not exceeding twenty days, is allowed." 28 U.S.C. § 2243.

12. Because Petitioner is in physical custody and the Government has continued to detain him on a statutory theory rejected by the Second and Eleventh Circuits and a Board decision vacated by the Central District of California, expedited consideration is warranted.

V. EXHAUSTION OF REMEDIES

13. Exhaustion under 28 U.S.C. § 2241 is prudential, not jurisdictional. *Laing v. Ashcroft*, 370 F.3d 994, 997–1000 (9th Cir. 2004). Petitioner reserved appeal of the May 4, 2026 bond denial, which is due June 3, 2026. To the extent prudential exhaustion applies, it should be waived here.

14. First, the immigration judge's stated jurisdictional ground for the bond denial, that the immigration court "lacks jurisdiction to set a bond" for noncitizens charged as EWI, is the position the Board of Immigration Appeals adopted in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and that the Executive Office for Immigration Review has continued to apply notwithstanding the Central District of California's December 18, 2025 final judgment and February 18, 2026 vacatur. Pursuit of administrative review on the question whether the Board's own no-bond jurisdictional rule applies is therefore futile.

15. Second, Petitioner's ongoing harm is irreparable and accrues daily: he is detained 2,500 miles from his sponsor, family, and treating physician, and remains exposed to further transfer at Respondents' discretion. The pace of BIA review is incompatible with the prompt action that 28 U.S.C. § 2243 contemplates for executive detention. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

16. Third, the Board has no authority to grant the anti-transfer protection Petitioner seeks, to enjoin re-detention, or to direct the application of a corrected burden allocation on remand. Habeas is the only forum competent to provide complete relief on the claims pleaded here. Petitioner raises pure statutory and constitutional questions appropriate for direct judicial resolution.

VI. PARTIES

17. Petitioner Darwuin Jose Lozada Escobar is a native of Venezuela, born in 1989. His Alien Registration Number is A220-174-557. He is presently detained by U.S. Immigration and Customs Enforcement at the Otay Mesa Detention Center, 7488 Calzada de la Fuente, San Diego, California 92154. Petitioner has resided continuously in the United States since on or about April 30, 2021.

18. Respondent Christopher J. LaRose is the Senior Warden of the Otay Mesa Detention Center. He is Petitioner's immediate custodian and is sued in his official capacity.

19. Respondent Daniel A. Brightman is the Field Office Director of the San Diego Field Office of U.S. Immigration and Customs Enforcement. He has authority over the detention, transfer, and release of immigration detainees within the San Diego Area of Responsibility and is sued in his official capacity.

20. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. He has nationwide authority over the policies and practices of ICE, including the detention of noncitizens, and is sued in his official capacity.

21. Respondent Markwayne Mullin is the Secretary of the United States Department of Homeland Security and has ultimate authority over U.S. Immigration and Customs Enforcement. He is sued in his official capacity.

22. Respondent United States Department of Homeland Security is the federal department within which U.S. Immigration and Customs Enforcement is housed and is responsible for the enforcement of the Immigration and Nationality Act.

23. Respondent Todd Blanche is the Acting Attorney General of the United States and has authority over the Executive Office for Immigration Review, including the Immigration Court system. He is sued in his official capacity.

24. Petitioner names Respondent Warden LaRose as the primary habeas respondent in his capacity as Petitioner's immediate custodian. *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). The remaining Respondents are named in their official

capacities to ensure complete relief regarding the authority for, location of, and procedures applicable to Petitioner's detention, including transfer, release, and custody-redetermination determinations made by officials in supervisory positions above the immediate custodian.

VII. STATUTORY AND REGULATORY FRAMEWORK

25. The Immigration and Nationality Act distinguishes three principal regimes for the civil detention of noncitizens. The regime applicable to a particular individual depends on that individual's circumstances at the time of arrest.

26. The default detention authority for noncitizens placed in standard removal proceedings under 8 U.S.C. § 1229a is 8 U.S.C. § 1226(a). Section 1226(a) authorizes the Attorney General to arrest and detain a noncitizen "on a warrant issued by the Attorney General . . . pending a decision on whether the [noncitizen] is to be removed from the United States." Section 1226(a) also expressly authorizes release on bond and conditional parole pending the removal decision.

27. Section 1225(b) addresses a different population. It applies to noncitizens at the Nation's ports of entry or those "seeking admission" who are subject to inspection. The Supreme Court has explained that the § 1225(b) detention scheme operates "at the Nation's borders and ports of entry, where the

Government must determine whether a[n] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

28. Section 1231 governs detention only after a removal order becomes administratively final. 8 U.S.C. § 1231(a). It is not at issue here.

29. Section 1226 expressly applies to noncitizens charged as being inadmissible, including those who entered without inspection. Subparagraph (E) of 8 U.S.C. § 1226(c)(1) authorizes mandatory detention without bond for certain inadmissible noncitizens convicted of enumerated offenses. As the court in *Rodriguez Vazquez v. Bostock* explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025). Section 1226(c)(1)(E) confirms that, by default, inadmissible noncitizens like Petitioner are afforded a bond hearing under § 1226(a).

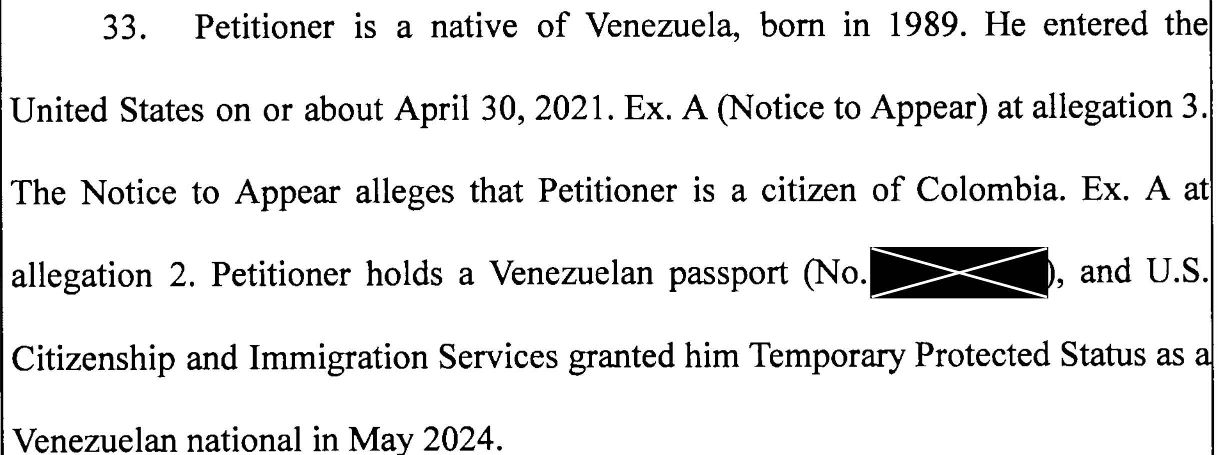
30. The 1997 interim regulations issued by EOIR and the then-Immigration and Naturalization Service to implement IIRIRA confirm that the agencies understood that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). For decades, noncitizens charged as inadmissible under § 212(a)(6)(A)(i) routinely received bond hearings before Immigration Judges under § 1226(a).

31. In 2025, the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), purporting to strip Immigration Judges of bond authority over noncitizens charged as inadmissible under § 212(a)(6)(A)(i). On December 18, 2025, the United States District Court for the Central District of California entered final judgment in *Maldonado Bautista v. Noem* declaring that this interpretation violates the Immigration and Nationality Act. *Bautista v. Santacruz*, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025); judgment entered sub nom. *Maldonado Bautista v. Noem*, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). On February 18, 2026, the same court vacated *Matter of Yajure Hurtado* under the Administrative Procedure Act. *Maldonado Bautista v. Noem*, 2026 WL 468284 (C.D. Cal. Feb. 18, 2026). On March 31, 2026, the Ninth Circuit Court of Appeals granted the Government's motion for a stay of the December 18, 2025 and February 18, 2026 orders pending appeal, with the result that the nationwide class judgment and the vacatur of *Matter of Yajure Hurtado* are presently stayed outside the Central District of California. The underlying merits remain pending before the Ninth Circuit. Petitioner relies on the *Maldonado Bautista* judgments as persuasive authority and on the independent statutory and constitutional grounds set forth herein.

32. Two federal Courts of Appeals have squarely held, on the merits, that 8 U.S.C. § 1225(b)(2)(A) does not apply to noncitizens present in the interior of the United States and that 8 U.S.C. § 1226(a) governs their detention. *Cunha v.*

Freden, No. 25-3141 (2d Cir. Apr. 28, 2026); *Hernandez Alvarez v. Warden*, Nos. 25-14065 & 25-14075 (11th Cir. May 6, 2026). Both decisions expressly considered and rejected the contrary statutory analysis of the Fifth Circuit in *Buenrostro-Mendez v. Bondi*, 2026 WL 323330 (5th Cir. Feb. 6, 2026), and the Eighth Circuit in *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026).

VIII. STATEMENT OF FACTS



A. Petitioner's Background and Continuous Interior Presence

33. Petitioner is a native of Venezuela, born in 1989. He entered the United States on or about April 30, 2021. Ex. A (Notice to Appear) at allegation 3. The Notice to Appear alleges that Petitioner is a citizen of Colombia. Ex. A at allegation 2. Petitioner holds a Venezuelan passport (No. [redacted]), and U.S. Citizenship and Immigration Services granted him Temporary Protected Status as a Venezuelan national in May 2024.

34. Petitioner has resided continuously in the United States since his entry, a period of more than five years. During that time he has built a life and a small business in Florida.

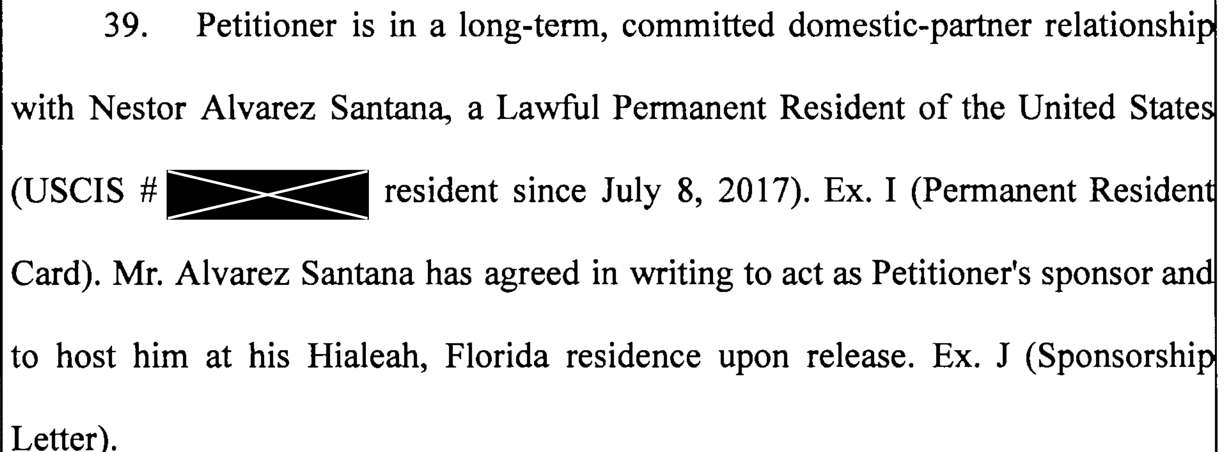
35. In or about November 2022, Petitioner registered a Florida limited liability company, Hair Stylist Darwin Lozada LLC, with the Florida Department of State, Division of Corporations. The company has been in continuous active

good standing ever since, with timely annual reports filed for 2023, 2024, and 2025. Ex. G.

36. Petitioner has filed federal income tax returns for tax years 2022, 2023, and 2024. Ex. H.

37. On April 13, 2026, the Florida Department of Law Enforcement confirmed that Petitioner has no Florida criminal history of any kind. Ex. F.

38. Petitioner is HIV-positive. He is prescribed and takes one tablet of Biktarvy (bictegravir/emtricitabine/tenofovir alafenamide, 50 mg / 200 mg / 25 mg) daily. Ex. L.



39. Petitioner is in a long-term, committed domestic-partner relationship with Nestor Alvarez Santana, a Lawful Permanent Resident of the United States (USCIS # [redacted] resident since July 8, 2017). Ex. I (Permanent Resident Card). Mr. Alvarez Santana has agreed in writing to act as Petitioner's sponsor and to host him at his Hialeah, Florida residence upon release. Ex. J (Sponsorship Letter).

B. Removal Proceedings, Temporary Protected Status, and Continuous Compliance

40. On September 13, 2023, the Department of Homeland Security issued Petitioner a Notice to Appear (Form I-862). The NTA charged Petitioner as removable under § 212(a)(6)(A)(i) of the Immigration and Nationality Act, as an

alien present in the United States without being admitted or paroled, and under § 212(a)(7)(A)(i)(I), as an immigrant without a valid entry document. Ex. A.

41. The NTA expressly states: "You are an alien present in the United States who has not been admitted or paroled." Box 1, which designates an arriving alien, is not checked. Box 2, which designates an alien "present in the United States who has not been admitted or paroled," is checked. Ex. A.

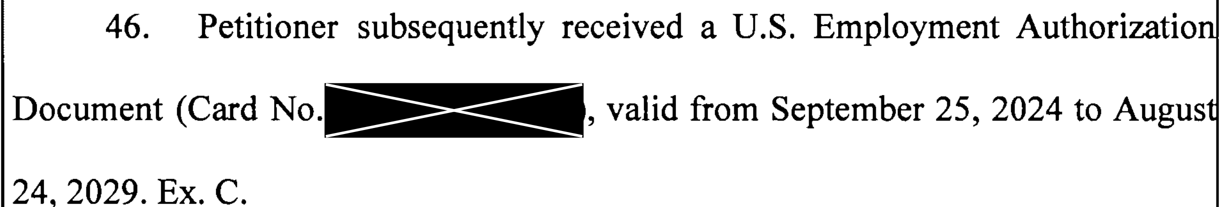
42. Two referral boxes on the NTA are both unchecked: the box confirming that the NTA "is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture," and the box confirming that a "Section 235(b)(1) order was vacated." Ex. A. Petitioner was not placed in or referred from expedited removal proceedings under 8 U.S.C. § 1225(b)(1). He was placed directly into standard removal proceedings under 8 U.S.C. § 1229a.

43. The NTA was served on Petitioner by mail on or about September 14, 2023. Petitioner was not taken into immigration custody at that time. The Government acknowledged Petitioner's interior presence, identified him as removable, and made the considered determination not to detain him.

44. On October 14, 2023, Petitioner applied for Temporary Protected Status as a Venezuelan national under section 244 of the Immigration and Nationality Act. On May 16, 2024, U.S. Citizenship and Immigration Services

granted Petitioner Temporary Protected Status, with a validity period beginning May 16, 2024. Ex. B (Form I-797A, Notice of Action).

45. The grant of Temporary Protected Status was an affirmative determination by the United States Government that Petitioner was at that time statutorily eligible to remain and work lawfully in the country. The approval notice states that TPS holders "will be considered as being in, and maintaining, lawful status as a nonimmigrant for purposes of adjustment of status under section 245 of the Act." Ex. B. Petitioner does not contend in this Petition that his TPS remains in force on the date of filing; rather, he relies on the May 2024 grant as evidence of the Government's prior considered determination of his eligibility to remain and work lawfully in the United States.



46. Petitioner subsequently received a U.S. Employment Authorization Document (Card No. [redacted], valid from September 25, 2024 to August 24, 2029. Ex. C.

47. Petitioner has appeared for every required engagement with the immigration system. He has missed no immigration court hearings and has been the subject of no in absentia order. Petitioner's removal proceedings are presently venued at the Otay Mesa Immigration Court, 7488 Calzada de la Fuente, San Diego, California 92154, the immigration court housed within the same complex as Petitioner's place of detention. His next master calendar hearing is scheduled for

May 20, 2026, at 1:00 p.m., in person, before Immigration Judge John T. Driscoll. Ex. E (EOIR Automated Case Information).

C. The April 5, 2026 Arrest and Cross-Country Transfer

48. On April 5, 2026, U.S. Immigration and Customs Enforcement officers arrested Petitioner in Florida. The arrest occurred more than thirty months after the Department of Homeland Security had identified Petitioner in pending removal proceedings and made the considered determination not to detain him, and more than twenty-two months after USCIS had granted him Temporary Protected Status.

49. Petitioner received no advance notice of the April 5, 2026 arrest. Respondents identified no changed circumstance, no new criminal conduct, no missed court hearing, no compliance violation, and no other ground that distinguished April 5, 2026 from any of the thirty months preceding it during which Petitioner remained at liberty under DHS supervision.

50. Following his arrest, Respondents transferred Petitioner from Florida to the Otay Mesa Detention Center in San Diego, California, located approximately 2,500 miles from Petitioner's home, family, sponsor, and treating HIV provider.

51. At the time of Petitioner's transfer, the United States Court of Appeals for the Eleventh Circuit had not yet decided *Hernandez Alvarez v. Warden*, Nos. 25-14065 & 25-14075. The Eleventh Circuit issued its published opinion in that case on May 6, 2026, two days after the Miami Krome Immigration Court issued

the May 4, 2026 bond denial in Petitioner's matter. The Eleventh Circuit held in *Hernandez Alvarez* that 8 U.S.C. § 1225(b)(2)(A) does not apply to noncitizens "simply present" in the interior and that 8 U.S.C. § 1226(a) governs their detention. Petitioner's removal proceedings have since been moved to the Otay Mesa Immigration Court in this District.

D. The May 4, 2026 Bond Denial

52. On May 4, 2026, Immigration Judge Stuart A. Siegel of the Miami Krome Immigration Court conducted a custody redetermination hearing pursuant to 8 C.F.R. § 1003.19 and issued a written order denying Petitioner's request for a change in custody status. Ex. D.

53. The Immigration Judge's order states two independent grounds for the denial. Ex. D.

54. The primary stated ground is jurisdictional. The order reads: "Based on Respondent's manner of entry (EWI), the Court lacks jurisdiction to set a bond. See *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)." Ex. D.

55. By the time of the May 4, 2026 bond hearing, *Matter of Yajure Hurtado* had been vacated by the United States District Court for the Central District of California more than two and a half months earlier. *Maldonado Bautista v. Noem*, 2026 WL 468284 (C.D. Cal. Feb. 18, 2026). Two days after the bond hearing, on May 6, 2026, the United States Court of Appeals for the Eleventh Circuit, the appellate court whose precedent governed the Miami Krome

Immigration Court at the time it issued the bond order under challenge here, held in a published opinion that 8 U.S.C. § 1225(b)(2)(A) does not apply to noncitizens "simply present" in the interior and that 8 U.S.C. § 1226(a) governs their detention. *Hernandez Alvarez v. Warden*, Nos. 25-14065 & 25-14075 (11th Cir. May 6, 2026).

56. The alternative stated ground for the bond denial is an individualized assessment under the factors set out in *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). The Immigration Judge wrote: "Applying the 9 Guerra factors, at this time, and after conducting an individualized bond hearing[,] Respondent has not met his burden of proof in establishing he is a suitable bail risk as he has no close immediate family with status, conflicting addresses exist in the record for Respondent (Eustis, Tavares and Hialeah, FL); no proof of ownership of any property; and no proof of savings." Ex. D.

57. The Immigration Judge's alternative ruling expressly placed the burden of proof on Petitioner. That burden allocation flowed directly from the Immigration Judge's stated view that Petitioner was detained under 8 U.S.C. § 1225(b)(2). Under 8 U.S.C. § 1226(a), and under binding Ninth Circuit authority, the Government bears the burden of justifying continued detention by clear and convincing evidence. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022); *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

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58. Following the Immigration Judge's order, the Department of Homeland Security waived appeal. Petitioner reserved appeal. The appeal deadline is June 3, 2026. Ex. D.

59. Petitioner remains detained at the Otay Mesa Detention Center, more than thirty-eight days as of the filing of this Petition, with no individualized determination by a neutral decisionmaker, conducted under a constitutionally adequate burden allocation, that his continued detention is justified.

60. Petitioner's next master calendar hearing is scheduled for May 20, 2026, just nine days from the filing of this Petition. The unlawful nature of his current detention impairs his ability to consult with counsel, gather evidence, and meaningfully participate in the proceedings he faces.

E. Respondents' Unlawful Policy and Practice

61. Respondents have adopted and continue to apply a policy and practice of treating noncitizens who entered without inspection and were apprehended in the interior of the United States as "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), without regard to the duration of their interior presence or to any individualized circumstances. That policy is reflected in a July 8, 2025 ICE memorandum, in the now-vacated Board decision in *Matter of Yajure Hurtado*, and in the conduct of Respondents in this case.

62. The Central District of California has held that the ICE memorandum and the underlying statutory interpretation are unlawful, has vacated the BIA's

Matter of Yajure Hurtado decision under the Administrative Procedure Act, and has certified a nationwide class of "Bond Eligible" noncitizens who, like Petitioner, (i) entered without inspection; (ii) were not apprehended upon arrival; and (iii) are not subject to 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231. *Bautista v. Santacruz*, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025); *Maldonado Bautista v. Noem*, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025); *Maldonado Bautista v. Noem*, 2026 WL 468284 (C.D. Cal. Feb. 18, 2026). On March 31, 2026, the Ninth Circuit stayed those orders pending appeal, with the result that they are not presently effective outside the Central District of California. Petitioner is the precise type of noncitizen whom the Central District found to be unlawfully detained under the policy, and Petitioner relies on those orders as highly persuasive authority on the merits.

63. Respondents' continued application of 8 U.S.C. § 1225(b)(2) to Petitioner, and the May 4, 2026 bond denial that gave effect to that application, is unlawful and inflicts ongoing constitutional injury.

IX. CLAIMS FOR RELIEF

COUNT I

Violation of the Immigration and Nationality Act (8 U.S.C. § 1226(a))

64. Petitioner re-alleges and incorporates by reference the allegations of fact set forth in the preceding paragraphs.

65. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens charged with grounds of inadmissibility. As relevant here, it does not apply to noncitizens who previously entered the country and were already residing in the interior of the United States before being apprehended and placed in removal proceedings. Such noncitizens are detained under 8 U.S.C. § 1226(a), unless they are subject to 8 U.S.C. § 1225(b)(1), § 1226(c), or § 1231.

66. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). The removal hearing for which such detention is authorized is conducted under 8 U.S.C. § 1229a, to "decid[e] the inadmissibility or deportability of a[n] [noncitizen]."

67. The text of 8 U.S.C. § 1226 explicitly applies to persons charged as inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such persons confirms that, by default, such persons are afforded a bond hearing under subsection (a). "[W]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025).

68. By contrast, 8 U.S.C. § 1225(b) applies to persons arriving at U.S. ports of entry or who recently entered the United States and are subject to inspection. The statute's framework is premised on inspections at the border of

persons "seeking admission". The Supreme Court has explained that the § 1225(b) mandatory detention scheme operates "at the Nation's borders and ports of entry, where the Government must determine whether a[n] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

69. Petitioner was not apprehended upon arrival. He resided in the United States for approximately five years before being arrested by ICE in the interior. The mandatory detention provision of § 1225(b)(2)(A) does not apply to persons like Petitioner, who have already entered the country and were apprehended after their entry.

70. The Eleventh Circuit has squarely so held. *Hernandez Alvarez v. Warden*, Nos. 25-14065 & 25-14075 (11th Cir. May 6, 2026) (holding that 8 U.S.C. § 1225(b)(2)(A) does not apply to noncitizens "simply present" in the interior and that § 1226(a) governs their detention). So has the Second Circuit. *Cunha v. Freden*, No. 25-3141 (2d Cir. Apr. 28, 2026) (holding that § 1226(a) governs detention of noncitizens who entered without inspection and were not apprehended at or near the border). Although neither circuit's precedent is binding on this Court, their published opinions are highly persuasive, particularly in light of the fact that the May 4, 2026 bond order Petitioner challenges was issued by an immigration court (Miami Krome) whose appellate review at the time lay in the Eleventh Circuit, and that the Eleventh Circuit issued its decision just two days later.

71. Within the Ninth Circuit, district courts have uniformly rejected the Government's expansive reading of § 1225(b)(2). See, e.g., *Vasquez Garcia v. Noem*, No. 25-cv-02180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Bautista v. Santacruz*, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025).

72. Respondents' application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the Immigration and Nationality Act.

COUNT II

Violation of the Bond Regulations (8 C.F.R. §§ 236.1, 1236.1, 1003.19)

73. Petitioner re-alleges and incorporates by reference the allegations of fact set forth in the preceding paragraphs.

74. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply the new statute. Specifically, under the heading "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. 10312, 10323 (Mar. 6, 1997) (emphasis added).

75. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before Immigration Judges under 8 U.S.C. § 1226 and its implementing regulations.

76. For decades following IIRIRA, noncitizens who entered without inspection and were placed in standard removal proceedings routinely received bond hearings, unless their criminal history rendered them ineligible under 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an Immigration Judge or other hearing officer.

77. Pursuant to *Matter of Yajure Hurtado* and *Matter of Q. Li*, however, EOIR adopted a policy and practice of applying 8 U.S.C. § 1225(b)(2) to individuals like Petitioner. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). On February 18, 2026, the United States District Court for the Central District of California vacated *Matter of Yajure Hurtado* in *Maldonado Bautista v. Noem*, finding that the administration had failed to comply with the court's December 2025 final judgment declaring the policy unlawful. *Maldonado Bautista v. Noem*, 2026 WL 468284 (C.D. Cal. Feb. 18, 2026).

78. On May 4, 2026, the Immigration Judge in Petitioner's custody redetermination hearing relied expressly on *Matter of Yajure Hurtado* to conclude

that the immigration court "lacks jurisdiction to set a bond." Ex. D. That reliance was unlawful.

79. Respondents' application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III

Violation of the INA: Persuasive Authority of Maldonado Bautista

80. Petitioner re-alleges and incorporates by reference the allegations of fact set forth in the preceding paragraphs.

81. The Central District of California has issued two orders directly relevant to Petitioner's detention. On December 18, 2025, that court entered final judgment in *Maldonado Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM, holding that noncitizens who entered the United States without inspection and were not apprehended at or near the border are detained under 8 U.S.C. § 1226(a), not § 1225(b)(2), and vacating the ICE memorandum of July 8, 2025 as contrary to law. *Bautista v. Santacruz*, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025); judgment entered sub nom. *Maldonado Bautista v. Noem*, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). On February 18, 2026, that court further vacated *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), under the Administrative Procedure Act. *Maldonado Bautista v. Noem*, 2026 WL 468284 (C.D. Cal. Feb. 18, 2026).

82. On March 31, 2026, the Ninth Circuit granted the Government's motion for a stay of the December 18, 2025 and February 18, 2026 orders pending appeal. As a result, the nationwide class judgment and the vacatur of *Matter of Yajure Hurtado* are presently not in effect outside the Central District of California. The merits of the appeal remain pending before the Ninth Circuit.

83. Petitioner does not rely on the *Maldonado Bautista* orders as binding nationwide relief while the stay is in effect. He relies on those orders as highly persuasive authority on the merits of the central statutory question presented: whether 8 U.S.C. § 1226(a), rather than § 1225(b)(2), governs the detention of noncitizens who entered the United States without inspection and were not apprehended at or near the border. The detailed statutory analysis in the December 18, 2025 partial summary-judgment order is consistent with the Second Circuit's analysis in *Cunha v. Freden*, No. 25-3141 (2d Cir. Apr. 28, 2026), the Eleventh Circuit's analysis in *Hernandez Alvarez v. Warden*, Nos. 25-14065 & 25-14075, (11th Cir. May 6, 2026), and the analysis of district courts within the Ninth Circuit that have addressed the question, including *Vasquez Garcia v. Noem*, No. 25-cv-02180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025), and *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025), appeal pending.

84. Petitioner satisfies each of the three criteria that the Central District of California identified as defining the Bond Eligible Class: (i) he entered the United States without inspection; (ii) he was not apprehended at or near the border but

was, rather, arrested approximately five years after his entry; and (iii) he is not subject to 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231. Petitioner is, therefore, the precise type of noncitizen whom every appellate and most district court to consider the question has concluded is detained under § 1226(a).

COUNT IV

Violation of the Fifth Amendment Due Process Clause: Bond Hearing Conducted Under Erroneous Burden Allocation

85. Petitioner re-alleges and incorporates by reference the allegations of fact set forth in the preceding paragraphs.

86. The Fifth Amendment provides that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. This protection extends to all "persons" within the United States, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

87. Freedom from physical restraint "lies at the heart of the liberty protected by the Due Process Clause," *Zadvydas*, 533 U.S. at 690, and is "the most elemental of liberty interests," *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

88. Civil immigration detention is constitutionally permissible only when it serves its limited regulatory purpose. The procedural safeguards required by the Due Process Clause include, at minimum, a hearing before a neutral adjudicator at which the Government bears the burden of justifying continued detention.

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89. Under 8 U.S.C. § 1226(a), and under binding Ninth Circuit authority, the Government bears the burden of justifying continued detention by clear and convincing evidence. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022); *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008); *Diouf v. Napolitano*, 634 F.3d 1081, 1091 (9th Cir. 2011).

90. On May 4, 2026, the Immigration Judge in Petitioner's custody redetermination hearing expressly placed the burden of proof on Petitioner, finding that "Respondent has not met his burden of proof in establishing he is a suitable bail risk." Ex. D. That burden allocation flowed directly from the Immigration Judge's stated view that Petitioner was an applicant for admission detained under 8 U.S.C. § 1225(b)(2).

91. The Immigration Judge's burden allocation was incorrect as a matter of statutory law and incompatible with the requirements of the Due Process Clause. Where, as here, the legal premise for assigning the burden of proof to the detainee falls, the procedural ruling that depended on it cannot stand. The bond hearing must be conducted under the correct burden allocation, with the Government bearing the burden of justifying detention by clear and convincing evidence.

92. Even on the face of the Immigration Judge's findings, the record does not establish by clear and convincing evidence that Petitioner is a flight risk or a danger to the community. Petitioner has resided continuously in the United States

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for over five years, owns and operates an active Florida small business, files federal tax returns, has no criminal history of any kind, has an LPR domestic-partner sponsor and an LPR co-sponsor at a documented Florida residence, was granted Temporary Protected Status by USCIS, holds a valid Employment Authorization Document through August 2029, and depends on a daily prescription HIV medication regimen for his health. He has missed no immigration court hearings and has fully complied with the conditions of his pending removal proceedings.

93. Petitioner is entitled to a new bond hearing before a neutral adjudicator at which the Government must justify his continued detention by clear and convincing evidence.

COUNT V

Violation of the Fifth Amendment Due Process Clause: Detention After Considered Determination of Non-Detention

94. Petitioner re-alleges and incorporates by reference the allegations of fact set forth in the preceding paragraphs.

95. Petitioner has a fundamental interest in liberty and in freedom from official restraint. *Zadvydas*, 533 U.S. at 690. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause." *Id.*

96. Consistent with this principle, individuals released and at liberty in the community have a recognized liberty interest in their continued liberty. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Such liberty is protected by the Fifth Amendment because, "although indeterminate, [it] includes many of the core values of unqualified liberty," such as the ability to be gainfully employed and to live with family. *Id.*

97. Due process requires "adequate procedural protections" that ensure the Government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690. Where the Government has previously made a considered determination not to detain an individual, and has affirmatively granted that individual a lawful immigration status, due process requires notice and an individualized hearing before a neutral decisionmaker before that determination may be reversed and the individual taken into custody. See *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970); *Morrissey*, 408 U.S. at 485.

98. The *Mathews v. Eldridge* framework, 424 U.S. 319 (1976), confirms that result on these facts:

(a) ***Private interest.*** Petitioner has been deprived of his most elemental liberty interest. The Government identified Petitioner in removal proceedings in September 2023 and made the considered determination not to detain him. In May 2024, USCIS granted

Petitioner Temporary Protected Status, an affirmative determination of his statutory eligibility to remain and work lawfully in the United States. Over the more than thirty months between the issuance of the NTA and his April 5, 2026 arrest, Petitioner resided openly, operated a registered Florida business, filed federal tax returns, complied with all conditions of his removal proceedings, and never missed a court hearing.

(b) ***Risk of erroneous deprivation.*** Without a hearing before a neutral decisionmaker, the risk of erroneous deprivation of liberty is high. "The fact that the Government may believe it has a valid reason to detain Petitioner does not eliminate its obligation to effectuate the detention in a manner that comports with due process." *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE (W.D. Wash. Aug. 19, 2025).

(c) ***Government interest.*** The Government's interest in detaining without notice and without an individualized determination a noncitizen whom it previously concluded was suitable for non-detention, and to whom it subsequently granted lawful status, is low. The administrative cost of providing pre-deprivation process is modest. That cost is far outweighed by the constitutionally protected liberty interest at stake.

99. Respondents arrested and detained Petitioner without notice, without an individualized hearing, and without identifying any changed circumstance. They then transferred him across the country, removing him from the geographic jurisdiction of his removal proceedings and from his sponsor, family, and treating HIV provider. Multiple courts have ordered immediate release on similar facts. See, e.g., *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*, No. 2:25-CV-01723-MJP-TLF (W.D. Wash. Sept. 12, 2025); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT (W.D. Wash. Sept. 17, 2025); *Valdez v. Joyce*, 2025 WL 1707737 (S.D.N.Y. June 18, 2025).

100. Respondents' detention of Petitioner under these circumstances, without adequate procedural protections, violates the Due Process Clause of the Fifth Amendment.

COUNT VI

Violation of the Fifth Amendment Due Process Clause: Deliberate Indifference to Serious Medical Need

101. Petitioner re-alleges and incorporates by reference the allegations of fact set forth in the preceding paragraphs.

102. Petitioner is HIV-positive. His prescribed treatment regimen consists of the daily oral administration of Biktarvy (bictegravir, emtricitabine, and tenofovir alafenamide), a fixed-dose combination antiretroviral medication. Ex. L. Continuous daily dosing is the recognized standard of care for the management of

HIV. Interruption of antiretroviral therapy, including interruption for short periods, creates a substantial risk of viral rebound, the development of drug-resistance mutations that compromise the efficacy of present and future treatment, and progressive immune deterioration.

103. Respondents and their agents have known of Petitioner's HIV-positive status and of his prescribed antiretroviral regimen since the inception of Petitioner's federal custody on April 5, 2026. Medical intake was conducted on Petitioner upon his arrest and again upon his transfer to the Otay Mesa Detention Center.

104. As of the filing of this Petition, Petitioner has been denied his prescribed Biktarvy for approximately four (4) to five (5) days. Petitioner has requested his medication from Respondents' agents at the Otay Mesa Detention Center. Respondents have failed to provide it. Each additional day without prescribed antiretroviral therapy compounds the risk of viral rebound and resistance development.

105. Petitioner's HIV-positive status, and the prescribed antiretroviral regimen for that condition, constitute a serious medical need within the meaning of the Fifth Amendment Due Process Clause. *See Estelle v. Gamble*, 429 U.S. 97, 103–104 (1976); *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983) (pretrial detainees are entitled to medical care at least equal to that constitutionally required for convicted persons).

106. Civil immigration detainees are protected by the Due Process Clause of the Fifth Amendment, and the standard governing their medical-care claims in the Ninth Circuit is objective deliberate indifference. *Gordon v. County of Orange*, 888 F.3d 1118, 1124–1125 (9th Cir. 2018); *Castro v. County of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016) (en banc); *Sandoval v. County of San Diego*, 985 F.3d 657, 669 (9th Cir. 2021). Under that standard, a constitutional violation is established where (i) the custodian made an intentional decision with respect to the conditions of confinement, (ii) those conditions put the detainee at substantial risk of serious harm, (iii) the custodian did not take reasonable available measures to abate that risk although a reasonable official in the circumstances would have appreciated the high degree of risk, and (iv) by not taking such measures, the custodian caused the detainee's injuries. *Gordon*, 888 F.3d at 1125.

107. Each element is satisfied here. Respondents made the intentional decision to take Petitioner into custody and to transfer him to the Otay Mesa Detention Center; the resulting conditions, in which Petitioner has been denied his prescribed antiretroviral therapy for multiple consecutive days, place Petitioner at substantial risk of serious harm in the form of viral rebound, resistance development, and immune deterioration; reasonable measures to abate that risk, namely the provision of Petitioner's prescribed Biktarvy or a clinically equivalent regimen together with HIV-competent medical evaluation, are readily available and have not been taken; and Petitioner is suffering the resulting injury day by day.

108. The Ninth Circuit has recognized that civil immigration detainees may bring claims concerning conditions of confinement, including medical-care claims, under the Fifth Amendment Due Process Clause. *Doe v. Kelly*, 878 F.3d 710, 720–722 (9th Cir. 2017); *Roman v. Wolf*, 977 F.3d 935, 943–944 (9th Cir. 2020) (per curiam). The denial of prescribed antiretroviral therapy to an HIV-positive detainee, in the face of known diagnosis and known regimen, falls squarely within that protection.

109. The unconstitutional conditions of Petitioner's detention provide an additional and independent ground for habeas relief, and for emergency interim relief to halt the ongoing constitutional injury. Petitioner is contemporaneously moving for a Temporary Restraining Order directing Respondents to provide the prescribed medication and necessary medical evaluation pending resolution of this Petition.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that this Court:

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the Southern District of California while this habeas petition is pending, except for bona fide medical emergencies, and require Respondents to provide forty-eight (48) hours' advance notice to Petitioner's counsel before any transfer;

c. Issue an Order to Show Cause directing Respondents to show cause within three (3) days, as required by 28 U.S.C. § 2243, why this Petition should not be granted;

d. Grant Petitioner's contemporaneously filed Motion for Temporary Restraining Order and order Respondents to (i) provide Petitioner with his prescribed Biktarvy or a clinically equivalent antiretroviral regimen without further delay, (ii) provide Petitioner with prompt examination by a physician competent in the management of HIV, (iii) provide viral load and CD4 count testing, (iv) develop and provide to Petitioner and his counsel a written treatment plan, and (v) file daily compliance certifications with this Court;

e. Declare that Petitioner is detained pursuant to 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b), and that Petitioner is entitled to a bond hearing under § 1226(a);

f. Declare that Petitioner's continued detention is unlawful;

g. Declare that Respondents' policy and practice of categorically denying bond hearings to noncitizens in Petitioner's circumstances violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment;

h. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner from custody. See *Martinez v. McAleenan*, 385 F. Supp. 3d 349, 366, 373 (S.D.N.Y. 2019) ("As Petitioner's arrest and detention were blatantly

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unlawful from the start, the only commensurate and appropriate equitable remedy to even partially restore [Petitioner] is to immediately release him and enjoin the Government from further similar transgressions.");

i. In the alternative, order Respondents to provide Petitioner with a bond hearing within seven (7) days before an Immigration Judge, at which Respondents shall bear the burden of proving by clear and convincing evidence that Petitioner's continued detention is justified;

j. Enjoin Respondents from re-detaining Petitioner absent a material change in circumstances, written notice to Petitioner's counsel at least forty-eight (48) hours in advance, and a renewed individualized hearing before a neutral decisionmaker;

k. Order Respondents to file a declaration of compliance with this Court's orders within seven (7) days of entry;

l. Award Petitioner reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law; and

m. Grant such other and further relief as the Court deems just and proper.

Dated: May 13, 2026

Respectfully submitted,

/s/ Igor Harris

Igor Harris (SBN 335884)
Attorney for Petitioner