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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MOISES DE OLIVEIRA PINHEIRO
MORE

Petitioner,

vs.

CHRISTOPHER J. LAROSE, in his
official capacity as Senior Warden of
Otay Mesa Detention Facility;

TODD LYONS, in his official capacity
as Director of U.S. Immigration and
Customs Enforcement (ICE);

MARKWAYNE MULLIN, in his
official capacity as Secretary of the U.S.
Department of Homeland Security;

TODD BLANCHE, in his official
capacity as Acting Attorney General of
the United States


Respondents.

Case No.: '26CV3064 JO AHG

**PETITION FOR WRIT OF
HABEAS CORPUS UNDER 28
U.S.C. § 2241 AND COMPLAINT
FOR ADMINISTRATIVE
PROCEDURE ACT RELIEF
[IMMEDIATE RELEASE OR
BOND HEARING REQUESTED]**

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INTRODUCTION

1. Moises de Oliveira Pinheiro More () respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to challenge the unlawful detention imposed by Respondents.

2. Petitioner is a Brazilian National who entered the United States without inspection on or around April 9, 2024 and has resided in the United States ever since. Petitioner has been detained by ICE since April 1, 2026.

3. ICE issued a Notice to Appear dated April 9, 2024, charging him under INA § 212(a)(6)(A)(i) as an alien present without admission or parole; and INA § 212(a)(7)(A)(i)(I) as an alien without possession of a valid unexpired entry document required by the Act.

4. Petitioner has been held at the Otay Mesa Detention Center, a detention center privately owned by The GEO Group, Inc., *See Exhibit 1*, ICE Locater Search Results. The Department of Homeland Security (“DHS”) asserts that Petitioner is subject to mandatory detention under 8 U.S.C. §1226(c), despite Congress’s separate detention framework in 8 U.S.C. §1226(a), which governs interior arrests and provides discretionary bond and immigration-judge (“IJ”) review.

5. Although Respondents assert that Petitioner is subject to mandatory

1 detention under INA § 235(b), that classification is legally erroneous given his
2 long-term presence in the United States since at least 2006.
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4 6. Respondents have relied on *Matter of Yajure Hurtado*, 29 I&N Dec. 216
5 (BIA 2025) and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), to argue that
6 Petitioner is categorically ineligible for a bond hearing under 8 U.S.C. § 1226(a).
7 That reliance is legally and constitutionally flawed: Yajure Hurtado improperly
8 strips Immigration Judges of jurisdiction to review detention, conflicts with Ninth
9 Circuit precedent, and has been rejected by multiple federal courts across several
10 circuits.
11

12 7. Petitioner's detention is therefore governed by 8 U.S.C. § 1226(a), which
13 entitles him to a prompt, individualized bond hearing. Respondents' continued
14 detention without due process violates the Fifth Amendment and the Suspension
15 Clause.
16

17 8. Petitioner accordingly seeks a writ of habeas corpus under 28 U.S.C. § 2241;
18 Declaratory relief confirming that he was not paroled into the United States and
19 thus falls under the jurisdiction of the immigration court; Injunctive relief requiring
20 Respondents to recognize his procedural and statutory rights; and Any other
21 appropriate relief under the Administrative Procedure Act, as the reclassification
22 or denial of jurisdiction constitutes final agency action that is arbitrary, capricious,
23 an abuse of discretion, and contrary to law under 5 U.S.C. § 706(2).
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1 9. Petitioner respectfully requests that this Court order his immediate release,
2 or alternatively, require Respondents to provide a constitutionally compliant bond
3 hearing within ten days, consistent with statutory and constitutional requirements.
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6 **JURISDICTION AND VENUE**
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8 10. This Court has subject matter jurisdiction over this Petition pursuant to 28
9 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I,
10 Section 9, Clause 2 of the United States Constitution (the Suspension Clause).
11

12 11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)
13 because Respondents are U.S. agencies and officers of the United States acting in
14 their official capacities or because they reside in this district. In addition, a
15 substantial part of the events or omissions giving rise to the claims occurred in this
16 District, Petitioner is detained in this District, and no real property is involved in
17 this action.
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21 **REQUIREMENTS OF 28 U.S.C. § 2243**
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23 12. The Court must grant the petition for writ of habeas corpus or issue an order
24 to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not
25 entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court
26 must require respondents to file a return “within *three days* unless for good cause
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1 additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

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3 13. Courts have long recognized the significance of the habeas statute in
4 protecting individuals from unlawful detention. The Great Writ has been referred
5 to as “perhaps the most important writ known to the constitutional law of England,
6 affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
7 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).
8
9

10 **PARTIES**

11
12 9. Petitioner Moises de Oliveira Pinheiro More is a Brazilian national who
13 entered the U.S. without inspection on or about April 9, 2024, in Otay Mesa, CA.
14

15 10. Respondent Christopher J. LaRose, in his official capacity as Senior Warden
16 of Otay Mesa Detention Facility, he is responsible for the custody of immigration
17 detainees there, including Petitioner. He is sued in his official capacity.
18

19 11. Respondent Todd Lyons is the Director of ICE. He is responsible for the
20 implementation of immigration detention policies and oversees the Petitioner’s
21 detention.
22

23 12. Respondent Markwayne Mullin is the Secretary of the U.S. Department of
24 Homeland Security (“DHS”). He is the cabinet-level official responsible for the
25 administration of immigration laws.
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1 13. Respondent Todd Blanche is the Acting Attorney General of the United
2 States. He oversees the Executive Office for Immigration Review (“EOIR”) and the
3 IJs who have refused to provide the Petitioner with a neutral bond hearing.
4

5
6 **FACTUAL BACKGROUND**
7

8 10. Petitioner is a Brazilian national who has resided in the United States for
9 over two years. Since his entry more than two years ago, Petitioner has resided
10 continuously in the United States.
11

12 11. He was not detained, nor was he granted parole under INA § 212(d)(5).
13

14 12. Petitioner has no criminal history, poses no danger to the community, and
15 has not been charged with any offenses. Petitioner has remained continuously
16 detained since that time and is currently held at Otay Mesa Detention Center in
17 California.
18

19 13. On or about April 9, 2024, Petitioner was formally placed in removal
20 proceedings.
21

22 14. On April 1, 2026, Petitioner while leaving a condominium. ICE officers
23 were present at the location searching for a different individual. As the client
24 entered his car, ICE approached him, requested his driver’s license, and
25 subsequently detained him.
26

27 15. Petitioner has strong family and community ties to the United States. He
28

1 has made his life here, and his continued detention prevents him from participating
2 in his ongoing immigration proceedings and any connection with his counsel.
3

4 16. Petitioner poses no danger or flight risk, and there has been no
5 individualized determination of necessity for his continued detention. Under the
6 current misapplication of *Matter of Q. Li* and *Matter of Hurtado*, Petitioner is
7 effectively denied any meaningful opportunity to challenge his detention, in
8 violation of the Fifth Amendment's Due Process Clause and the Administrative
9 Procedure Act.
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12 17. As a result of this ruling, Petitioner has been denied any opportunity for
13 release on bond or meaningful custody review.
14

15 18. On April 28, 2026, the Immigration Judge denied Petitioner's request for
16 release on bond. The Immigration Judge determined that Petitioner is an "applicant
17 for admission" under INA § 235(a). Based on that classification, the Immigration
18 Judge found that Petitioner is subject to mandatory detention under INA § 235(b)
19 and that the court lacked authority to grant bond.
20
21

22 19. Petitioner's continued detention is based solely on a categorical
23 determination that he is subject to mandatory detention, rather than any
24 individualized assessment of flight risk or danger.
25

26 20. At the time of his detention in 2026, Petitioner had been physically present
27 in the United States for more than four years.
28

1 21. Despite this significant period of continuous presence, Respondents
2 continue to treat Petitioner as though he were an arriving alien seeking admission
3 at the border.
4

5 22. Petitioner remains detained without a meaningful opportunity to challenge
6 the necessity of his detention before a neutral decision-maker applying
7 constitutionally adequate standards.
8

9 23. As a result, Petitioner continues to suffer a severe deprivation of liberty.
10

11 24. Conditions at Otay Mesa Detention Center have further exacerbated his
12 distress, including lack of adequate medical care, restricted communication with
13 his family and counsel, and intimidation by certain facility staff. This mistreatment
14 shows the urgent need for judicial intervention in his ongoing detention.
15

16 25. These conditions of confinement further show the urgency of Petitioner's
17 release, as his continued detention not only subjects him to an unreasonable risk of
18 harm but also serves no legitimate governmental purpose given his lack of
19 dangerousness or flight risk. Respondent has no criminal history is therefore not a
20 threat to the community.
21

22 26. Petitioner poses no danger or flight risk, and there has been no
23 individualized determination of necessity for his continued detention. Under the
24 current misapplication of *Matter of Q. Li* and *Matter of Yahure Hurtado*, Petitioner
25 is effectively denied any meaningful opportunity to challenge his detention, in
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1 violation of the Fifth Amendment's Due Process Clause and the Administrative
2 Procedure Act.
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4 14. Petitioner remains in ICE custody with no available administrative
5 mechanism to seek release. He seeks relief from this Court through a writ of habeas
6 corpus under 28 U.S.C. § 2241 and declaratory relief under the Administrative
7 Procedure Act, to remedy this ongoing unlawful detention.
8

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10 **LEGAL FRAMEWORK**

11 **Detention under 8 U.S.C. § 1226(a) and § 1225(b)(2)**

12
13 27. The Immigration and Nationality Act (“INA”) authorizes the detention of
14 noncitizens in removal proceedings under three primary provisions: INA § 236(a)
15 (8 U.S.C. § 1226(a)), INA § 235(b) (8 U.S.C. § 1225(b)), and 8 U.S.C. § 1231(a)–
16 (b).
17

18 28. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard
19 non-expedited removal proceedings before an IJ. See 8 U.S.C. § 1229a. Individuals
20 in § 1226(a) detention are entitled to a bond hearing at the outset of their detention,
21 see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested,
22 charged with, or convicted of certain crimes are subject to mandatory detention,
23 see 8 U.S.C. § 1226(c).
24

25 29. Second, the INA provides for mandatory detention of noncitizens subject to
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1 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals
2 seeking admission referred to under § 1225(b)(2).
3

4 30. Last, the Act also provides for detention of noncitizens who have been
5 previously ordered removed, including individuals in withholding-only
6 proceedings, *see* 8 U.S.C. § 1231(a)–(b).
7

8 31. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).
9

10 32. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part
11 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of
12 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to
13 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year
14 by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).
15

16 33. Following enactment of the IIRIRA, EOIR drafted new regulations
17 explaining that, in general, people who entered the country without inspection were
18 not considered detained under § 1225 and that they were instead detained under §
19 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal
20 of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg.
21 10312, 10323 (Mar. 6, 1997).
22
23
24

25 34. Thus, in the decades that followed, most people who entered without
26 inspection—unless they were subject to some other detention authority—received
27 bond hearings. That practice was consistent with many more decades of prior
28

1 practice, in which noncitizens who were not deemed “arriving” were entitled to a
2 custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
3 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a)
4 simply “restates” the detention authority previously found at § 1252(a)).
5

6
7 35. The text of § 1226 also explicitly applies to people charged as being
8 inadmissible, including those who entered without inspection. *See* 8 U.S.C. §
9 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by
10 default, such people are afforded a bond hearing under subsection (a). Section 1226
11 therefore leaves no doubt that it applies to people who face charges of being
12 inadmissible to the United States, including those who are present without
13 admission or parole.
14

15
16 36. 8 U.S.C. § 1225(b), by contrast, mandates detention of certain arriving aliens
17 and applicants for admission during the pendency of expedited or full removal
18 proceedings. However, this provision only applies to individuals who are “seeking
19 admission” and who are either subject to expedited removal or placed into § 240
20 proceedings as applicants for admission.
21

22
23 37. A key distinction in this framework is “parole” under INA § 212(d)(5),
24 which permits the Secretary of Homeland Security, in his discretion, to parole an
25 individual into the United States temporarily for urgent humanitarian reasons or
26 significant public benefit. Parole is an express legal status that must be granted
27
28

1 affirmatively and documented by the issuance of Form I-94 or other evidence of
2 parole.

3
4 38. The Board of Immigration Appeals' decision in *Matter of Q. Li*, 29 I&N
5 Dec. 66 (BIA 2025), held that individuals who have been formally "paroled" into
6 the United States under § 212(d)(5) are not eligible for a bond hearing under INA
7 § 236(a), because they are considered "arriving aliens" subject to § 235.

8
9 39. However, *Q. Li* does not apply to individuals who, like Petitioner, were
10 never formally granted parole but were instead released on their own recognizance
11 after being processed and issued an NTA. DHS cannot unilaterally designate an
12 individual as "paroled" absent a formal parole determination under § 212(d)(5) and
13 issuance of appropriate documentation.
14
15

16 40. In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA
17 extended this reasoning, holding that noncitizens who entered without inspection
18 and were later apprehended in the interior are categorically ineligible for bond
19 hearings under § 236(a), effectively stripping IJs of jurisdiction.
20
21

22 41. These decisions are recent, agency-specific interpretations. They are binding
23 within EOIR but not controlling in federal courts. Following the Supreme Court's
24 decision in *Loper Bright Enterprises v. Raimondo*, courts now review statutes de
25 novo without deference to agency interpretations.
26

27
28 42. Federal courts have increasingly recognized that reliance on *Q. Li* and

1 *Yajure Hurtado* to deny bond hearings violates statutory and constitutional
2 principles, particularly when the detainee:
3

- 4 • Entered without inspection but was never formally paroled;
- 5 • Has strong family or community ties;
- 6 • Poses no danger or flight risk; and
- 7 • Faces prolonged detention without an individualized custody determination

8
9 43. As courts in multiple circuits have found, including *Ponte-Guanare v.*
10 *Archambeault*, No. 3:25-cv-02081 (S.D. Cal. Sep. 25, 2025), and *Sampiao v. Hyde*,
11 No. 1:25-cv-11981-JEK (D. Mass. Sept. 9, 2025), administrative exhaustion is
12 futile when detention is based solely on these BIA precedents, making habeas
13 review appropriate and ordering that: “*Respondents SHALL NOT deny Petitioner’s*
14 *bond on the basis that 8 U.S.C. § 1225(b)(2) requires mandatory detention*”.
15
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18 44. The Fifth Amendment guarantees that no person shall be deprived of liberty
19 without due process of law. Prolonged detention without an individualized custody
20 determination by a neutral arbiter violates due process. See *Zadvydas v. Davis*, 533
21 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 583
22 U.S. 131 (2018).
23
24

25 45. Where DHS has misclassified a person as paroled to avoid judicial review
26 of custody under § 236(a), courts retain habeas jurisdiction to correct such errors
27 and order a bond hearing. See *Padilla v. ICE*, 354 F. Supp. 3d 1218, 1228 (W.D.
28

1 Wash. 2018); *Sajous v. Decker*, No. 18-CV-2447 (AJN), 2018 WL 2357266, at *7
2 (S.D.N.Y. May 23, 2018).
3

4 46. The Administrative Procedure Act, 5 U.S.C. §§ 701–706, provides a cause
5 of action for individuals aggrieved by final agency action that is arbitrary,
6 capricious, contrary to law, or in excess of statutory authority. DHS’s and the
7 Immigration Judge’s reliance on *Q. Li* under the mistaken belief that Petitioner had
8 been “paroled” constitutes final agency action that is contrary to law and subject
9 to review under the APA.
10
11

12 **The BIA’s Practice of Delayed Decisions in Bond Proceedings**

13
14 47. The BIA’s appellate process does not offer a meaningful avenue to correct
15 the Krome Immigration Court’s errors.
16

17 48. According to the agency’s own data, during FY 2024, the agency’s average
18 processing time for a bond appeal was 204 days, or nearly seven months.
19

20 49. The lengthy delays in bond appeal determinations do not affect only Mr.
21 Morales-Matias and similarly situated individuals subject to the Board of
22 Immigration Appeals’ decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025)
23 described above. It also affects all noncitizens who are detained, who have a right
24 to a bond hearing, and who have their request for a bond denied or cannot afford
25 the bond they are provided.
26

27
28 50. This average of 204 days tells only part of the story. The data released by

1 EOIR shows that in many cases, the BIA review takes far longer—in some cases,
2 a year or more—to decide a person’s bond appeal.
3

4 51. These processing times defy the Due Process Clause.

5 52. The Supreme Court and the Ninth Circuit have explained that appellate
6 review is a critical component of a constitutional civil detention scheme, including
7 in immigration cases. *See, e.g., Schall v. Martin*, 467 U.S. 253, 280 (1984); *Singh*
8 *v. Holder*, 638 F.3d 1196, 1209 (9th Cir. 2011); *Prieto-Romero v. Clark*, 534 F.3d
9 1053, 1065–66 (9th Cir. 2008).
10
11

12 53. The Supreme Court has also made clear that *timely* appellate review is a key
13 feature of any civil detention scheme. As the Court has explained, “[r]elief [when
14 seeking review of detention] must be speedy if it is to be effective.” *Stack v. Boyle*,
15 342 U.S. 1, 4 (1951).
16
17

18 54. Most notably, the Court upheld the federal pretrial detention under the Bail
19 Reform Act in part because the statute “provide[s] for immediate appellate review
20 of the detention decision.” *United States v. Salerno*, 481 U.S. 739, 752 (1987). As
21 the Ninth Circuit later elaborated, “[e]ffective review of pretrial detention orders
22 necessarily entails a speedy review in order to prevent unnecessary and lengthy
23 periods of incarceration on the basis of an incorrect magistrate’s decision.” *United*
24 *States v. Fernandez-Alfonso*, 813 F.2d 1571, 1572 (9th Cir. 1987).
25
26

27 55. These principles derive from the federal pretrial context, where, by
28

1 definition, individuals are subject to federal criminal proceedings. Yet here, where
2 only civil proceedings are at issue, the BIA provides nothing like the speedy review
3 federal district and appellate courts provide of magistrate judge detention decisions.
4

5 56. Without timely review, appellate review is meaningless. Indeed, the
6 Supreme Court has explained that the opportunity to obtain “freedom before
7 conviction permits the unhampered preparation of a defense, and serves to prevent
8 the infliction of punishment prior to conviction.” *Stack*, 342 U.S. at 4. Additionally,
9 such detention “may imperil the [detained person’s] job, interrupt his source of
10 income, and impair his family relationships.” *Gerstein v. Pugh*, 420 U.S. 103, 114
11 (1975).
12
13
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15 57. During the many months the BIA takes to review a bond appeal, a detained
16 noncitizen will be forced to defend themselves against their removal on the merits,
17 depriving them of a meaningful chance to assemble evidence outside detention,
18 coordinate with family, or communicate with potential witnesses in other countries.
19
20

21 58. Indeed, their very detention significantly reduces their likelihood of
22 obtaining legal representation. In removal proceedings, noncitizens have the right
23 to be represented by legal counsel but “at no expense to the government.” 8 U.S.C.
24 § 1362. Those detained while in removal proceedings face significant challenges
25 to accessing and communicating with counsel or other forms of legal assistance.
26
27
28 *See, e.g.,* ACLU, *No Fighting Chance: ICE’s Denial of Access to Counsel in U.S.*

1 Immigration Detention Centers 6 (June 9, 2022).¹

2 59. The lack of legal representation in turn dramatically reduces the potential
3 for successful outcomes in their underlying removal proceedings. *Id.* at 12.

4 60. The months a noncitizen waits for appellate review also deprives them of
5 time with their spouses, children, parents, and other family members. These
6 individuals—who are often U.S. citizens or lawful permanent residents—are
7 similarly deprived of the love, care, and financial support that the detained person
8 provides.
9

10 61. Time in detention is also difficult in other ways. Detained persons are often
11 incarcerated in jail-like settings, forced to sleep in communal spaces, receive
12 inadequate medical care, and subjected to other degrading treatment.
13

14 62. While not all noncitizens succeed in their appeals, some do. The BIA's
15 months-long appellate review means that for those individuals, they have spent
16 months of unnecessary time in detention and suffered the many harms outlined
17 above.
18

19 63. Such review processing times violate the Due Process Clause and do not
20 constitute a reasonable time as required by the APA.
21

22 **Bia's Precedent in *Matter of O.Li* and *Matter of Hurtato* Should Not Be**
23

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25
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27 ¹ <https://www.aclu.org/publications/no-fighting-chance-ices-denial-access-counsel-us-immigration-detention-centers>.
28

Applied in This Matter

1
2 64. The Board of Immigration Appeals (BIA) decision in *Matter of Q. Li* and
3
4 *Matter of Hurtado* should be viewed as an agency interpretation of a statute. The
5 Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, which
6
7 overturned the *Chevron deference*, fundamentally alters how courts should review
8 such agency interpretations.

9 65. The Supreme Court's ruling in *Loper Bright Enterprises v. Raimondo* (U.S.
10 June 28, 2024) represents a significant shift in administrative law. The Court
11 expressly abrogated the Chevron framework, which previously instructed courts
12 to defer to an agency's reasonable interpretation of an ambiguous statute. The
13 Court concluded that the Chevron doctrine was a misapplication of judicial power
14 and that it improperly shifted the judicial function of interpreting the law to the
15 executive branch. The judiciary's role is to say, "what the law is," as established
16 in *Marbury v. Madison*. This means that courts must now interpret statutes *de*
17 *novo*, or as if for the first time, without any special deference to an agency's
18 interpretation.
19
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22

23 66. The BIA, as part of the Department of Justice, is an administrative body
24 charged with interpreting and applying the Immigration and Nationality Act
25 (INA). Its decisions, such as *Matter of Q. Li* and *Yajure Hurtado*, are classic
26 examples of agency interpretations of a statute. In this case, the BIA interpreted a
27
28

1 specific provision of the INA to determine eligibility for a particular form of relief.
2 Under the old *Chevron* framework, a court would have likely deferred to the BIA's
3 interpretation as long as it was a reasonable construction of an ambiguous statute.
4

5 67. With *Loper Bright*, the legal landscape has changed. When a court now
6 reviews BIA's decision in *Matter of Q.* and *Yajure Hurtado*, it cannot simply
7 accept the BIA's interpretation. Instead, the court must undertake its own
8 independent analysis of the statute. The court must use all traditional tools of
9 independent analysis of the statute. The court must use all traditional tools of
10 statutory interpretation, such as the plain language of the statute, legislative
11 history, and statutory context, to determine the correct meaning of the law. The
12 BIA's interpretation is no longer entitled to deference. It is simply one possible
13 reading of the statute, which the court can consider but is not bound by. This new
14 approach restores the judiciary's power to serve as the ultimate arbiter of statutory
15 meaning, ensuring a more uniform and consistent application of the law.
16
17

18 68. *Matter of Q. Li* (29 I&N Dec. 66 (BIA 2025)) and *Matter of Yajure Hurtado*
19 (29 I&N Dec. 216 (BIA 2025)) contradict the plain language of the statute by
20 expanding the scope of "arriving aliens" beyond the clear meaning of the law. The
21 decision's interpretation effectively erases the distinction between individuals
22 apprehended at the border and those who have already entered the United States,
23 which is a critical distinction in the Immigration and Nationality Act (INA). By
24 doing so, it subjects a broader category of individuals to mandatory detention
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26
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1 under § 235(b) of the INA, despite the fact that they would otherwise be eligible
2 for a bond hearing under § 236(a).
3

4 69. The legal principle of statutory interpretation, specifically the "plain
5 meaning" rule dictates that if the language of a statute is clear and unambiguous,
6 a court must apply it as written, without looking at outside sources to interpret its
7 meaning.
8

9 70. INA § 235(b) governs the processing of "arriving aliens" and those seeking
10 admission to the United States. It mandates the detention of individuals who are
11 "applicants for admission" and are found to be inadmissible. The plain language
12 of this statute applies to individuals who are physically presenting themselves at
13 a port of entry or are otherwise in the process of seeking admission.
14
15

16 71. INA § 236(a), in contrast, applies to a broader class of non-citizens who are
17 in the United States and have been arrested for a removable offense. It explicitly
18 allows for the release of these individuals on bond while their removal
19 proceedings are pending.
20
21

22 72. The key legal distinction between these two sections is whether a non-
23 citizen is an "arriving alien" or has already "entered" the United States.
24 Traditionally, an individual apprehended miles away from a port of entry has been
25 considered to have already entered and, therefore, is eligible for a bond hearing
26 under § 236(a).
27
28

1 73. The Board of Immigration Appeals (BIA) in *Matter of Q. Li* contradicts this
2 established understanding by reclassifying a person apprehended several miles
3 from the border as an "arriving alien." This classification is a direct expansion of
4 the statutory language. The BIA's decision essentially holds that an individual is
5 an "arriving alien" so long as they were apprehended "while arriving in the United
6 States," regardless of their physical location or distance from a port of entry.
7

8
9 74. The BIA's ruling effectively renders the geographic distinction between "at
10 a port of entry" and "in the United States" meaningless. The statute's structure,
11 with its two separate detention provisions, clearly intended for these to be different
12 categories.
13

14
15 75. By defining "arriving" so broadly, the BIA's decision expands the scope of
16 mandatory detention under § 235(b) to encompass individuals who would have
17 previously been subject to the bond-eligible detention provisions of § 236(a).
18

19 76. The purpose of § 236(a) is to provide a mechanism for releasing certain
20 non-citizens on bond. By moving these individuals into a mandatory detention
21 category, *Matter of Q. Li* and *Yajure Hurtado* bypasses the discretionary authority
22 of immigration judges and thwarts the legislative intent to allow for bond hearings
23 in these cases.
24

25
26 77. Here, the petitioner was apprehended already in the United States, released
27 on his own recognizance, and later re-apprehended when he was complying with
28

1 mandatory inspection appointments before the Immigration and Customs
2 Enforcement – ICE. This fact pattern differs entirely from the Congressional
3 intent at the time § 235(b) was written.
4

5 78. Federal district courts across multiple circuits have consistently rejected the
6 government’s position that noncitizens who previously entered without inspection
7 and were later apprehended in the interior are subject to mandatory detention
8 under INA § 235(b)(2). These courts instead hold that INA § 236 governs
9 detention for such individuals and preserves access to bond hearings before an
10 Immigration Judge. The following decisions, grouped by circuit, illustrate the
11 growing consensus against *Matter of Yajure Hurtado*.
12
13
14

15 **A. First Circuit**

16 79. District courts within the First Circuit have been particularly active in
17 issuing habeas relief and rejecting the government’s new interpretation of INA §
18 235(b)(2).
19

- 20 • *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025)
- 21 • *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8,
22 2025)
- 23 • *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025)
- 24 • *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025)
- 25 • *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025)
- 26
27
28

- 1 • *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025)
- 2 • *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025)
- 3 • *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025)
- 4 • *Orellana Juarez v. Moniz*, 2025 WL 1698600 (D. Mass. June 11, 2025)

5
6
7 80. These cases uniformly hold that individuals arrested in the interior after
8 living in the United States are detained under § 236(a) and are entitled to a bond
9 hearing. In particular, *Sampiao* directly disagreed with the BIA’s reasoning in
10 *Yajure Hurtado*, finding that INA § 235(b)(2) does not apply in these
11 circumstances.
12

13 **B. Second Circuit**

14
15 81. Courts within the Second Circuit have also struck down the government’s
16 expansive reading of § 235(b)(2).
17

- 18 • *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025)
- 19 • *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025)

20 **C. Fourth Circuit**

- 21 • *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025)

22 **D. Fifth Circuit**

- 23 • *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025)

24 **E. Sixth Circuit**

- 25 • *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025)

F. Eighth Circuit

82. The District of Nebraska and District of Minnesota have issued numerous decisions rejecting *Yajure Hurtado*'s interpretation:

- *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025)
- *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025)
- *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025)
- *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025)
- *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025)
- *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025)
- *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025)
- *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025)
- *Escalante v. Bondi*, 2025 WL 2212104 (D. Minn. July 31, 2025)

G. Ninth Circuit

83. Courts within the Ninth Circuit have not only rejected *Yajure Hurtado* but have also explicitly noted that its issuance makes BIA administrative exhaustion futile.

- *Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025)
- *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025)
- *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025)

- 1 • *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025)
- 2 • *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025)
- 3
- 4 • *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025)

5 **H. Key Ninth Circuit Trend:**

6
7 84. In *Zaragoza Mosqueda*, the court expressly held that requiring prudential
8 exhaustion of administrative remedies was **futile** given the binding nature of
9 *Matter of Yajure Hurtado*. This supports our position that habeas review in district
10 court is appropriate and necessary without first appealing to the BIA or even
11 requesting a bond hearing from the Immigration Judge.
12

13 **I. Summary**

14
15 85. Across **seven circuits**, federal district courts have consistently:

- 16 • Rejected DHS's interpretation of INA § 235(b)(2) as applying to noncitizens
17 apprehended in the interior after an unlawful entry.
- 18 • Affirmed that § 236(a) provides the statutory framework for discretionary
19 detention and bond hearings.
- 20 • Found that *Matter of Yajure Hurtado* improperly strips immigration judges
21 of jurisdiction and is contrary to the statutory scheme, Supreme Court
22 precedent (*Jennings v. Rodriguez*), and decades of practice.
23

24
25
26 86. These decisions create a strong foundation for arguing that petitioner's
27 detention is unlawful and that immediate habeas relief is warranted without
28

1 exhausting BIA administrative remedies.

2
3
4 **CAUSES OF ACTION**

5 **COUNT I**

6 **I. Violation of the Due Process Clause of the Fifth Amendment of the**
7 **United States Constitution**

8
9 87. Petitioner realleges and incorporates by reference all preceding paragraphs
10 as if fully set forth herein.

11
12 88. The Due Process Clause asks whether the government's deprivation of a
13 person's life, liberty, or property is justified by a sufficient purpose. Here, there is
14 no question that the government has deprived Petitioner of his liberty.

15
16 89. Petitioner's continued detention violates his rights to substantive and
17 procedural due process guaranteed by the Fifth Amendment of the United States
18 Constitution.

19
20 90. The Due Process Clause of the Fifth Amendment to the U.S. Constitution
21 provides that "[n]o person shall...be deprived of life, liberty, or property without
22 due process of law." As a noncitizen who shows over "two years" physical
23 presence in the United States, Mr. Portillo is entitled to Due Process Clause
24 protections against deprivation of liberty and property. *See Zadvydas*, 533 U.S. at
25 693 ("[T]he Due Process Clause applies to all 'persons' within the United States,
26
27
28

1 including aliens, whether their presence here is lawful, unlawful, temporary, or
2 permanent.”). Any deprivation of this fundamental liberty interest must be
3 accompanied not only by adequate procedural protections, but also by a
4 “sufficiently strong special justification” to outweigh the significant deprivation of
5 liberty. *Id.* at 690.
6

7
8 91. Respondents have deprived Petitioner of his liberty interest, protected by the
9 Fifth Amendment by detaining him since April 1, 2026.
10

11 92. Petitioner’s detention is improper because he has been deprived of a true
12 bond hearing. A hearing is if anything a right to be heard, and here the immigration
13 judge considered it a foregone conclusion that he was ineligible for bond, without
14 considering the law or entertaining his counsel’s arguments. Like the accused in
15 criminal cases, habeas is proper. See *Moore v. Dempsey*, 261 U.S. 86 (1923);
16 *Johnson v. Zerbst*, 304 U.S. 458 (1938); *Burns v. Wilson*, 346 U.S. 137, 154 (1953).
17

18
19 93. Petitioner was scheduled for a custody redetermination, where the
20 Immigration Judge denied jurisdiction based on *Matter of Q. Li*, 29 I&N Dec. 66
21 (BIA 2025) and *Matter of Hurtado* (BIA 2025), two recent BIA decisions that
22 erroneously interpret § 236(a) as inapplicable to certain noncitizens who were not
23 paroled but released after entry.
24

25
26 94. Under the clear language of the INA, § 235(b) governs the treatment of
27 “applicants for admission” who present themselves at a port of entry or are
28

1 intercepted while seeking entry. Section 236(a) applies to noncitizens who have
2 already entered the country and are awaiting removal proceedings.

3
4 95. Respondents' actions in detaining Petitioner without any legal justification
5 violate the Fifth Amendment.

6
7 96. The government's detention of Petitioner is unjustified. Respondents have
8 not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at
9 690 (*finding immigration detention must further the twin goals of (1) ensuring the*
10 *noncitizen's appearance during removal proceedings and (2) preventing danger*
11 *to the community*). There is no credible argument that Petitioner cannot be safely
12 released back to his community and family.
13
14

15 97. Following the Supreme Court's decision in *Loper Bright Enterprises v.*
16 *Raimondo* (U.S. June 28, 2024), agency interpretations of ambiguous statutes are
17 no longer entitled to Chevron deference. Courts must interpret statutory provisions
18 *de novo*, using the traditional tools of statutory construction.
19

20
21 98. Because *Matter of Q. Li* and *Matter of Hurtado* constitute agency
22 interpretations inconsistent with the INA's plain text, they are not entitled to
23 deference and cannot lawfully strip Immigration Judges of jurisdiction to conduct
24 bond hearings for individuals like Petitioner.
25

26 99. This constitutes an unlawful application of § 1226(a), warranting habeas
27 relief.
28

1
2
3 **COUNT II**
4 **Violation of the Administrative Procedure Act**

5 100. Petitioner realleges and incorporates by reference all preceding paragraphs
6 as if fully set forth herein.

7 101. The APA, 5 U.S.C. §§ 701–706, prohibits agency action that is arbitrary,
8 capricious, an abuse of discretion, or otherwise not in accordance with law.
9

10 102. Respondents’ failure to docket Petitioner’s case with EOIR and to afford
11 him any opportunity for a custody redetermination under 8 U.S.C. § 1226(a)
12 constitutes arbitrary and capricious agency action. Despite more than two months
13 in ICE detention, Petitioner has not received a bond hearing or any individualized
14 assessment of flight risk or danger, in violation of statutory and constitutional
15 requirements.
16
17

18 103. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply
19 to noncitizens residing in the United States who are subject to the grounds of
20 inadmissibility because they originally entered the United States without
21 inspection. Such noncitizens are detained under § 1226(a), unless they are subject
22 to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.
23
24

25 104. The BIA’s holdings in *Matter of Q. Li* and *Matter of Hurtado* are agency
26 actions that reinterpret the INA to eliminate jurisdiction for Immigration Judges to
27
28

1 hold bond hearings in cases governed by § 236(a).

2 105. These decisions are contrary to the plain text, structure, and legislative
3 history of the INA and thus not in accordance with law.
4

5 106. Moreover, under *Loper Bright Enterprises v. Raimondo*, courts may not
6 defer to such interpretations. Instead, the judiciary must independently construe
7 the INA's statutory scheme. Upon such review, *Matter of Q. Li* and *Matter of*
8 *Hurtado* constitute unlawful, ultra vires agency actions.
9
10

11 107. Respondents' bond decision was not in accordance with the INA, the APA,
12 or due process, and therefore must be set aside under 5 U.S.C. § 706(2).
13

14 **COUNT III**

15 **Petitioner Must Be Immediately Released Because His Detention Violates**

16 **Due Process Under *Mathews v. Eldridge***

17 108. Petitioner's ongoing detention violates the Due Process Clause of the Fifth
18 Amendment because ICE deprived his of liberty without adequate procedural
19 safeguards and without any legitimate governmental justification. Applying the
20 three-factor balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976),
21 the balance overwhelmingly favors immediate release.
22
23

24 **1. Petitioner's Liberty Interest Is Profound and Weighty**

25 109. The first *Mathews* factor requires the Court to consider "*the private*
26 *interest that will be affected by the [government] action.*" Id. at 321. Freedom from
27
28

1 bodily restraint lies “*at the core of the liberty protected by the Due Process Clause*
2 *from arbitrary governmental action.*” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).
3

4 Civil immigration detainees are entitled to this fundamental protection. Courts in
5 the Ninth Circuit consistently recognize that noncitizens have a strong liberty
6 interest in avoiding civil immigration detention. See, e.g., *Diouf v. Napolitano*, 634
7 F.3d 1081, 1086 (9th Cir. 2011) (The Fifth Amendment's Due Process Clause
8 protects individuals in immigration proceedings, entitling them to freedom from
9 unnecessary detention.).
10
11

12 110. Here, Petitioner does not have any criminal convictions and has no
13 history of violent or dangerous conduct. The government has failed to articulate
14 any specific facts demonstrating that Petitioner poses a danger to the community
15 or a flight risk. Accordingly, the government’s interest in continued detention is
16 minimal and does not outweigh Petitioner’s substantial liberty interest.
17
18

19 111. To continue detaining a man who poses no danger, and whose young
20 United States-born children rely on is the very definition of arbitrary and
21 oppressive government action.
22

23 **2. The Risk of Erroneous Deprivation Was Extreme, and the**
24 **Government Provided No Adequate Procedure Prior to Detention**
25

26 112. The second Mathews factor requires the Court to examine “*the risk of*
27 *an erroneous deprivation of such interest through the procedures used, and the*
28

1 *probable value, if any, of additional or substitute procedural safeguards.*” 424 U.S.
2 at 321. Ninth Circuit courts “regularly apply Mathews to due process challenges to
3 removal proceedings.” *Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022).
4 Under that framework, the government’s abrupt detention of Petitioner presents
5 one of the highest conceivable risks of error.
6
7

8 113. The risk of erroneous deprivation in this case is not merely
9 theoretical; it is realized. Petitioner has been held for over four months now, even
10 though he does not have any convictions or previous criminal history, meaning his
11 detention was completely untethered to any active adjudicatory process.
12

13 114. Even if the Immigration Judge previously denied Petitioner’s release
14 under bond solely under *Matter of Yajure Hurtado*, a precedent that does not permit
15 meaningful consideration of Petitioner’s actual risk profile and fails to ensure the
16 individualized analysis due process demands. Where the initial arrest itself was
17 unsupported by any prior procedural protections, a later bond hearing cannot
18 retroactively legitimize unlawful detention. See *Wong Wing v. United States*, 163
19 U.S. 228, 238 (1896) (punitive or restrictive measures cannot precede due process).
20
21
22

23 115. Furthermore, the risk of error is underscored by the current posture
24 of his case. Without a bond hearing or a meaningful opportunity to contest his
25 detention before a neutral arbiter, the current “procedure” serves only to prolong
26 the incarceration of an individual whom the court seems eager to declare eligible
27
28

1 for legal status.

2 **3. The Government's Interest in Detaining Petitioner Is Minimal, and No**
3 **Legitimate Administrative Burden Justifies His Continued Confinement**

4
5 116. The third *Mathews* factor examines the government's interest,
6 including "*fiscal and administrative burdens that the additional or substitute*
7 *procedural requirement would entail*" of additional procedures. 424 U.S. at 321.
8 In the civil immigration context, courts recognize that the government's interests
9 are largely limited to ensuring attendance at proceedings and protecting public
10 safety. See *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017).

11
12
13 117. The government's interest in detaining Petitioner is minimal,
14 particularly because he has no criminal history and is not a flight risk. Courts have
15 consistently held that the government's interest in detaining noncitizens is limited
16 to ensuring attendance at proceedings and protecting public safety. *Lopez v. Decker*,
17 978 F.3d 842. In *Lopez v. Decker*, the Second Circuit emphasized that prolonged
18 detention without justification undermines the government's interest and imposes
19 an undue burden on detainees. *Lopez v. Decker*, 978 F.3d 842. Similarly, in *Black*
20 *v. Almodovar*, 156 F.4th 171 the court held that due process requires the
21 government to bear the burden of justifying continued detention by clear and
22 convincing evidence in cases of prolonged detention.

23
24
25
26
27 118. Here, the government has no legitimate interest in continuing to detain
28

1 Petitioner:

- 2 • He has no criminal history.
- 3
- 4 • He has never posed any danger to the community.

5 119. The Respondents have failed to articulate any legitimate justification
6 for Petitioner's continued detention. Petitioner has demonstrated his willingness to
7 comply with the adjudicatory process. The government's continued detention of
8 Petitioner, despite these facts, serves no legitimate purpose and imposes an undue
9 burden on Petitioner's liberty and well-being.
10

11 120. Given the availability of far less burdensome and far less restrictive
12 means, the government cannot justify the constitutional cost of detention in this
13 case.
14

15 121. Balancing all three *Mathews* factors, the Court should conclude that
16 Petitioner's arrest and ongoing detention violate the Due Process Clause. The
17 government deprived him of a fundamental liberty interest without any
18 pre-deprivation process, subjected him to an unreasonably high risk of erroneous
19 deprivation, and continues to detain him without any meaningful governmental
20 justification.
21

22 122. Petitioner's fundamental liberty interest far outweighs any dwindling
23 government interest in his detention. Because no constitutionally adequate
24

1 procedures supported his initial arrest or sustain his ongoing confinement, habeas
2 relief is warranted. Petitioner should be immediately released from custody.
3

4
5 **PRAYER FOR RELIEF**

6
7 WHEREFORE, Petitioner respectfully requests that this Court grant the
8 following relief:

- 9
10 1) Assume jurisdiction and proper venue over this matter;
- 11 2) Issue a writ of habeas corpus under 28 U.S.C. § 2241 ordering Respondents
12 to immediately release Petitioner from immigration detention or, in the
13 alternative, order the immigration court to schedule a custody determination
14 hearing without considering *Matter of Q.Li* and *Matter of Hurtado* within 10
15 days or any time this court deems reasonable.
- 16
17 3) Declare that Respondents' denial of bond under *Matter of Q-Li* and *Matter*
18 *of Hurtado* was or would have been unlawful under 8 U.S.C. § 1226(a), the
19 Administrative Procedure Act, and the Due Process Clause of the Fifth
20 Amendment;
- 21
22 4) Enjoin Respondents from further detaining Petitioner without providing a
23 lawful and individualized custody determination;
- 24
25 5) Petitioner's personal belongings should be returned to him after his release;
- 26
27 6) Award Petitioner reasonable attorneys' fees and costs under the Equal
28

1 Access to Justice Act, 28 U.S.C. § 2412; and

2 7) Grant such other and further relief as this Court deems just and proper.
3

4
5 Respectfully submitted,
6

7 /s/ Marcelo Gondim

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