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5
6 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

7 **PEDRO RAMIREZ ANDRES,**

8 Petitioner,

9 v.

10 **Markwayne MULLIN,** Secretary, U.S.
11 Department of
Homeland Security;

12 **Todd LYONS,** Acting Director, U.S.
13 Immigration and Customs Enforcement;

14 **Patrick DIVVER,** Field Office Director, San
15 Diego Field Office, U.S. Immigration and
Customs Enforcement.

16 **Christopher LAROSE,** Senior Warden, Otay
Mesa Detention Center;

17 **Sirce OWEN,** Acting Director of the Executive
18 Office for Immigration Review (EOIR),
U.S. Department of Justice.

19 **Todd BLANCHE,** Acting Attorney General,
20 U.S. Department of Justice.

21 Does 1-2
22 Respondents.
23
24

Case No.: **'26CV3366 LL GC**

Agency File No.: 

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner Pedro Ramirez Andres, (Petitioner) is a noncitizen and longtime resident of the United States who has been harmed by Defendants-Respondents' (Defendants) new, draconian policy reinterpreting the immigration detention statutes to preclude Petitioner from eligibility for bond under the Immigration and Nationality Act (INA), 8 U.S.C. § 1226(a), and for bond hearings under 8 C.F.R. §§ 1003.19(a), 1236.1(d). Instead, pursuant to this new policy, Defendants now consider Petitioner as subject to mandatory detention under INA section 235(b)(1)(B)(iii)(IV) without the opportunity for release on bond during the pendency of his lengthy removal proceedings.

2. Petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging his ongoing immigration detention without a custody hearing. Respondents unlawfully classify Petitioner as subject to mandatory detention under INA § 235(b), despite the fact that Petitioner has lived continuously in the United States since 2019, was released from custody as a minor, was never issued an expedited removal order, and previously had removal proceedings dismissed by the Immigration Court in 2022.

3. Petitioner has lived in the United States continuously since 2019. Petitioner was detained on May 19, 2026. He was transferred to the Otay Mesa Detention Facility in San Diego, California, where he remains detained. On May 29, 2026, the Immigration Judge refused jurisdiction over Petitioner's custody hearing request, concluding that Petitioner was subject to mandatory detention under INA § 235(b)(1)(B)(iii)(IV). The Immigration Judge relied on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and referenced the Ninth Circuit's stay in *Maldonado Bautista v. DHS*, No. 26-1044 (9th Cir. Mar. 6, 2026).

1 4. However, Petitioner is not an arriving alien and is not presently subject to expedited
2 removal proceedings under INA § 235. Because Petitioner was released into the United States in
3 2019, continuously resided in the country for years, and never received an expedited removal order,
4 his detention is governed by INA § 236(a), which entitles him to an individualized custody
5 determination.

6 5. Petitioner is charged with, *inter alia*, having entered the United States without
7 inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i). Petitioner entered the United States when he was only
8 13 years old. Petitioner was released on an order of supervision upon entry in 2019 with no
9 expedited removal order, due to his age. Thus, he is not subject to mandatory detention as he has
10 been physically present in the US since 2019 well past the two year minimum. Thus, he is detained
11 pursuant to INA 236(a) - not mandatory under INA 236(c). This Court should order his immediate
12 release. Alternatively, Petitioner is entitled to an immediate bond hearing before an Immigration
13 Judge.

14 6. DHS denied Petitioner release from immigration custody. The denial was
15 consistent with a new DHS policy issued on July 8, 2025, instructing all ICE employees to consider
16 anyone alleged to be inadmissible under § 1182(a)(6)(A)(i) —i.e., those who entered the United
17 States without inspection—to be subject to mandatory detention under INA section
18 235(b)(1)(B)(iii)(IV) and therefore eligible for release only on parole.

19 7. Petitioner sought a bond redetermination hearing before Immigration Judge Mark
20 Sameit (“IJ Sameit”) at the Otay Mesa Immigration Court on May 29, 2026. Petitioner asserted
21 the Court had jurisdiction to conduct a custody redetermination hearing pursuant to 8 USC
22 §1226(a).

1 8. IJ Sameit asked the Department’s position on whether the Court had jurisdiction to
2 proceed with the bond hearing and the Department opposed, stating the Board’s precedent decision
3 in *Matter of Yajure Hurtado* remains law, and that the Court was not bound by the Central District
4 Court declaratory order.

5 9. IJ Sameit agreed explicitly with the Department’s position and parroted their
6 reasoning in denying Petitioner a bond hearing deciding he had no jurisdiction. He continued that
7 Petitioner is an “applicant for admission” who is “seeking admission” and subject to mandatory
8 detention under INA section 235(b)(1)(B)(iii)(IV). IJ Sameit did not allow for any argument or
9 testimony regarding the merits and made no finding on the merits of whether the Petitioner is a
10 danger or flight risk. IJ Sameit justified the court’s refusal to accept jurisdiction on the basis that
11 the Maldonado Bautista orders were stayed by the the 9th Circuit on March 6, 2025.

12 10. Petitioner’s detention on this basis violates the plain language of the INA and its
13 implementing regulations.

14 11. Subparagraph 1225(b)(2)(A) applies to individuals who are apprehended on arrival
15 in the United States. It states that an “applicant for admission” who is “seeking admission” shall
16 be detained for a removal proceeding. *Id.* It does not apply to individuals like Petitioner, who was
17 arrested and detained by ICE after having entered and begun residing in the United States. Instead,
18 such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on
19 conditional parole or bond. That statute expressly applies to people like Petitioner, are charged as
20 inadmissible for having entered the United States without inspection.

21 12. Defendants’ new legal interpretation is plainly contrary to the statutory framework
22 and its implementing regulations. Indeed, for decades, Defendants have applied § 1226(a) to
23 people like Petitioner. Defendants’ new policies are thus not only contrary to law, but arbitrary
24

1 and capricious in violation of the Administrative Procedure Act (APA). They were also adopted
2 without complying with the APA's procedural requirements.

3 13. On January 13, 2026, Executive Office of Immigration Review Chief Immigration
4 Judge Teresa L. Riley wrote an email directing all Immigration Judges that "Maldonado Bautista
5 is not a nationwide injunction and does not purport to vacate, stay, or enjoin *Yajure Hurtado*.
6 Therefore, *Yajure Hurtado* remains binding precedent on agency adjudicators. For clarification,
7 declaratory judgments differ from injunctions in that the former clarifies parties' legal rights
8 without ordering specific action, while the latter is a court order compelling to do or stop doing a
9 specific act. A declaratory judgment is not an equitable remedy, and does not, by itself, have the
10 effect of compelling specific action by a party." See Exhibit A: EOIR Chief Immigration Judge
11 Email.

12 14. On February 18, 2026, the Central District of California issued an Order to Enforce
13 Judgement in the matter of *Maldonado Bautista et al. v. Ernesto Santacruz Jr et al.*, 5:25-cv-
14 01873-SSS-BFM (Dkt No. 107) (Feb. 18, 2026). The Court chastised the Department of Homeland
15 Security and the Executive Office for Immigration Review for failing to adhere to its prior orders
16 certifying the class and instructing to provide bond hearings for persons like Petitioner. As a result
17 of the rejection and ignorance of the federal court orders, the Central District Court issued further
18 relief explicitly vacating *Matter of Yujare Hurtado* under the Administrative Procedure Act. The
19 9th Circuit Court of Appeals stayed the order on March 6, 2026.

20 15. Petitioner is not an arriving alien and is not presently subject to expedited removal
21 proceedings under INA § 235. Because Petitioner was released into the United States in 2019,
22 continuously resided in the country for years, and never received an expedited removal order, his
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1 detention is governed by INA § 236(a), which entitles him to an individualized custody
2 determination.

3 16. Petitioner is not a danger to the community nor a flight risk based on the core factors
4 to be used by Immigration Courts. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

5 17. Petitioner now challenges his continued detention as illegal and unconstitutional
6 and requests his immediate release.

7 8 JURISDICTION

9 18. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
10 Otay Mesa Detention Center in San Diego, California.

11 19. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C.
12 § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the
13 Suspension Clause).

14 20. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment
15 Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

16 VENUE

17 21. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
18 500 (1973), venue lies in the United States District Court for the Southern District, the judicial
19 district in which Petitioner currently is detained.

20 22. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
21 Respondents are employees, officers, and agencies of the United States, and because a substantial
22 part of the events or omissions giving rise to the claims occurred in the Southern District of
23 California.

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

23. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to the Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file return “within three days unless good cause additional time, not exceeding twenty days, is allowed.” *Id.* Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention.

24. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

25. Petitioner is “in custody” for the purpose of 28 U.S.C. § 2241 because he was arrested by Respondents and remains in their legal and physical custody at Otay Mesa Detention center in Otay Mesa, California. He is under Respondents’ and their agents’ direct control.

PARTIES

26. Petitioner Pedro Ramirez Andres is a citizen of Guatemala who has been in immigration detention since May 19, 2026. Petitioner was arrested in Escondido, CA. ICE did not set bond, and Petitioner requested review of his custody by an IJ. On May 29, 2026, Petitioner was denied bond by IJ Sameit at the Otay Mesa Immigration Court based on an erroneous lack of

1 jurisdiction determination, because he was deemed an “applicant for admission.” Petitioner has
2 resided continuously in the United States since 2019.

3 27. Respondent, Patrick Divver, is the Director of the San Diego Field Office of ICE’s
4 Enforcement and Removal Operations division. As such, Patrick Divver is Petitioner’s immediate
5 custodian and is responsible for Petitioner’s detention and removal. He is named in his official
6 capacity.

7 28. Respondent, Todd Lyons, is the Acting Director of US Immigration and customs
8 enforcement. As such, Todd Lyons is responsible for Petitioner’s detention and is named in his
9 official capacity.

10 29. Respondent Markwayne Mullin is the Secretary of the Department of Homeland
11 Security. He is responsible for the implementation and enforcement of the Immigration and
12 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Mr.
13 Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

14 30. Respondent Department of Homeland Security (DHS) is the federal agency
15 responsible for implementing and enforcing the INA, including the detention and removal of
16 noncitizens.

17 31. Respondent Todd Blanche is the Acting Attorney General of the United States. He
18 is responsible for the Department of Justice, of which the Executive Office for Immigration
19 Review and the immigration court system it operates is a component agency. He is sued in his
20 official capacity.

21 32. Respondent Executive Office for Immigration Review (EOIR) is the federal agency
22 responsible for implementing and enforcing the INA in removal proceedings, including for custody
23 redeterminations in bond hearings.

1 33. Respondent Christopher LAROSE is employed by CoreCivic as Warden of the
2 Otay Mesa Detention Facility where Petitioner is detained. He has immediate physical custody of
3 Petitioner. He is sued in his official capacity.

4
5 **FACTUAL BACKGROUND**

6 34. Petitioner has been detained since May 19, 2026.

7 35. Petitioner is detained pursuant to 8 USC §1225(b)(2)(A).

8 36. Petitioner has been in the United States since 2019. He has never left the United
9 States since.

10 37. Petitioner entered the United States when he was only 13 years old. He has resided
11 in the United States continuously for well beyond 2 years and thus is not subject to Mandatory
12 Detention.

13 38. Petitioner was released on an order of supervision upon entry in 2019 with no
14 expedited removal order based on his age. Thus, he is not subject to mandatory detention as he
15 has been physically present in the US since 2019 well past the two years. *See Exhibit B: (Original*
16 *NTA and Order of Release).*

17 39. Petitioner came to the United States with his father and filed for asylum within one
18 year of his entry. Petitioner's Father returned to Guatemala.

19 40. Removal proceedings were initiated and docketed on March 6, 2020.

20 41. On June 15, 2022, the Immigration Judge dismissed Petitioner's removal
21 proceedings.

22 42. Petitioner has a US citizen sponsor willing to post his bond and ensure he appears
23 for all immigration hearings and check-ins. *See Exhibit C (Sponsor's affidavit, financial*
24 *documents, proof of fixed address).*

1 43. Petitioner has zero criminal history. He is a person of good moral character. *See*
2 Exhibit D (Letters of Support).

4 LEGAL FRAMEWORK

5
6 44. A petitioner must exhaust administrative remedies by appealing to the BIA before
7 seeking judicial remedies and include bond determinations. *Leonardo v. Crawford*, 646 F.3d 1157,
8 1160 (9th Cir. 2011). “[A] court may waive the prudential exhaustion requirement if
9 ‘administrative remedies are inadequate or not efficacious, pursuit of administrative remedies
10 would be a futile gesture, irreparable injury will result, or the administrative proceedings would
11 be void.’” *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*,
12 370 F.3d 994, 1000 (9th Cir. 2004)). “The party moving the court to waive prudential exhaustion
13 requirements bears the burden of demonstrating that at least one of these Laing factors applies.”
14 *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019).

15 45. Here, Petitioner is challenging both the lawfulness of his initial detention, and the
16 ongoing detention. Respondents’ position is that Petitioner is not eligible for a custody
17 redetermination hearing pursuant to Section 236(a) of the Immigration and Nationality Act and
18 therefore will deny any request for a bond hearing for Petitioner. Therefore any request for such
19 hearing at this stage would be futile and require the instant petition for relief.

20 46. Petitioner is challenging the unlawfulness of Respondents’ initial decision to detain
21 him, independent of any decision made by any Immigration Judge in removal proceedings.

22 47. Therefore, a writ of habeas corpus is the sole avenue to vindicate Petitioner’s
23 constitutional, statutory, and regulatory rights and restore his liberty.

1 48. Courts have recognized the significance of the habeas statute in protecting
2 individuals from unlawful detention, which affords “a swift and imperative remedy in all cases of
3 illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963); see also *Yong v. INS*, 208.
4 F.3d 1116, 1120 (9th Cir. 2000) (noting that habeas statute requires expeditious determination of
5 petitions).

6 49. The Court must grant the petition for writ of habeas corpus or issue an order to
7 show cause to Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. § 2243.
8 “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in
9 deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507
10 U.S. 292, 306 (1993)).

11 50. Due process requires “adequate procedural protections” to ensure that the
12 government’s asserted justification for physical confinement “outweighs the individual’s
13 constitutionally protected interest in avoiding physical restraint.” *Zadvydas v. Davis*, 533 U.S.
14 678, 690 (2001) (internal quotation marks omitted).

15 51. In the immigration context, the Supreme Court has recognized two valid purposes
16 for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*;
17 *Demore*, 538 U.S. at 528.

18 52. The test for procedural due process claims, the Mathews test balances: (1) the
19 private interest threatened by governmental action; (2) the risk of erroneous deprivation of such
20 interest and the value of additional or substitute safeguards; and (3) the government interest.
21 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); see also *Sho v. Current or Acting Field Off. Dir.*,
22 No. 1:21CV-01812 TLN AC, 2023 WL 4014649, at *3 (E.D. Cal. June 15, 2023), report and
23 recommendation adopted, No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June 21,
24

2023) (using Mathews factors to assess a habeas petitioner's due process claims and collecting cases doing the same). Here, each factor weighs in Petitioner's favor, and Petitioner's release is justified due to his interest in avoiding prolonged or unjustified detention. Petitioner poses no danger to the community, nor is a flight risk.

53. Respondents have failed to demonstrate that Petitioner is a flight risk or danger to his community warranting his detention after being released on his own recognizance. Immigration Courts are required to consider the following non-exhaustive *Matter of Guerra* list of factors to decide if a respondent is a danger to the community or a flight risk:

- Fixed Address: Whether the individual has a stable fixed address in the United States. Here, Petitioner has a US Citizen Sponsor who is committed to supporting him and he will reside at same address prior to his detention. *See* Exhibit C.
- Length of Residence: How long the individual has resided in the United States. Petitioner has been in the United States for over 7 years.
- Family Ties: Presence of family in the United States. Petitioner has an Uncle and several siblings in the United States.
- Employment History: Petitioner has a record of stable employment and is a good worker in the roofing business. *See* Exhibit D.
- Court Appearance Record: A history of appearing for court hearings. Petitioner has never failed to appear for any hearing and intends to pursue his applications for relief. An I-589 was filed for him previously while he was a 13 year old minor.
- Criminal Record: The extensiveness, recency, and seriousness of criminal activity. Petitioner has zero criminal history in the United States nor Abroad.
- Immigration Violations: A history of previous immigration violations. Here, Petitioner entered the United States to escape persecution in Guatemala. His only violation was entering without an authorized entry document as a 13 year-old minor. There is no official "Asylum" visa, thus compliance with this statute was not feasible. His manner and method of entry were reasonable based on his age and credible fear of persecution.
- Manner of Entry: How the individual entered the United States.
- Flight risk: Attempts to flee prosecution or escape authorities. Petitioner made no attempt to flee authorities.

See Matter of Guerra, 24 I&N Dec. 37 (BIA 2006)

54. The Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have unlawfully ordered that Petitioner

1 be denied the opportunity to be released on bond. On May 29, 2026, Petitioner had a custody
2 hearing in which IJ Sameit refused to assert proper jurisdiction and stubbornly following the
3 outdated DHS position. The Immigration Court continues its improper jurisdictional deflection
4 via *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 (BIA 2025).

5 55. Petitioner, Pedro Ramirez Andres, while he does not have lawful status in the
6 United States, he was unlawfully detained and is being held at the Otay Mesa Detention Center.
7 He was apprehended by immigration authorities on May 19, 2026.

- 8
- 9 a. entered the United States without inspection in 2019 and was not apprehended upon
arrival, cf. *id.*; and
 - 10 b. was previously in removal proceedings docketed in 2020 which were terminated in
2022.
 - 11 c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.
- 12

13 56. After apprehending Petitioner on May 19, 2026 the DHS placed him in removal
14 proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible under
15 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection.
16 Petitioner is subject to Section 236(a) of the Immigration and Nationality Act, and is not subject
17 to mandatory detention pursuant to Section 236(c) or Section 235 of the Act. The Court should
18 expeditiously grant this petition and order Petitioner released.

19 57. Alternatively, the Court should order Respondents to provide a custody
20 redetermination hearing under 8 U.S.C. § 1226(a) within seven days.

21 CAUSES OF ACTION

22 1. Violation of Fifth Amendment Right to Due Process – Substantive and Procedural 23 Due Process, U.S. Const. Amend. V.

1 58. Petitioner restates, realleges, and incorporates by reference each and every allegation in the
2 paragraphs above as if fully set forth herein.

3 59. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the
4 federal government from depriving any person of “life, liberty, or property, without due
5 process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the
6 United States, including [non-citizens], whether their presence here is lawful, unlawful,
7 temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

8 60. Generally, due process protections depend on the situation and must account for (1) the
9 private interest at issue, (2) the risk of erroneous deprivation of that interest through the
10 procedures used, and (3) the Government's interest. *Mathews v. Eldridge*, 424 U.S. 319,
11 334–35 (1976). Here, Petitioner was detained and subject to mandatory detention without
12 any opportunity to be heard prior to his detention.

13 61. Due process requires that government action be rational and non-arbitrary. *See U.S. v.*
14 *Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

15 62. Petitioner has a vital liberty interest in remaining free from DHS custody.

16 63. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal. July
17 24, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June
18 14, 2025) (explaining that a non-citizen that ICE released from custody after initial
19 apprehension “has a substantial private interest in remaining out of custody” which
20 includes an interest in “...obtaining necessary medical care, [and] maintaining her
21 relationships in the community...”).

22 64. Even if the initial decision to release a non-citizen from DHS custody is discretionary,
23 “...after that individual is released from custody, he has a protected liberty interest in
24

1 remaining out of custody.” *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL
 2 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-
 3 PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025)).

4 65. Once a non-citizen is released, should the Department decide to re-detain him, he is entitled
 5 to notice as to what reasons he is being re-detained, such as which alleged violations of
 6 conditions of his release. 8 CFR 241.4(l)(1) (2024). That did not occur here.

7 66. Here, Petitioner was detained in a hasty manner after being free for over 7 years. He had
 8 no violations of the conditions of his release. Rather, the Department of Homeland Security
 9 played games with his removal case, dismissing it in 2022 and detaining him again for no
 10 reason.

11 67. Petitioner has no criminal history. He came to the U.S. to seek asylum and to escape the
 12 threats he endured in Guatemala. *See generally Mathews v. Eldridge*, 424 U.S. 319, 333
 13 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally
 14 protected interest). Nor has the government identified any materially changed
 15 circumstances that would warrant detaining Petitioner.

16 **2. Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in**
 17 **Accordance with Law and in Excess of Statutory Authority Violation of 8 C.F.R. §**
 18 **239.2(c)**

19 68. Petitioner restates, realleges, and incorporates by reference each and every allegation in the
 20 paragraphs above as if fully set forth herein.

21 69. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in
 22 accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction
 23
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1 authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C.
2 § 706(2)(A)-(D).

3 70. Once a removal proceeding has been initiated, regulations enumerate the reasons for which
4 proceedings may be dismissed at 8 C.F.R. § 239.2(a). In considering a motion to dismiss,
5 the Immigration Judge must make “an informed adjudication . . . based on an evaluation
6 of the factors underlying the [DHS] motion.” *Matter of G-N-C-*, 22 I&N Dec. 281, 284
7 (BIA 1998).

8 71. The initiation of expedited removal proceedings is not an enumerated ground upon which
9 a removal proceeding may be dismissed.

10 72. It is a well-established administrative principle that “agency action taken without lawful
11 authority is at least voidable, if not void ab initio.” *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d
12 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015);
13 see also *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016)
14 (invalidating agency action because it was taken by unauthorized official).

15 73. Under the APA, an agency must provide “reasoned explanation for its action” and “may
16 not depart from a prior policy sub silentio or simply disregard rules that are still on the
17 books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). On mere
18 conjecture, Respondents’ intent was to eliminate the due process rights available to
19 Petitioner in removal proceedings under section 240 of the INA, deprive him of his liberty
20 interest despite no evidence of material changed circumstances, or for some other purposes
21 not supported by law. See *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921,
22 at *5 (N.D. Cal. July 24, 2025) (“Detention for its own sake, to meet an administrative
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1 quota, or because the government has not yet established constitutionally required pre-
2 detention procedures is not a legitimate government interest.”).

3 74. In deciding to detain Petitioner, Respondents further violated the APA by “entirely fail[ing]
4 to consider an important aspect of the problem” – namely, the important procedural rights
5 that Petitioner relied on in § 1229a immigration court proceedings. *See Motor Vehicle Mfrs.*
6 *Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also Dep’t*
7 *of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding
8 that rescission of immigration policy without considering “particular reliance interests” is
9 arbitrary and capricious in violation of the APA).

10 75. The arbitrary and capricious detention of Petitioner was not made in furtherance of an
11 enumerated reason set forth in the regulations and causes Petitioner irreparable harm. For
12 these reasons, the Court should find that the decision to detain Petitioner is arbitrary,
13 capricious, and unsupported by substantial evidence. *See* 5 U.S.C. § 706(2)(A), (E).

14 **3. Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in**
15 **Accordance with Law and in Excess of Statutory Authority, Unlawful Detention**

16 76. Petitioner restates, realleges, and incorporates by reference each and every allegation in the
17 paragraphs above as if fully set forth herein.

18 77. Under the APA, a court shall “hold unlawful and set aside agency action...” that is “...(A)
19 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B)
20 contrary to constitutional right, power, privilege, or immunity...” 5 U.S.C. § 706(2)(A)-
21 (B).

22 78. An action is an abuse of discretion if the agency “entirely failed to consider an important
23 aspect of the problem, offered an explanation for its decision that runs counter to the
24

evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

79. To survive an APA challenge, the agency must articulate “a satisfactory explanation” for its action, “including a rational connection between the facts found and the choice made.” *Dep’t of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted).

80. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025), the Court explained the process of discretionary release from custody in immigration cases and noted that before revoking the release, the non-citizen must be given written notice of the impending revocation, which must include a cogent description of the reasons. Under the APA, non-citizens are entitled to determinations related to their release revocations that are not arbitrary, capricious or an abuse of discretion. *See id.* at *10.

81. By detaining Petitioner without notice or consideration of his individualized facts and circumstances, Respondents have violated the INA, implementing regulations, and the APA.

82. Respondents have made no finding that Petitioner is a danger to the community.

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

84. By detaining Petitioner categorically and without notice, Respondents have further abused their discretion because, since the agency made its initial custody determination, on mere conjecture, there have been no changes to Petitioner’s specific facts or circumstances that support his detention.

4. Violation of the Fourth Amendment of the Constitution

1 85. Petitioner restates, realleges, and incorporates by reference each and every allegation in the
2 paragraphs above as if fully set forth herein.

3 86. The Fourth Amendment protects “[t]he right of the people to be secure in their persons
4 against unreasonable searches and seizures.” U.S. Const. amend. IV. The Supreme Court
5 has recognized that immigration arrests and detentions are “seizures” within the meaning
6 of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984)
7 (acknowledging that deportation proceedings are civil, but the Fourth Amendment still
8 applies to the “seizure” of the person).

9 87. The Fourth Amendment requires that arrests entail a neutral, judicial determination of
10 probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral, judicial
11 determination can occur either before the arrest, in the form of a warrant, or promptly
12 afterward, in the form of a prompt judicial probable cause determination. *See id.* Arrest and
13 detention of a person, including of a noncitizen, absent a neutral judicial determination of
14 probable cause violates the Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of*
15 *Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991). This determination must occur within 48
16 hours of detention, which includes weekends, unless there is a bona fide emergency or
17 other extraordinary circumstances. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57
18 (1991).

19 88. Congress enacted a strong preference that immigration arrests be based on warrants. *See*
20 *Arizona v. United States*, 567 U.S. 387, 407–08 (2012). The Immigration and Nationality
21 Act thus provides immigration officers with only limited authority to conduct warrantless
22 arrests. 8 U.S.C. § 1357(a)(2). Federal regulations track the strict limitations on warrantless
23 arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

1 89. Petitioner did not receive any judicial determination of probable cause for his arrest or
2 continued detention by the Respondents.

3 90. The Government cannot salvage this seizure by invoking generalized immigration
4 enforcement interests. The Fourth Amendment's reasonableness inquiry is fact-specific
5 and demands individualized justification for both the arrest and the extended detention. *See*
6 *United States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114.
7 Petitioner did not pose any danger to any person in the community at large, and in fact, has
8 a credible fear of returning to Guatemala as the government is ill-equipped to protect those
9 with cognitive impairments from abuse and persecution.

10 91. Respondents' arrest of Petitioner constitutes an unreasonable and unlawful seizure in
11 violation of the Fourth Amendment.

12 CLAIM FOR RELIEF

13 1. Violation of Fifth Amendment Right to Due Process

14
15 92. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in
16 the preceding paragraphs as if fully set forth herein.

17 93. Here, Petitioner has “passed through our gates” and “may be expelled only after
18 proceedings conforming to traditional standards of fairness encompassed in due process of
19 law.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). Because
20 Petitioner has developed an interest in remaining during his time here, “the procedures used
21 to remove [him] must adequately protect” that interest. *Make the Rd. New York v. Noem*,
805 F. Supp. 3d 139, 159 (D.D.C. 2025).

22 94. In this case, Petitioner has been present in our country for over 7 years. This substantial
23 amount of time indicates he is afforded the Fifth Amendment's guaranteed due process
24

1 before removal. *See Yamataya v. Fisher*, 189 U.S. 86, 87 (1903) (finding a noncitizen was
2 entitled to due process before removal despite having spent only four days in the US).

3 95. There is no basis to find Petitioner is a flight risk or presents a danger to the community,
4 which are core guideposts for parole, and Respondents have not supplied any additional
5 information to the contrary. Denying Petitioner notice and reasoning upon his detainment
6 took away a meaningful opportunity to contest and violated due process. *See Pinchi*, 792
7 F. Supp. 3d at 1032-35; *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1146-47 (D. Or. 2025)
8 (D. Or. July 9, 2025).

9 96. Continued detention violates the Fifth Amendment, and Habeas relief is required to remedy
10 this constitutional violation.

11 **Counts 2 and 3: Violation of the Administrative Procedure Act – 5 U.S.C. §**

12 **706(2)(A); Unlawful Detention;**

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

15 98. Petitioner was not provided adequate notice. Respondents must provide at minimum some
16 reasoning explaining why the Petitioner would now be considered a flight risk or danger
17 to the community. *See Castellon*, 2025 WL 2373425, at *12; *Pinchi v. Noem*, 792 F. Supp.
18 3d 1025, 1032-35 (N.D. Cal. July 24, 2025). Given Respondent has not attempted to justify
19 the detention for Petitioner, this demonstrates they have acted arbitrarily and capriciously
20 in violation of the APA.

21 99. Habeas relief is required to remedy this Constitutional violation.

22 **4. Fourth Amendment Violation and Irreparable Harm**

1 100. Petitioner did not receive any judicial determination of probable cause for his arrest
2 or continued detention by the Respondents.

3 101. Continued detention based on this warrantless arrest causes severe and irreparable
4 harm, including loss of liberty, emotional and psychological harm, separation from family,
5 and interference with the ability to pursue legal claims.

6
7 **PRAYER FOR RELIEF**

8
9 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 10 a. Assume jurisdiction over this matter;
11 b. Issue a writ of habeas corpus;
12 c. Declare the Petitioner's detention is unlawful;
13 d. Declare that Petitioner's detention is governed by INA § 236(a), not INA § 235(b);
14 e. Order Respondents to immediately release Petitioner;
15 f. Alternatively order prompt constitutionally compliant bond hearing before a neutral
16 adjudicator within five (5) days;
17 g. Award Petitioner attorney's fees and costs as permitted by law; and
18 h. Grant any other and further relief that this Court deems just and proper.

19 DATED this 2nd Day of June, 2026.

20 /S/ ANNA M HYSELL
21 *Attorney for Petitioner*
22
23
24