

1 Prerna Preshika Lal
2 SBN: 354786
3 Lal Legal APLC
4 2001 Addison St STE 300
5 Berkeley CA 94704
6 (800) 552-5616
7 prerna@lallegal.com

8 *Attorney for Petitioner*

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 **EDUARDO MEJIA-TEXTA**
12 

13 Petitioner,

14 v.

15 **CHRISTOPHER LAROSE**, Warden of Otay Mesa
16 Detention Center; **KENNETH C. SMITH**, San
17 Diego Field Director, U.S. Immigration and
18 Customs Enforcement; **TODD LYONS**, in his
19 official capacity as Acting Director of Immigration
20 and Customs Enforcement; **MARKWAYNE**
21 **MULLIN**, U.S. Department of Homeland Security;
22 and **TODD BLANCHE**, Acting U.S. Attorney
23 General.

24 Respondents.

Civil Action No.: **'26CV3646 RBM JLB**

25 **PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

INTRODUCTION

- 1
2 1. This case is about fundamental fairness. Petitioner Eduardo Mejia-Texta has lived in the
3 United States for over 25 years. He was brought here as a young child and has built his life
4 here through work and family ties. He poses no danger to the community and presents no
5 individualized basis for flight-risk detention.
- 6
7 2. Yet, since April 2, 2026, Petitioner has been held in mandatory detention at the Otay Mesa
8 Detention Center without a single individualized hearing to determine whether he poses a
9 flight risk or danger to the community. No immigration judge has ever considered his deep
10 ties to the United States, his U.S. citizen children, his stable employment, or his fixed
11 address. Instead, an Immigration Judge denied Petitioner a bond hearing, relying on *Matter*
12 *of Yajure-Hurtado* and concluding that a bond hearing was unavailable.
- 13
14 3. This is not a case about whether Petitioner should ultimately be removed. It is a case
15 about whether the government may deprive him of his liberty without any individualized
16 process whatsoever. The answer, under the Fifth Amendment and controlling Supreme
17 Court precedent, is no.
- 18
19 4. Petitioner brings this habeas corpus petition to challenge the legality of his detention on
20 three separate counts. First, the government violated his procedural and substantive due
21 process rights under the Fifth Amendment by detaining him without any individualized
22 bond hearing. As Judge Ohta held in *Sohom Mas v. Casey*, No. 3:26-cv-01913-JO-BJW
23 (S.D. Cal. Apr. 14, 2026), the government violates due process when it deprives a
24 noncitizen of liberty “without an individualized determination of flight risk or danger to
25 the public.” This is precisely what happened here. Second, Petitioner’s arrest and detention
26 without an individualized determination of whether he poses a flight risk or danger is a
27 violation of substantive due process. Third, Petitioner was arrested without a pre-arrest
28 warrant, contrary to 8 U.S.C. § 1226(a), which authorizes arrest and detention only “on a
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1 warrant issued by the Attorney General.” The narrow exception for warrantless arrests
2 under 8 U.S.C. § 1357(a)(2) does not apply because Petitioner was not “likely to escape
3 before a warrant could be obtained.” *See, e.g., Pedraza v. LaRose*, No. 26-cv-2697-LL-
4 MSB, slip op. at 2 (S.D. Cal. May 27, 2026) (ordering release where arrest was
5 warrantless).

- 6 5. The remedy for these violations is clear: immediate release, or in the alternative, a
7 constitutionally adequate bond hearing at which the government bears the burden of
8 proving by clear and convincing evidence that Petitioner poses a flight risk or danger to
9 the community.
10

11 JURISDICTION AND VENUE

- 12 6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question),
13 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1651 (All Writs Act), and 5 U.S.C. § 701–
14 706 (Administrative Procedure Act).
15
16 7. Venue is proper in this District because Petitioner is detained at the Otay Mesa Detention
17 Center, located at 7488 Calzada De La Fuente, San Diego, California 92154, which lies
18 within the Southern District of California. 28 U.S.C. § 2241(a); 28 U.S.C. § 1391(b)(2).
19

20 PARTIES

- 21 8. Petitioner Eduardo Mejia-Texta  is a 30-year-old native and citizen of
22 Mexico. He is currently detained at the Otay Mesa Detention Center.
23 9. Respondent Christopher LaRose is the Warden of the Otay Mesa Detention Center and
24 Petitioner’s immediate custodian. He is named in his official capacity.
25 10. Respondent Kenneth C. Smith is the San Diego Field Director for U.S. Immigration and
26 Customs Enforcement (ICE) and has supervisory authority over Petitioner’s detention. He
27 is named in his official capacity.
28

1 11. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs
2 Enforcement (ICE), and is named in his official capacity.

3 12. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland
4 Security and is named in his official capacity.

5 13. Respondent Todd Blanche is the Acting Attorney General of the United States and is
6 named in his official capacity.

7
8 **FACTUAL BACKGROUND**

9 **A. Petitioner's Entry and Long-Term Residence in the United States.**

10 14. Petitioner is a native and citizen of Mexico. He entered the United States without inspection
11 in or about 2001, when he was merely five years old. He has lived continuously in the
12 United States ever since. Exhibit 1, Decl. of Margaret Hellerstein ("Hellerstein Decl.") ¶
13 5.

14 15. Petitioner has a fixed address in Los Angeles, California, where he has lived for many
15 years. Hellerstein Decl. ¶ 6.

16 16. Petitioner is the father of three U.S. citizen children: 

17  He is the primary provider for his household. He has
18 been employed in construction for over a decade. Hellerstein Decl. ¶ 7.

19 17. Petitioner's criminal record reflects a 2022 DUI arrest that resulted in a March 13, 2024
20 disposition of convicted-probation under California Vehicle Code section 23152(b). The
21 rap sheet also reflects a later 2024 arrest that included marijuana-related and DUI-related
22 charges, none of which were violent. Hellerstein Decl. ¶ 14; Exhibit 2, FBI Rap Sheet.

23
24
25 **B. Warrantless Arrest on April 2, 2026.**

26 18. On April 2, 2026, at approximately 2:18 p.m., Petitioner was driving a gray Ford Mustang
27 northbound on Interstate 5 near San Clemente, California, with his brother as a passenger.

28 Both were on their way to work. Hellerstein Decl. ¶¶ 8, 11; *see also* Exhibit 3, Form I-213.
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1 19. Border Patrol Agents Carlos Rodriguez and Brandon DeMark, operating a marked Border
2 Patrol vehicle, observed the vehicle and initiated a traffic stop for alleged California
3 Vehicle Code violations: window tint on the front windows and no front license plate.
4 Hellerstein Decl. ¶ 9; Exhibit 3, Form I-213.

5 20. The Agents did not present any warrant for Petitioner's arrest, and the records reviewed by
6 counsel do not identify any administrative warrant issued before the stop or arrest. The I-
7 213 form contains no warrant number and no indication that a warrant was obtained prior
8 to the stop. *See* Exhibit 3. To the contrary, the form shows that the Notice to Appear and
9 other documents were issued only *after* Petitioner was already in custody latwr in the
10 afternoon. Hellerstein Decl. ¶ 10; Exhibit 3, Form I-213; Exhibit 5, Notice to Appear.

11 21. Petitioner was driving to his job in construction. He was not fleeing or attempting to evade
12 law enforcement. He complied with the officers' orders. Hellerstein Decl. ¶ 11.

13 22. At the time of arrest, Petitioner had lived at the same address for years, was not attempting
14 to escape, and was not at the border. He was in the interior of the United States, 67 miles
15 north of the Mexican border. Hellerstein Decl. ¶ 12; Exhibit 3, Form I-213.

16 23. Moreover, the government's internal documents have revealed that its agents do not
17 conduct individualized escape-risk assessments as a matter of policy. DHS officials have
18 circulated a template narrative to agents containing pre-written boilerplate language to
19 justify warrantless arrests. *See United Farm Workers v. Noem*, No. 1:25-cv-00246-JLT-
20 CDB, Doc. 176 at 24 n.26 (E.D. Cal. Apr. 1, 2026) (“[Border Patrol] provided ERO officers
21 with an encounter narrative template (i.e., narrative related to the circumstances around the
22 arrest)”). The existence of this template, which asks agents to fill in only a name, confirms
23 that any “escape risk” determination in an I-213 is a post-hoc justification, not a genuine
24 pre-arrest assessment. The agents who arrested Petitioner were following a script, not
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1 exercising independent judgment about whether he was likely to escape before a warrant
2 could be obtained.

3 24. ICE leadership has explicitly ordered agents to prioritize mass arrests over individualized
4 assessments. On May 31, 2025, Acting Executive Associate Director Marcos D. Charles
5 directed field offices to “turn the creative knob up to 11 and push the envelope,” instructing
6 that “anyone that is found to be amenable to removal needs to be arrested.” Exhibit 4,
7 Charles Memo. This directive treats all noncitizens as presumptive targets regardless of
8 their individual circumstances and it is the direct cause of Petitioner’s warrantless arrest
9 and the absence of any pre-arrest escape-risk inquiry.
10

11 25. Furthermore, ICE leadership explicitly describes these enforcement operations as “smash
12 and grab” operations, or “turn and burn” operations, leaving little or no time for questioning
13 or individualized analysis. Exhibit 4, Charles Memo. This confirms that the absence of any
14 escape-risk inquiry in Petitioner’s case was not an oversight but a direct result of a systemic
15 policy to prioritize arrest numbers over individualized constitutional assessments.
16

17 **C. Detention and Bond Proceedings.**

18 26. On April 2, 2026, DHS issued a Notice to Appear (“NTA”) charging Petitioner as
19 removable under INA § 212(a)(6)(A)(i) (present without admission or parole) and INA §
20 212(a)(7)(A)(i)(I) (immigrant without valid entry document). Exhibit 5, Notice to Appear.
21

22 27. On or about May 6, 2026, Petitioner filed a motion for bond redetermination, arguing that
23 he is not an “applicant for admission” under § 1225(b)(2) but rather is subject to
24 discretionary detention under § 1226(a), and that he is eligible for bond because he poses
25 no flight risk or danger. Hellerstein Decl. ¶ 16.

26 28. On May 26, 2026, Immigration Judge Eugene H. Robinson Jr. held a custody
27 redetermination hearing. On that same date, he issued an order denying Petitioner’s request
28

1 for bond. The only reason stated was: “Based on the evidence in the record, *Matter of*
 2 *Yajure-Hurtado* applies.” Hellerstein Decl. ¶ 17; Exhibit 6, Bond Denial Order.

3 29. The Immigration Judge did not make any individualized findings regarding flight risk or
 4 danger to the community. He did not consider Petitioner’s strong ties, employment history,
 5 family responsibilities, or lack of serious criminal record. Hellerstein Decl. ¶ 18.

6 30. Petitioner has been detained since April 2, 2026 without any individualized bond hearing
 7 or any determination that he poses a flight risk or danger. Hellerstein Decl. ¶ 19.

8 EXHAUSTION

9
 10 31. Exhaustion is not required and should be waived. Exhaustion is futile where administrative
 11 review “cannot provide the relief requested” or where “the administrative remedy is
 12 inadequate.” *El Rescate Legal Servs. v. Exec. Office of Immig. Rev.*, 959 F.2d 742, 747 (9th
 13 Cir. 1991). The BIA’s decision in *Yajure-Hurtado* is the legal foundation upon which
 14 Respondents justified denying Petitioner a bond hearing. *See, e.g., Julio F.V. v. Chestnut*,
 15 No. 1:25-cv-01432-KES-SKO, slip op. at 7 (E.D. Cal. Feb. 11, 2026) (court granted habeas
 16 relief because BIA moot dismissed merits review); *Diaz v. Noem*, No. 1:26-cv-00066-JLT-
 17 CDB, slip op. at 8 (E.D. Cal. Feb. 6, 2026) (court waived the prudential exhaustion
 18 requirement due to *Matter of Yajure-Hurtado*). Where, as here, the agency’s highest
 19 administrative body has already committed to the challenged legal error, exhaustion would
 20 be an empty formality that serves only to prolong unlawful detention.

21
 22 32. Moreover, the BIA lacks jurisdiction to consider Petitioner’s constitutional claims. *See*
 23 *Matter of G-K-*, 26 I&N Dec. 88, 96–97 (BIA 2013) (“Neither the [BIA] nor the
 24 Immigration Judges have the authority to rule on the constitutionality of the statutes we
 25 administer.”); *Sola v. Holder*, 720 F.3d 1134, 1135 (9th Cir. 2013) (“An exception to the
 26 exhaustion requirement has been carved for constitutional challenges”). Petitioner’s claim
 27
 28

arises under the Fifth Amendment Due Process Clause, which the BIA is neither qualified nor competent to adjudicate. Exhaustion is therefore excused.

LEGAL STANDARDS

A. The Constitution Protects Noncitizens from Arbitrary Arrest and Detention.

33. The Constitution establishes due process rights for “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)).

34. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

35. Substantive due process requires that all forms of civil detention, including immigration detention, bear a “reasonable relation” to a non-punitive purpose. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen’s appearance at immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *Demore v. Kim*, 538 U.S. 510, 519–20, 527–28 (2003).

36. Procedural due process requires a hearing before the State deprives a person of liberty. *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is so even where that freedom is lawfully revocable. *See Young v. Harper*, 520 U.S. 143, 152 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973); *Morrissey v. Brewer*, 408 U.S. 471 (1972).

B. Noncitizens Are Entitled to Individualized Bond Hearings Under § 1226(a).

37. Section 8 U.S.C. § 1226(a) provides the discretionary detention authority for noncitizens who are present in the United States and eligible for removal. The statute states: “On a warrant issued by the Attorney General, a [noncitizen] may be arrested and detained

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1 pending a decision on whether the [noncitizen] is to be removed from the United States.”

2 8 U.S.C. § 1226(a).

3 38. Under § 1226(a), the government has discretion to release a noncitizen on bond, and the
4 noncitizen is entitled to an individualized bond hearing before an immigration
5 judge. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022); 8 C.F.R. §§
6 1236.1(c)(8), (d)(1).

7 39. Section 1225(b)(2) does not apply to long-term interior residents like Petitioner. The
8 Supreme Court has held that § 1226 governs detention of noncitizens already inside the
9 country. *Jennings v. Rodriguez*, 583 U.S. 281, 287–89 (2018) (Section 1226 “generally
10 governs the process of arresting and detaining” noncitizens “already in the country pending
11 the outcome of removal proceedings,” and “once inside the United States ... the default
12 rule is § 1226(a)”).

13 40. Federal courts nationwide have overwhelmingly rejected the government’s attempt to
14 apply § 1225(b)(2) to interior residents. On December 18, 2025, the Central District of
15 California entered final judgment vacating the July 8, 2025 DHS policy memorandum in
16 its entirety. *Maldonado Bautista v. Santacruz Jr.*, No. 5:25-cv-01873-SSS-BFM, Doc. 94,
17 at 2 ¶ 3 (C.D. Cal. Dec. 18, 2025). Courts in this District have joined that consensus. *See*,
18 *e.g.*, *Carrillo Gregorio v. LaRose*, No. 25-cv-03322-BAS-BJW, slip op. at 4-7 (S.D. Cal.
19 Dec. 17, 2025) (granting habeas and ordering bond hearing).

20 **C. Detention Without an Individualized Hearing Violates Due Process**

21 41. In *Sohom Mas v. Casey*, Judge Ohta of this Court held that the government violates the
22 Fifth Amendment when it detains a noncitizen “without an individualized determination of
23 flight risk or danger to the public.” Slip op. at 2. The Court reasoned that because “the
24 government has articulated no individualized justification for his continued detention...
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1 The absence of any individualized determination significantly risks erroneously depriving
2 Petitioner of his liberty interest.” Slip op. at 2.

3 42. The same is true here. The record contains no individualized determination that Petitioner
4 poses a danger or flight risk. To the contrary, the evidence shows the opposite: decades of
5 continuous residence, U.S. citizen family members, stable employment, fixed address, and
6 no significant criminal history.

7 43. The government has offered no individualized justification for Petitioner’s continued
8 detention. The Immigration Judge did not make any individualized findings; he simply
9 cited *Yajure-Hurtado* and denied bond. This is precisely the constitutional violation
10 identified in *Sohom Mas*.

11 44. The Ninth Circuit has recognized that a noncitizen’s interest in freedom from physical
12 confinement itself constitutes a core liberty interest protected by the Due Process
13 Clause. *Hernandez*, 872 F.3d at 990. As of November 2025, over 350 federal district courts
14 had ruled against the government on this issue. *Barco Mercado v. Francis*, 811 F. Supp.
15 3d 487, 494-95 & n.22 (S.D.N.Y. Nov. 26, 2025) (collecting cases); *Sales v. Warden*, No.
16 25-cv-03125-BAS-BJW, slip op. at 3-5 (S.D. Cal. Dec. 12, 2025); *Beltran v. Noem*, No.
17 25cv2650-LL-DEB, slip op. at 4-5, 11-17 (S.D. Cal. Nov. 4, 2025); *Carrillo Gregorio*, slip
18 op. at 4-7.

19
20
21 **D. The Warrant Requirement of 8 U.S.C. § 1226(a) Is Absolute.**

22 45. Section 1226(a) authorizes arrest and detention only “on a warrant issued by the Attorney
23 General.” The statute’s structure confirms the warrant requirement is a precondition, not
24 an afterthought. *See Jennings*, 583 U.S. at 302 (“Section 1226(a) ‘authorizes detention only
25 [o]n a warrant issued’ leading to the [noncitizen’s] arrest”).
26
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1 46. However, discretion is not unlimited. Congress imposed a clear, non-discretionary
2 prerequisite to any arrest or detention under § 1226(a). The statute states, in plain and
3 unambiguous language:

4 “On a warrant issued by the Attorney General, a [noncitizen] may be arrested and
5 detained pending a decision on whether the [noncitizen] is to be removed from the
6 United States.” 8 U.S.C. § 1226(a) (emphasis added).

7
8 47. The statute’s structure confirms the warrant requirement is a precondition, not an
9 afterthought. The phrase “on a warrant issued by the Attorney General” appears at the very
10 beginning of the sentence, immediately before the words “a [noncitizen] may be arrested
11 and detained.” By placing the warrant requirement first, Congress signaled that no arrest
12 or detention may occur under § 1226(a) unless a warrant has been issued beforehand.

13 48. The statute uses the past participle “issued,” meaning the warrant must exist *before* the
14 arrest. A post-arrest warrant cannot retroactively validate an unlawful arrest. *See Yociris*
15 *P. v. Bondi*, 2026 WL 327937, at *3 (D. Minn. Feb. 8, 2026) (“Where the record shows
16 Respondents have not identified a valid statutory basis for detention in the first place, the
17 remedy is not to supply one through further proceedings.”).

18
19 49. The reasoning is compelled by the text. If the government could arrest and detain under §
20 1226(a) without a warrant, the warrant requirement would be rendered meaningless.
21 Congress does not include superfluous language. *See TRW Inc. v. Andrews*, 534 U.S. 19,
22 31 (2001) (“It is a cardinal principle of statutory construction that a statute ought, if
23 possible, to be construed so that no clause, sentence, or word shall be superfluous, void, or
24 insignificant.”).

25
26 50. The absence of a pre-arrest warrant is not a technicality. It is a fundamental violation of
27 the statutory scheme Congress created. Section 1226(a) conditions the government’s
28 authority to arrest and detain on the prior issuance of a warrant. When the government fails

1 to comply with that condition, the arrest is unlawful from its inception, and any subsequent
2 detention flowing from that unlawful arrest is also unlawful.

3 51. The agency's own regulations require that before a warrantless arrest, the officer must
4 document the individualized "likelihood of escape" finding. 8 C.F.R. § 287.8(c)(2)(ii)
5 explicitly states: "If the officer has reason to believe that the [noncitizen] is likely to escape
6 before a warrant can be obtained, the officer may arrest the [noncitizen] without a warrant."
7 The regulation inherently requires a pre-arrest, individualized assessment.

8
9 52. Respondents' January 28, 2026 Lyons Memo confirms its unlawful policy. The memo
10 explicitly instructs federal agents not to consider traditional flight-risk factors such as
11 "whether an [individual] is likely to attend future immigration court hearings, appear before
12 ERO as directed, surrender for removal, and comply with other immigration obligations."¹
13 By prohibiting agents from considering family ties, employment, fixed addresses, and
14 compliance history, the memo renders the statutory "likely to escape" requirement a
15 nullity. The Lyons Memo is therefore itself a violation of the APA and cannot be used to
16 justify Petitioner's warrantless arrest.

17
18 53. Under the *Accardi* doctrine, an agency must follow its own regulations and policies. *United*
19 *States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954). When ICE leadership
20 issued directives to "turn the creative knob up to 11" and arrest all "collaterals" without
21 individualized assessments, they violated their own binding regulations. *See* 8 C.F.R. §
22 287.8(c)(2)(ii)); Exhibit 4. Failure to follow these regulations renders the arrest and
23 detention arbitrary and capricious.

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27 ¹ Todd M. Lyons, "Civil Immigration Arrest Authority: Administrative Arrest Warrants and
28 Warrantless Arrests," U.S. Immigrations and Customs Enforcement, Jan. 28, 2026,
<https://www.courthousenews.com/wp-content/uploads/2026/03/todd-lyons-dc-immigration-arrests-jan-memo.pdf>. ("Lyons Memo")
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1 54. The Ninth Circuit has already recognized that federal immigration agents' current
2 enforcement tactics violate constitutional and statutory protections. *See Vasquez Perdomo*
3 *v. Noem*, 148 F.4th 656, 676 (9th Cir. 2025) (holding that organizational plaintiffs have
4 standing to challenge ICE's mass stop-and-arrest practices and recognizing the real and
5 immediate threat of unlawful arrest).

6 **E. The Exception for Warrantless Arrests Under 8 U.S.C. § 1357(a)(2) Does Not**
7 **Apply Here.**
8

9 55. Under 8 U.S.C. § 1357(a)(2), an officer may make a warrantless arrest only if the officer
10 "has reason to believe" that the noncitizen (1) is in the United States in violation of
11 immigration laws and (2) "is likely to escape before a warrant can be obtained." 8 C.F.R.
12 § 287.8(c)(2)(ii) imposes the same requirement.

13 56. The phrase "reason to believe" is the equivalent of probable cause. *Tejeda-Mata v. INS*,
14 626 F.2d 721, 725 (9th Cir. 1980). The flight-risk determination must be individualized. *M-*
15 *J-M-A v. Hermosillo*, No. 6:25-cv-02011-MTK, slip op. at 23–26 (D. Or. Feb. 27, 2026);
16 *Urias v. Semaia*, No. 5:26-cv-02753-DTB, slip op. at 12–13 (C.D. Cal. June 10, 2026).

17 57. The "likely to escape" standard requires probable cause that the individual will flee the
18 jurisdiction or evade apprehension entirely, not merely that the individual is mobile or
19 could walk away from the scene. *Escobar Molina v. DHS*, 811 F. Supp. 3d 1, 31 (D.D.C.
20 2025) (holding that unlawful presence alone does not establish 'likely to escape'); *M-J-M-*
21 *A v. Hermosillo*, No. 6:25-cv-02011-MTK, slip op. at 23–26 (D. Or. Feb. 27, 2026) ("likely
22 to escape" means likely to evade immigration officers *before a warrant could be obtained*).
23

24 58. Unlawful presence alone cannot supply the missing escape-risk showing. Because
25 unlawful presence is a civil violation, it does not by itself establish probable cause that a
26 person will flee or evade apprehension. *Arizona v. United States*, 567 U.S. 387, 413
27 (2012); *Au Yi Lau v. U.S. Immigr. & Naturalization Serv.*, 445 F.2d 217, 222 (D.C. Cir.
28

1 1971) (“reason to believe” must be read in light of constitutional standards, so that ‘reason
2 to believe’ is the equivalent of probable cause).

3 **F. The Remedy for Unlawful Detention is Immediate Release**

4 59. District courts within this circuit have enforced this warrant requirement by ordering
5 release where the government failed to obtain a pre-arrest warrant. *See, e.g., Pedraza v.*
6 *LaRose*, No. 26v2697-LL-MSB, slip op. at 2 (S.D. Cal. May 27, 2026) (ordering immediate
7 release where arrest was warrantless); *V.M. v. Albarran*, No. 1:26-cv-01280-TLN-DMC,
8 slip op. at 4–5 (E.D. Cal. Mar. 5, 2026) (same); *J.A.C.P. v. Wofford*, No. 1:25-cv-01354-
9 KES-SKO (HC), 2025 WL 3013328, at *8 (E.D. Cal. Oct. 27, 2025) (same); *Urias*, slip
10 op. at 11–12 (same).

11
12 60. When detention violates § 1226(a) or the Due Process Clause, the appropriate remedy is
13 immediate release, not a new bond hearing. *V.M. v. Albarran*, slip op. at 5 (“Petitioner’s
14 release is necessary to return him to the status quo.”); *J.A.C.P.*, 2025 WL 3013328, at
15 *8; *Urias*, slip op. at 13-14 (ordering immediate release and enjoining redetention without
16 pre-deprivation hearing).

17
18 61. A bond hearing after the fact cannot cure the initial unlawful arrest; it would merely shift
19 the injury from the arrest itself to prolonged detention awaiting a hearing. *See also*
20 *Silvestre-Mendoza v. Noem*, No. 3:25-cv-03206-RBM-DDL, slip op. at 3-4 (S.D. Cal. Dec.
21 8, 2025) (“a bond hearing ‘misapprehends the purpose of a pre-detention hearing: if
22 Petitioner is detained, he will already have suffered the injury he is now seeking to avoid’”);
23 *Sohom Mas*, slip op. at 3-4. Courts have held that where the IJ’s decision is based on a legal
24 error that cannot be cured by further administrative process, a post-deprivation bond
25 hearing is not an adequate remedy. *W.T.M. v. Bondi*, No. 2:25-cv-02428-RAJ-BAT, slip
26 op. at 9 (W.D. Wash. Jan. 30, 2026) (ordering immediate release where IJ’s bond denial
27 was based on an erroneous factual predicate).
28

1 62. The status quo is “the last uncontested status which preceded the pending
2 controversy.” *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000).
3 Here, the last uncontested status was Petitioner living freely in the community with his
4 family before his unlawful arrest on April 2, 2026.

5 63. The only remedy that ensures Petitioner’s constitutional rights are protected is immediate
6 release from custody. In the alternative, if the Court is inclined to order a bond hearing
7 rather than release, such hearing must include constitutionally mandated safeguards: a
8 neutral adjudicator, and the government bearing the burden of proving by *clear and*
9 *convincing* evidence that Petitioner’s detention is justified. But given the government’s
10 demonstrated record of defiance and the structural bias embedded in the immigration court
11 system, even these safeguards may be insufficient to produce a lawful result.
12

13 CLAIMS FOR RELIEF

14 COUNT ONE – Violation of Procedural Due Process (Fifth Amendment) – Detention

15 Without Individualized Bond Hearing

16 64. Petitioner incorporates by reference all preceding paragraphs.

17 65. The Fifth Amendment guarantees that no person shall “be deprived of life, liberty, or
18 property, without due process of law.” U.S. Const. amend. V.
19

20 66. Petitioner has a core liberty interest in freedom from physical confinement. *Zadvydas*, 533
21 U.S. at 690; *Hernandez*, 872 F.3d at 990.
22

23 67. Respondents have deprived Petitioner of this liberty interest by detaining him for over two
24 months without any individualized determination that he poses a flight risk or danger to
25 the community. No immigration judge has ever considered his decades of continuous
26 residence, his U.S. citizen children, his stable employment, or his fixed address. Instead,
27 the Immigration Judge simply cited *Matter of Yajure-Hurtado* and denied bond.
28

1 68. As Judge Ohta held in *Sohom Mas*, Respondents violate the Fifth Amendment when it
2 detains a noncitizen “without an individualized determination of flight risk or danger to the
3 public.” *Sohom Mas*, slip op. at 2. This is precisely what happened here.

4 69. The *Mathews v. Eldridge* balancing test confirms that due process requires a bond hearing.
5 First, Petitioner’s private interest in freedom from physical confinement is “at the heart of
6 the liberty that the Due Process Clause protects.” *Zadvydas*, 533 U.S. at 690. Second, the
7 risk of erroneous deprivation is high. Without any hearing, Respondents cannot know
8 whether Petitioner poses a flight risk or danger, and the record shows he poses neither.
9 Third, the government has no legitimate interest in detaining individuals who pose no flight
10 risk or danger. *Hernandez*, 872 F.3d at 994.

11
12 70. Accordingly, Respondents have violated Petitioner’s procedural due process rights under
13 the Fifth Amendment. The violation here is not merely procedural; it is substantive and
14 ongoing. The only remedy that restores Petitioner to the status quo ante is **immediate**
15 **release**. *Silvestre-Mendoza*, slip op. at 3-4 (“a bond hearing misapprehends the purpose of
16 a pre-detention hearing”); *V.M. v. Albarran*, slip op. at 5 (“Petitioner’s release is necessary
17 to return him to the status quo.”).

18
19 **COUNT TWO – Violation of Substantive Due Process (Fifth Amendment) – Arbitrary**
20 **and Punitive Detention**

21 71. Petitioner incorporates by reference all preceding paragraphs.

22 72. Substantive due process forbids the government from depriving a person of liberty without
23 a legitimate regulatory purpose. *Foucha*, 504 U.S. at 80. Civil immigration detention is
24 permissible only to ensure appearance at removal proceedings or prevent danger to the
25 community. *Zadvydas*, 533 U.S. at 690–92.

26
27 73. In the Ninth Circuit, “the government may not detain a noncitizen to punish him for his
28 immigration status; it may only detain him to ensure his presence at removal proceedings

1 or to protect the community.” *Hernandez*, 872 F.3d at 990. Because Petitioner poses neither
2 a danger nor a flight risk, his continued detention is punitive and violates substantive due
3 process. *Sohom Mas*, slip op. at 2.

4 74. Petitioner has lived in the United States for over 25 years, has a fixed address, U.S. citizen
5 children, stable employment, and no significant criminal history. His detention serves no
6 legitimate regulatory purpose. It is therefore arbitrary and punitive, in violation of
7 substantive due process.

8
9 75. Because Petitioner poses neither a flight risk nor a danger, his continued detention serves
10 no legitimate regulatory purpose. It is therefore punitive in nature, and the Constitution
11 forbids punitive civil detention. *Foucha*, 504 U.S. at 80. Where detention lacks any lawful
12 purpose, the remedy is not a hearing—it is immediate release. *Zadvydas*, 533 U.S. at 697.
13 Petitioner must be released immediately.

14 **COUNT THREE – Violation of 8 U.S.C. § 1226(a) – Warrantless Arrest**

15 76. Petitioner incorporates by reference all preceding paragraphs.

16
17 77. Petitioner was arrested on April 2, 2026, by Border Patrol Agents during a traffic stop. No
18 pre-arrest warrant was ever produced. The I-213 form contains no warrant number and no
19 indication that a warrant was obtained *prior* to the arrest. Hellerstein Decl. ¶¶ 10–11;
20 Exhibit 3, Form I-213. Instead, the government’s documents reflect a post-arrest
21 processing narrative. Hellerstein Decl. ¶¶ 10, 13; Exhibit 3, Form I-213.

22
23 78. Under 8 U.S.C. § 1226(a), a noncitizen may be arrested and detained pending removal
24 proceedings only “**on a warrant issued by the Attorney General.**” Because no warrant
25 was issued before April 2, 2026, Respondents lack statutory authority to detain Petitioner.

26 79. The exception for warrantless arrests under 8 U.S.C. § 1357(a)(2) does not apply. At the
27 time of arrest, there was no probable cause to believe Petitioner was “likely to escape before
28 a warrant could be obtained.” Petitioner had lived at the same address for years, was

1 employed, had strong family ties, and was driving to work, not fleeing from law
2 enforcement. Hellerstein Decl. ¶¶ 6–7, 11–12. Courts have held that a person with long-
3 term residence, stable employment, and strong family ties does not present a likelihood of
4 escape. *Escobar Molina*, 811 F. Supp. at 31; *Urias*, slip op. at 13.

5 80. Respondents also cannot rely on any other statutory authority to justify Petitioner’s arrest
6 and detention. Section 1225(b) (mandatory detention for applicants for admission) does
7 not apply because Petitioner has resided in the United States for over 25 years and is not
8 seeking admission at the border. Section 1226(c) (mandatory detention for criminal non-
9 citizens) does not apply because Petitioner does not have the requisite criminal convictions
10 to trigger mandatory detention. Section 1231 (detention after final order of removal) does
11 not apply because there is no final order of removal against Petitioner.
12

13 81. The warrantless arrest was unlawful from its inception. Because no valid statutory authority
14 supports Petitioner’s arrest and detention, there is no lawful basis to hold him in custody.
15 A bond hearing cannot retroactively cure an arrest that never should have
16 occurred. *Pedraza*, slip op. at 2 (ordering immediate release where arrest was
17 warrantless); *J.A.C.P.*, 2025 WL 3013328, at *8 (same). The only remedy is immediate
18 release from unlawful custody.
19

20 **COUNT FOUR – Violation of the Immigration and Nationality Act – Detention Under the**
21 **Wrong Statute**
22

23 82. Petitioner incorporates by reference all preceding paragraphs.

24 83. Petitioner is not an “applicant for admission” subject to mandatory detention under 8
25 U.S.C. § 1225(b)(2). He has resided in the United States for over 25 years, has a fixed
26 address, U.S. citizen children, stable employment, and strong community ties. He did not
27 present himself at the border seeking admission when he was arrested.
28

1 84. The Supreme Court has held that § 1226 governs detention of noncitizens already inside
2 the country. *Jennings*, 583 U.S. at 287–89. This Court has repeatedly rejected the
3 government's attempt to apply § 1225(b)(2) to interior residents. *Pedraza*, slip op. at
4 2; *Sohom Mas*, slip op. at 2.

5 85. By detaining Petitioner under § 1225(b)(2) and denying him a bond hearing under §
6 1226(a), Respondents violated the Immigration and Nationality Act.

7
8 86. The IJ's denial of bond rests entirely on the legally erroneous premise that Petitioner is
9 detained under § 1225(b)(2). This Court has the authority to correct that error. Because the
10 Respondents lack statutory authority to detain Petitioner under the statute they invoke,
11 continued detention is unlawful. The remedy for detention under the wrong statute
12 is release, not a remand for further proceedings under the correct statute. *Yociris P.*, 2026
13 WL 327937, at *3 (“Where the record shows Respondents have not identified a valid
14 statutory basis for detention in the first place, the remedy is not to supply one through
15 further proceedings.”).

16
17 **COUNT FIVE – Unlawful Agency Action in Violation of the Administrative Procedure**
18 **Act, 5 U.S.C. § 706**

19 87. Petitioner incorporates by reference all preceding paragraphs.

20 88. The APA authorizes this Court to “hold unlawful and set aside agency action, findings, and
21 conclusions” that are “arbitrary, capricious, an abuse of discretion, or otherwise not in
22 accordance with law.” 5 U.S.C. § 706(2)(A). The APA also requires this Court to set aside
23 agency action that is “in excess of statutory jurisdiction.” 5 U.S.C. § 706(2)(C).

24
25 89. DHS's policy and practice of detaining long-term interior residents like Petitioner under 8
26 U.S.C. § 1225(b)(2) as “applicants for admission” is contrary to the plain text of the INA,
27 contrary to Supreme Court precedent, and has been held unlawful by multiple federal
28 courts. *Jennings*, 583 U.S. at 287–89; *Maldonado Bautista*, Doc. 94 at 2 ¶ 3.

1 90. On December 18, 2025, the Central District of California entered final judgment vacating
2 the July 8, 2025 DHS policy memorandum in its entirety. *Maldonado Bautista*, Doc. 94 at
3 2 ¶ 3. Despite this vacatur, Respondents continue to apply the same unlawful policy to
4 Petitioner. An agency cannot rely on a vacated policy to justify its actions. To do so is
5 arbitrary, capricious, and contrary to law.

6 91. The BIA's decision in *Matter of Yajure-Hurtado*, which the IJ relied upon to deny
7 Petitioner a bond hearing, is itself arbitrary and capricious. It contradicts the plain text of
8 the INA, disregards the statutory distinction between § 1225 and § 1226, and upends
9 decades of uniform agency practice. This Court has repeatedly rejected *Yajure-Hurtado* as
10 inconsistent with the INA. *See Carrillo Gregorio*, slip op. at 4-7.

11 92. By detaining Petitioner under § 1225(b)(2), denying him a bond hearing under § 1226(a),
12 and relying on a vacated policy memorandum and an arbitrary BIA decision, Respondents
13 have engaged in agency action that is “arbitrary, capricious, an abuse of discretion, and
14 otherwise not in accordance with law” within the meaning of 5 U.S.C. § 706(2)(A).
15

16 93. A remand for a new bond hearing would be an exercise in futility. The IJ has already denied
17 Petitioner a hearing based on a legal position that this Court and others have rejected. The
18 agency has demonstrated no willingness to comply with federal court orders. Under these
19 circumstances, the APA requires this Court to set aside the unlawful agency action and
20 order immediate release. *Urias*, slip op. at 13–14 (ordering immediate release and
21 enjoining redetention without pre-deprivation hearing).
22

23 PRAYER FOR RELIEF

24 WHEREFORE, Petitioner prays that this Court grant the following relief:
25

- 26 a. Assume jurisdiction;
- 27 b. Enjoin Respondents from transferring, relocating, or removing Petitioner outside of
28 the Southern District of California pending final resolution of this case;

PETITION FOR WRIT OF HABEAS CORPUS

- c. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody, within 48 hours of this Court's order;
- d. Declare that Petitioner's warrantless arrest violated 8 U.S.C. § 1226(a);
- e. Declare that Petitioner's detention without an individualized bond hearing violates the Fifth Amendment Due Process Clause;
- f. In the alternative, if the Court does not order immediate release, order a constitutionally adequate bond hearing under § 1226(a) before a neutral adjudicator within seven days, on the record, with the government bearing the burden of proof by clear and convincing evidence, and with express instructions that Respondents shall not deny bond on the basis that Petitioner is detained under § 1225(b)(2), but must instead consider alternatives to detention, including conditional release; and
- g. Grant any other relief deemed just and proper.

Date: June 22, 2026

Respectfully Submitted,

/s/ Perna P. Lal

Perna Preshika Lal

Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Prerna Preshika Lal, declare that I electronically filed the foregoing document with the Clerk of Court via CM/ECF on June 22, 2026 which will serve electronic notice upon all counsel of record listed in the ECF docket.

Date: June 22, 2026

Respectfully Submitted,

/s/ Prerna P. Lal
Prerna Preshika Lal
SBN: 354786
Lal Legal APLC
2001 Addison St STE 300
Berkeley CA 94704
(800) 552-5616
prerna@lallegal.com

Attorney for Petitioner