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

12 **JESUS RAUL TEXTA-LOPEZ**



13
14 Petitioner,

15 v.

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

25 Respondents.

Civil Action No.: **'26CV3647 DMS MSB**

26
27 **PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**
28

INTRODUCTION

- 1
2 1. Petitioner Jesus Raul Texta-Lopez has lived in the United States for over 23 years. He was
3 brought here as a young child and has built his life here through work and family ties. He
4 poses no danger to the community and presents no individualized basis for flight-risk
5 detention.
- 6 2. Yet, since April 2, 2026, Petitioner has been held in mandatory detention at the Otay Mesa
7 Detention Center without a single individualized hearing to determine whether he poses a
8 flight risk or danger to the community. No immigration judge has ever considered his deep
9 ties to the United States, his family, his stable employment, or his fixed address. Instead,
10 an Immigration Judge denied Petitioner a bond hearing, relying on *Matter of Yajure-*
11 *Hurtado* and concluding that a bond hearing was unavailable.
- 12 3. This is not a case about whether Petitioner should ultimately be removed. It is a case
13 about whether the government may deprive him of his liberty without any individualized
14 process whatsoever. The answer, under the Fifth Amendment and controlling Supreme
15 Court precedent, is no.
- 16 4. Petitioner brings this habeas corpus petition to challenge the legality of his detention on
17 three separate counts. First, the government violated his procedural and substantive due
18 process rights under the Fifth Amendment by detaining him without any individualized
19 bond hearing. As Judge Ohta held in *Sohom Mas v. Casey*, No. 3:26-cv-01913-JO-BJW
20 (S.D. Cal. Apr. 14, 2026), the government violates due process when it deprives a
21 noncitizen of liberty “without an individualized determination of flight risk or danger to
22 the public.” This is precisely what happened here. Second, Petitioner’s arrest and detention
23 without an individualized determination of whether he poses a flight risk or danger is a
24 violation of substantive due process. Third, Petitioner was arrested without a pre-arrest
25 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 Jesus Raul Texta-Lopez  is a 27-year-old native and citizen of
22 Mexico. He is currently detained at the Otay Mesa Detention Center.
23
24 9. Respondent Christopher LaRose is the Warden of the Otay Mesa Detention Center and
25 Petitioner’s immediate custodian. He is named in his official capacity.
26
27 10. Respondent Kenneth C. Smith is the San Diego Field Director for U.S. Immigration and
28 Customs Enforcement (ICE) and has supervisory authority over Petitioner’s detention. He
is named in his official capacity.

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 2003, when he was approximately five years old. He has lived continuously in
12 the United States ever since. Hellerstein Decl. ¶ 5; Exhibit 3, Form I-213.

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

15 16. Petitioner has strong family ties in the United States, including his brother Eduardo Mejia-
16 Texta and other family members in the Los Angeles area. He has been employed in
17 construction. Hellerstein Decl. ¶ 7.

18 17. Petitioner's criminal record reflects a 2024 arrest that resulted in a December 9, 2024
19 disposition of convicted-probation on a California Vehicle Code section 23152(b) offense.
20 The offense was non-violent. Hellerstein Decl. ¶ 14; Exhibit 2, FBI Rap Sheet.

21 22 **B. Warrantless Arrest on April 2, 2026.**

23 18. On April 2, 2026, at approximately 2:18 p.m., Petitioner was a **passenger** in a gray Ford
24 Mustang driven by his brother, Eduardo Mejia-Texta, northbound on Interstate 5 near San
25 Clemente, California. Both were on their way to work. Hellerstein Decl. ¶¶ 8, 11; *see also*
26 Exhibit 3, Form I-213.
27
28

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 the Warrant was issued only *after* Petitioner was already in custody. Hellerstein Decl. ¶ 10;
10 Exhibit 3, Form I-213; Exhibit 5, Notice to Appear. Specifically, the government's
11 documents reflect a post-arrest processing narrative and state that no warrants existed in
12 the system. *See* Exhibit 3, Form I-213, at 5.
13

14 21. Petitioner was a passenger in the vehicle. He was not driving. He was not fleeing or
15 attempting to evade law enforcement. He complied with the officers' orders. Hellerstein
16 Decl. ¶ 11.
17

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

21 23. Moreover, the government's internal documents have revealed that its agents do not
22 conduct individualized escape-risk assessments as a matter of policy. DHS officials have
23 circulated a template narrative to agents containing pre-written boilerplate language to
24 justify warrantless arrests. *See United Farm Workers v. Noem*, No. 1:25-cv-00246-JLT-
25 CDB, Doc. 176 at 24 n.26 (E.D. Cal. Apr. 1, 2026) ("[Border Patrol] provided ERO officers
26 with an encounter narrative template (i.e., narrative related to the circumstances around the
27 arrest)"). The existence of this template, which asks agents to fill in only a name, confirms
28

1 that any “escape risk” determination in an I-213 is a post-hoc justification, not a genuine
2 pre-arrest assessment. The agents who arrested Petitioner were following a script, not
3 exercising independent judgment about whether he was likely to escape before a warrant
4 could be obtained.

5 24. ICE leadership has explicitly ordered agents to prioritize mass arrests over individualized
6 assessments. On May 31, 2025, Acting Executive Associate Director Marcos D. Charles
7 directed field offices to “turn the creative knob up to 11 and push the envelope,” instructing
8 that “anyone that is found to be amenable to removal needs to be arrested.” Exhibit 4,
9 Charles Memo. This directive treats all noncitizens as presumptive targets regardless of
10 their individual circumstances and it is the direct cause of Petitioner’s warrantless arrest
11 and the absence of any pre-arrest escape-risk inquiry.
12

13 25. Furthermore, ICE leadership explicitly describes these enforcement operations as “smash
14 and grab” operations, or “turn and burn” operations, leaving little or no time for questioning
15 or individualized analysis. Exhibit 4, Charles Memo. This confirms that the absence of any
16 escape-risk inquiry in Petitioner’s case was not an oversight but a direct result of a systemic
17 policy to prioritize arrest numbers over individualized constitutional assessments.
18

19 **C. Detention and Bond Proceedings.**

20 26. On April 2, 2026, DHS issued a Notice to Appear (“NTA”) charging Petitioner as
21 removable under INA § 212(a)(6)(A)(i) (present without admission or parole) and INA §
22 212(a)(7)(A)(i)(I) (immigrant without valid entry document). Exhibit 5, Notice to Appear.
23

24 27. On or about May 6, 2026, Petitioner filed a motion for bond redetermination, arguing that
25 he is not an “applicant for admission” under § 1225(b)(2) but rather is subject to
26 discretionary detention under § 1226(a), and that he is eligible for bond because he poses
27 no flight risk or danger. Hellerstein Decl. ¶ 16.
28

1 28. On May 26, 2026, Immigration Judge Eugene H. Robinson Jr. held a custody
2 redetermination hearing. On that same date, he issued an order denying Petitioner's request
3 for bond. The only reason stated was: "Based on the evidence in the record, *Matter of*
4 *Yajure-Hurtado* applies." Hellerstein Decl. ¶ 17; Exhibit 6, Bond Denial Order.

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

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

11 EXHAUSTION

12 31. Exhaustion is not required and should be waived. Exhaustion is futile where administrative
13 review "cannot provide the relief requested" or where "the administrative remedy is
14 inadequate." *El Rescate Legal Servs. v. Exec. Office of Immig. Rev.*, 959 F.2d 742, 747 (9th
15 Cir. 1991). The BIA's decision in *Yajure-Hurtado* is the legal foundation upon which
16 Respondents justified denying Petitioner a bond hearing. *See, e.g., Beltran v. Noem*, No.
17 25cv2650-LL-DEB, slip op. at 5-7 (S.D. Cal. Nov. 4, 2025) (court waived the prudential
18 exhaustion requirement due to *Matter of Yajure-Hurtado*); *Carrillo Gregorio v. LaRose*,
19 No. 25-cv-03322-BAS-BJW, slip op. at 4-5 (S.D. Cal. Dec. 17, 2025) (same). Where, as
20 here, the agency's highest administrative body has already committed to the challenged
21 legal error, exhaustion would be an empty formality that serves only to prolong unlawful
22 detention.
23

24 32. Moreover, the BIA lacks jurisdiction to consider Petitioner's constitutional claims. *See*
25 *Matter of G-K-*, 26 I&N Dec. 88, 96-97 (BIA 2013) ("Neither the [BIA] nor the
26 Immigration Judges have the authority to rule on the constitutionality of the statutes we
27 administer."); *Sola v. Holder*, 720 F.3d 1134, 1135 (9th Cir. 2013) ("An exception to the
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1 exhaustion requirement has been carved for constitutional challenges”). Petitioner’s claim
2 arises under the Fifth Amendment Due Process Clause, which the BIA is neither qualified
3 nor competent to adjudicate. Exhaustion is therefore excused.
4

5 LEGAL STANDARDS

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

7 33. The Constitution establishes due process rights for “all ‘persons’ within the United States,
8 including [noncitizens], whether their presence here is lawful, unlawful, temporary, or
9 permanent.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*
10 *v. Davis*, 533 U.S. 678, 693 (2001)).
11

12 34. “Freedom from imprisonment—from government custody, detention, or other forms of
13 physical restraint—lies at the heart of the liberty that [the Due Process] Clause
14 protects.” *Zadvydas*, 533 U.S. at 690.
15

16 35. Substantive due process requires that all forms of civil detention, including immigration
17 detention, bear a “reasonable relation” to a non-punitive purpose. *Jackson v. Indiana*, 406
18 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-
19 punitive purposes for immigration detention: ensuring a noncitizen’s appearance at
20 immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at
21 690–92; *Demore v. Kim*, 538 U.S. 510, 519–20, 527–28 (2003).
22

23 36. Procedural due process requires a hearing before the State deprives a person of
24 liberty. *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is so even where that freedom
25 is lawfully revocable. See *Young v. Harper*, 520 U.S. 143, 152 (1997); *Gagnon v. Scarpelli*,
26 411 U.S. 778, 782 (1973); *Morrissey v. Brewer*, 408 U.S. 471 (1972).
27
28

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

8 U.S.C. § 1226(a).

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

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

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

C. Detention Without an Individualized Hearing Violates Due Process

41. In *Sohom Mas v. Casey*, Judge Ohta of this Court held that the government violates the Fifth Amendment when it detains a noncitizen “without an individualized determination of

1 flight risk or danger to the public.” Slip op. at 2. The Court reasoned that because “the
2 government has articulated no individualized justification for his continued detention...
3 The absence of any individualized determination significantly risks erroneously depriving
4 Petitioner of his liberty interest.” *Id.*

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

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

14 44. The Ninth Circuit has recognized that a noncitizen’s interest in freedom from physical
15 confinement itself constitutes a core liberty interest protected by the Due Process
16 Clause. *Hernandez*, 872 F.3d at 990.

17
18 45. Federal courts across the country have overwhelmingly rejected the government’s attempt
19 to apply § 1225(b)(2) to interior residents. As of November 2025, over 350 federal district
20 courts had ruled against the government on this issue. *Barco Mercado v. Francis*, 811 F.
21 Supp. 3d 487, 494-95 & n.22 (S.D.N.Y. Nov. 26, 2025) (collecting cases); *Sales v. Warden*,
22 No. 25-cv-03125-BAS-BJW, slip op. at 3-5 (S.D. Cal. Dec. 12, 2025); *Beltran*, slip op. at
23 11-17; *Carrillo Gregorio*, slip op. at 4-7. This Court should follow the overwhelming
24 consensus and hold that Petitioner is at least entitled to a bond hearing under § 1226(a).
25

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

27 46. Section 1226(a) authorizes arrest and detention only “on a warrant issued by the Attorney
28 General.” The statute’s structure confirms the warrant requirement is a precondition, not
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1 an afterthought. *See Jennings*, 583 U.S. at 302 (“Section 1226(a) ‘authorizes detention only
2 [o]n a warrant issued’ leading to the [noncitizen’s] arrest”).

3 47. However, discretion is not unlimited. Congress imposed a clear, non-discretionary
4 prerequisite to any arrest or detention under § 1226(a). The statute states, in plain and
5 unambiguous language:

6 “On a warrant issued by the Attorney General, a [noncitizen] may be arrested and
7 detained pending a decision on whether the [noncitizen] is to be removed from the
8 United States.” 8 U.S.C. § 1226(a) (emphasis added).
9

10 48. The statute’s structure confirms the warrant requirement is a precondition, not an
11 afterthought. The phrase “on a warrant issued by the Attorney General” appears at the very
12 beginning of the sentence, immediately before the words “a [noncitizen] may be arrested
13 and detained.” By placing the warrant requirement first, Congress signaled that no arrest
14 or detention may occur under § 1226(a) unless a warrant has been issued beforehand.
15

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

21 50. The reasoning is compelled by the text. If the government could arrest and detain under §
22 1226(a) without a warrant, the warrant requirement would be rendered meaningless.
23 Congress does not include superfluous language. *See TRW Inc. v. Andrews*, 534 U.S. 19,
24 31 (2001) (“It is a cardinal principle of statutory construction that a statute ought, if
25 possible, to be construed so that no clause, sentence, or word shall be superfluous, void, or
26 insignificant.”).
27
28

1 51. The absence of a pre-arrest warrant is not a technicality. It is a fundamental violation of
2 the statutory scheme Congress created. Section 1226(a) conditions the government's
3 authority to arrest and detain on the prior issuance of a warrant. When the government fails
4 to comply with that condition, the arrest is unlawful from its inception, and any subsequent
5 detention flowing from that unlawful arrest is also unlawful.

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

11 53. Respondents' January 28, 2026 Lyons Memo confirms its unlawful policy. The memo
12 explicitly instructs federal agents not to consider traditional flight-risk factors such as
13 "whether an [individual] is likely to attend future immigration court hearings, appear before
14 ERO as directed, surrender for removal, and comply with other immigration obligations."¹
15 By prohibiting agents from considering family ties, employment, fixed addresses, and
16 compliance history, the memo renders the statutory "likely to escape" requirement a
17 nullity. The Lyons Memo is therefore itself a violation of the APA and cannot be used to
18 justify Petitioner's warrantless arrest.
19

20 54. Under the Accardi doctrine, an agency must follow its own regulations and policies. *United*
21 *States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954). When ICE leadership
22 issued directives to "turn the creative knob up to 11" and arrest all "collaterals" without
23 individualized assessments, they violated their own binding regulations. *See* 8 C.F.R. §
24
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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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1 287.8(c)(2)(ii)); Exhibit 4. Failure to follow these regulations renders the arrest and
2 detention arbitrary and capricious.

3 55. The Ninth Circuit has already recognized that federal immigration agents' current
4 enforcement tactics violate constitutional and statutory protections. *See Vasquez Perdomo*
5 *v. Noem*, 148 F.4th 656, 676 (9th Cir. 2025) (holding that organizational plaintiffs have
6 standing to challenge ICE's mass stop-and-arrest practices and recognizing the real and
7 immediate threat of unlawful arrest).

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

11 56. Under 8 U.S.C. § 1357(a)(2), an officer may make a warrantless arrest only if the officer
12 "has reason to believe" that the noncitizen (1) is in the United States in violation of
13 immigration laws and (2) "is likely to escape before a warrant can be obtained." 8 C.F.R.
14 § 287.8(c)(2)(ii) imposes the same requirement.

15
16 57. The phrase "reason to believe" is the equivalent of probable cause. *Tejeda-Mata v. INS*,
17 626 F.2d 721, 725 (9th Cir. 1980). The flight-risk determination must be individualized. *M-*
18 *J-M-A v. Hermosillo*, No. 6:25-cv-02011-MTK, slip op. at 23–26 (D. Or. Feb. 27,
19 2026); *Urias v. Semaia*, No. 5:26-cv-02753-DTB, slip op. at 13-14 (C.D. Cal. June 10,
20 2026).

21 58. The "likely to escape" standard requires probable cause that the individual will flee the
22 jurisdiction or evade apprehension entirely, not merely that the individual is mobile or
23 could walk away from the scene. *Escobar Molina v. DHS*, 811 F. Supp. 3d 1, 31 (D.D.C.
24 2025) (holding that unlawful presence alone does not establish 'likely to escape'); *M-J-M-*
25 *A v. Hermosillo*, No. 6:25-cv-02011-MTK, slip op. at 23-26 (D. Or. Feb. 27, 2026) ("likely
26 to escape" means likely to evade immigration officers *before a warrant could be obtained*).
27
28

59. Unlawful presence alone cannot supply the missing escape-risk showing. Because unlawful presence is a civil violation, it does not by itself establish probable cause that a person will flee or evade apprehension. *Arizona v. United States*, 567 U.S. 387, 413 (2012); *Au Yi Lau v. U.S. Immigr. & Naturalization Serv.*, 445 F.2d 217, 222 (D.C. Cir. 1971) (“reason to believe” must be read in light of constitutional standards, so that ‘reason to believe’ is the equivalent of probable cause).

F. The Remedy for Unlawful Detention is Immediate Release

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

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

62. A bond hearing after the fact cannot cure the initial unlawful arrest; it would merely shift the injury from the arrest itself to prolonged detention awaiting a hearing. *See also Silvestre-Mendoza v. Noem*, No. 3:25-cv-03206-RBM-DDL, slip op. at 3–4 (S.D. Cal. Dec. 8, 2025) (“a bond hearing ‘misapprehends the purpose of a pre-detention hearing: if Petitioner is detained, he will already have suffered the injury he is now seeking to avoid’”);

Sohom Mas v. Casey, slip op. at 3–4. Courts have held that where the IJ’s decision is based

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1 on a legal error that cannot be cured by further administrative process, a post-deprivation
2 bond hearing is not an adequate remedy. *W.T.M. v. Bondi*, No. 2:25-cv-02428-RAJ-BAT,
3 slip op. at 9 (W.D. Wash. Jan. 30, 2026) (ordering immediate release where IJ's bond denial
4 was based on an erroneous factual predicate).

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

9 64. The only remedy that ensures Petitioner’s constitutional rights are protected is immediate
10 release from custody. In the alternative, if the Court is inclined to order a bond hearing
11 rather than release, such hearing must include constitutionally mandated safeguards: a
12 neutral adjudicator, and the government bearing the burden of proving by *clear and*
13 *convincing* evidence that Petitioner’s detention is justified. But given the government's
14 demonstrated record of defiance and the structural bias embedded in the immigration court
15 system, even these safeguards may be insufficient to produce a lawful result.
16
17

18 CLAIMS FOR RELIEF

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

20 Without Individualized Bond Hearing

21 65. Petitioner incorporates by reference all preceding paragraphs.

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

24 67. Petitioner has a core liberty interest in freedom from physical confinement. *Zadvydas*, 533
25 U.S. at 690; *Hernandez*, 872 F.3d at 990.

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

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

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

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

21
22 **COUNT TWO - Violation of Substantive Due Process (Fifth Amendment) -- Arbitrary and**
23 **Punitive Detention**
24

25 72. Petitioner incorporates by reference all preceding paragraphs.

26 73. Substantive due process forbids the government from depriving a person of liberty without
27 a legitimate regulatory purpose. *Foucha*, 504 U.S. at 80. Civil immigration detention is
28

1 permissible only to ensure appearance at removal proceedings or prevent danger to the
2 community. *Zadvydas*, 533 U.S. at 690–92.

3 74. In the Ninth Circuit, “the government may not detain a noncitizen to punish him for his
4 immigration status; it may only detain him to ensure his presence at removal proceedings
5 or to protect the community.” *Hernandez*, 872 F.3d at 990. Because Petitioner poses neither
6 a danger nor a flight risk, his continued detention is punitive and violates substantive due
7 process. *Sohom Mas*, slip op. at 2.

8 75. Petitioner has lived in the United States for over 23 years, has a fixed address, strong family
9 ties, stable employment, and no significant criminal history. His detention serves no
10 legitimate regulatory purpose. It is therefore arbitrary and punitive, in violation of
11 substantive due process.
12

13 76. Because Petitioner poses neither a flight risk nor a danger, his continued detention serves
14 no legitimate regulatory purpose. It is therefore punitive in nature, and the Constitution
15 forbids punitive civil detention. *Foucha*, 504 U.S. at 80. Where detention lacks any lawful
16 purpose, the remedy is not a hearing—it is immediate release. *Zadvydas*, 533 U.S. at 697.
17 Petitioner must be released immediately.
18

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

20 77. Petitioner incorporates by reference all preceding paragraphs.

21 78. Petitioner was arrested at around 2:20pm on April 2, 2026, by Border Patrol Agents during
22 a traffic stop. No pre-arrest warrant was ever produced. The I-213 form contains no warrant
23 number and no indication that a warrant was obtained *prior* to the arrest. Hellerstein Decl.
24 ¶¶ 10–11; Exhibit 3, Form I-213. Instead, the government’s documents reflect a post-arrest
25 processing narrative. Hellerstein Decl. ¶¶ 10, 13; Exhibit 3, Form I-213 at 5 (states no
26 warrants existed in the system until one was propagated post-arrest).
27
28

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

4 80. The exception for warrantless arrests under 8 U.S.C. § 1357(a)(2) does not apply. At the
5 time of arrest, there was no probable cause to believe Petitioner was “likely to escape before
6 a warrant could be obtained.” Petitioner had lived at the same address for years, was
7 employed, had strong family ties, and was on his way to work, not fleeing from law
8 enforcement. Hellerstein Decl. ¶¶ 6–7, 11–12. Courts have held that a person with long-
9 term residence, stable employment, and strong family ties does not present a likelihood of
10 escape. *Escobar Molina*, 811 F. Supp. at 31; *Urias*, slip op. at 13.

11
12 81. Respondents also cannot rely on any other statutory authority to justify Petitioner’s arrest
13 and detention. Section 1225(b) (mandatory detention for applicants for admission) does
14 not apply because Petitioner has resided in the United States for over 23 years and is not
15 seeking admission at the border. Section 1226(c) (mandatory detention for criminal non-
16 citizens) does not apply because Petitioner does not have the requisite criminal convictions
17 to trigger mandatory detention. Section 1231 (detention after final order of removal) does
18 not apply because there is no final order of removal against Petitioner.

19
20 82. The warrantless arrest was unlawful from its inception. Because no valid statutory authority
21 supports Petitioner’s arrest and detention, there is no lawful basis to hold him in custody.
22 A bond hearing cannot retroactively cure an arrest that never should have
23 occurred. *Pedraza*, slip op. at 2 (ordering immediate release where arrest was
24 warrantless); *J.A.C.P.*, 2025 WL 3013328, at *8 (same). The only remedy is immediate
25 release from unlawful custody.
26

27 **COUNT FOUR – Violation of the Immigration and Nationality Act – Detention Under the**

28 **Wrong Statute**

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1 83. Petitioner incorporates by reference all preceding paragraphs.

2 84. Petitioner is not an “applicant for admission” subject to mandatory detention under 8
3 U.S.C. § 1225(b)(2). He has resided in the United States for over 23 years, has a fixed
4 address, strong family ties, stable employment, and strong community ties. He did not
5 present himself at the border seeking admission when he was arrested.

6 85. The Supreme Court has held that § 1226 governs detention of noncitizens already inside
7 the country. *Jennings*, 583 U.S. at 287–89. This Court has repeatedly rejected the
8 government's attempt to apply § 1225(b)(2) to interior residents. *Pedraza*, slip op. at
9 2; *Sohom Mas*, slip op. at 2; *Sales*, slip op. at 3-5; *Beltran*, slip op. at 11-17; *Carrillo*
10 *Gregorio*, slip op. at 4-7.

11 86. As the Southern District of New York explained, the phrase “seeking admission” in §
12 1225(b)(2) “necessarily implies some sort of present-tense action.” *Barco Mercado*, 811
13 F. Supp. 3d at 496 (quoting *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 489 (S.D.N.Y.
14 2025)). Someone who enters a movie theater without a ticket and sits through the film is
15 not “seeking admission” when they are detected; they are already present. *Id.* at 496-97.
16 The same is true here: Petitioner entered the United States over 23 years ago and has lived
17 here continuously. He is not “seeking admission.”

18 87. By detaining Petitioner under § 1225(b)(2) and denying him a bond hearing under §
19 1226(a), Respondents violated the Immigration and Nationality Act.

20 88. The IJ’s denial of bond rests entirely on the legally erroneous premise that Petitioner is
21 detained under § 1225(b)(2). This Court has the authority to correct that error. Because the
22 Respondents lack statutory authority to detain Petitioner under the statute they invoke,
23 continued detention is unlawful. The remedy for detention under the wrong statute
24 is release, not a remand for further proceedings under the correct statute. *Yociris P.*, 2026
25 WL 327937, at *3 (“Where the record shows Respondents have not identified a valid
26 PETITION FOR WRIT OF HABEAS CORPUS
27
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1 statutory basis for detention in the first place, the remedy is not to supply one through
2 further proceedings.”).

3 **COUNT FIVE – Unlawful Agency Action in Violation of the Administrative Procedure**

4 **Act, 5 U.S.C. § 706**

5 89. Petitioner incorporates by reference all preceding paragraphs.

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

10
11 91. DHS’s policy and practice of detaining long-term interior residents like Petitioner under 8
12 U.S.C. § 1225(b)(2) as “applicants for admission” is contrary to the plain text of the INA,
13 contrary to Supreme Court precedent, and has been held unlawful by multiple federal
14 courts. *Jennings*, 583 U.S. at 287–89; *Maldonado Bautista*, Doc. 94 at 2 ¶ 3.

15
16 92. On December 18, 2025, the Central District of California entered final judgment vacating
17 the July 8, 2025 DHS policy memorandum in its entirety. *Maldonado Bautista*, Doc. 94 at
18 2 ¶ 3. Despite this vacatur, Respondents continue to apply the same unlawful policy to
19 Petitioner. An agency cannot rely on a vacated policy to justify its actions. To do so is
20 arbitrary, capricious, and contrary to law.

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

26
27 94. By detaining Petitioner under § 1225(b)(2), denying him a bond hearing under § 1226(a),
28 and relying on a vacated policy memorandum and an arbitrary BIA decision, Respondents
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1 have engaged in agency action that is “arbitrary, capricious, an abuse of discretion, and
2 otherwise not in accordance with law” within the meaning of 5 U.S.C. § 706(2)(A).

3 95. A remand for a new bond hearing would be an exercise in futility. The IJ has already denied
4 Petitioner a hearing based on a legal position that this Court and others have rejected. The
5 agency has demonstrated no willingness to comply with federal court orders. Under these
6 circumstances, the APA requires this Court to set aside the unlawful agency action and
7 order immediate release. *Urias*, slip op. at 13–14 (ordering immediate release and
8 enjoining redetention without pre-deprivation hearing).
9

10 PRAYER FOR RELIEF

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

- 12 a. Assume jurisdiction;
- 13 b. Enjoin Respondents from transferring, relocating, or removing Petitioner outside of
14 the Southern District of California pending final resolution of this case;
- 15 c. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from
16 custody, within 48 hours of this Court’s order;
- 17 d. Declare that Petitioner’s warrantless arrest violated 8 U.S.C. § 1226(a);
- 18 e. Declare that Petitioner’s detention without an individualized bond hearing violates the Fifth
19 Amendment Due Process Clause;
- 20 f. In the alternative, if the Court does not order immediate release, order a constitutionally
21 adequate bond hearing under § 1226(a) before a neutral adjudicator within seven days, on
22 the record, with the government bearing the burden of proof by clear and convincing
23 evidence, and with express instructions that Respondents shall not deny bond on the basis
24 that Petitioner is detained under § 1225(b)(2), but must instead consider alternatives to
25 detention, including conditional release; and
26 g. Grant any other relief deemed just and proper.

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1 Date: June 22, 2026

Respectfully Submitted,

2 /s/ Prerna P. Lal

3 Prerna Preshika Lal

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5 *Attorney for Petitioner*
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CERTIFICATE OF SERVICE

I, Perna 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/ Perna P. Lal
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