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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JONNATHAN ADRIAN ALLAICO
LLIGUICOTA,

Petitioner,

v.

WARDEN OF IMPERIAL REGIONAL
DETENTION FACILITY,

MARKWAYNE MULLIN, In his official
capacity as Secretary of Homeland
Security,

GREGORY JOHN ARCHAMBEAULT,
in his official capacity as Field Office
Director, San Diego Field Office, U.S.
Immigration & Customs Enforcement;

DAVID VENTURELLA, In his official
capacity as Acting Director, U.S.
Immigration and Customs Enforcement,

TODD BLANCHE, In his official capacity
as Acting Attorney General;

Respondents.

Civil Action No.

'26CV4131 JO MMP

Immigration No. 

VERIFIED EMERGENCY PETITION FOR
WRIT OF HABEAS CORPUS AND
INCORPORATED MEMORANDUM OF LAW

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PRELIMINARY STATEMENT

- 1
2 1. This matter involves a citizen of Ecuador, Petitioner Mr. Jonnathan Adrian Allaico Lliguicota
3 ("Mr. Allaico" or "Jonnathan"), who is being detained by in the custody of ICE ERO's San
4 Diego Field Office at the Imperial Regional Detention Facility, in violation of the law. Mr.
5 Allaico entered the United States without inspection in 2023, and was released from the
6 custody of Respondents on or about December 19, 2023, on an Order of Release on
7 Recognizance. He had a pending matter before the administrative tribunals of the Executive
8 Office for Immigration Review (EOIR), but proceedings were terminated on October 9, 2025
9 because he was seeking Special Immigrant Juvenile Status (SIJS). Mr. Allaico is the
10 beneficiary of an approved I-360 granting him Special Immigrant Juvenile Status. On June
11 26, 2026, despite his Order of Release on Recognizance, his SIJS status, and the prior
12 termination of the removal proceedings against him, Mr. Allaico was arbitrarily and
13 unlawfully re-detained by Respondents. Not only did the Respondents fail to satisfy the
14 requirements of the law when they unlawfully revoked his release, they also, upon
15 information and belief, unlawfully detained him without a warrant. He was held at the Buffalo
16 Federal Detention Facility in Batavia, New York before being transferred to the Imperial
17 facility in California. He has now been held for three weeks days without due process.
- 18 2. DHS and EOIR each have nationwide policies mandating the detention of all persons who
19 entered without admission or parole, regardless of whether that person was apprehended upon
20 arrival. Most recently, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. & N. Dec.
21 216 (BIA 2025), the Board of Immigration Appeals (BIA) held that all persons who have
22 entered the United States without admission or parole are now subject to mandatory detention
23 under § 1225(b)(2)(A). This legal interpretation is plainly contrary to the statutory framework
24 and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.
- 25 3. The Second Circuit issued a decision in *Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir.
26 2026) holding that 8 U.S.C. § 1226(a) governs the detention of a noncitizen who is present in
27 the United States, having entered without inspection and admission, and not apprehended at or
28 near the border. Petitioner was detained in the Second Circuit, yet was quickly moved outside

1 of that jurisdiction.

2 4. Accordingly, Petitioner seeks a writ of habeas corpus. Petitioner requests an order requiring
3 his immediate release, or in the alternative, his immediate release unless Respondents provide
4 a bond hearing under § 1226(a) within seven days.

5 **THE PARTIES**

6 5. Petitioner is detained in the custody of ICE. He is being detained in the custody of the San
7 Diego ICE Field Office at the Imperial Regional Detention Facility, which is located within
8 this judicial district. His custody and governmental actions related to his removal are likewise
9 controlled by the ICE San Diego Field Office.

10 6. Respondent Warden of the Imperial Regional Detention Facility is the unknown individual
11 who is in charge of the Imperial Regional Detention Facility, and is therefore the individual
12 who has direct physical authority over the Petitioner. His office is located at 1572 Gateway
13 Road, Calexico, CA 92231.

14 7. Respondent Gregory John Archambeault is the Field Office Director for the San Diego Field
15 Office of Enforcement and Removal Operations, U.S. Immigration and Customs
16 Enforcement. He is the local ICE official who has authority over the Petitioner. *See Vasquez*
17 *v. Reno*, 233 F.3d 688, 690 (1st Cir. 2000), cert. denied, 122 S. Ct. 43 (2001). Respondent
18 Archambeault's office is at 880 Front Street #2242, San Diego, CA 92101.

19 8. Petitioner's custody and the governmental actions related to his potential removal from the
20 district are likewise controlled by Respondents David Venturella (who is the Acting Director
21 of U.S. Immigration and Customs Enforcement), Markwayne Mullin (who is the Secretary of
22 Homeland Security), and Todd Blanche (who is the Acting Attorney General and therefore in
23 control of the Executive Office for Immigration Review, which administers the Immigration
24 Courts and the Board of Immigration Appeals).

25 **CUSTODY**

26 9. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs
27 Enforcement ("ICE") at the Imperial Regional Detention Facility. The Deportation Officer
28 responsible for his case is employed by the San Diego Field Office of ICE. The Petitioner is

1 under the direct care, custody and control of Respondents and their agents.

3 JURISDICTION & VENUE

4 I. Subject Matter Jurisdiction

5 10. This action arises under the Constitution of the United States, and the Immigration and
6 Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration
7 Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104 - 208, 110
8 Stat. 1570, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.

9 11. This Court has jurisdiction under 28 U.S.C. § 2241, Art. I, § 9, el. 2 of the Constitution of the
10 United States (the Suspension Clause) and 28 U.S.C. § 1331, as Petitioner is presently in
11 custody under color of the authority of the United States, and such custody is in violation of
12 the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to
13 28 U.S.C. § 2241, 5 U.S.C. § 702, the All Writs Act, 28 U.S.C. § 1651 and the Court's
14 equitable habeas authority.

15 II. Personal Jurisdiction

16 12. This Court has personal jurisdiction over Petitioner's immediate custodian (who is physically
17 within the district).¹

18 III. VENUE

19 13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.484, 493-500 (1973),
20 venue lies in the United States District Court for the Eastern District of California, the judicial
21 district in which Petitioner is being detained. Petitioner is being detained at the Imperial
22 facility and his detention falls under the jurisdiction of the ICE Field Office of San Diego,
23 California, which encompasses the area where Petitioner is being detained, pursuant to 28
24 U.S.C. § 1391.

25
26
27 ¹ Petitioner asserts this Court has personal jurisdiction over the additional Respondents, however, in the
28 interest of brevity, the Petitioner will brief this if (1) any governmental acts challenged herein are found to relate to
those Respondents (instead of the immediate custodian) and (2) the Government seeks to argue against personal
jurisdiction.

FACTS

14. Petitioner, Jonnathan Adrian Allaico Lliguicota, is a citizen of Ecuador who entered the United States without inspection in 2023.

15. Petitioner was previously detained and was released from the custody of Respondents on or about December 19, 2023, on an Order of Release on Recognizance.

16. Petitioner's Order of Release on Recognizance stated: "NOTICE: Failure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by the Department of Homeland Security."

17. Petitioner, upon information and belief, complied with that order as he pursued his immigration matter in the United States.

18. Petitioner had a pending matter before the administrative tribunals of the Executive Office for Immigration Review (EOIR), but proceedings were terminated on October 9, 2025 because he was seeking Special Immigrant Juvenile Status (SIJS).

19. Petitioner is, upon information and belief, the beneficiary of an approved I-360 granting him Special Immigrant Juvenile Status.

20. Upon information and belief, Petitioner has no criminal record.

21. On June 26, 2026, despite his Order of Release on Recognizance, his SIJS status, and the prior termination of the removal proceedings against him, Jonnathan was arbitrarily and unlawfully re-detained by Respondents in Buffalo, New York after being pulled over by their agents.

22. Petitioner was with his father at the time of his re-detention, and was on his way to work.

23. Upon information and belief, Respondents did not follow the regulations and law surrounding the revocation of Jonnathan's Order of Release on Recognizance.

24. Prior to re-detaining Jonnathan, Respondents did not provide any written notice explaining the basis for revoking his order of release on recognizance. Likewise, Respondents did not assess whether Jonnathan presented a flight risk or danger to the community prior to his re-arrest. Nor did Respondents provide Jonnathan with a hearing before a neutral decision-maker at which ICE was required to justify his re-detention.

1 25. The government's abrupt termination of Jonnathan's liberty without notice or a hearing
2 violates the Due Process Clause of the Fifth Amendment.

3 26. Upon information and belief, and based on current ICE practice, no warrant for the arrest of
4 Petitioner, as required under 8 U.S.C. Section 1226(a), had been properly issued prior to
5 Petitioner's arrest, making his current detention by ICE illegal because upon information and
6 belief ICE did not make any individualized determination that Petitioners presented a risk of
7 flight.

8 27. When ICE re-detained Petitioner, upon information and belief, they did not arrest him
9 pursuant to a warrant as required by § 1226(a).

10 28. When ICE re-detained Petitioner, it was unlawful for them to detain him without a warrant
11 without first making a finding that he was a flight risk.

12 29. Upon information and belief, no pre-deprivation hearing was held prior to his re-detention,
13 nor was any deliberative process or any consideration of Petitioner's individual circumstances
14 made.

15 30. Petitioner was re-detained without any opportunity to meaningfully challenge the decision to
16 re-detain him.

17 31. Upon information and belief, ICE has issued a custody determination to continue Petitioner's
18 detention without an opportunity to post bond or be released on other conditions.

19 32. The revocation of Petitioner's release did not comply with the requirements of 8 C.F.R. §
20 236.1(c)(9) because, upon information and belief, none of the enumerated officials specified
21 in that regulation made the decision to re-detain Petitioner, therefore the revocation was
22 contrary to 8 C.F.R. § 236.1(c)(9) and in violation of the APA.

23 33. Petitioner's continued detention serves no legitimate immigration purpose and violates the
24 fundamental liberty protections guaranteed by the Fifth Amendment.

25 34. Respondents are likely to assert that they have authority to detain Petitioner under 8 U.S.C.
26 Section 1225(b), which has been found to be legally incorrect. *Da Cunha v. Freden*, No. 25-
27 3141-PR, 2026 WL 1146044, at *2 (2d Cir. Apr. 28, 2026).

28 35. The mandatory detention of Petitioner without an individualized bond determination violated

1 and continues to violate Petitioner's Fifth Amendment due process rights.

2 36. A Petition for a Writ of Habeas Corpus was filed in the Western District of New York on July
3 4, 2026 under case number 26-cv-1345. That matter has been voluntarily dismissed.

4 37. Without relief from this Court, Petitioner faces the prospect of numerous months, or even
5 years, in immigration custody, as they seek relief from removal.

6 38. Accordingly, Petitioner seeks a writ of habeas corpus. Petitioner requests an order requiring
7 his immediate release and restoration of the Order of Release on Recognizance on which he
8 had been placed, due to the unlawful and arbitrary revocation of such, in direct violation of
9 his liberty interest, in addition to likely warrantless arrest based on likely racial profiling.

10

11 **LEGAL FRAMEWORK WITH RESPECT TO UNLAWFUL WARRANTLESS ARREST,**
12 **UNLAWFUL REVOCATION OF RELEASE, AND LIBERTY INTEREST**

13 39. "Section 1357(a)(2) provides ICE with limited authority to conduct warrantless arrests."

14 *Curimilma Quille v. Blanche*, No. 26-cv-2818, 2026 WL 1453889, at *5 (E.D.N.Y. May 22,
15 2026); see also *Yeleshev v. Larocco*, No. 26-cv-2294, 2026 WL 1353806, at *3 (E.D.N.Y.
16 May 14, 2026) ("Except in the limited circumstances permitting warrantless arrests (which
17 often all turn on the existence of exigent circumstances), due process does not tolerate arrest
18 first and charge later schemes[.]"). "Specifically, ICE must obtain a warrant before arresting a
19 noncitizen unless the officer 'has reason to believe that the [noncitizen] is in the United States
20 in violation of any such law or regulation and is likely to escape before a warrant can be
21 obtained for his arrest.'" *Curimilma Quille*, 2026 WL 1453889, at *5 (quoting 8 U.S.C. §
22 1357(a)(2)) (emphasis in original); see also 8 C.F.R. § 287.8(c)(2)(ii) ("A warrant of arrest
23 shall be obtained except when the designated immigration officer has reason to believe that
24 the person is likely to escape before a warrant can be obtained."). "ICE officers must satisfy
25 both prongs to establish probable cause to effect a warrantless arrest." *B.D.A.A. v. Bostock*,
26 No. 25-cv-2062, 2025 WL 3484912, at *7 (D. Or. Dec. 4, 2025).

27 40. Petitioner was encountered during a traffic stop, likely on the basis of racial profiling. He had a
28 fixed address, a pending asylum matter, a work permit, no criminal record, and a documented

1 history of lawful interaction with immigration officials. "No twist of logic or sophistry can
 2 transform him into a potential escapee." *Alfaro v. Mullin*, No. 26-cv-766, 2026 WL 734348, at *5
 3 (E.D.N.Y. Mar. 16, 2026) (finding that a warrantless arrest pursuant to Section 1357 and 8 C.F.R.
 4 § 287.8(c)(2)(ii) under similar circumstances "was plainly illegal"); *Sisalema Rea*, No. 9:26-cv-
 5 012487 (N.D.N.Y. July 2, 2026).

6 41. Section 1226(a) provides that immigration officers may, in their discretion, detain noncitizens
 7 or may release them on conditional parole (also called an Order of Release on Recognizance,
 8 or "OREC"). 8 U.S.C. § 1226(a); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th
 9 Cir. 2007) ("It is apparent that the INS used the phrase 'released on recognizance' as another
 10 name for 'conditional parole' under § 1226(a)"). The corresponding regulation requires that,
 11 before granting release, the immigration officer must determine that such "release would not
 12 pose a danger to property or persons, and that the [noncitizen] is likely to appear for any
 13 future proceeding." 8 C.F.R. § 236.1(c)(8).

14 42. By issuing the OREC, ICE necessarily determined that Petitioner would not pose a danger and
 15 was likely to appear for future proceedings. See 8 C.F.R. § 236.1(c)(8).

16 43. Section 1226(b) authorizes the Attorney General to "revoke a bond or parole ... rearrest the
 17 alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b). Immigration
 18 regulations clarify that only certain officials may exercise this revocation authority: "the
 19 district director, acting district director, deputy district director, assistant district director for
 20 investigations, assistant district director for detention and deportation, [and] officer in charge
 21 (except foreign)[.]" 8 C.F.R. § 236.1(c)(9) (custody and release procedures).

22 44. Although Petitioner does not know exactly who revoked his release, he has reason to believe
 23 that it was not one of those enumerated officials. See *Ledesma Gonzalez v. Bostock*, 808 F.
 24 Supp. 3d 1189 (W.D.Wash. 2025), citing *United States v. Gemmill*, 535 F.2d 1145, 1152 (9th
 25 Cir. 1976) (agency officials not explicitly granted authority in regulation lack authority to
 26 act); see also *SMJ v. Bostock*, No. 6:25-cv-01426-MTK (D.Or., Nov 10, 2025) ("there is no
 27 evidence that S-M-J's release was revoked by anyone with authority to do so. Thus,
 28 Respondents' revocation of S-M-J's release was contrary to 8 C.F.R. § 236.1(c)(9) and in

1 violation of the APA.”)

2 45. Further, even if it was one of the enumerated officials who revoked Petitioner’s release, it is
3 required for there to have been a valid exercise of DHS’s discretion. *Lopez Benitez v. Francis*,
4 795 F. Supp. 3d 475 (S.D.N.Y. 2025); *Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065
5 (E.D.N.Y. 2025) (“the hallmark” of the Fifth Amendment due process protections are “the
6 requirement to provide notice and an opportunity to be heard.”).

7 46. The Fifth Amendment states that “[n]o person shall be . . . deprived of life, liberty, or
8 property, without due process of law.” U.S. Const. amend. V. The Supreme Court has
9 repeatedly affirmed that “[i]n our society liberty is the norm, and detention prior to trial or
10 without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755
11 (1987); see also *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (“We have always been careful
12 not to minimize the importance and fundamental nature of the individual’s right to liberty.”).
13 Petitioner’s interest in not being detained is “the most elemental of liberty interests[.]” *Hamdi*
14 *v. Rumsfeld*, 542 U.S. 507, 529 (2004). Consistent with this principle, individuals released on
15 parole or other forms of conditional release, including immigration bonds, have a liberty
16 interest in their “continued liberty.” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). “The
17 procedural component of due process ‘imposes constraints on governmental decisions which
18 deprive individuals of ‘liberty’ . . . within the meaning of the Due Process Clause.’” *D.B. v.*
19 *Cardall*, 826 F.3d 721, 741 (4th Cir. 2016) (citing *Mathews v. Eldridge*, 424 U.S. 319, 332
20 (1976)). For this reason, “civil commitment for any purpose constitutes a significant
21 deprivation of liberty that requires due process protections.” *Addington v. Texas*, 441 U.S.
22 418, 425 (1979) (emphasis added).

23 47. Thus, “when the government deprives a person of a protected liberty . . ., it is obliged to
24 provide ‘notice and opportunity for hearing appropriate to the nature of the case.’” *Cardall*,
25 826 F.3d at 741 (citing *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950));
26 see generally *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an
27 opportunity to be heard before deprivation of a legally protected interest). The question of
28 what form of “notice and opportunity for hearing” is “appropriate” and thus constitutionally

1 required in a given case requires considering three factors. *Cardall*, at 742 (citing *Turner v.*
2 *Rogers*, 564 U.S. 431, 444–45 (2011)). Specifically, the Supreme Court has instructed courts
3 to consider the following: (1) “the private interest that will be affected by the official action;”
4 (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the
5 probable value, if any, of additional or substitute procedural safeguards;” and (3) “the
6 Government’s interest, including the function involved and the fiscal and administrative
7 burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424
8 U.S. at 335.

9 48. “The three-factor Mathews framework is ‘flexible’ and highly ‘fact-specific.’” *Cardall*, 826
10 F.3d at 743 (citing *Ciambriello v. Cnty. of Nassau*, 292 F.3d 307, 319 (2nd Cir. 2002)). “The
11 mere availability and utilization of some procedures does not mean they [a]re constitutionally
12 sufficient. That is, the Fifth Amendment guarantees ‘due process of law,’ not just ‘some
13 process of law.’” *Id.* (citing *Davidson v. City of New Orleans*, 96 U.S. 97, 107 (1877)
14 (Bradley, J., concurring)).

15 49. Upon finding a person is in custody in violation of the laws of the United States, a district
16 court may grant a writ of habeas corpus and “dispose of the matter as law and justice so
17 require.” 28 U.S.C. §§ 2241(a), 2243. The “typical remedy” for “unlawful executive
18 detention” is release from custody. See *Munaf v. Geren*, 553 U.S. 674, 693 (2008); see also
19 *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). See, e.g., *Morales Mendez v. Field Office*
20 *Director*, No. 9:26-cv-337-ECC (Coombe, J.), (N.D.N.Y., March 16, 2026); *Perez v. Akshar,*
21 *et al.*, No. 9:26-cv-120-ECC (Coombe, J.) (N.D.N.Y., March 5, 2026); See also *Crespo Tacuri*
22 *v. Genalo*, No. 25-cv-6896, 2026 WL 35569, at *7 (E.D.N.Y. Jan. 6, 2026) (concluding that
23 Petitioner had a “cognizable private interest in being freed from unlawful detention”) (citing,
24 among others, *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (“[T]he most elemental of liberty
25 interests [is] the interest in being free from physical detention by one’s own government.”));
26 *Fernandez Lopez v. Wofford*, 2025 WL 2959319, at *4 (E.D. Cal. Oct. 17, 2025).

27 50. Immediate release is the appropriate remedy where a non-citizen petitioner is detained
28 unlawfully in violation of their due process rights. See *J.A.C.P. v. Wofford*, 1:25-cv-01354,

2025 WL 3013328 at *8 (E.D.Cal. Oct 27, 2025).

LEGAL FRAMEWORK WITH RESPECT TO BOND

51. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

52. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge (IJ). See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

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

54. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)–(b).

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

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

57. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without admission or parole were not considered detained under § 1225 and that they were instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

58. Thus, in the decades that followed, most people who entered without admission or parole and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of

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

5 59. On July 8, 2025, ICE, “in coordination with” the Department of Justice, announced a new
6 policy that rejected this well-established understanding of the statutory framework and
7 reversed decades of practice.

8 60. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for
9 Admission,” claims that all persons who entered the United States without admission or
10 parole shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore
11 are subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of
12 when a person is apprehended, and affects those who have resided in the United States for
13 months, years, and even decades.

14 61. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure Hurtado*.

15 There, the Board held that all noncitizens who entered the United States without admission or
16 parole are considered applicants for admission who are seeking admission and are ineligible
17 for IJ bond hearings.

18 62. Numerous judges within this circuit and nationwide have uniformly rejected DHS’s and
19 EOIR’s new interpretation because it defies the INA. The plain text of the statutory provisions
20 demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner. *See, e.g.,*
21 *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3,
22 2025); *Coc Pacham v. Archeambault*, No. 3:25-cv-03163-GPC-DEB (S.D. Cal. Dec. 17,
23 2025); *J.A.C.P. v. Wofford*, No. 1:25-CV-01354-KES-SKO (HC), 2025 WL 3013328 (E.D.
24 Cal. Oct. 27, 2025); *A.E.R.T. v. Wofford*, 1:25-CV-1824-KES-SKO (HC) (E.D. Cal., Dec. 16,
25 2025); *Garcia Mariagua v. Chestnut*, No. 1:25-cv-01744-DJC-CSK, 2025 WL 3551700 (E.D.
26 Cal. Dec. 11, 2025); *J.E.H.G. v. Chestnut*, No. 1:25-CV-01673-JLT-SKO, 2025 WL 3523108,
27 at *10 (E.D. Cal. Dec. 9, 2025) (citing *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025
28 WL 691664, at *4 (E.D. Cal. Mar. 3, 2025)) *see also Barco Mercado v. Francis*, ___ F. Supp.

1 3d. ___, No. 25-cv-6582 (LAK), 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025) (noting
2 that, in “350” of the “362” opinions to address this issue, the petitioners “prevailed, either on
3 a preliminary or final basis,” and these cases were “decided by over 160 different judges
4 sitting in about fifty different courts”)

5 63. In *Maldonado Bautista v. Santacruz*, the Central District of California issued both declaratory
6 and injunctive relief holding that noncitizens who entered without inspection but were not
7 apprehended at the border are detained under § 1226(a), not § 1225(b)(2), and are therefore
8 entitled to bond hearings. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM,
9 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-
10 CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

11 64. Subsection 1226(a) applies by default to all persons “pending a decision on whether the
12 [noncitizen] is to be removed from the United States.” These removal hearings are held under
13 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

14 65. Subsection 1226(a) applies by default to all persons “pending a decision on whether the
15 [noncitizen] is to be removed from the United States.” These removal hearings are held under
16 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

17 66. The text of § 1226 also explicitly applies to people charged as being inadmissible, including
18 those who entered without admission or parole. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph
19 (E)’s reference to such people makes clear that, by default, such people are afforded a bond
20 hearing under subsection (a). “When Congress creates ‘specific exceptions’ to a statute’s
21 applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez*
22 *Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate*
23 *Ins. Co.*, 559 U.S. 393, 400 (2010)).

24 67. Section 1226 therefore leaves no doubt that it applies to people who face charges of being
25 inadmissible to the United States, including those who are present without admission or
26 parole.

27 68. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered
28 the United States. The statute’s entire framework is premised on inspections at the border of

1 people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed,
2 the Supreme Court has explained that this mandatory detention scheme applies “at the
3 Nation’s borders and ports of entry, where the Government must determine whether a[]
4 [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281,
5 287 (2018).

6 69. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like
7 Petitioner, who has already entered and was residing in the United States at the time he was
8 apprehended.

9 70. Many courts have held that immediate release is the appropriate remedy where a non-citizen
10 petitioner is detained unlawfully in violation of their due process rights, such as by being
11 detained without a warrant as required under § 1226(a). *See J.A.C.P. v. Wofford*, 2025 WL
12 3013328, at *8; see also *Chogillo Chafila v. Scott*, No. 2:25-CV-00437-SDN, 2025 WL 2688541, at
13 *11 (D. Me. Sept. 22, 2025) (“Issuance of a warrant is a necessary condition to justify
14 discretionary detention under section 1226(a).”). “Section 1226(a) plainly states: ‘On a warrant
15 issued by the Attorney General, a [noncitizen] may be arrested and detained’” *Id.* (quoting 8
16 U.S.C. § 1226(a)). “As such, it follows that absent a warrant a noncitizen may not be arrested and
17 detained under section 1226(a).” *Id.* “To put it simply, [petitioner’s] detention[] [is] improper
18 because there is no evidence in the record that [he was] arrested pursuant to a warrant.” *Id.* “Since
19 the Government did not comply with the plain language of section 1226(a), [petitioner’s]
20 immediate release is justified.” *Id.*; *Chiliquina Yumbillo v. Stamper*, No. 2:25-CV-00479-SDN,
21 2025 WL 2783642, at *5 (D. Me. Sept. 30, 2025) (reaching same conclusion).

22 **LEGAL FRAMEWORK WITH RESPECT TO SIJS AND DEFERRED ACTION**

23 71. Congress created SIJS to protect vulnerable immigrant children and provide them a pathway to
24 citizenship. Immigration Act of 1990, Pub. L. No. 101-649, § 153, 104 Stat. 4978 (1990)
25 (amending various sections of the INA); Special Immigrant Status, 58 Fed. Reg. 42843, 43844
26 (Aug. 12, 1993) (This rule alleviates hardships experienced by some dependents of United States
27 juvenile courts by providing qualified [noncitizens] with the opportunity to apply for special
28 immigrant classification and lawful permanent resident status, with [the] possibility of becoming

1 citizens of the United States in the future.). Since 1990, Congress has amended the INA multiple
2 times to expand the protections of SIJS, most recently in 2008, through the TVPRA, Pub. L. 110-
3 457, § 235(d), 122 Stat. 5044 (2008).

4 72. To be granted SIJS, youths must first satisfy a set of rigorous, congressionally defined eligibility
5 criteria. *Osorio-Martinez v. U.S. Att’y Gen.*, 893 F.3d 153, 163 (3d Cir. 2018). Specifically, the
6 INA provides that those eligible for SIJS designation, as relevant here, are noncitizen youth who
7 are present in the United States; who have been declared dependent on a state juvenile court; who
8 cannot be reunified with one or more parents because of abuse, neglect, or abandonment; and for
9 whom it has been determined that it is not in their best interest to return to their country of origin.
10 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c).

11 73. Crucially, a noncitizen youth is eligible for SIJS only if he is present in the United States. 8
12 U.S.C. § 1101(a)(27)(J). The application process involves submitting a Form I-360 Petition to
13 USCIS, along with the predicate state court order and other supporting evidence. See 8 C.F.R. §
14 204.11(b). USCIS then considers the application and supporting documentation to determine
15 whether to use its statutory —consent functionl to approve the petition. *See* 8 U.S.C. §
16 1101(a)(27)(J)(iii).

17 74. The core purpose of SIJS is to confer on vulnerable youth the right to seek Lawful Permanent
18 Resident status while remaining in the United States. Although SIJS renders youth eligible to
19 apply for adjustment, they can only do so when a visa is immediately available to them. 8 U.S.C.
20 § 1255(h). However, there is an annual limit on visas available to SIJS beneficiaries. 8 U.S.C. §
21 1153(b)(4). And since 2016, the number of SIJS beneficiaries has surpassed the supply of
22 available visas for most countries, leaving what has been estimated to be more than 100,000
23 young people in a backlog, waiting to apply for a green card.

24 75. Despite the immediate unavailability of visas, waitlisted SIJS beneficiaries are the same
25 vulnerable young people that the SIJS statute was designed to protect. The fact that no visa is
26 currently available because a numerical limit has been reached changes nothing about their
27 eligibility determination by USCIS, or Congress’s intent that they be afforded a pathway to LPR
28 status and, eventually, citizenship. These are the same individuals whom state courts have

1 determined cannot safely be reunited with their parent(s) or returned to their home country.

2 76. Taken together, the structure of the SIJS program—including the requirement that recipients
3 remain in the United States to move forward in the process, the grant of parole for the purpose of
4 adjustment, and the waiver of grounds of inadmissibility and removability—evinces Congress’
5 intent that SIJS recipients remain safely in the United States until they can adjust to become
6 LPRs. And given that they are only — a hair’s breadth from being able to adjust their status and
7 have a —substantial legal relationship with the United States, these individuals have been
8 recognized as enjoying meaningful constitutional due process rights. *Osorio*, 893 F. 3d at 173-75.

9 77. Nonetheless, DHS has taken the position that SIJS youth in the visa backlog remain subject to
10 removal, including simply for their lack of lawful immigration status in the United States, while
11 they wait for the ability to apply for a green card. So in March 2022, to address the harms being
12 caused by the SIJS visa backlog, USCIS announced that all young people granted SIJS would also
13 be considered for a discretionary grant of deferred action, meaning that they would be protected
14 from deportation while waiting for a visa to become available. In enacting this policy, USCIS
15 acknowledged that —Congress likely did not envision that SIJ petitioners would have to wait
16 years before a visa became available. USCIS Policy Alert, PA-2022-10, Special Immigrant
17 Juvenile Classification and Deferred Action (March 7, 2022),
18 [https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-](https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf)
19 [SIJAndDeferredAction.pdf](https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf) (hereinafter —2022 USCIS Policy Alert).

20 78. When determining whether a SIJS youth was eligible for deferred action, USCIS assessed, —
21 based on the totality of the evidence, whether [he] warrants a favorable exercise of discretion.
22 2022 USCIS Policy Alert at n.6; see also USCIS Policy Manual as of April 18, 2025, vol. 6, pt. J,
23 ch. 4, [https://web.archive.org/web/20250418205752/https://www.uscis.gov/policy-](https://web.archive.org/web/20250418205752/https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4)
24 [manual/volume-6-part-j-chapter-4](https://web.archive.org/web/20250418205752/https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4) (USCIS weighs all relevant positive and negative factors that
25 apply to the person’s case. USCIS may generally grant deferred action if, based on the totality of
26 the facts and circumstances of the case, the positive factors outweigh the negative factors.).

27 79. Specifically, —[o]ne particularly strong positive factor that weighs heavily in favor of granting
28 deferred action is that the person has an approved [SIJS petition] and will be eligible to apply for

1 adjustment of status as soon as an immigrant visa number becomes available, *id.*, while —[i]f
2 background and security checks indicate that an SIJ-classified individual may be subject to an
3 inadmissibility ground ... that cannot be waived and that would make them ineligible for SIJ-
4 based adjustment of status, this would generally be a strong negative factor weighing against the
5 favorable exercise of discretion, as would —serious unresolved criminal charge(s), Exh. 14,
6 USCIS-ICE Memo at 2.

7 80. Deferred action is an act of prosecutorial discretion that defers efforts to deport a noncitizen from
8 the United States for a certain period of time. USCIS Policy Manual as of April 18, 2025, vol. 6,
9 pt. J, ch. 4, [https://web.archive.org/web/20250418205752/https://www.uscis.gov/policy-](https://web.archive.org/web/20250418205752/https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4)
10 [manual/volume-6-part-j-chapter-4](https://web.archive.org/web/20250418205752/https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4). In the case of SIJS recipients awaiting visas, USCIS granted
11 deferred action for a period of four years. 2022 USCIS Policy Alert at 2. Individuals granted
12 deferred action are also eligible to apply for employment authorization under 8 C.F.R. §
13 274a.12(c)(14). *Id.*

14 81. In June 2025, USCIS rescinded the SIJS deferred action policy, deciding to no longer consider
15 granting deferred action to SIJS youth waiting to apply for a green card. However, this policy
16 change had no impact on SIJS beneficiaries, like Petitioner, who had already received deferred
17 action. See USCIS Policy Alert, PA-2025-07, —Special Immigrant Juvenile Classification and
18 Deferred Actionl 2 (June 6, 2025), [https://www.uscis.gov/sites/default/files/document/policy-](https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250606-SIJDeferredAction.pdf)
19 [manual-updates/20250606-SIJDeferredAction.pdf](https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250606-SIJDeferredAction.pdf) (hereinafter — 2025 USCIS Policy Alert).
20 Indeed, USCIS explicitly provided that noncitizens —with current deferred action based on their
21 SIJ classification will generally retain this deferred action . . . until the current validity periods
22 expire. *Id.*

23 82. Pursuant to USCIS's internal policies, only USCIS may terminate a SIJS beneficiary's deferred
24 action before it expires, and only if the agency engages in an individualized review and
25 determines, for example, that a favorable exercise of discretion is no longer warranted; the
26 individual's SIJS petition was approved in error and is revoked; or the prior deferred action was
27 granted in error. USCIS Policy Manual, vol. 6, part J, ch. 4, [https://www.uscis.gov/policy-](https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4)
28 [manual/volume-6-part-j-chapter-4](https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4) ; see also Exh. 14, USCIS-ICE Memo at 2 (confirming that

USCIS has the sole authority to grant and terminate deferred action for noncitizens with SIJ classification and that USCIS may terminate deferred action if the SIJ-classified individual was not eligible at the time of the initial grant of deferred action, the SIJ Form I-360 is revoked, or if they are no longer eligible based on new information, including new information about criminal activity that impacts the discretionary determination to grant SIJ deferred action).

CLAIMS FOR RELIEF

COUNT 1: VIOLATION OF THE INA

83. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein, and does so for all additional counts.

84. The detention provision at 8 U.S.C. § 1225(b) is not applicable in the case of a noncitizen who was detained inside of the United States, but rather, § 1226(a) applies. See, e.g., *Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026), *Lopez-Campos v. Raycraft*, 175 F.4th 713 (6th Cir. 2026); *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, 175 F.4th 1258 (11th Cir. 2026); *Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048 (7th Cir. 2025), *Santillan Quiroz v. Mullin*, No. 26-6019 (10th Cir. 2026) (the five majority circuits that have held that § 1225(b) does not apply); but see *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) (the two minority circuits that held that § 1225(b), as advanced by the government, does apply).

85. Petitioner was detained years after his initial entry into the United States, his initial apprehension, and subsequent release on OREC, and, thus, § 1225(b) does not provide Respondents the authority to detain Petitioner without a bond hearing or other due process.

86. Further, § 1226(b), as implemented by 8 C.F.R. § 236.1(c)(9), only authorizes specific officials to revoke the release of a noncitizen.

87. 8 U.S.C. § 1357(a)(2) requires a specific finding that a noncitizen is an escape risk before a warrantless arrest may be effectuated.

88. Respondents are in violation of these statutory requirements.

COUNT 2: VIOLATION OF DUE PROCESS

89. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein, and does so for all additional counts.

90. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

91. Petitioner has a fundamental interest in liberty and being free from official restraint.

92. Because of Petitioner’s profound legal interest in his liberty as a noncitizen, his detention violates his due process rights. *See generally Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest).

93. Petitioner’s detention violates the Due Process Clause of the Fifth Amendment.

COUNT 3: Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B)

94. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein, and does so for all additional counts.

95. Under the APA, a court shall “hold unlawful and set aside agency action . . . found to be . . . not in accordance with law” or “contrary to constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(A), (B).

96. The APA’s reference to “law” in the phrase “not in accordance with law,” “means, of course, any law, and not merely those laws that the agency itself is charged with administering.” *FCC v. NextWave Pers. Commc’ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

97. Respondents failed to follow their own regulations and procedures in re-detaining Petitioner.

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Prevent the Petitioner's removal outside of this judicial district until this action is decided;
- (3) Issue a temporary stay of Petitioner's removal until this action is decided;
- (4) Issue a writ of habeas corpus clarifying that the statutory basis for Petitioner's detention is 8 U.S.C. § 1226(a) and that 8 U.S.C. § 1231 does not apply to Petitioner;
- (5) Issue a writ of habeas corpus requiring that Respondents release Petitioner immediately, and that if the government seeks to re-detain petitioner, it must provide no less than seven (7) days' notice to petitioner and must hold a pre-deprivation bond hearing before a neutral arbiter pursuant to section 1226(a) and its implementing regulations, at which petitioner's eligibility for bond must be considered and where the Government shall bear the burden of proving by clear and convincing evidence that Petitioner poses a danger to the community or a flight risk; and
- (6) Fashion such additional relief as is necessary and appropriate, including declaratory relief or other interim relief necessary to vindicate Petitioners' rights under U.S. and international law

Dated: July 17, 2026

Respectfully Submitted,

/s/ Kurt R. Saccone

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**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT
TO 28 U.S.C. § 2242**

I represent Petitioner and submit this verification on Petitioner's behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: July 17, 2026

Respectfully Submitted,

/s/ Kurt R. Saccone

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