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UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

JOSE RAFAEL CRESPIN CANAS,

Petitioner,

v.

TODD BLANCHE, Acting Attorney General of the United States; MARKWAYNE MULLIN, Secretary of Homeland Security; DAVID J. VENTURELLA, Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement; PATRICK DIVVER, Field Office Director, San Diego Field Office, U.S. Immigration and Customs Enforcement; JORGE VELARDE, Assistant Field Office Director, U.S. Immigration and Customs Enforcement, Otay Mesa Detention Center; CHRISTOPHER J. LaROSE, Senior Warden, Otay Mesa Detention Center,

Respondents.

Case No. '26CV4464 JO VET

Agency No. [redacted]

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN FEDERAL CUSTODY UNDER 28 U.S.C. § 2241 AND APPLICATION FOR ORDER TO SHOW CAUSE

IMMIGRATION HABEAS, DETAINED

INTRODUCTION

1. Petitioner Jose Rafael Crespin Canas is a 28-year-old citizen of El Salvador who has resided continuously in the United States since May 2022 and lives in La Puente, California with his partner and stepdaughter. He has worked for the same employer for approximately four years and is the sole financial support for his household. He has no criminal record. On June 8, 2026, Border Patrol agents arrested him without a warrant. He is confined at the Otay Mesa Detention Center and has been detained for more than seven weeks, and no immigration judge, and no officer of Respondents, has ever made an individualized determination that he presents a risk of flight or a danger to the community.

2. This Court has granted immediate release to petitioners in Petitioner's position repeatedly and recently, on facts materially indistinguishable from these. *See, e.g. Lucas Gregorio v. LaRose*, No. 3:26-cv-03918-RBM-SBC, Doc. 6 (S.D. Cal. July 16, 2026); *Baltazar Raymundo v. Blanche*, No. 3:26-cv-03984-JO-SBC, Dkt. 6–7 (S.D. Cal. July 27, 2026); *Figueroa v. Casey*, No. 3:26-cv-03482-JO, Dkt. 5–6 (S.D. Cal. June 22, 2026).

3. The Ninth Circuit settled the threshold statutory question today. In *Rodriguez Vazquez v. Bostock*, No. 25-6842 (9th Cir. July 30, 2026), the Court affirmed the judgment of the Western District of Washington and held that "aliens present without admission who are apprehended in the interior of the United States are subject to the detention regime of § 1226, not § 1225(b)(2)(A)." Petitioner is such a person. He is, and has at all times been, a § 1226(a) detainee.

4. That holding does not merely establish that Petitioner was entitled to a bond hearing. It establishes the source of Respondents' arrest authority, and Respondents did not

comply with it. Section 1226(a) provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a) (emphasis added). The Ninth Circuit noted in *Rodriguez Vazquez* that the named plaintiff there "was apprehended pursuant to a warrant." No warrant issued for Petitioner.

5. The sole statutory exception permitting a warrantless immigration arrest requires that the arresting officer have reason to believe the person "is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2); *accord* 8 C.F.R. § 287.8(c)(2)(ii); *see Arizona v. United States*, 567 U.S. 387, 407 (2012); *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980). Respondents made no such determination. An arrest in violation of these provisions is unlawful, *Sanchez v. Sessions*, 904 F.3d 643, 650 (9th Cir. 2018); *Perez Cruz v. Barr*, 926 F.3d 1128, 1137 (9th Cir. 2019), and where the statute is violated there is no authority to hold the person in immigration custody at all. Immediate release is required.

6. A bond hearing now also cannot undo the deprivation Petitioner has already suffered. Respondents have confined him for more than seven weeks without any individualized determination of flight risk or danger, "continuing to deprive him of his freedom from physical confinement without an individualized determination of flight risk or danger to the public," in violation of the Fifth Amendment. *Baltazar Raymundo v. Blanche*, No. 3:26-cv-03984-JO-SBC, Dkt. 6 ¶ 3 (S.D. Cal. July 27, 2026). A hearing held now is a post-deprivation remedy that "cannot prevent an erroneous deprivation of liberty" that has already occurred. *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025).

7. Petitioner asks this Court to order his immediate release and to enjoin Respondents from redetaining him without first providing notice and a pre-deprivation bond hearing before an immigration judge, held before any redetention, at which the Government bears the burden of justifying any renewed deprivation of his liberty. He does not seek a temporary restraining order, given the settled precedent in this District. He requests that Respondents respond within three days pursuant to 28 U.S.C. § 2243, or on such schedule as the Court sets consistent with Chief Judge Order No. 144, and that Respondents be barred from transferring him outside this District pending resolution.

JURISDICTION AND VENUE

8. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.* This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Relief is available under 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

9. Sections 1252(g), (a)(5), and (b)(9) of Title 8 do not bar Petitioner's collateral challenge to the constitutionality and legality of his current detention. *Esquivel Pacheco v. LaRose*, 818 F. Supp. 3d 1168, 1174–75 (S.D. Cal. 2026); *Pacheco v. LaRose*, No. 3:25-cv-2421-JO-AHG, 2026 WL 242300, at *2–5* (S.D. Cal. Jan. 29, 2026). Petitioner does not challenge the commencement or adjudication of removal proceedings, nor the execution of any removal order; he challenges only the lawfulness of his present physical confinement. "[C]laims that are independent of or collateral to the removal process do not fall within the scope of § 1252(b)(9)." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016). Section 1252(g) "does not prohibit

challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th Cir. 2025).

10. Section 1226(e) forecloses review only of the Attorney General's discretionary judgments; it does not bar habeas review of whether detention is authorized at all or whether the procedures attending it satisfy the Constitution. *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018); *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017).

11. Venue is proper in this District. Petitioner is detained at the Otay Mesa Detention Center in San Diego County and his immediate custodian is located here. *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). A substantial part of the events and omissions giving rise to Petitioner's claims, including his arrest, his transport to the Campo Border Patrol Station, and his continuing confinement, occurred in this District, and no real property is involved in this action. 28 U.S.C. § 1391(e).

12. The Court must grant the writ or issue an order to show cause "forthwith," and must require a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." 28 U.S.C. § 2243. The writ is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004). "[T]he traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

PARTIES

13. Petitioner Jose Rafael Crespin Canas ([redacted]) is a citizen and national of El Salvador, detained at the Otay Mesa Detention Center, 7488 Calzada de la Fuente, San Diego, CA 92154, in the custody and under the direct control of Respondents and their agents.

14. Respondent Todd Blanche is sued in his official capacity as Acting Attorney General of the United States. He oversees the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the Board of Immigration Appeals. He is a legal custodian of Petitioner.

15. Respondent Markwayne Mullin is sued in his official capacity as Secretary of Homeland Security. He is responsible for enforcement of the INA and oversees U.S. Immigration and Customs Enforcement ("ICE"), the component responsible for Petitioner's detention. He is a legal custodian of Petitioner.

16. Respondent David J. Venturella is sued in his official capacity as the Senior Official Performing the Duties of the Director of ICE. He is a legal custodian of Petitioner.

17. Respondent Patrick Divver is sued in his official capacity as Field Office Director of the San Diego ICE Field Office. He is a legal custodian of Petitioner and has authority to release him.

18. Respondent Jorge Velarde is sued in his official capacity as Assistant Field Office Director of ICE at the Otay Mesa Detention Center. He is a legal custodian of Petitioner and has direct authority to release him.

19. Respondent Christopher J. LaRose is sued in his official capacity as Senior Warden of the Otay Mesa Detention Center. He is Petitioner's immediate physical custodian and has direct authority to release him.

STATEMENT OF FACTS

20. Petitioner was born on [redacted] in Cabañas, El Salvador. He entered the United States without inspection on or about May 15, 2022, and has resided continuously in the country since that date. Robinson Decl.; Ex. A, Form I-213 at 1.

21. Petitioner resides in La Puente, California, in Los Angeles County, with his partner, Jocelyn Hernandez, and his stepdaughter. Respondents' own records list his United States address in La Puente and record the vehicle he was driving as registered jointly to Petitioner and Ms. Hernandez at that address. Ex. A, Form I-213 at 1; Ex. A, Memorandum of Investigation at 1.

22. Petitioner has worked at PRL Glass for approximately four years. He is the breadwinner for his household and also provides financial support to his mother in the United States and his grandfather in El Salvador. Robinson Decl.

23. Upon information and belief, Petitioner has no criminal history. Respondents' Form I-213 leaves the "Criminal Record" field blank, records negative results on the NCIC, TECS, NGI, and ABIS checks, and states that "[n]o wants or warrants were found." Ex. A, Form I-213 at 1-3.

24. Four years after his entry, on June 8, 2026, Petitioner was arrested by Border Patrol agents during a vehicle stop in eastern San Diego County, approximately 30 miles east of the Tecate port of entry. Ex. A, Memorandum of Investigation at 1. The arrest occurred in the interior of the United States, within the State where Petitioner has lived for four years.

25. Respondents had no warrant for Petitioner's arrest. Ex. A, Memorandum of Investigation at 1.

26. Respondents did not issue a Form I-200, Warrant of Arrest, for Petitioner before arresting him. *See* 8 C.F.R. § 236.1(b) (providing that an officer may arrest and take into custody a noncitizen "under the authority of Form I-200, Warrant of Arrest" issued upon supervisory review). To the extent Respondents produce a Form I-200 in these proceedings, it was created after Petitioner had already been arrested, transported, and taken into custody, and it therefore did not and could not authorize the arrest that preceded it.

27. Respondents had no knowledge of Petitioner before the encounter beyond his presence in a particular location. Their records reflect no warrant, no prior lead, no surveillance, no source information, and no database record identifying Petitioner before the stop. Every systems check on which Respondents rely was run only after Petitioner had been arrested and transported to the Campo Border Patrol Station, and those checks disclosed no criminal record and, in Respondents' own words, "[n]o wants or warrants." Ex. A, Form I-213 at 1-3; Ex. A, Memorandum of Investigation at 1 ("Once at the Campo Station, biometrics checks were conducted").

28. Respondents therefore could not have formed, and did not form, any individualized belief that Petitioner was likely to escape before a warrant could be obtained. That determination is necessarily particularized: it depends on facts such as the person's address, employment, family ties, and history, none of which Respondents knew or attempted to learn before arresting him. Had Respondents inquired, they would have learned that Petitioner had lived at a fixed address in La Puente for four years, had worked for the same employer for four years, and was driving a vehicle registered in his own name at that address.

29. Respondents recorded the disposition of Petitioner's case as "Notice to Appear Detained (I-862)." Ex. A, Form I-213 at 1. Nothing in Respondents' records reflects that any officer considered whether Petitioner's release "would not pose a danger to property or persons," or whether Petitioner "is likely to appear for any future proceeding," as 8 C.F.R. § 1236.1(c)(8) requires. Respondents issued no Form I-286, Notice of Custody Determination, the form by which such a determination is communicated and by which a noncitizen requests review of it before an immigration judge. Respondents have produced no Form I-286 in Petitioner's immigration proceedings.

30. Upon information and belief, the Form I-213 prepared in Petitioner's case contains substantial material discrepancies, including internal inconsistencies as to biographical information and as to the circumstances of the arrest it purports to describe, which call into question the manner of its preparation and the reliability of the information recorded in it. Petitioner reserves the right to address those discrepancies should Respondents rely on the Form I-213.

31. Petitioner's continued detention was not the product of any individualized weighing. Respondents treated Petitioner as subject to mandatory detention under 8 U.S.C. § 1225(b)(2), a provision under which release on bond is unavailable as a matter of law and under which an immigration judge has no authority to conduct a bond hearing. Under that classification there was no discretion for any officer to exercise, and the notation "Detained" reflects the automatic consequence of Respondents' statutory classification rather than any assessment of Petitioner's danger or flight risk.

32. Because Petitioner was arrested without a warrant, the procedures of 8 C.F.R. § 287.3 governed his processing. That regulation required that "a determination . . . be made within 48 hours of the arrest," absent emergency or extraordinary circumstance, as to two distinct questions: "whether the alien will be continued in custody or released on bond or recognizance," and "whether a notice to appear and warrant of arrest . . . will be issued." 8 C.F.R. § 287.3(d).

33. Respondents made the charging determination promptly and never made the custody determination at all. Respondents served Petitioner with Form I-826 and Form I-862 the day after his arrest, on June 9, 2026. Ex. A, Form I-213 at 4; Ex. B, Notice to Appear at 1, 3. Respondents were therefore able to process Petitioner within the regulatory period, and no emergency or extraordinary circumstance prevented them from also determining whether he should be "continued in custody or released on bond or recognizance." 8 C.F.R. § 287.3(d). Neither Form I-826 nor Form I-862 supplies that determination: neither addresses whether Petitioner poses a danger or a flight risk, neither reflects any consideration of the factors § 1236.1(c)(8) prescribes, and neither is the Form I-286 by which a custody determination is communicated. No such determination was made within 48 hours of Petitioner's arrest, during the approximately eight days he was held in a Border Patrol holding cell, or at any time in the more than seven weeks since.

34. On June 9, 2026, Respondents served Petitioner with a Notice to Appear charging him under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). Ex. B, Notice to Appear at 1 & continuation page. On the face of that document, Respondents designated Petitioner as "an alien present in the United States who has not been admitted or paroled," and did *not* designate him as "an arriving alien." *Id.* at 1. Those are the only grounds Respondents charged, and neither appears

among the grounds enumerated in 8 U.S.C. § 1226(c)(1). Petitioner is therefore not subject to mandatory detention.

35. Respondents initiated proceedings against Petitioner under section 240 of the INA by issuing a Notice to Appear, rather than reinstating any prior order of removal. *See* 8 U.S.C. § 1231(a)(5). Petitioner is not subject to any prior order of removal, and Respondents' issuance of a Notice to Appear under section 240 confirms as much. Ex. A, Form I-213 at 1, 3-4; Ex. B, Notice to Appear at 1.

36. Upon information and belief, Petitioner has no criminal history and has never been charged with any criminal offense. Respondents' own records are consistent: the Form I-213 leaves the "Criminal Record" field blank and records that "[n]o wants or warrants were found." Ex. A, Form I-213 at 1, 3.

37. Petitioner's removal proceedings are pending before the immigration court while he is physically detained at Otay Mesa. He was not in removal proceedings before his arrest, but now is seeking relief in the form of Asylum, Withholding and relief pursuant to the Convention Against Torture.

38. Petitioner therefore has an affirmative interest in appearing at his removal proceedings and pursuing that application, which, together with his four years at a fixed address, his four years with a single employer, his household, and his complete absence of criminal history, negates any suggestion that he presents a risk of flight.

39. Petitioner has never received a bond hearing, and no immigration judge has ever made any custody determination in his case. He has been detained without a bond hearing at the Otay Mesa Detention Center since June 8, 2026.

LEGAL FRAMEWORK

40. The INA prescribes distinct detention frameworks. Section 1226(a) provides for discretionary detention with the possibility of release on bond; § 1226(c) mandates detention of noncitizens charged with or convicted of enumerated offenses; § 1225(b) governs mandatory detention of noncitizens subject to expedited removal and of other applicants for admission; and § 1231 governs post-order detention. This case concerns §§ 1226(a) and 1225(b)(2).

41. Petitioner is subject to § 1226(a), not § 1225(b)(2). That question is now settled in this Circuit. In *Rodriguez Vazquez v. Bostock*, No. 25-6842 (9th Cir. July 30, 2026), the Ninth Circuit held that noncitizens present without admission who are apprehended in the interior of the United States are subject to the detention regime of § 1226, not § 1225(b)(2)(A). The holding accords with *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc), which held that a person "submit[s] an application for admission" only "at the moment in time when the immigrant actually applies for admission," and with *Jennings v. Rodriguez*, 583 U.S. 281, 287–89 (2018), which describes § 1225 as concerned "primarily [with those] seeking entry" at "the Nation's borders and ports of entry" while § 1226(a) governs noncitizens "inside the United States" and "present in the country." It also accords with the uniform view of the judges of this District. *See, e.g. Esquivel Pacheco v. LaRose*, 818 F. Supp. 3d 1168, 1174–75 (S.D. Cal. 2026); *Garcia v. Noem*, 803 F. Supp. 3d 1064 (S.D. Cal. 2025); *Silvestre-Mendoza v. Noem*, No. 3:25-cv-03206-RBM-DDL, 2025 WL 3512410, at *1–2 (S.D. Cal. Dec. 8, 2025);* Bernardo Aquino v. LaRose, *No. 25-cv-02904-RSH-MMP, 2025 WL 3158676, at* 3 (S.D. Cal. Nov. 12, 2025) ("The overwhelming majority of courts to address the issue have agreed that Section 1226(a), rather than the mandatory detention provision of Section 1225(b)(2)(A), applies to a noncitizen . . . who

has resided in the United States for many years."); *Huerta v. Bondi*, No. 25-cv-00941-JLT-HBK, 2026 WL 366709, at *1* (E.D. Cal. Feb. 10, 2026). This Court has articulated the same conclusion in the decisions it has incorporated in granting comparable petitions: *"a proper understanding of the relevant statutes, in light of their plain text, overall structure, and . . . case law interpreting them, compels the conclusion that § 1225's provisions for mandatory detention of noncitizens seeking admission [do] not apply to someone like [the petitioner]," who has been residing in the United States for several years. Silvestre-Mendoza v. Noem, No. 3:25-cv-03206-RBM-DDL, 2025 WL 3512410, at* 1 (S.D. Cal. Dec. 8, 2025) (quoting *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 484 (S.D.N.Y. 2025)).

42. Petitioner falls squarely within that holding. He entered the United States without inspection on or about May 15, 2022, and was apprehended more than four years later, after continuous residence in Los Angeles County. Respondents charged him under INA § 212(a)(6)(A)(i) as a person present without admission or parole, and initiated proceedings under section 240 of the INA. Ex. B, Notice to Appear at 1. Respondents are bound by the charges they elected to bring and by the detention framework those charges invoke. Petitioner is a § 1226 detainee.

43. The consequences of that classification are substantial. Section 1226(a) "and its implementing regulations provide extensive procedural protections that are unavailable under other detention provisions, including several layers of review of the agency's initial custody determination, an initial bond hearing before a neutral decisionmaker, the opportunity to be represented by counsel and to present evidence, the right to appeal, and the right to seek a new

hearing when circumstances materially change." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022).

44. Those protections operate in sequence. An officer may arrest and take a noncitizen into custody "under the authority of Form I-200, Warrant of Arrest," issued upon supervisory review. 8 C.F.R. § 236.1(b). A DHS officer then conducts an initial custody determination and must release the noncitizen if he demonstrates that release "would not pose a danger to property or persons" and that he "is likely to appear for any future proceeding." *Id.* § 1236.1(c)(8). Where an arrest is made without a warrant, a determination whether the noncitizen "will be continued in custody or released on bond or recognizance" must be made within 48 hours of the arrest, absent an emergency or other extraordinary circumstance. *Id.* § 287.3(d); *see also id.* § 287.3(a) (governing examination following warrantless arrest). Only after the initial custody determination may the noncitizen seek review before an immigration judge. *Id.* §§ 1236.1(d)(1), 1003.19; *Rodriguez Diaz*, 53 F.4th at 1197.

The Statutory Limits on Warrantless Immigration Arrests

45. The warrant requirement of § 1226(a) is the rule; warrantless arrest is a narrow exception. Section 1357(a)(2) authorizes an immigration officer to arrest without a warrant only where the officer has "reason to believe that the alien so arrested is in the United States in violation of any such law or regulation *and* is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2) (emphasis added). The implementing regulation imposes the same two requirements. 8 C.F.R. § 287.8(c)(2)(ii). The Supreme Court has described this authority as a limited one. *Arizona v. United States*, 567 U.S. 387, 407 (2012); *see also Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980).

46. The two requirements are conjunctive and independent. The first concerns the noncitizen's removability. The second concerns something entirely different: whether this person, on the facts known to the officer at the time, is likely to flee before a warrant can be obtained. A belief that a person is removable therefore cannot supply the escape element, because on that reading every person subject to a warrantless immigration arrest would satisfy both requirements automatically, the exception would swallow § 1226(a)'s warrant rule, and the words "and is likely to escape before a warrant can be obtained" would do no work. Statutes are not read to render their terms superfluous.

47. The escape determination is also necessarily individualized and necessarily antecedent. It is individualized because likelihood of flight depends on facts particular to the person, such as residence, employment, family ties, and history. It is antecedent because the statute authorizes a warrantless arrest only where a warrant cannot be obtained in time, a judgment that must be made before the arrest occurs rather than reconstructed afterward.

48. The "reason to believe" standard is equivalent to the probable cause standard of the Fourth Amendment. *Perez Cruz v. Barr*, 926 F.3d 1128, 1137 (9th Cir. 2019). An arrest made in violation of these provisions is unlawful. *Sanchez v. Sessions*, 904 F.3d 643, 650 (9th Cir. 2018); *Perez Cruz*, 926 F.3d at 1137. Where the statutory precondition to the arrest was never satisfied, there is no lawful authority to hold the person in immigration custody, and release is required.

49. These requirements apply irrespective of proximity to an international boundary. Congress addressed the border in the neighboring subsection, authorizing officers "within a reasonable distance from any external boundary of the United States" to board and search

vehicles for noncitizens. 8 U.S.C. § 1357(a)(3). That provision confers authority to search; it neither appears in nor modifies § 1357(a)(2). The case law observes the same division: proximity to the border bears on whether a roving patrol has reasonable suspicion to make a brief investigative stop, *United States v. Brignoni-Ponce*, 422 U.S. 873, 884-85 (1975), and even away from the border the Fourth Amendment requires probable cause for a roving patrol search, *Almeida-Sanchez v. United States*, 413 U.S. 266, 272-73 (1973). Neither doctrine relaxes the statutory preconditions Congress imposed on warrantless arrests. Whatever the location of the encounter, no authority permitted Respondents to arrest Petitioner without a warrant and without ever forming the individualized belief that he was likely to escape before a warrant could be obtained.

50. The structure of § 1226(c) confirms the point. As amended by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), § 1226(c)(1)(E) subjects noncitizens charged under INA § 212(a)(6) who are also arrested for, charged with, or convicted of certain offenses to mandatory detention. If § 1225(b)(2) already mandated the detention of every noncitizen who entered without inspection, that carve-out would be superfluous. Petitioner is charged under no such ground and is not subject to mandatory detention under § 1226(c).

51. The Due Process Clause protects "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). "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 v. Davis*, 533 U.S. 678, 690 (2001). In *Hernandez*, the Ninth Circuit recognized that a noncitizen's interest in freedom from physical

confinement itself constitutes a core liberty interest protected by the Due Process Clause. And "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

52. Immigration detention has only two permissible regulatory goals: "ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community." *Zadvydas*, 533 U.S. at 690–93; *see also Demore v. Kim*, 538 U.S. 510, 519–20, 527–28 (2003); 8 U.S.C. § 1226(a), (b); 8 C.F.R. § 1236.1(c)(8). Civil detention must bear a "reasonable relation" to such a non-punitive purpose. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

53. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective," *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

54. Procedural due process is assessed under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), which weighs (1) "the private interest that will be affected by the [government] action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional procedural safeguards"; and (3) "the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail."

55. Generally, "the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). That is so even where the liberty at issue is lawfully revocable. *See Young v. Harper*, 520 U.S. 143, 152

(1997) (re-detention after pre-parole conditional supervision requires a pre-deprivation hearing); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, probation); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same, parole; a grant of release carries an "implicit promise" that liberty will be revoked only for violation of release conditions); *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017).

56. The Fourth Amendment separately guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "The touchstone of the Fourth Amendment is reasonableness," *United States v. Knights*, 534 U.S. 112, 118 (2001), "generally assessed by carefully weighing 'the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.'" *County of Los Angeles v. Mendez*, 581 U.S. 420, 427 (2017) (quoting *Tennessee v. Garner*, 471 U.S. 1, 8 (1985)). Reasonableness is an objective inquiry evaluated on "the 'totality of the circumstances.'" *Case v. Montana*, 607 U.S. ___, 146 S. Ct. 500, 508 (2026) (first quoting *Barnes v. Felix*, 605 U.S. 73, 80 (2025); and then quoting *Ohio v. Robinette*, 519 U.S. 33, 39 (1996)).

THIS COURT HAS ORDERED IMMEDIATE RELEASE ON THESE FACTS

57. This Court has granted immediate release as opposed to a bond hearing, to noncitizens detained in the interior after years of residence, held without a bond hearing, and without any individualized determination of flight risk or danger.

58. Judges of this District have repeatedly held that the prolonged detention of a noncitizen arrested in the interior, without any individualized determination of flight risk or danger, violates the Fifth Amendment. In Baltazar Raymundo v. Blanche, the Court held that §§

1252(g), (a)(5), and (b)(9) posed no bar, that the petitioner was subject to § 1226 rather than § 1225(b)(2) because he was already residing in the United States when arrested, and that the government violated his due process rights by "continuing to deprive him of his freedom from physical confinement without an individualized determination of flight risk or danger to the public," where the record contained "no evidence that he has a criminal history, poses a danger to the community, or presents a flight risk." No. 3:26-cv-03984-JO-SBC, Dkt. 6 ¶¶ 2–3 (S.D. Cal. July 27, 2026). The Court reached the same conclusion in *Figueroa v. Casey*, finding that "[t]he absence of any individualized determination significantly risks erroneously depriving Petitioner of his liberty interest, and the government has offered no evidence that the burdens of providing such process would outweigh this substantial liberty interest." No. 3:26-cv-03482-JO, Dkt. 5 ¶ 3 (S.D. Cal. June 22, 2026).

59. In each case the Court ordered immediate release rather than a bond hearing, and did so even where the government offered a hearing as the remedy. *In Lucas Gregorio v. LaRose*, Respondents did not substantively oppose the petition and stated they did not oppose an order directing a bond hearing under § 1226(a); the Court nonetheless held that "immediate release, rather than a bond hearing, is the appropriate remedy," and enjoined redetention absent a hearing at which the Government must establish danger or flight risk by clear and convincing evidence. No. 3:26-cv-03918-RBM-SBC, Doc. 6 at 3 (S.D. Cal. July 16, 2026). The Court likewise ordered release in Figueroa, where the respondent had filed a non-opposition to a bond hearing only, and in Baltazar Raymundo, where it further enjoined redetention absent a pre-deprivation hearing. Upon information and belief, Petitioner's circumstances are materially identical, and in several

respects more favorable: he has no criminal history of any kind, he has worked for a single employer throughout his residence, and he supports a household that includes a child.

60. The Court has reached the same result across a series of comparable petitions. *See Escamilla-Alvarado v. Casey*, No. 3:26-cv-02593-JO, Dkt. 6 (S.D. Cal. May 7, 2026); *Francisco v. Casey*, No. 3:26-cv-03463-JO, Dkt. 5 (S.D. Cal. June 22, 2026); *Miranda Guevara v. Mullin*, No. 3:26-cv-02690-RBM-AHG, at 3 (S.D. Cal. May 14, 2026); *Ramirez v. Mullin*, No. 3:26-cv-01880-RBM-VET (S.D. Cal. Apr. 9, 2026); *Perez Solis v. LaRose*, No. 3:26-cv-01532-RBM-AHG (S.D. Cal. Mar. 26, 2026); *Rodas-Dieguez v. Noem*, No. 3:26-cv-00976-RBM-MMP, 2026 WL 549910, at *1 (S.D. Cal. Feb. 26, 2026) ("The Court also agrees that Petitioner is entitled to immediate release");* Zheng v. Casey, *No. 3:26-cv-01110-RBM-BLM, 2026 WL 559780, at* 1 (S.D. Cal. Feb. 27, 2026) (granting immediate release); *Silvestre-Mendoza v. Noem*, No. 3:25-cv-03206-RBM-DDL, 2025 WL 3512410, at *1–2 (S.D. Cal. Dec. 8, 2025).

EXHAUSTION IS NOT REQUIRED, AND A BOND HEARING CANNOT CURE PETITIONER'S UNLAWFUL ARREST AND DETENTION

A. No Statutory Exhaustion Requirement Applies

61. No statutory administrative exhaustion requirement applies to a habeas petition challenging immigration detention. *Singh v. Holder*, 638 F.3d 1196, 1203 n.3 (9th Cir. 2011); *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). Any exhaustion requirement is prudential, and this Court has discretion to waive it. *Ward v. Chavez*, 678 F.3d 1042, 1045 (9th Cir. 2012); *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017).

62. Prudential exhaustion is excused where further pursuit would be futile, where the agency lacks authority to grant effective relief, or where the administrative process would itself cause irreparable harm. *McCarthy v. Madigan*, 503 U.S. 140, 144-45 (1992); *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007); *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004); *Hernandez*, 872 F.3d at 987. Each of those grounds is satisfied here.

B. The Agency Lacks Authority to Grant the Relief Petitioner Seeks

63. Neither an immigration judge nor the Board of Immigration Appeals has authority to adjudicate Petitioner's constitutional claims. *Matter of R-A-V-P-*, 27 I&N Dec. 803, 804 n.2 (BIA 2020); *Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992). Nor does either tribunal have authority to determine whether Respondents complied with 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8 when they seized Petitioner without a warrant, or whether the resulting custody is authorized at all.

64. The questions this Petition presents are pure questions of law. They require no development of an administrative record and draw on no agency expertise. *Hernandez*, 872 F.3d at 989. An immigration judge conducting a custody redetermination decides whether a detainee should be released on bond under the factors set out in *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). That proceeding does not reach, and could not resolve, whether Respondents possessed authority to arrest Petitioner in the first instance. A bond determination in Petitioner's favor would not adjudicate his claims, and a bond determination against him would not defeat them.

C. Further Administrative Process Would Prolong the Unlawful Detention

65. Requiring Petitioner to pursue further administrative process would itself prolong his unlawful confinement and inflict the very injury this Petition seeks to end. *Hernandez*, 872 F.3d at 987; *Laing*, 370 F.3d at 1000; *McCarthy*, 503 U.S. at 146-47.

66. Each day of continued detention is itself an irreparable injury. "Deprivation of physical liberty by detention constitutes irreparable harm." *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th Cir. 2018). The Ninth Circuit has likewise recognized the "irreparable harms imposed on anyone subject to immigration detention," including "the economic burdens imposed on detainees and their families as a result of detention." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Petitioner is the primary financial support for his household, and every additional day of his confinement compounds that harm.

67. Respondents also may not fault Petitioner for failing to invoke a process they never made available to him. The ordinary mechanism by which a noncitizen requests review of a custody determination is a Form I-286, Notice of Custody Determination, issued following the initial custody determination. Respondents never made an individualized custody determination for Petitioner and never served him a Form I-286, because under the § 1225(b)(2) classification they applied, no such determination was thought to be required. A court should "reject[] that Petitioner should have made a request for a bond hearing based on a process that was not made available to him." *Dominguez Perez v. Santacruz*, No. 5:26-cv-03936-MBK, slip op. at 13 (C.D. Cal. July 30, 2026); *accord Garcia-Maya v. Mattos*, No. 2:26-cv-01513-RFB-BNW, 2026 WL 1965886, at *5 (D. Nev. July 7, 2026).

D. A Post-Deprivation Hearing Cannot Remedy a Deprivation Already Suffered

68. Review before an immigration judge is a second layer of process that presupposes a first. "In the absence of an initial custody determination, which establishes a lawful basis for detention in the first instance, a subsequent bond hearing 'is no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip' Petitioner of his freedom." *Garcia-Maya*, 2026 WL 1965886, at *8 (quoting* Lopez Benitez v. Francis, *795 F. Supp. 3d 475, 497 (S.D.N.Y. 2025)). Petitioner's detention "was unlawful from its inception because ICE detained him under the wrong statute and without affording him any notice or process whatsoever, much less the procedures due under Section 1226(a)."* Id. *(quoting* Rodriguez-Acurio v. Almodovar*, 811 F. Supp. 3d 274, 319-20 (E.D.N.Y. 2025)).

69. Even a lawful and prompt bond hearing would come too late. "Although the Government notes that Petitioner may request a bond hearing while detained, such a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty." *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025); *see also Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) ("if Petitioner is detained, he will already have suffered the injury he is now seeking to avoid"); *Domingo v. Kaiser*, No. 25-cv-05893 (RFL), 2025 WL 1940179, at *3 (N.D. Cal. July 14, 2025).

70. This Court applied that reasoning in ordering immediate release in *Lucas Gregorio*, where Respondents had offered a bond hearing as the remedy. No. 3:26-cv-03918-RBM-SBC, Doc. 6 at 3 (S.D. Cal. July 16, 2026).

E. The Custody Adjudication Process Is Not a Neutral Forum

71. "Chief among the procedural protections due process requires is the guarantee of an impartial and disinterested tribunal." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980); *see also Ward v. Village of Monroeville*, 409 U.S. 57, 61-62 (1972).

72. Immigration judges are housed within the Department of Justice, a component of the same executive branch that seized Petitioner and controls his detention. 8 C.F.R. § 1003.0(a). They do not enjoy the independence of Article III judges or of adjudicators under the Administrative Procedure Act. They are attorneys appointed by the Attorney General who serve subject to the direction, performance review, and reassignment authority of the same Department that defends Petitioner's detention here. 8 C.F.R. § 1003.10(a). Where the executive both effects a deprivation of liberty and controls the forum that reviews it, the resulting process is constitutionally suspect. *Ward*, 409 U.S. at 61-62.

73. The practical consequences of that structure are documented. Upon information and belief, the Declaration of Zabdi J. Salazar of the University of California, Berkeley School of Law, submitted herewith as Exhibit D, analyzes approximately 149,000 completed bond records drawn from the Executive Office for Immigration Review's own administrative case data. That analysis shows that while the volume of bond proceedings rose sharply during 2025 and early 2026, bond outcomes became substantially more denial-heavy nationwide, with denial shares increasing in ten of the eleven circuits. Ex. C.

74. A nationwide movement toward denial, occurring across circuits and timed to executive directives rather than to any change in the composition of the detained population, is difficult to reconcile with individualized adjudication. Petitioner does not ask this Court to

resolve why bond outcomes have shifted in any particular immigration court. He asks it to recognize that the administrative forum Respondents would send him to has become an increasingly ineffective mechanism for obtaining release, and that further administrative proceedings are therefore unlikely to provide prompt or effective relief from his ongoing detention.

75. That structure bears directly on the relief Petitioner seeks. The forum Respondents would send him to is administered by the Department that seized him, and it cannot in any event adjudicate whether that seizure was lawful. This Court is the appropriate forum for the claims Petitioner raises, and it should resolve them rather than remit him to further process before the agency whose conduct is at issue.

CLAIMS FOR RELIEF

COUNT ONE

Violation of 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii):

Warrantless Arrest Without Determination of Likelihood of Escape

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

77. An immigration officer may arrest a noncitizen without a warrant only where the officer has reason to believe the person is in the United States in violation of law "and is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2); *see Arizona v. United States*, 567 U.S. 387, 407 (2012). The implementing regulation imposes the same requirement. 8 C.F.R. § 287.8(c)(2)(ii). The "reason to believe" standard is equivalent to Fourth Amendment probable cause. *Perez Cruz v. Barr*, 926 F.3d 1128, 1137 (9th Cir. 2019).

78. Respondents arrested Petitioner without a warrant and made no determination that he was likely to escape before a warrant could be obtained. No such determination could have been supported on the facts known to Respondents, and Respondents ran no records check until after the arrest.

79. An arrest in violation of these provisions is unlawful. *Sanchez v. Sessions*, 904 F.3d 643, 650 (9th Cir. 2018); *Perez Cruz*, 926 F.3d at 1137. Issuance of a warrant, or an individualized determination of likelihood of escape, is a necessary condition of the authority to detain under 8 U.S.C. § 1226(a). Because Respondents satisfied neither, there is no statutory or regulatory authority for Petitioner's custody, and immediate release is required.

80. That conclusion follows directly from the detention framework the Ninth Circuit confirmed today. Section 1226(a) authorizes arrest and detention only "[o]n a warrant issued by the Attorney General." 8 U.S.C. § 1226(a). Petitioner is a § 1226 detainee. *Rodriguez Vazquez v. Bostock*, No. 25-6842 (9th Cir. July 30, 2026). No warrant issued, and the sole warrantless exception in § 1357(a)(2) was not satisfied. Respondents therefore lacked authority to arrest Petitioner, and they lack authority to detain him now.

81. A warrant generated after the fact does not cure the defect. Section 1226(a) authorizes an arrest made "[o]n a warrant," and 8 C.F.R. § 236.1(b) authorizes an arrest made "under the authority of" a Form I-200, language that presupposes a warrant already in existence at the time of arrest. Section 1357(a)(2) supplies the only exception, and it permits a warrantless arrest solely where the officer has reason to believe the person "is likely to escape before a warrant can be obtained." The regulations do contemplate that a warrant of arrest may issue after a warrantless arrest, as part of the determination required by 8 C.F.R. § 287.3(d). But that post-

arrest procedure presupposes that the warrantless arrest was lawful when made. Where the § 1357(a)(2) precondition was never satisfied, a subsequently generated Form I-200 documents the custody; it does not retroactively supply the authority that was missing when Respondents seized Petitioner.

82. Petitioner is being held unlawfully, in violation of his right to due process, and immediate release from immigration detention is required by law. *Urias v. Semaia*, No. 5:26-cv-02753-DTB, 2026 WL 1710375, at *6 (C.D. Cal. June 10, 2026);* Galvez Pantoja v. DHS, *No. 5:26-cv-02084-JDE, 2026 WL 1601897, at* 4 (C.D. Cal. June 1, 2026); *Ahmed M. v. Bondi*, No. 25-cv-4711 (ECT/SGE), 2026 WL 25627, at *3 (D. Minn. Jan. 5, 2026);* Lopez-Sanchez v. Blanche, *No. 8:26cv264, 2026 WL 1759557, at* 3 (D. Neb. June 18, 2026); *Chiliquinga Yumbillo v. Stamper*, No. 2:25-cv-00479-SDN, 2025 WL 2783642, at *5 (D. Me. Sept. 30, 2025);* 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).

COUNT TWO

Violation of 8 C.F.R. § 287.8(b)(2):

Detention Without Specific Articulable Facts as to Petitioner

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

84. An immigration officer may briefly detain a person for questioning only where the officer has "reasonable suspicion, based on specific articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense against the United States or is [a noncitizen] illegally in the United States." 8 C.F.R. § 287.8(b)(2).

85. Respondents identify no specific articulable fact concerning Petitioner. The only basis reflected in Respondents' records for stopping the vehicle Petitioner was driving is another agent's report that the vehicle "seemed out of place in the area." Ex. A, Memorandum of Investigation. Respondents had no prior knowledge of Petitioner, no information identifying him, and ran no records check until after the arrest. Whatever Respondents may have suspected about a vehicle, the regulation requires articulable facts about "the person being questioned." 8 C.F.R. § 287.8(b)(2).

86. Respondents' detention of Petitioner violated the Fourth Amendment and 8 C.F.R. § 287.8(b)(2).

COUNT THREE

Violation of the Fourth Amendment and 8 C.F.R. § 287.8(c)(2):

Unreasonable Seizure Exceeding Statutory Arrest Authority

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

88. A seizure that exceeds the arresting officer's statutory authority is unreasonable within the meaning of the Fourth Amendment. Respondents arrested Petitioner without a warrant and without probable cause to believe that he was likely to escape before a warrant could be obtained, as 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2) require. *See Perez Cruz v. Barr*, 926 F.3d 1128, 1137 (9th Cir. 2019) (the "reason to believe" standard is equivalent to Fourth Amendment probable cause). Whatever Respondents may have believed about Petitioner's removability, they lacked the separate and independent basis the statute requires before an

immigration arrest may be made without a warrant, and the seizure was unreasonable for that reason.

89. The seizure exceeded Respondents' arrest authority and cannot supply lawful authority for the detention that followed. *Sanchez v. Sessions*, 904 F.3d 643, 650 (9th Cir. 2018).

COUNT FOUR

Violation of the Fifth Amendment, Due Process

Detention Without Any Individualized Determination

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

91. Petitioner's interest in freedom from physical confinement is a core liberty interest protected by the Due Process Clause. *Hernandez v. Sessions*, 872 F.3d at 990; *Zadvydas*, 533 U.S. at 690.

92. Respondents have deprived Petitioner of his physical liberty for more than seven weeks without ever making an individualized determination that he presents a risk of flight or a danger to the community, and without articulating any individualized justification for his continued detention. *See* 8 C.F.R. § 1236.1(c)(8). The record contains no evidence that Petitioner has a criminal history, poses a danger to the community, or presents a flight risk.

93. The absence of any individualized determination significantly risks erroneously depriving Petitioner of his liberty interest, and Respondents have offered no evidence that the burdens of providing such process would outweigh that substantial liberty interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

94. That liberty interest does not depend on any prior grant of release. Petitioner has not previously been released from the custody of the Department of Homeland Security, and he need not have been. The Ninth Circuit in *Hernandez* recognized that a noncitizen's interest in freedom from physical confinement *itself* constitutes a core liberty interest protected by the Due Process Clause. 872 F.3d at 990. Courts have accordingly protected that interest with particular force where it arises from a prior release, *see, e.g.*, *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025); *Alegria Palma v. LaRose*, No. 25-cv-1942-BJC-MMP, ECF No. 14, at *6 (S.D. Cal. Aug. 11, 2025);* Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019), but the interest they protect is the same interest Petitioner holds here, and its existence is not conditioned on the government having once let him go.

95. The procedural protections of § 1226(a) safeguard that interest whether or not a noncitizen has previously been released. "Section 1226(a) provides protections that safeguard Petitioner's due process protected interest in freedom from arbitrary confinement." *Dominguez Perez v. Santacruz*, No. 5:26-cv-03936-MBK, slip op. at 14 (C.D. Cal. July 30, 2026); *accord Garcia-Maya v. Mattos*, No. 2:26-cv-01513-RFB-BNW, 2026 WL 1965886, at *5 (D. Nev. July 7, 2026) (petitioner "is entitled to the procedural protections provided by § 1226(a), not merely by statute and regulation, but also by the Due Process Clause").

96. The procedures § 1226(a) prescribes are the mechanisms by which the Government ensures that detention bears a reasonable relation to a permissible non-punitive purpose. *Zadvydas*, 533 U.S. at 690–92; *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Upon information and belief, by arresting and detaining Petitioner under the wrong statutory authority, Respondents denied him each of those protections, no Form I-200 warrant, no initial custody

determination, no Form I-286, no referral within 48 hours, and no review before an immigration judge, and thereby "created an unacceptably high risk that Petitioner's detention is not justified on danger or flight risk grounds." *Dominguez Perez*, slip op. at 14.

97. The reasoning of the foregoing cases applies with equal force here: Petitioner is not a flight risk or a danger to the community, as evidenced by his complete absence of criminal history, his four years at a fixed address and with a single employer, his household obligations, and his intention to pursue relief from removal. Respondents have never contended otherwise, and have never made any finding to the contrary.

98. Petitioner has therefore been subjected to unconstitutional detention and is entitled to immediate release.

COUNT FIVE

Violation of the INA, 8 U.S.C. § 1226(a)

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

100. Petitioner was not "seeking admission" at the time of his arrest. He entered the interior of the United States in May 2022 and had resided here for four years when Respondents apprehended him. His detention is governed by 8 U.S.C. § 1226(a), not § 1225(b)(2). *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc); *Jennings*, 583 U.S. at 288–89; *Esquivel Pacheco*, 818 F. Supp. 3d at 1174–75.

101. Respondents' own charging document confirms that classification, designating Petitioner as a person "present in the United States who has not been admitted or paroled" rather than as "an arriving alien."

102. Petitioner is not subject to mandatory detention under § 1226(c). Neither charged ground of inadmissibility appears among the grounds enumerated in § 1226(c)(1).

103. Section 1226(a) and its implementing regulations prescribe a sequence of protections, each of which Respondents disregarded. Respondents arrested Petitioner without a Form I-200, Warrant of Arrest, in violation of 8 C.F.R. § 236.1(b). Respondents made no individualized custody determination and issued no Form I-286, Notice of Custody Determination, in violation of 8 C.F.R. § 1236.1(c)(8); the notation "Detained" on Petitioner's Form I-213 records an outcome dictated by Respondents' erroneous § 1225(b)(2) classification, not an assessment of danger or flight risk. Respondents made no determination within 48 hours of the warrantless arrest whether Petitioner "will be continued in custody or released on bond or recognizance," in violation of 8 C.F.R. § 287.3(d). And because no individualized custody determination was ever made and no Form I-286 ever issued, Petitioner was never placed in a position to seek review of one before an immigration judge. *See* 8 C.F.R. §§ 1236.1(d)(1), 1003.19.

104. Respondents cannot escape these violations from either direction. If Respondents maintain that Petitioner's warrantless arrest was authorized by 8 U.S.C. § 1357(a)(2), then 8 C.F.R. § 287.3 governed his processing by its terms and Respondents failed to make the custody determination that regulation requires. If Respondents instead contend that a warrant authorized the arrest, no such warrant existed when Petitioner was seized, and § 1226(a) was violated. Either way, Petitioner has been detained for more than seven weeks without the process the governing framework requires.

105. An agency is bound to follow its own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954). A violation of a regulation warrants relief where the regulation serves a purpose of benefit to the noncitizen and the violation prejudiced interests the regulation protects. *United States v. Calderon-Medina*, 591 F.2d 529, 531 (9th Cir. 1979); *see Sanchez v. Sessions*, 904 F.3d 643, 649–50 (9th Cir. 2018). Both conditions are met. The custody-determination regulations exist to ensure that a noncitizen is not confined absent a finding of danger or flight risk, and their breach has cost Petitioner more than seven weeks of physical liberty with no such finding ever made. Courts have granted habeas relief on materially similar facts. *See Dos Reis v. McShane*, No. 26-cv-3775, 2026 WL 1746649, at *4 (E.D. Pa. June 17, 2026);* Cajamarca-Janza v. Soto, *No. 26-cv-3066 (HG), 2026 WL 1506777, at* 3–5 (E.D.N.Y. 2026); *Curimilma Quille v. Blanche*, No. 26-cv-2818, 2026 WL 1453889, at *3–5 (E.D.N.Y. May 22, 2026);* Pastrana-Beltran v. Mullin, *No. 26-cv-2657, 2026 WL 1398609, at* 2 (E.D.N.Y. May 19, 2026).

106. Detention is neither a required nor an exclusive means of securing Petitioner's appearance. Respondents may place a noncitizen in removal proceedings and permit him to remain at liberty pending those proceedings, and where Respondents have concerns about appearance they may impose conditions of supervision, including reporting requirements and participation in alternatives to detention. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 1236.1(c)(8), (d). Respondents have never contended that any condition short of confinement would be inadequate, because they never considered the question.

107. Petitioner has accordingly been held for more than seven weeks under a statute that authorizes his release, without any officer or immigration judge ever determining that his

detention is warranted, and without any of the "several layers of review" that § 1226(a) guarantees. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022).

REMEDY: IMMEDIATE RELEASE AND AN INJUNCTION AGAINST REDETENTION

108. Immediate release, rather than a bond hearing, is the appropriate remedy. Where Respondents identify no lawful basis for detention and assert no alternative basis or extenuating circumstance, immediate release is the relief that follows. *Maciel v. Noem*, No. 1:26-cv-01318-DC-CKD (HC), 2026 WL 496948, at *5 (E.D. Cal. Feb. 23, 2026);* Rodas-Dieguez v. Noem, *2026 WL 549910, at* 1; *Zheng v. Casey*, 2026 WL 559780, at *1.

109. Because Petitioner's detention has been unlawful from the outset, the most appropriate remedy is to return him to the status quo that preceded it. "[T]he purpose of habeas remedies is to put the defendant back in the position he would have been in if the constitutional violation never occurred." *Lujan v. Garcia*, 734 F.3d 917, 935 (9th Cir. 2013) (cleaned up); *see United States v. Morrison*, 449 U.S. 361, 364 (1981) ("remedies should be tailored to the injury suffered"); *United States v. Stein*, 541 F.3d 130, 146 (2d Cir. 2008). That principle has particular force where, as here, the protections denied were designed to prevent an unlawful detention in the first place. *Dominguez Perez v. Santacruz*, No. 5:26-cv-03936-MBK, slip op. at 15 (C.D. Cal. July 30, 2026); *Reyes v. Santacruz*, No. 26-cv-3394-E, 2026 WL 2069974, at *2 (C.D. Cal. July 13, 2026).

110. This Court is authorized to dispose of habeas matters "as law and justice require." 28 U.S.C. § 2243; *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987); *Lujan*, 734 F.3d at 933. Law and justice require Petitioner's release.

An Order Directing Respondents to Supply the Omitted Process Would Not Remedy the Violation

111. An order directing Respondents to supply the process they omitted would not remedy the violation Petitioner alleges.

112. Where the sole defect in a detention is that the agency omitted a procedural step, an order directing the agency to take that step may restore the status quo. That is not this case. Petitioner's claim is not merely that Respondents skipped steps within a detention they were authorized to effect. It is that Respondents lacked authority to seize him at all: they arrested him without a warrant and without the individualized determination that 8 U.S.C. § 1357(a)(2) makes the precondition of any warrantless immigration arrest. "As the statute was violated, there is no authority to hold him in immigration custody at all, and immediate release is required." There is no omitted procedure for this Court to compel, because no procedure completed after the fact can supply authority that was absent at the moment of the seizure.

113. Courts have ordered release rather than further process in these circumstances. *Urias v. Semaia*, No. 5:26-cv-02753-DTB, 2026 WL 1710375, at *6 (C.D. Cal. June 10, 2026);* Galvez Pantoja v. DHS, *No. 5:26-cv-02084-JDE, 2026 WL 1601897, at* 4 (C.D. Cal. June 1, 2026); *Lopez-Sanchez v. Blanche*, No. 8:26cv264, 2026 WL 1759557, at *3 (D. Neb. June 18, 2026);* Chiliquinga Yumbillo v. Stamper, *No. 2:25-cv-00479-SDN, 2025 WL 2783642, at* 5 (D. Me. Sept. 30, 2025); *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).

114. An order directing Respondents to complete the § 1226(a) sequence now would restore Petitioner to the position he would have occupied had Respondents processed him

correctly after unlawfully arresting him. It would not restore him to the position he would have occupied had the unlawful arrest never occurred, which is the position habeas exists to restore. That position is liberty.

115. This Court has declined to substitute further process for release in materially identical circumstances, ordering immediate release even where Respondents affirmatively offered a bond hearing as the remedy. *Lucas Gregorio v. LaRose*, No. 3:26-cv-03918-RBM-SBC, Doc. 6 at 3 (S.D. Cal. July 16, 2026). It should do so again here.

116. Release alone would not afford complete relief, because it would leave Respondents free to redetain Petitioner on the same unlawful basis. This Court should therefore further enjoin Respondents from redetaining Petitioner without first providing notice and a pre-deprivation bond hearing before an immigration judge, held before any redetention rather than after it. *See Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008) (while habeas relief commonly includes release from physical imprisonment, "depending on the circumstances, more [relief] may be required"); *Rodriguez v. Hayes*, 591 F.3d 1105, 1117 (9th Cir. 2010); *Clark v. Martinez*, 543 U.S. 371, 376 n.3 (2005); *Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503, at *12 (N.D. Cal. Sept. 12, 2025);* Valencia Zapata v. Kaiser, *801 F. Supp. 3d 919, 938 (N.D. Cal. 2025);* O.G. v. Albarran, *No. 1:26-cv-00010-TLN-DMC, 2026 WL 19105, at* 5 (E.D. Cal. Jan. 3, 2026).

117. While § 1226 ordinarily provides for a bond hearing after detention, a pre-deprivation hearing is the more appropriate remedy for an individual who has already been subjected to unconstitutional detention. To prevent any further erroneous deprivation of

Petitioner's liberty interest and to satisfy due process, the hearing must take place prior to any redetention.

118. At any such hearing the Government must bear the burden of justifying detention by clear and convincing evidence. *Sadeqi v. LaRose*, 809 F. Supp. 3d 1090, 1095 (S.D. Cal. 2025); *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011), *abrogated on other grounds by Jennings v. Rodriguez*, 583 U.S. 281 (2018).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Issue an order to show cause requiring Respondents to respond within three days pursuant to 28 U.S.C. § 2243, or on such other schedule as the Court sets consistent with Chief Judge Order No. 144;

c. Order that Respondents not transfer Petitioner outside the Southern District of California during the pendency of this Petition;

d. Declare that Petitioner's arrest and continued detention are unlawful, and that his detention is governed by 8 U.S.C. § 1226(a) rather than 8 U.S.C. § 1225(b)(2);

e. Issue a writ of habeas corpus ordering Respondents to release Petitioner immediately, and in no event more than forty-eight (48) hours after this Court's order, without the imposition of any restraints on his liberty such as reporting requirements, GPS monitoring, or electronic monitoring, and to return to him any property and documents confiscated upon his arrest;

f. Order Respondents to file a status report confirming Petitioner's release, and any conditions of supervision imposed, within forty-eight (48) hours of his release;

g. Enjoin Respondents from redetaining Petitioner without first providing at least seven (7) days' notice and a bond hearing before an immigration judge, held prior to any redetention, at which the Government bears the burden of establishing by clear and convincing evidence that Petitioner is a danger to the community or a risk of flight and that no condition or combination of conditions of release would reasonably assure his appearance and the safety of the community, and at which the immigration judge conducts an individualized assessment of Petitioner's suitability for release under that standard;

h. Award Petitioner reasonable attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any other applicable law; and

i. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: August 4, 2026

/s/ Emily L. Robinson
Emily L. Robinson
Counsel for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I, Emily L. Robinson, am an attorney admitted to practice law in the State of California and represent Petitioner, Jose Rafael Crespin Canas. Because many of the allegations of this Petition require legal knowledge not possessed by Petitioner, I make this verification on his behalf. I have read the foregoing Petition for Writ of Habeas Corpus and verify under penalty of perjury under the laws of the United States that the factual statements made therein are true and correct to the best of my knowledge, information, and belief.

Dated: August 4, 2026

/s/ Emily L. Robinson

Emily L. Robinson
Counsel for Petitioner