

LORI B. SCHOENBERG
California State Bar No. 212972
LAW OFFICES OF LORI B. SCHOENBERG
611 Wilshire Boulevard, Suite 1006
Los Angeles, CA 90017
Tel.: (213) 622-2565
Fax: (888) 509-6716
Email: lori.schoenberg.esq@gmail.com

Attorney for Petitioner Mauricio Alejandro Ovalle Lombana

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MAURICIO ALEJANDRO OVALLE) Case No.
LOMBANA [REDACTED],)

Petitioner,)

v.)

MARK BOWEN, ACTING) **PETITION FOR WRIT OF**
WARDEN, ADELANTO ICE) **HABEAS CORPUS,**
PROCESSING CENTER; ERNESTO) **PURSUANT TO 28 U.S.C. § 2241**
SANTACRUZ, JR., ACTING FIELD)
OFFICE DIRECTOR, UNITED)
STATES IMMIGRATION AND)
CUSTOMS ENFORCEMENT, ICE)
LOS ANGELES FIELD OFFICE;)
TODD M. LYONS, ACTING)
DIRECTOR, UNITED STATES)
IMMIGRATION AND CUSTOMS)
ENFORCEMENT; KRISTI NOEM,)
SECRETARY, UNITED STATES)
DEPARTMENT OF HOMELAND)
SECURITY; AND PAMELA JO)
BONDI, ATTORNEY GENERAL,)

Respondents.)

I.

INTRODUCTION

1. Petitioner Mauricio Alejandro Ovalle Lombana, through counsel, brings the instant petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2241, to challenge the Respondents' unlawful, unjustified revocation of the terms and conditions of his release from federal immigration custody.

2. Mr. Ovalle Lombana, through counsel, brings the instant petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2241, to challenge his detention in the Respondents' custody.

3. Mr. Ovalle Lombana is a national and citizen of Colombia, who arrived in the United States on March 28, 2022. [Exh. A; Exh. B, p. 3; Exh. G, p. 15].¹ On March 29, 2022, an officer of United States Customs and Border Protection (hereinafter "CBP"), an agency within the United States Department of Homeland Security, issued a Notice to Appear for removal proceedings under section 240 of the Immigration and Nationality Act (hereinafter "INA"), 8 U.S.C. § 1229a, to Mr. Ovalle Lombana. [Exh. B, pp. 3-5]. The CBP officer then released Mr. Ovalle Lombana from detention on his own recognizance. [Exh. B, p. 2; Exh. G, p. 15].

4. After federal immigration officials released Mr. Ovalle Lombana from their custody, Mr. Ovalle Lombana relocated to Opa Locka, Florida, and

¹ "Exh." refers to the Exhibits that Mr. Ovalle Lombana, through counsel, files with the instant Petition.

1 then to Los Angeles, California. On April 22, 2024, Mr. Ovalle Lombana
2 married a United States citizen, Veronica Sernas Jimenez, in Las Vegas, Nevada.
3 [Exh. D]. The couple resided in Los Angeles, California, prior to Mr. Ovalle
4 Lombana's re-detention by the Respondents.
5

6
7 5. Mr. Ovalle Lombana complied with directives of the United States
8 Department of Homeland Security to appear for required appointments with the
9 agency. He has no criminal convictions.
10

11 6. On September 20, 2025, Mr. Ovalle Lombana appeared for a routine
12 supervision appointment at the Los Angeles Field Office of United States
13 Immigration and Customs Enforcement (hereinafter "ICE") in Los Angeles,
14 California. [Exh. G, p. 15]. At that appointment, an ICE officer arrested Mr.
15 Ovalle Lombana, after determining that Mr. Ovalle Lombana lacked "possession
16 of valid immigration documents allowing him to be or remain in the United
17 States legally." [Exh. G, pp. 15-16]. ICE officers transported Mr. Ovalle
18 Lombana to the Los Angeles Staging Facility [Exh. G, p. 15], and then to the
19 Adelanto ICE Processing Center in Adelanto, California. [Exh. F].
20
21

22 7. Mr. Ovalle Lombana remains in ICE custody at the Adelanto ICE
23 Processing Center. [Exh. I, p. 19]. He is undergoing removal proceedings at the
24 United States Immigration Court in Adelanto, California. [Exh. I, p. 18]. ICE
25 officers have declared that Mr. Ovalle Lombana "will remain in ICE ERO
26 custody pending his/her immigration proceedings." [Exh. G, p. 16].
27
28

1 8. The Respondents' revocation of Mr. Ovalle Lombana's release on
2 his own recognizance and his re-detention for removal proceedings under section
3 240 of the INA, 8 U.S.C. § 1229a, without notice and a meaningful opportunity
4 to challenge the legality of his confinement, deprives him of his rights under the
5 Fifth Amendment's Due Process Clause, U.S. Const. amend. V.
6

7
8 9. Section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), does not
9 authorize Mr. Ovalle Lombana's detention for removal proceedings under section
10 240 of the INA, 8 U.S.C. § 1229a, as he is not an "applicant for admission" who
11 is "seeking admission" to the United States under the statutory scheme.
12

13
14 10. Accordingly, Mr. Ovalle Lombana, through counsel, asks this Court
15 to grant the instant petition for writ of habeas corpus. He asks the Court to issue
16 Orders, declaring that the revocation of his release on his own recognizance and
17 his detention by the Respondents violated the Due Process Clause of the Fifth
18 Amendment, and was unauthorized by 8 U.S.C. § 1225(b)(2)(A).
19

20
21 11. Mr. Ovalle Lombana, through counsel, respectfully requests that the
22 Court issue an Order, directing the Respondents to immediately release him from
23 the Respondents' custody.
24

25 12. If this Court orders his release from the Respondents' custody, Mr.
26 Ovalle Lombana, through counsel, asks the Court to prohibit the Respondents
27 from imposing any additional conditions on his release from detention, such as
28 electronic monitoring, unless a neutral decisionmaker determines that such

1 conditions of release are necessary at a pre-deprivation hearing. He further
2 requests that the Court enjoin his re-arrest and re-detention by the Respondents
3 without constitutional safeguards, including pre-deprivation notice and a hearing
4 before a neutral adjudicator.
5

6
7 13. To preserve the Court's jurisdiction, Mr. Ovalle Lombana, through
8 counsel, asks the Court for an order, enjoining the Government from transferring
9 him to another detention facility outside this District and from removing him
10 from the United States for the duration of his habeas corpus proceedings.
11

12 14. Finally, Mr. Ovalle Lombana, through counsel, asks the Court to
13 issue an Order awarding him attorneys' costs, fees, and expenses, pursuant to the
14 Equal Access to Justice Act, 28 U.S.C. §§ 2412(a)(1) and 2412(b).
15

16 **II.**

17 **JURISDICTION AND VENUE**

18
19 15. This Court has jurisdiction under 21 U.S.C. §§ 2241(a) and
20 2241(c)(3) to grant a writ of habeas corpus to a noncitizen in federal immigration
21 detention who is "in custody in violation of the Constitution or laws or treaties of
22 the United States[.]" 8 U.S.C. § 2241(c)(3). The Constitution states that "[t]he
23 Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in
24 Cases of Rebellion or Invasion the public Safety may require it." U.S. Const.
25 Art. I, § 9, cl. 2. The Suspension Clause makes clear that some "judicial
26 intervention in deportation cases' is unquestionably 'required by the
27
28

1 Constitution.” INS v. St. Cyr, 533 U.S. 289, 300 (2001) (quoting Heikkila v.
2 Barber, 345 U.S. 229, 235 (1953)).

3
4 16. A petition for writ of habeas corpus “historically provides a remedy
5 to noncitizens challenging executive detention.” Trinidad y Garcia v. Thomas,
6 683 F.3d 952, 956 (9th Cir. 2012) (citing St. Cyr, 533 U.S. at 301-03).

7
8 17. After the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, 119
9 Stat. 231, 231 (2005), this Court retains jurisdiction under 28 U.S.C. § 2241 to
10 review constitutional and legal challenges to a noncitizen’s detention in federal
11 immigration custody that are “independent of challenges of removal orders.”
12 Singh v. Holder, 638 F.3d 1196, 1211-12 (9th Cir. 2011) (quoting H.R. Rep. No.
13 109-72, at 175, reprinted in 2005 U.S.C.C.A.N. 240, 299).

14
15
16 18. This Court has original jurisdiction over Mr. Ovalle Lombana’s
17 petition for writ of habeas corpus under 28 U.S.C. § 1331 because he raises
18 federal questions arising under the United States Constitution and the laws of the
19 United States. This case involves the Respondents’ construction and application
20 of the Fifth Amendment’s Due Process Clause, U.S. Const. amend. V, and
21 section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A).

22
23
24
25 19. In the immigration context, “[t]he default rule is that agency actions
26 are reviewable under federal question jurisdiction, pursuant to 28 U.S.C. §
27 1331...even if no statute specifically authorizes judicial review.” Perez v. Wolf,
28 943 F.3d 853, 860 (9th Cir. 2019) (quoting ANA Int’l, Inc. v. Way, 393 F.3d 886,

1 890 (9th Cir. 2004), overruled on other grounds, Bouafra v. Mayorkas, 604 U.S.
2 6, 13, 19 (2024)).

3
4 20. The Declaratory Judgment Act provides, in part, that “[i]n a case of
5 actual controversy within its jurisdiction,...any court of the United States, upon
6 the filing of an appropriate pleading, may declare the rights and other legal
7 relations of any interested party seeking such declaration, whether or not further
8 relief is or could be sought.” 28 U.S.C. § 2201(a). The law specifies that
9 “[f]urther necessary or proper relief based on a declaratory judgment or decree
10 may be granted, after reasonable notice and hearing, against any adverse party
11 whose rights have been determined by such judgment.” 28 U.S.C. § 2202.

12
13
14
15 21. The All Writs Act, 28 U.S.C. § 1651(a), empowers federal district
16 courts to allows federal courts to “issue all writs necessary or appropriate in aid
17 of their respective jurisdictions and agreeable to the usages and principles of
18 law.” 28 U.S.C. § 1651(a). While the All Writs Act does not “enlarge” federal
19 courts’ jurisdiction, Clinton v. Goldsmith, 526 U.S. 529, 534-35 (1999), it
20 nonetheless confers “express authority...to issue such temporary injunctions as
21 may be necessary to protect its own jurisdiction[.]” F.T.C. v. Dean Foods Co.,
22 384 U.S. 597, 608 (1966).

23
24
25
26 22. Venue lies in the United States District Court for the Central District
27 of California, pursuant to 28 U.S.C. §§ 1391(e)(1)(B) and 2241(a), because the
28 Respondents have detained Mr. Ovalle Lombana at the Adelanto ICE Processing

Center in Adelanto, California. See Rumsfeld v. Padilla, 542 U.S. 426, 443 (2004) (declaring that “for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement[.]”); Doe v. Garland, 109 F.4th 1188, 1192, 1199 (9th Cir. 2024) (applying the “district of confinement rules to core habeas petitions filed pursuant to 28 U.S.C. § 2241, including those filed by immigrant detainees”) (citing Lopez-Marroquin v. Barr, 955 F.3d 759, 760 (9th Cir. 2020)). The Adelanto ICE Processing Center lies within this Court’s territorial jurisdiction. See 28 U.S.C. § 84(b).

III.

PARTIES

A. Petitioner.

23. Petitioner Mauricio Alejandro Ovalle Lombana is a national and citizen of Colombia, who arrived in the United States on March 28, 2022. [Exh. A; Exh. B, p. 3; Exh. G, p. 15]. On March 29, 2022, a CBP officer released Mr. Ovalle Lombana from detention on his own recognizance. [Exh. B, p. 2; Exh. G, p. 15]. He resided in Los Angeles, California before ICE officers re-detained him on September 30, 2025. [Exh. G]. On September 30, 2025, ICE officers arrested Mr. Ovalle Lombana at the ICE Los Angeles Field Office in Los Angeles, California, and transported him to the Adelanto ICE Processing Center in Adelanto, California. [Exh. F; Exh. G, pp. 15-16]. Mr. Ovalle Lombana remains

1 in the Respondents' custody at the Adelanto ICE Processing Center. [Exh. F;
2 Exh. I, p. 19].
3

4 **B. Respondents.**

5 24. Respondent Mark Bowen is the Acting Warden of the Adelanto ICE
6 Processing Center, a private, for-profit immigration detention facility in
7 Adelanto, California owned and operated by The GEO Group, Inc. The GEO
8 Group, Inc. contracts with ICE to detain noncitizens for suspected civil
9 immigration violations. The warden of a facility in which federal immigration
10 officials have detained a noncitizen is a proper respondent in a challenge to the
11 noncitizen's physical confinement in federal immigration custody in habeas
12 corpus proceedings. See Padilla, 542 U.S. at 435, 447 (declaring that when a
13 habeas petitioner challenges his "present physical confinement" within the
14 United States, "the default rule is that the proper respondent is the warden of the
15 facility where the prisoner is being held[]"); Doe, 109 F.4th at 1192, 1196-97,
16 1199 (applying the "immediate custodian" rule to a habeas petition under 28
17 U.S.C. § 2241 that challenges a noncitizen's detention in federal immigration
18 custody, and affirming that "the immediate custodian, not a supervisory official
19 who exercises legal control, is the proper respondent[]" for the habeas petition)
20 (quoting Padilla, 542 U.S. at 440) (other internal citations omitted).
21
22
23
24
25
26
27

28 25. Respondent Ernesto Santacruz, Jr. is the Acting Field Office
Director for the United States Immigration and Customs Enforcement, ICE Los

1 Angeles Field Office in Los Angeles, California. He has a duty, delegated to him
2 by the Secretary of Homeland Security and the Director of ICE, to supervise the
3 apprehension, detention, and removal of noncitizens within the territorial
4 jurisdiction of the United States District Court for the Central District of
5 California, including the County of Los Angeles, California.
6
7

8 26. Respondent Todd M. Lyons is the Acting Director of ICE. He has a
9 mandate, pursuant to 6 U.S.C. §§ 251(2) and 252(a)(3)(A)(ii) and 8 U.S.C. §§
10 1103(a)(1) and 1103(g)(2), to exercise any functions delegated to him by the
11 Secretary of the United States Department of Homeland Security, including the
12 enforcement of the INA and all other laws, regulations, and policies pertaining to
13 the immigration and naturalization of immigrants, and the apprehension and
14 detention of noncitizens for removal from the United States.
15
16
17

18 27. Respondent Kristi Noem is the Secretary of the United States
19 Department of Homeland Security. She has a mandate, pursuant to 8 U.S.C. §
20 1103(a), to administer and enforce the INA and other laws related to the
21 immigration and naturalization of aliens. She is responsible for “[c]arrying out
22 the immigration enforcement functions vested by statute in, or performed by, the
23 Commissioner of [the former] Immigration and Naturalization (or any officer,
24 employee, or component of the Immigration and Naturalization Service),” 6
25 U.S.C. § 202(3), and for “[e]stablishing national immigration enforcement
26 policies and priorities.” 6 U.S.C. § 202(5).
27
28

1 28. Respondent Pamela Jo Bondi is the Attorney General of the United
2 States. She has a mandate, pursuant to 8 U.S.C. §§ 1101(b)(4) and 1103(g), to
3 supervise the implementation and enforcement of the INA, including the
4 apprehension, detention, and removal of noncitizens from the United States.
5

6
7 **IV.**

8 **STATUTORY AND REGULATORY REFERENCES**

9
10 29. Section 236 of the INA “authorizes the Government to detain certain
11 aliens already in the country pending the outcome of removal proceedings” under
12 section 240 of the INA, 8 U.S.C. § 1229a. Jennings v. Rodriguez, 583 U.S. 281,
13 289 (2018); Rodriguez Diaz v. Garland, 53 F.4th 1189, 1196 (9th Cir. 2022)
14 (same). The statute “distinguishes between two different categories of aliens.”
15 Jennings, 583 U.S. at 288; Rodriguez Diaz, 53 F.4th at 1196 (same).
16

17
18 30. Section 236(a) of the INA, 8 U.S.C. § 1226(a), establishes the
19 “‘default rule[]’” for arresting and detaining removable noncitizens, and gives
20 “the Attorney General ‘broad discretion’ over detention matters[.]” Rodriguez
21 Diaz, 53 F.4th at 1196 (quoting Nielsen v. Preap, 586 U.S. 392, 409 (2019), and
22 Jennings, 583 U.S. at 288). Section 236(a)(1) of the INA provides, in relevant
23 part, that “[o]n a warrant issued by the Attorney General, an alien may be
24 arrested and detained pending a decision on whether the alien is to be removed
25 from the United States.” 8 U.S.C. § 1226(a)(1); see also 8 C.F.R. §
26 236.1(b)(1)(A) (2025) (declaring that “[a]t the time of issuance of the notice to
27
28

1 appear, or at any time thereafter and up to the time removal proceedings are
2 completed, the respondent may be arrested and taken into custody under the
3 authority of Form I-200, Warrant of Arrest[]”). An ICE district director makes
4 the initial custody determination, “including the setting of a bond.” 8 C.F.R. §
5 236.1(d) (2025). An immigration officer “authorized to issue a warrant of arrest
6 may, in the officer’s discretion, release an alien” who does not fall within section
7 236(c)(1) of the INA, 8 U.S.C. § 1226(c)(1), if the noncitizen “demonstrate[s] to
8 the satisfaction of the officer that such release would not pose a danger to
9 property or persons, and that the alien is likely to appear for any future
10 proceeding.” 8 C.F.R. § 236.1(c)(8) (2025).

15 31. Noncitizens who are detained under section 236(a) of the INA, 8
16 U.S.C. § 1226(a), are entitled to “receive bond hearings at the outset of
17 detention.” Jennings, 583 U.S. at 360 (citing 8 C.F.R. §§ 236.1(d)(1) and
18 1236.1(d)(1)). A noncitizen who disagrees with the initial custody determination
19 by an ICE officer may request a bond redetermination hearing before an
20 Immigration Judge at any time before the issuance of an administratively final
21 order of removal. See 8 C.F.R. § 236.1(d) (2025); Rodriguez Diaz, 53 F.4th at
22 1197 (citing 8 C.F.R. §§ 236.1(d)(1) and 1003.19). During a bond
23 redetermination hearing, an Immigration Judge “(1) may continue to detain the
24 arrested alien; and (2) may release the alien on - (A) bond of at least \$1,500 with
25 security approved by, and containing conditions prescribed by, the Attorney
26
27
28

1 General; or (B) conditional parole[.]” if the noncitizen does not fall within the
2 categories of “criminal aliens[.]” who face mandatory detention under section
3 236(c)(1) of the INA, 8 U.S.C. § 1226(c)(1). 8 U.S.C. § 1226(a)(1); 8 C.F.R. §
4 236.1(d) (2025).
5

6
7 32. During a bond redetermination hearing, if a noncitizen
8 “demonstrates by the preponderance of the evidence that he is not ‘a threat to
9 national security, a danger to the community at large, likely to abscond, or
10 otherwise a poor bail risk,’” an Immigration Judge “will order his release.”
11 Rodriguez Diaz, 53 F.4th at 1197 (quoting Matter of Guerra, 24 I. & N. Dec. 37,
12 40 (BIA 2006), and citing Matter of Barreiros, 10 I. & N. Dec. 536, 537-38 (BIA
13 1964)). An Immigration Judge “considers various factors” when deciding
14 whether to release a noncitizen from detention, “including the individual’s ties to
15 the United States as well as his employment history, criminal record, history of
16 immigration violations, and manner of entry into this country[.]” and assesses
17 “whether bond or other conditions on the alien’s release are appropriate.” Id.
18 (citing Guerra, 24 I. & N. Dec. at 40, and 8 U.S.C. § 1226(a)(2)). During bond
19 proceedings, “[t]he detainee may be represented by counsel and can submit
20 evidence in support of his claims.” Id. (citing 8 C.F.R. § 1003.19(b), and Matter
21 of Fatahi, 26 I. & N. Dec. 791, 792 (BIA 2016)). A noncitizen can challenge an
22 Immigration Judge’s adverse decision on a motion for bond redetermination in
23 the Board of Immigration Appeals, see 8 C.F.R. § 236.1(d)(3) (2025), or “request
24
25
26
27
28

1 an additional bond hearing whenever he experiences a material change in
2 circumstances.” Rodriguez Diaz, 53 F.4th at 1197 (citing 8 C.F.R. § 1003.19(e)).
3

4 33. Section 236(c) of the INA, 8 U.S.C. § 1226(c), “carves out a
5 statutory category of [noncitizens] who may not be released under [8 U.S.C.] §
6 1226(a).” Jennings, 583 U.S. at 289. The statutory subsection mandates
7 detention of certain noncitizens “who fall[] into one of several enumerated
8 categories involving criminal offenses and terrorist activities[,]” id., and extends
9 to both “inadmissible” and “deportable” noncitizens with criminal history. 8
10 U.S.C. § 1226(c)(1). Federal immigration officials may only release a detainee
11 under 8 U.S.C. § 1226(c) “if necessary for witness protection purposes.”
12 Rodriguez Diaz, 53 F.4th at 1197 (citing 8 U.S.C. § 1226(c)(2)), and Jennings,
13 583 U.S. at 289). The plain language of section 236(c) of the INA “implies that
14 the default discretionary bond procedures in Section 1226(a) apply to a
15 noncitizen who...is present without being admitted or paroled but has not been
16 implicated in any crimes as set forth in Section 1226(c).” Rodriguez v. Bostock,
17 779 F. Supp. 3d 1239, 1256-57 (W.D. Wash. 2025) (citing 8 U.S.C. § 1226(a),
18 and Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393,
19 400 (2010)).
20
21

22 34. Section 235 of the INA, 8 U.S.C. § 1225, “applies primarily to
23 [noncitizens] seeking entry into the United States[.]” Jennings, 583 U.S. at 297.
24 Section 235(a)(1) of the INA states, in part, that a noncitizen who is “present in
25
26
27
28

1 the United States who has not been admitted or who arrives in the United States
2 (whether or not at a designated port of arrival and including an alien who is
3 brought to the United States after having been interdicted in international or
4 United States waters) shall be deemed... an applicant for admission.” 8 U.S.C. §
5 1225(a)(1). All noncitizens “who are applicants for admission or otherwise
6 seeking admission or readmission to or transit through the United States shall be
7 inspected by immigration officers[.]” 8 U.S.C. § 1225(a)(3), to confirm “that
8 they may be admitted into the country consistent with U.S. immigration law.”
9 Jennings, 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(3)). The inspection
10 process “generally begins at the Nation’s borders and ports of entry, where the
11 Government must determine whether an alien seeking to enter the country is
12 admissible.” Id.

13
14
15
16
17
18 35. Section 235(b) of the INA, 8 U.S.C. § 1255(b), divides applicants
19 for admission into the United States into “one of two categories, those covered by
20 [8 U.S.C.] § 1225(b)(1) and those covered by [8 U.S.C.] § 1225(b)(2).” Id.

21
22 36. Section 1225(b)(1) “applies to [noncitizens] initially determined to
23 be inadmissible due to fraud, misrepresentation, or lack of valid documentation,”
24 who are “normally ordered removed ‘without further hearing or review’ pursuant
25 to an expedited removal process.” Id. (quoting 8 U.S.C. §§ 1225(b)(1)(A)(i) and
26 1225(b)(1)(A)(ii)) (other internal citations omitted). Two classes of inadmissible
27 noncitizens qualify for expedited removal under 8 U.S.C. § 1225(b)(1) –
28

1 noncitizens who are “arriving in the United States[,]” and certain noncitizens
2 designated by the Attorney General, who “ha[ve] not been admitted or paroled
3 into the United States” and cannot “affirmatively show[]” that they have been
4 “physically present in the United States continuously for the 2-year period
5 immediately prior to the date of the determination of inadmissibility.” 8 U.S.C.
6 §§ 1225(b)(1)(A)(i), 1225(b)(1)(A)(iii).

9
10 37. A noncitizen in expedited removal proceedings under 8 U.S.C. §
11 1225(b)(1) who indicates “either an intention to apply for asylum...or a fear of
12 persecution[]” must be referred for an asylum interview, 8 U.S.C. §
13 1225(b)(1)(A)(ii), and “shall be detained” by federal immigration officials
14 “[p]ending the credible fear determination by an asylum officer and any review
15 of that determination by an immigration judge[.]” 8 C.F.R. § 235.3(b)(4)(ii)
16 (2025). If an immigration officer determines that a noncitizen in section
17 1225(b)(1) proceedings has a credible fear of persecution in his country of origin,
18 the noncitizen “shall be detained for further consideration of the application for
19 asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii). If an immigration officers finds that the
20 noncitizen does not have a credible fear of persecution, the immigration officer
21 “shall order the [noncitizen] removed from the United States without further
22 hearing or review[.]” unless the noncitizen requests a review of that finding by an
23 Immigration Judge. 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I), 1225(b)(1)(B)(iii)(III). A
24 noncitizen with a negative credible fear determination “shall be detained pending
25
26
27
28

1 a final determination of credible fear of persecution and, if found not to have
2 such a fear, until removed.” 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

3
4 38. Section 235(b)(2) of the INA, 8 U.S.C. § 1225(b)(2), “serves as a
5 catchall provision that applies to all applicants for admission not covered by [8
6 U.S.C.] § 1225(b)(1)[.]” subject to certain exceptions. Jennings, 583 U.S. at 287
7 (citing 8 U.S.C. §§ 1225(b)(2)(A), 1225(b)(2)(B)). The statute provides that, “in
8 the case of an alien who is an applicant for admission, if the examining
9 immigration officer determines that an alien seeking admission is not clearly and
10 beyond a doubt entitled to be admitted, the alien shall be detained for a
11 proceeding under section 240 [of the INA, 8 U.S.C. § 1229a].” 8 U.S.C. §
12 1225(b)(2)(A). Federal immigration officials’ power to detain a noncitizen under
13 8 U.S.C. § 1225(b)(2)(A) ends when removal proceedings conclude. See
14 Jennings, 583 U.S. at 297.

15
16
17
18
19 V.

20
21 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

22 39. Exhaustion of administrative remedies “can be either statutorily
23 required or judicially imposed as a matter of prudence.” Puga v. Chertoff, 488
24 F.3d 812, 815 (9th Cir. 2007) (citing Noriega-Lopez v. Ashcroft, 335 F.3d 874,
25 881 (9th Cir. 2003)).

26
27 40. Exhaustion is a prudential requirement for a petition for writ of
28 habeas corpus under 28 U.S.C. § 2241. See Hernandez v. Sessions, 872 F.3d

1 976, 988 (9th Cir. 2017) (citing Singh, 638 F.3d at 1203 n.3) (other internal
2 citations omitted). A court may require prudential exhaustion when “(1) agency
3 expertise makes agency consideration necessary to generate a proper record and
4 reach a proper decision; (2) relaxation of the requirement would encourage the
5 deliberate bypass of the administrative scheme; and (3) administrative review is
6 likely to allow the agency to correct its own mistakes and to preclude the need for
7 judicial review.” Id. (citing Puga, 488 F.3d at 815). Even if those factors apply,
8 a court may nonetheless waive a prudential exhaustion mandate if
9 ““administrative remedies are inadequate or not efficacious, pursuit of
10 administrative remedies would be a futile gesture, irreparable injury will result,
11 or the administrative proceedings would be void.”” Id. (quoting Laing v.
12 Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004)).

13
14
15
16
17
18 41. “An exception to the exhaustion requirement has been carved for
19 constitutional challenges to...[DHS] procedures.” Iraheta-Martinez v. Garland,
20 12 F.4th 942, 949 (9th Cir. 2021) (quoting Sola v. Holder, 720 F.3d 1134, 1135
21 (9th Cir. 2013) (per curiam) (other internal citations omitted)). Mr. Ovalle
22 Lombana, through counsel, contests the Respondents’ revocation of his release
23 on parole and his detention in the Respondents’ custody under the Fifth
24 Amendment’s Due Process Clause. Neither an Immigration Judge nor the Board
25 of Immigration Appeals has the authority to decide the constitutionality of
26 immigration statutes. See Padilla-Padilla v. Gonzales, 463 F.3d 972, 977 (9th
27
28

1 Cir. 2006) (citing Liu v. Waters, 55 F.3d 421, 425 (9th Cir. 1995)); Matter of
2 G.K., 26 I. & N. Dec. 88, 96-97 (BIA 2013) (explaining that “[n]either the [BIA]
3 nor the Immigration Judges have the authority to rule on the constitutionality of
4 the statutes we administer[.]”). Since those tribunals could not address Mr. Ovalle
5 Lombana’s constitutional challenge to the legality of his detention under the INA,
6 the Court cannot require him to exhaust those claims before seeking habeas
7 relief. See Padilla-Padilla, 463 F.3d at 977 (excusing the petitioners from
8 exhausting a “constitutional due process claim” in the Board of Immigration
9 Appeals because the Board could not resolve the claim) (citing Liu, 55 F.3d at
10 426, and Garcia-Ramirez v. Gonzales, 423 F.3d 935, 938 (9th Cir. 2005)).

15 42. Mr. Ovalle Lombana, through counsel, challenges the Respondents’
16 judgment that section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A),
17 mandates his detention in federal immigration custody for the duration of his
18 removal proceedings. An administrative record is not necessary to resolve the
19 “purely legal question” of statutory interpretation presented in this case – whether
20 8 U.S.C. § 1225(b)(2)(A) authorizes his detention by the Respondents. See
21 Hernandez, 872 F.3d at 989 (finding that “an administrative appellate record is
22 not necessary to resolve the purely legal questions presented by Plaintiffs’
23 challenge to the government’s policy of refusing to require ICE and IJs to
24 consider financial circumstances and alternative conditions of release in bond
25 determinations[.]”); (citing Singh, 638 F.3d at 1203 n. 3).

1 43. The Court’s decision to waive the prudential exhaustion requirement
2 will not “encourage the deliberate bypass of the administrative scheme” in
3 future cases. Hernandez, 872 F.3d at 989 (quoting Puga, 488 F.3d at 815). The
4 instant case concerns the legality of Mr. Ovalle Lombana’s detention by the
5 Respondents under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A).
6 When this Court determines the legality of Mr. Ovalle Lombana’s confinement,
7 the disputed issue “should cease to arise.” Id. (quoting Singh, 638 F.3d at 1203
8 n.3.). While “similarly situated individuals” may “desire to raise similar appeals
9 in the district courts[,]” a “resolution of this question of law at the district court
10 level might provide expedient clarity and guidance to the IJs and BIA, obviating
11 the need for similar, subsequent bypassing of administrative remedies.” Bautista
12 v. Santacruz, U.S.D.C. No. 5:25-cv-01873-SSS-BFM, __ F. Supp. 3d __, 2025
13 U.S. Dist. LEXIS 171364, at *21 (C.D. Cal. July 28, 2025).

19 44. While the Court must “consider whether ‘administrative review is
20 likely to allow the agency to correct its own mistakes and to preclude the need for
21 judicial review[,]” in circumstances “where the agency’s position on the
22 question at issue appears already set, and it is very likely what the result of
23 recourse to administrative remedies would be, such recourse would be futile and
24 is not required.” Hernandez, 872 F.3d at 989 (quoting Noriega-Lopez v.
25 Ashcroft, 335 F.3d 874, 881 (9th Cir. 2003), and El Rescate Legal Servs., Inc. v.

1 Exec. Office of Immigration Review, 959 F.2d 742, 747 (9th Cir. 1991)) (other
2 internal citations and quotation marks omitted).

3
4 45. In Matter of Q. Li, the Board of Immigration Appeals held that a
5 noncitizen “who is arrested and detained without a warrant while arriving in the
6 United States, whether or not at a port of entry, and subsequently placed in
7 removal proceedings, is detained under section 235(b) of the INA, 8 U.S.C. §
8 1225(b), and is ineligible for any subsequent release on bond under section
9 236(a) of the INA, 8 U.S.C. § 1226(a).” Q. Li, 29 I. & N. Dec. at 69. On July 8,
10 2025, ICE officers issued a policy memorandum, “Interim Guidance Regarding
11 Detention Authority for Applications for Admission[.]” Francisco T. v. Bondi,
12 U.S.D.C. No. 25-CV-03219 (JMB/DTS), __ F. Supp. 3d __, 2025 U.S. Dist.
13 LEXIS 179562, at *2 n.2 (D. Minn. Aug. 29, 2025), in which it announced that
14 “all noncitizens who entered the United States without inspection shall now be
15 deemed applicants for admission and subject to mandatory detention under 8
16 U.S.C. § 1225(b)(2)(A).” Garcia v. Noem, U.S.D.C. No. 5:25-cv-02771-ODW
17 (PDx), __ F. Supp. 3d __, 2025 U.S. Dist. LEXIS 209286, at *2-3 (C.D. Cal. Oct.
18 22, 2025) (other internal quotation marks omitted). Subsequently, the Board of
19 Immigration Appeals held that noncitizens “who are present in the United States
20 without admission are applicants for admission as defined under section
21 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the
22 duration of their removal proceedings[.]” without bond, even if the noncitizens
23
24
25
26
27
28

1 resided in the United States for a number of years. In re Yajure Hurtado, 29 I. &
2 N. Dec. 216, 220-21 (BIA 2025) (citing Jennings, 583 U.S. at 300).
3

4 46. Published decisions of the Board of Immigration Appeals “are
5 binding on all officers and employees of DHS or immigration judges in the
6 administration of the immigration laws of the United States[,]” 8 C.F.R. §
7 1003.1(g)(1) (2025), and “serve as precedents in all proceedings involving the
8 same issue or issues.” 8 C.F.R. § 1003.1(g)(2) (2025). The Board’s decisions in
9 Matter of Q. Li and in In re Yajure Hurtado preclude an Immigration Judge from
10 correcting the Board’s mistaken construction and application of 8 U.S.C. §
11 1225(b)(2)(A). As the agency’s position on Mr. Ovalle Lombana’s detention
12 status is unlikely to change with agency action, the Court must conclude that any
13 attempted exhaustion of administrative remedies in the Immigration Court would
14 be futile. See Vasquez-Rodriguez v. Garland, 7 F.4th 888, 896 (9th Cir. 2021)
15 (declaring that the Court “will excuse a failure to exhaust if ‘it is very likely what
16 [the Board’s] result would have been[,]’” and “‘recourse to administrative
17 remedies is very likely futile[.]’”) (quoting Szonyi v. Barr, 942 F.3d 874, 891 (9th
18 Cir. 2019), and Sun v. Ashcroft, 370 F.3d 932, 943 (9th Cir. 2004)).
19
20
21
22
23
24

25 VI.

26 STATEMENT OF FACTS

27
28 47. Petitioner Mauricio Alejandro Ovalle Lombana is a national and
citizen of Colombia. [Exh. A].

1 48. On March 28, 2022, Mr. Ovalle Lombana entered the United States
2 near San Luis, Arizona. [Exh. B, p. 3; Exh. G, p. 15]. A CBP officer
3 encountered Mr. Ovalle Lombana, and arrested him. [Exh. G, p. 15].
4

5 49. On March 29, 2022, a CBP officer issued a Notice to Appear for
6 removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a, to Mr.
7 Ovalle Lombana. [Exh. B, pp. 3-5]. Mr. Ovalle Lombana acknowledged his
8 receipt of the Notice to Appear. [Exh. B, p. 4]. The CBP officer then released
9 Mr. Ovalle Lombana from detention on his own recognizance. [Exh. B, p. 2;
10 Exh. G, p. 15].
11
12

13 50. Mr. Ovalle Lombana relocated to Opa Locka, Florida, after the CBP
14 officer released him from detention.
15

16 51. On September 1, 2022, officers of the United States Department of
17 Homeland Security filed an Amended Notice to Appear for removal proceedings
18 under section 240 of the INA, 8 U.S.C. § 1229a, with the United States
19 Immigration Court in Miami, Florida. [Exh. C]. Mr. Ovalle Lombana's Notice
20 to Appear alleged that he was "an alien present in the United States who has not
21 been admitted or paroled." [Exh. C, p. 6]. The Notice to Appear charged Mr.
22 Ovalle Lombana with being subject to removal from the United States under
23 section 212(a)(6)(A)(i) of the INA, 8 U.S.C. § 1182(a)(6)(A)(i), for being a
24 noncitizen who was "present in the United States without being admitted or
25 paroled, or who arrived in the United States at any time or place other than as
26
27
28

1 designated by the Attorney General.” [Exh. C, p. 6]. The United States
2 Immigration Court scheduled a Master Calendar Hearing in Mr. Ovalle
3 Lombana’s case on October 3, 2024. [Exh. C, p. 6].

5 52. Mr. Ovalle Lombana relocated to Los Angeles, California after his
6 removal proceedings began. On April 22, 2024, Mr. Ovalle Lombana married a
7 United States citizen, Veronica Sernas Jimenez, in Las Vegas, Nevada. [Exh. D].
9 The couple resided in Los Angeles, California, following their marriage.

11 53. On October 3, 2024, a federal Immigration Judge in Miami, Florida
12 convened an initial Master Calendar Hearing in Mr. Ovalle Lombana’s case.
13 During the Master Calendar Hearing, Mr. Ovalle Lombana, through counsel,
14 admitted the factual allegations listed in his Notice to Appear, and conceded the
15 charge of removability against him under section 212(a)(6)(A)(i) of the INA, 8
16 U.S.C. § 1182(a)(6)(A)(i). The Immigration Judge confirmed that Mr. Ovalle
17 Lombana resided in Los Angeles, California, and adjourned Mr. Ovalle
19 Lombana’s removal proceedings for the filing of a motion to change venue to
20 Los Angeles.

23 54. On information and belief, Mr. Ovalle Lombana complied with the
24 terms and conditions of his parole between the date that a CBP officer released
25 him on his own recognizance on March 29, 2022, and the date that federal
26 immigration officials detained him on September 30, 2025. [Exh. B, p. 2; Exh.
27 E; Exh. G, pp. 15-16]. Mr. Ovalle Lombana has no criminal convictions.

1 55. On September 30, 2025, Mr. Ovalle Lombana appeared for a routine
2 supervision appointment at the ICE Los Angeles Field Office in Los Angeles,
3 California. [Exh. G, p. 15]. At that appointment, ICE officers conducted security
4 checks for Mr. Ovalle Lombana, and determined that he lacked “possession of
5 valid immigration documents allowing him to be or remain in the United States
6 legally.” [Exh. G, p. 15]. ICE officers alleged that Mr. Ovalle Lombana was
7 arrested on January 6, 2025 for a suspected violation of Cal. Penal Code §
8 243.4(e), and is “currently pending a disposition.” [Exh. G, p. 16]. However, no
9 criminal charges resulted from that arrest. [Exh. H]. The ICE officers noted that
10 Mr. Ovalle Lombana was a national and citizen of Colombia, claimed to be
11 married to a United States citizen, and “claim[s] fear of returning to his country
12 of citizenship, COLOMBIA.” [Exh. G, p. 16]. ICE officers served Mr. Ovalle
13 Lombana with an ICE Form I-200, Warrant for Arrest of Alien and an ICE Form
14 I-286, Notice of Custody Determination, arrested him, and transported him to the
15 agency’s Los Angeles Staging Facility. [Exh. G, p. 15].

16
17
18
19
20
21
22 56. On or about September 30, 2025, ICE officers transported Mr.
23 Ovalle Lombana to the Adelanto ICE Processing Center in Adelanto, California.
24 [Exh. F].

25
26 57. On or about October 3, 2025, the United States Immigration Court
27 transferred Mr. Ovalle Lombana’s case to a federal Immigration Judge in
28 Adelanto, California. [Exh. F]. On November 3, 2025, a federal Immigration

1 Judge in Adelanto, California convened another Master Calendar Hearing in Mr.
2 Ovalle Lombana's case. The Immigration Judge has adjourned Mr. Ovalle
3 Lombana's case until December 9, 2025. [Exh. I, p. 18].
4

5 58. Mr. Ovalle Lombana remains in the Respondents' custody at the
6 Adelanto ICE Processing Center. [Exh. I, p. 19]. He has been separated from his
7 spouse continuously since September 30, 2025.
8

9 59. On or about October 8, 2025, Mr. Ovalle Lombana sustained a
10 severe knee injury in detention, which temporarily immobilized him. Mr. Ovalle
11 Lombana sought medical assistance for his injury at the Adelanto ICE Processing
12 Center, but deportation officers at the facility only administered Tylenol to him
13 for pain. Mr. Ovalle Lombana suffers from debilitating knee pain and
14 immobility, as of the date of this filing. The deterioration in Mr. Ovalle
15 Lombana's physical condition in ICE custody has caused him physical suffering
16 and emotional distress, and has exacerbated the harm that he has sustained in
17 immigration detention.
18
19
20
21
22
23
24
25
26
27
28

VII.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of Fifth Amendment to the United States Constitution

(Substantive Due Process – Detention)

60. The Petitioner, through counsel, incorporates by reference all preceding paragraphs of the instant Petition and Complaint, as stated therein.

61. This Court may grant a writ of habeas corpus to a noncitizen in federal immigration detention who is “in custody in violation of the Constitution or laws or treaties of the United States[.]” 8 U.S.C. § 2241(c)(3).

62. The Due Process Clause of the Fifth Amendment states that no person shall “be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. The Constitution does not limit the “procedural protections provided by the Fifth Amendment’s Due Process Clause” to citizens. Washington v. Trump, 847 F.3d 1151, 1165 (9th Cir. 2017). Rather, the Due Process Clause applies “‘to all persons within the United States, including aliens,’ regardless of ‘whether their presence here is lawful, unlawful, temporary, or permanent.’” Id. (quoting Zadvydas v. Davis, 533 U.S. 678, 693 (2001)) (other internal quotation marks omitted).

63. Noncitizens “who have established connections in this country have due process rights in deportation proceedings[.]” regardless of their immigration

1 status. Department of Homeland Security v. Thuraissigiam, 591 U.S. 103, 107
2 (2020); Hernandez, 872 F.3d at 983-84, 990 (holding that undocumented
3 noncitizens who resided in Los Angeles, California for years without lawful
4 admission or parole are entitled to due process in bond proceedings in the
5 Immigration Court).
6
7

8 64. A person’s “[f]reedom from imprisonment - from government
9 custody, detention, or other forms of physical restraint—lies at the heart of the
10 liberty that Clause protects.” Hernandez, 872 F.3d at 990 (quoting Zadvydas,
11 533 U.S. at 690).
12

13 65. Detention by the Government violates the Due Process Clause
14 “unless the detention is ordered in a criminal proceeding with adequate
15 procedural protections,...or, in certain special and ‘narrow’ non-punitive
16 ‘circumstances,’” when a “special justification, such as harm-threatening mental
17 illness, outweighs the ‘individual’s constitutionally protected interest in avoiding
18 physical restraint.” Zadvydas, 533 U.S. at 690 (quoting Kansas v. Hendricks,
19 521 U.S. 346, 356 (1997), and Foucha v. Louisiana, 504 U.S. 71, 80 (1992), and
20 citing United States v. Salerno, 481 U.S. 739, 746 (1987)).
21
22
23
24

25 66. In matters concerning immigration detention, “‘due process requires
26 adequate procedural protections to ensure that the government’s asserted
27 justification for physical confinement outweighs the individual’s constitutionally
28 protected interest in avoiding physical restraint.” Hernandez, 872 F.3d at 990

1 (citing Singh, 638 F.3d at 1203) (other internal citations omitted). The
2 Government has “has legitimate interests in protecting the public and in ensuring
3 that non-citizens in removal proceedings appear for hearings, but any detention
4 incidental to removal must ‘bear[] [a] reasonable relation to [its] purpose.’” Id.
5 (quoting Zadvydas, 533 U.S. at 690, and citing Tijani v. Willis, 430 F.3d 1241,
6 1249 (9th Cir. 2005) (Tashima, J., concurring)). When the conditions of a
7 noncitizen’s detention no longer relate to those purposes, it will run afoul of due
8 process. See Zadvydas, 533 U.S. at 690 (finding that a statute permitting the
9 indefinite detention of noncitizens with final removal orders raised “a serious
10 constitutional problem” when the statutory objective, “preventing flight[,]” was
11 “no longer practically attainable[,]” due to the low likelihood of the noncitizens’
12 repatriation to their countries of origin, and when their detention no longer
13 related “‘to the purpose for which the individual [was] committed[]’”) (quoting
14 Jackson v. Indiana, 406 U.S. 715, 738 (1972)).
15
16
17
18
19
20

21 67. No evidence suggests that Mr. Ovalle Lombana is a flight risk or
22 danger to the community. Mr. Ovalle Lombana has no criminal convictions, and
23 no pending cases in the Superior Court of California, County of Los Angeles.
24 [Exh. G; Exh. H]. a CBP officer released Mr. Ovalle Lombana into the United
25 States on his own recognizance on March 29, 2022. [Exh. B, p. 2; Exh. G, p. 15].
26 By authorizing Mr. Ovalle Lombana’s release from detention, federal
27 immigration officials implicitly found that he posed no risk of flight or a danger
28

1 to the community if they released him from federal immigration custody. See 8
2 C.F.R. § 236.1(c)(8) (2025) (permitting “[a]ny officer authorized to issue a
3 warrant of arrest” to release a noncitizen from detention, at the officer’s
4 discretion, if the noncitizen is not described in 236(c)(1) of the INA, 8 U.S.C. §
5 1226(c)(1) (pertaining to criminal noncitizens), and “demonstrate[s] to the
6 satisfaction of the officer that such release would not pose a danger to property or
7 persons, and that the alien is likely to appear for any future proceeding[]”).

8
9
10
11 68. Mr. Ovalle Lombana’s detention is punitive because it bears no
12 “reasonable relation” to any legitimate government purpose. Zadvydas, 533
13 U.S. at 690 (finding that immigration detention is civil and is “nonpunitive in
14 purpose and effect”) (quoting Jackson, 406 U.S. at 738). As the “Due Process
15 Clause prohibits arbitrary deprivations of liberty,” this Court must question
16 whether Mr. Ovalle Lombana’s detention “is not to facilitate deportation, or to
17 protect against risk of flight or dangerousness, but to incarcerate for other
18 reasons[.]” Demore v. Hyung Joon Kim, 538 U.S. 510, 532-33 (2003) (Kennedy,
19 J., concurring) (citing Zadvydas, 533 U.S. at 684-86 (Kennedy, J., dissenting)),
20 such as the Government’s objective of making 3,000 arrests per day as part of an
21 “immigration crackdown.” Make the Road N.Y. v. Noem, U.S.D.C. No. 25-cv-
22 190 (JMC), __ F. Supp. 3d __, 2025 U.S. Dist. LEXIS 169432, at *17-*18
23 (D.D.C. Aug. 29, 2025) (describing the present administration’s mass
24 immigration arrests) (other internal quotation marks omitted).

69. The Respondents' unjustified detention of Mr. Ovalle Lombana violates his rights under the Due Process Clause of the Fifth Amendment. Accordingly, Mr. Ovalle Lombana asks this Court to issue an Order, declaring that his detention in the Respondents' custody violates his rights under the Fifth Amendment to the United States Constitution.

70. Mr. Ovalle Lombana respectfully requests that this Court issue an Order, mandating his immediate release from the Respondents' custody.

SECOND CLAIM FOR RELIEF

Violation of Fifth Amendment to the United States Constitution

(Procedural Due Process)

71. The Petitioner, through counsel, incorporates by reference all preceding paragraphs of the instant Petition and Complaint, as stated therein.

72. The Fifth Amendment to the United States Constitution “‘entitles aliens to due process of law in the context of removal proceedings.’” A.A.R.P. v. Trump, 605 U.S. 91, 94 (2025) (quoting Trump v. J.G.G., 604 U. S. 670, 673 (2025) (per curiam)) (other internal quotation marks omitted). Under the Fifth Amendment, “[p]rocedural due process rules are meant to protect” against “the mistaken or unjustified deprivation of life, liberty, or property.” Id. (quoting Carey v. Piphus, 435 U. S. 247, 259 (1978)).

73. The Supreme Court has “long held that ‘no person shall be’ removed from the United States ‘without opportunity, at some time, to be heard.’” Id.

1 (quoting The Japanese Immigrant Case, 189 U. S. 86, 101 (1903)). The Due
2 Process Clause “requires notice that is ‘reasonably calculated, under all the
3 circumstances, to apprise interested parties’ and that ‘afford[s] a reasonable time
4 ...to make [an] appearance.’” Id. at 95 (quoting Mullane v. Central Hanover
5 Bank & Trust Co., 339 U. S. 306, 314 (1950)).
6
7

8 74. To ascertain whether a noncitizen’s procedural due process rights
9 have been violated, a court “first ask[s] whether there exists a liberty or property
10 interest of which a person has been deprived, and if so we ask whether the
11 procedures followed by the [government] were constitutionally sufficient.”
12 Zerezghi v. United States Citizenship & Immigration Servs., 955 F.3d 802, 808
13 (9th Cir. 2020) (quoting Swarthout v. Cooke, 562 U.S. 216, 219 (2011)).
14
15

16 75. While “certain constitutional protections” do not extend to
17 noncitizens “outside of our geographic borders,” after a noncitizen “enters the
18 country, the legal circumstance changes, for the Due Process Clause applies to all
19 persons within the United States, including aliens, whether their presence here is
20 lawful, unlawful, temporary, or permanent.” Zadvydas, 533 U.S. at 693. A
21 noncitizen who has entered the United States retains a “weighty” liberty interest
22 in remaining, as they “stand[] to lose the right to stay and live and work in this
23 land of freedom,” and “may lose the right to rejoin [their] immediate family, a
24 right that ranks high among the interests of the individual.” Landon v. Plasencia,
25 459 U.S. 21, 34 (1982). Accordingly, the Due Process Clause “requires some
26
27
28

1 kind of a hearing before the State deprives a person of liberty or property.”

2 Zinermon v. Burch, 494 U.S. 113, 127 (1990).

3
4 76. A person’s “[f]reedom from imprisonment - from government
5 custody, detention, or other forms of physical restraint - lies at the heart of the
6 liberty that Clause protects[.]” even for those individuals “who face significant
7 constraints on their liberty[.]” Pinchi v. Noem, __ F. Supp. 3d __, U.S.D.C. No.
8 5:25-cv-05632-PCP, 2025 U.S. Dist. LEXIS 142213, at *7 (N.D. Cal. July 24,
9 2025) (quoting Zadvydas, 533 U.S. at 690, and citing Ortega v. Bonnar, 415 F.
10 Supp. 3d 963, 970 (N.D. Cal. 2019)) (other internal citations omitted). While
11 “the initial decision to detain or release an individual may be within the
12 government’s discretion[.]” in some cases, “the government’s decision to release
13 an individual from custody creates ‘an implicit promise,’ upon which that
14 individual may rely, that their liberty ‘will be revoked only if [they] fail[] to live
15 up to the...conditions [of release].” Id. at *7-*8 (quoting Morrissey v. Brewer,
16 408 U.S. 471, 482 (1972)). That individual’s liberty “‘is valuable and must be
17 seen as within the protection of the [Due Process Clause].” Id. at *8 (quoting
18 Morrissey, 408 U.S. at 482). Accordingly, “even when ICE has the initial
19 discretion to detain or release a noncitizen pending removal proceedings, after
20 that individual is released from custody she has a protected liberty interest in
21 remaining out of custody.” Id. (citing Romero v. Kaiser, U.S.D.C. No. 22-cv-
22 02508, 2022 U.S. Dist. LEXIS 82538, at *2 (N.D. Cal. May 6, 2022)) (other

1 internal citations omitted); see also Sequen v. Albarran, U.S.D.C. No. 25-cv-
2 06487-PCP, __ F. Supp. 3d __, 2025 U.S. Dist. LEXIS 203758, at *19-*20 (N.D.
3 Cal. Oct. 15, 2025) (finding that noncitizens released from immigration detention
4 “on their own recognizance subject to certain conditions[]” were “entitled to due
5 process under the Fifth Amendment with respect to their protected liberty interest
6 in remaining out of immigration custody”); Ramirez Clavijo v. Kaiser, U.S.D.C.
7 No. 25-cv-06248-BLF, __ F. Supp. 3d __, 2025 U.S. Dist. LEXIS 163056, at *13
8 (N.D. Cal. Aug. 21, 2025) (noting that “[c]ourts have previously found that
9 individuals released from immigration custody on bond have a protectable liberty
10 interest in remaining out of custody on bond[]”) (citing Ortiz Vargas v. Jennings,
11 U.S.D.C. No. 20-cv5785, __ F. Supp. 3d __, 2020 U.S. Dist. LEXIS 153579, at
12 *8 (N.D. Cal. Aug. 23, 2020), and Ortega v. Bonnar, 415 F. Supp. 3d 963, 969
13 (N.D. Cal. 2019)) (other internal citations omitted); cf. Ortega-Cervantes v.
14 Gonzales, 501 F.3d 1111, 1115 (9th Cir. 2007) (equating a noncitizen’s “release
15 on recognizance” for removal proceedings to the “conditional parole” examined
16 by the Supreme Court in Morrissey v. Brewer).

17
18
19
20
21
22
23
24 77. To assess the constitutional sufficiency of procedures to protect a
25 noncitizen’s liberty interest in remaining free from detention, this Court must
26 apply the following three-factor test delineated in Mathews v. Eldridge, 424 U.S.
27 319 (1976): “[f]irst, the private interest that will be affected by the official
28 action; second, the risk of an erroneous deprivation of such interest through the

1 procedures used, and the probable value, if any, of additional or substitute
2 procedural safeguards; and finally, the Government's interest, including the
3 function involved and the fiscal and administrative burdens that the additional or
4 substitute procedural requirement would entail.” Hernandez, 872 F.3d at 993
5 (quoting Mathews, 424 U.S. at 335).

6
7
8 78. The private interest at issue here “is ‘fundamental[,]’” as “freedom
9 from imprisonment is at the ‘core of the liberty protected by the Due Process
10 Clause.’” Hernandez, 872 F.3d at 993 (quoting Foucha, 504 U.S. at 80). A
11 noncitizen who is released from immigration detention “can be gainfully
12 employed and is free to be with family and friends and to form the other enduring
13 attachments of normal life[,]” subject to the conditions of his release from
14 confinement. Morrissey, 408 U.S. at 482. The Respondents’ termination of Mr.
15 Ovalle Lombana’s release conditions and his re-detention in federal immigration
16 custody deprives him of that liberty interest, and risks separating him from his
17 spouse in the United States.

18
19
20
21
22 79. The risk of an erroneous deprivation of Mr. Ovalle Lombana’s
23 protected liberty interest in remaining free from detention is high. Mr. Ovalle
24 Lombana’s “[c]ivil immigration detention is permissible only to prevent flight or
25 protect against danger to the community,...but the government has offered no
26 evidence...that [his] detention would serve either purpose.” Pinchi, 2025 U.S.
27 Dist. LEXIS 142213, at *13 (citing Zadvydas, 533 U.S. at 690). Yet, the
28

1 Respondents have not articulated a valid basis for revoking his release from
2 federal immigration custody and detaining him. While ICE officers allege that
3 Mr. Ovalle Lombana was arrested on January 6, 2025 for a suspected violation of
4 Cal. Penal Code § 243.4(e), and is “currently pending a disposition[,]” [Exh. G,
5 p. 16], no criminal charges resulted from that arrest. [Exh. H]. In any event, “the
6 record does not reveal any details about those circumstances that suggest - and
7 the government does not argue - this arrest contributes to a finding that [the]
8 Petitioner’s circumstances have materially changed.” Martinez Hernandez v.
9 Andrews, U.S.D.C. No. 1:25-CV-01035 JLT HBK, __ F. Supp. Ed __, 2025 U.S.
10 Dist. LEXIS 168147, at *26-*27 (E.D. Cal. Aug. 28, 2025) (citing Kelly v.
11 Almodovar, U.S.D.C. No. 25 CIV. 6448 (AT), __ F. Supp. 3d __, 2025 U.S. Dist.
12 LEXIS 159031, at *8 (S.D.N.Y. Aug. 15, 2025), and Duncan v. California,
13 U.S.D.C. No. S-04-523 LKK/PAN, __ F. Supp. 2d __, 2006 U.S. Dist. LEXIS
14 99283, at *3 (E.D. Cal. July 7, 2006)).

15
16
17
18
19
20
21 80. The Respondents will struggle to proffer a valid justification for its
22 decisions in Mr. Ovalle Lombana’s case, as federal immigration officials
23 detained him after they released him into the United States on his own
24 recognizance [Exh. B, p. 2; Exh. G, p. 15], and after he attended required
25 immigration proceedings without incident for over three years. See Pinchi, 2025
26 U.S. Dist. LEXIS 142213, at *13; see also Mohit Kumar v. Wamsley, __ F. Supp.
27 3d __, U.S.D.C. No. 2:25-cv-01772-JHC-BAT, 2025 U.S. Dist. LEXIS 182775,
28

1 at *9-*10 (W.D. Wash. Sept. 17, 2025) (finding that the “risk of erroneous
2 deprivation” resulting from the petitioner’s unjustified detention at an ICE
3 appointment was high, in part, because “it is undisputed that Petitioner’s arrest
4 was not preceded by a finding that Petitioner was a flight risk nor a danger to the
5 community[,]” and ICE offered no “valid legal justification for his arrest”).
6
7

8 81. As was noted above, see supra ¶¶ 35-38, section 235(b) of the INA,
9 8 U.S.C. § 1225(b), mandates the detention of certain noncitizens for removal
10 proceedings, unless federal immigration officials elect to parole them into the
11 United States. See 8 U.S.C. §§ 1225(b)(1)(B)(ii), 1225(b)(1)(B)(iii)(IV),
12 1225(b)(2)(A). The Board of Immigration Appeals’ decisions in Matter of Q. Li
13 and In re Yajure Hurtado and ICE Policy Guidance, discussed above, see supra ¶
14 45, indicate that ICE officers will detain Mr. Ovalle Lombana under 8 U.S.C. §
15 1225(b)(2)(A) for the duration of his removal proceedings in the Adelanto
16 Immigration Court, in the absence of judicial intervention, because he is present
17 in the United States without admission. Indeed, Mr. Ovalle Lombana’s Form I-
18 213, Record of Deportability / Inadmissibility states that he “will be arrested and
19 processed pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality
20 Act (INA),” and that he “will remain in ICE ERO custody pending his/her
21 immigration proceedings.” [Exh. G, pp. 15-16]. When a habeas petitioner ““has
22 not received any bond or custody... hearing, the risk of an erroneous deprivation
23 [of liberty] is high’ because neither the government nor [the petitioner] has had
24
25
26
27
28

1 an opportunity to determine whether there is any valid basis for [his] detention.”
2 Pinchi, 2025 U.S. Dist. LEXIS 142213, at *12-*13 (quoting Singh v. Andrews,
3 U.S.D.C. No. 1:25-cv-00801-KES-SKO (HC), __ F. Supp. 3d __, 2025 U.S. Dist.
4 LEXIS 132500, at *18 (E.D. Cal. July 11, 2025)).
5

6
7 82. When a habeas petitioner’s “substantial liberty interest” is at stake,
8 “the government must prove by clear and convincing evidence that an alien is a
9 flight risk or a danger to the community” to justify depriving him of his liberty.
10
11 Singh, 638 F.3d at 1203. The Respondents’ failure to proffer any evidence that
12 Mr. Ovalle Lombana poses a risk of flight or a danger to the community suggests
13 that his continued detention in the Respondents’ custody without a hearing is
14 likely to be in error. See Ramirez Clavijo, 2025 U.S. Dist. LEXIS 163056, at
15 *17-*18 (N.D. Cal. Aug. 21, 2025).
16
17

18 83. The “probable value, if any, of additional or substitute procedural
19 safeguards” is high. Hernandez, 872 F.3d at 993. The risk of “an erroneous
20 deprivation” of Mr. Ovalle Lombana’s protected liberty interest would likely
21 decrease if he “had received notice of the basis for his re-detention and an
22 opportunity to be heard before a neutral decisionmaker prior to his arrest.” Mohit
23 Kumar, 2025 U.S. Dist. LEXIS 182775, at *10. The “procedural safeguard of a
24 pre-detention hearing will have significant value in helping ensure that any future
25 detention has a lawful basis.” Sequen, 2025 U.S. Dist. LEXIS 203758, at *36.
26
27
28

84. The Government’s interest in Mr. Ovalle Lombana’s continued

1 detention in federal immigration custody is minimal. The Government “has no
2 legitimate interest in detaining individuals who have been determined not to be a
3 danger to the community and whose appearance at future immigration
4 proceedings can be reasonably ensured by a lesser bond or alternative
5 conditions[]” of supervision. Hernandez, 872 F.3d at 994 (citing Pugh v.
6 Rainwater, 572 F.2d 1053, 1057 (5th Cir. 1978)). Mr. Ovalle Lombana has no
7 criminal convictions, has complied with any required appearances before federal
8 immigration officials, and was previously released from immigration detention
9 on his own recognizance. After his initial release from the Respondents’ custody
10 on March 29, 2022, he developed strong ties to the community and married a
11 United States citizen. The Respondents have offered no evidence that “any
12 material circumstances have changed that would warrant reassessment of [his]
13 risk of flight or dangerousness.” Pinchi, 2025 U.S. Dist. LEXIS 142213, at *17.
14 At bottom, ““due process prohibits detaining an individual without justification.””
15 Noori v. Larose, U.S.D.C. No. 25-cv-1824-GPC-MSB, __ F. Supp. 3d __, 2025
16 U.S. Dist. LEXIS 194953, at *30-*31 (S.D. Cal. Oct. 1, 2025) (quoting
17 Mohammed H. v. Trump, No. CV 25-1576 (JWB/DTS), __ F. Supp. 3d __, 2025
18 U.S. Dist. LEXIS 117197, at *16 (D. Minn. June 17, 2025)).

19
20
21
22
23
24
25
26 85. The Respondents have not shown that providing additional
27 procedures before revoking Mr. Ovalle Lombana’s release and detaining him for
28 removal proceedings will impose any heightened administrative or financial

1 burdens on the Government. See Hernandez, 872 F.3d at 994. To comport with
2 due process, the Government needs to provide Mr. Ovalle Lombana with notice
3 of the revocation of his release status and his detention for removal proceedings,
4 and an opportunity to contest those decisions before a “neutral decisionmaker.”
5 Pinchi, 2025 U.S. Dist. LEXIS 142213, at *17. Hearings in the Immigration
6 Court are ““routine and impose a minimal cost.”” Id. (quoting Singh, 2025 U.S.
7 Dist. LEXIS 132500, at *20 (other citations and quotation marks omitted).

8
9
10
11 86. Accordingly, Mr. Ovalle Lombana, through counsel, asks the Court
12 for an Order declaring that the Respondents’ revocation of his release conditions
13 and his detention in the Respondents’ custody violated his rights under the Due
14 Process Clause under the Fifth Amendment, U.S. Const. amend. V.

15
16 87. Mr. Ovalle Lombana, through counsel, asks the Court for an Order
17 directing his immediate release from the Respondents’ custody. He further
18 requests that the Court issue an Order enjoining his rearrest or re-detention by the
19 Respondents without an Order from this Court or a pre-deprivation hearing, at
20 which the Government bears the burden of proving, by clear and convincing
21 evidence, that he poses a danger to the community or a risk of flight if he remains
22 outside immigration detention.
23
24
25

26 **THIRD CLAIM FOR RELIEF**

27 **(Detention of the Petitioner by the Respondents Without Lawful Authority)**

28

88. The Petitioner, through counsel, incorporates by reference all

preceding paragraphs of the instant Petition and Complaint, as stated therein.

89. As was noted above, see supra ¶¶ 45, 81, the Government has apparently determined that section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A) mandates Mr. Ovalle Lombana's detention in the Respondents' custody for the duration of his removal proceedings because he is a noncitizen who is present in the United States without inspection and admission or parole, within the meaning of section 212(a)(6)(A)(i) of the INA, 8 U.S.C. § 1182(a)(6)(A)(i).

90. Section 235(b)(2)(A) of the INA provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 240[]" of the INA, 8 U.S.C. § 1229a. 8 U.S.C. § 1225(b)(2)(A). Section 235(a)(1) of the INA states, in part, that a noncitizen "present in the United States who has not been admitted or who arrives in the United States...shall be deemed for purposes of this Act an applicant for admission." 8 U.S.C. § 1225(a)(1).

91. In Matter of Q. Li, the Board of Immigration Appeals observed that the United States Supreme Court treated a noncitizen "'who tries to enter the country illegally...as an applicant for admission[]'" under 8 U.S.C. § 1225(a)(1), and "clarified that 'an alien who is detained shortly after unlawful entry cannot be said to have effected an entry,' and is in the same position as an alien seeking

1 admission at a port of entry.” Id. at 68 (quoting DHS v. Thuraissigiam, 591 U.S.
2 103, 140 (2020)) (other citations and quotation marks omitted). The Board noted
3 that it treated noncitizens “‘who [are] apprehended’ just inside ‘the southern
4 border, and not at a point of entry, on the same day [they] crossed into the United
5 States[.]’” as noncitizens who “arrive in the United States” under 8 U.S.C. §
6 1225(a)(1), and mandated the detention of certain applicants for admission in
7 expedited removal proceedings under section 235(b)(1) of the INA, 8 U.S.C. §
8 1225(b)(1), “until the final adjudication of the[ir] asylum application[.]” Id.
9 (quoting Matter of M-D-C-V-, 28 I&N Dec. 18, 23 (BIA 2020), and citing Matter
10 of M-S-, 27 I&N Dec. 509, 516 (A.G. 2019)). As noncitizens “arriving in the
11 United States who are detained under section 235(b)(1) or (b)(2) are ineligible for
12 release on bond because both provisions ‘mandate detention of applicants for
13 admission until certain proceedings have concluded[.]’” the Board determined, it
14 held that “an applicant for admission who is arrested and detained without a
15 warrant while arriving in the United States, whether or not at a port of entry, and
16 subsequently placed in removal proceedings is detained under section 235(b) of
17 the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond
18 under section 236(a) of the INA, 8 U.S.C. § 1226(a)[.]” even if federal
19 immigration officials declined to place the noncitizen into expedited removal
20 proceedings. Id. at 69-70 (quoting Jennings, 583 U.S. at 298).

21
22
23
24
25
26
27
28
92. In Yajure Hurtado, the Board of Immigration Appeals held that an

1 Immigration Judge lacked jurisdiction to consider the bond request of a
2 noncitizen, who entered the United States without inspection and admission and
3 later resided in the United States without a lawful immigration status. Yajure
4 Hurtado, 29 I. & N. Dec. at 220. Based upon a “plain reading” of the statutory
5 text, the Board ruled that noncitizens “who are present in the United States
6 without admission are applicants for admission as defined under section
7 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the
8 duration of their removal proceedings.” Id. (citing Jennings, 583 U.S. at 300)
9 (other internal citations omitted).

10
11 93. Consistent with Q. Li, the Board observed that 8 U.S.C. § 1225(a)(1)
12 declared that “‘an alien present in the United States who has not been admitted’”
13 was an “applicant for admission[,]” who remained in that status “unless an
14 immigration officer determines that they are ‘clearly and beyond a doubt entitled
15 to be admitted.’” Id. at 288 (quoting 8 U.S.C. § 1225(b)(2)(A), and
16 Thuraissigiam, 591 U.S. at 109, and citing Matter of Lemus, 25 I. & N. Dec. 734,
17 743 (BIA 2012)) (other internal citations omitted). The Board noted that a
18 noncitizen who “[f]ail[s] to clearly and beyond a doubt demonstrate that they are
19 entitled to admission...‘shall be detained for a proceeding under section 240.’”
20 Id. (quoting Thuraissigiam, 591 U.S. at 109, and citing Jennings, 583 U.S. at
21 288). The Board rejected the Respondent’s contentions that “[r]emaining in the
22 United States for a lengthy period of time following entry without inspection[.]”

1 or “being arrested pursuant to a warrant and placed into removal proceedings”
2 were admissions under 8 U.S.C. § 1101(a)(13)(A) that enabled noncitizens who
3 entered the United States without inspection to avoid mandatory detention. *Id.*
4 Accordingly, the Board held that “just as Immigration Judges have no authority
5 to redetermine the custody of arriving aliens who present themselves at a port of
6 entry, they likewise have no authority to redetermine the custody conditions of an
7 alien who crossed the border unlawfully without inspection, even if that alien has
8 avoided apprehension for more than 2 years.” *Id.*

9
10
11
12 94. Under Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024),
13 courts have no obligation to defer to the Board of Immigration Appeals’
14 construction of the immigration laws. Murillo-Chavez v. Bondi, 128 F.4th 1076,
15 1086 (9th Cir. 2025) (citing Loper Bright, 603 U.S. at 412-13). Rather, “courts
16 must exercise independent judgment in determining the meaning of statutory
17 provisions.” Loper Bright, 603 U.S. at 394. The Board’s decisions have only the
18 “power to persuade[.]” and courts “may not defer to an agency interpretation
19 of the law simply because a statute is ambiguous.” Murillo-Chavez, 128 F.4th at
20 1086-87 (quoting Loper Bright, 603 U.S. at 402, 413) (other internal citations and
21 quotation marks omitted). Since the Board’s construction and application of
22 section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), conflicts with the
23 text, structure, and history of sections 235 and 236 of the INA, 8 U.S.C. §§ 1225
24 and 1226(a), and with federal immigration officials’ longstanding practices, for
25
26
27
28

1 the reasons set forth below, the Court should declare Mr. Ovalle Lombana
2 detained under section 236(a) of the INA, 8 U.S.C. § 1226(a), and should direct
3 his immediate release from the Respondents' custody.
4

5 95. The Court's analysis of 8 U.S.C. §§ 1225 and 1226 begins with the
6 "language of the statute." Esquivel-Quintana v. Sessions, 581 U.S. 385, 391
7 (2017) (quoting Leocal v. Ashcroft, 543 U.S. 1, 8 (2004)) (other internal citations
8 omitted). The Court does not "construe words 'in a vacuum[,]' " but instead reads
9 the statutory language "in their context and with a view to their place in the
10 overall statutory scheme." Gundy v. United States, 588 U.S. 128, 141 (2019)
11 (quoting National Ass'n of Home Builders v. Defenders of Wildlife, 551 U. S.
12 644, 666 (2007)) (other internal citations omitted). In addition to the statutory
13 language, context, and structure, the Court examines the statute's "history [and]
14 purpose' to divine the meaning of language." Id. (quoting Maracich v. Spears,
15 570 U. S. 48, 76 (2013)).
16
17
18
19
20

21 96. Section 236(a) of the INA, 8 U.S.C. § 1226(a), establishes the
22 "default rule" for arresting and detaining noncitizens "already present in the
23 United States[]" by "permitting - but not requiring - the Attorney General to issue
24 warrants for their arrest and detention pending removal proceedings[,]" and by
25 authorizing the Attorney General or her delegates to release those noncitizens on
26 bond or conditional parole, unless the noncitizens "fall[] into one of the
27 enumerated categories involving criminal offenses and terrorist activities."
28

1 Jennings, 583 U.S. at 288, 303 (citing 8 U.S.C. §§ 1226(a) and 1226(c)). While
2 the statute “expressly carves out certain criminal noncitizens from its
3 discretionary framework, it does not similarly carve out noncitizens who would
4 be subject to mandatory detention under Section 1225(b)(2).” Gomes v. Hyde,
5 U.S.D.C. No. 1:25-cv-11571-JEK, __ F. Supp. 3d __, 2025 U.S. Dist. LEXIS
6 128085, at *16-17 (D. Mass. July 7, 2025) (citing 8 U.S.C. § 1226(a)). The
7 ‘express exception’ to Section 1226(a)’s discretionary framework ‘implies that
8 there are no other circumstances under which’ detention is mandated for
9 noncitizens...who are subject to Section 1226(a).” Id. at *17 (quoting Jennings,
10 583 U.S. at 300) (other internal citations omitted) (emphasis omitted).

15 97. Even if the Court considers Mr. Ovalle Lombana an “applicant for
16 admission” under 8 U.S.C. § 1225(a)(1), the Court need not conclude that section
17 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), governs his detention in the
18 Respondents’ custody. Section 235(b)(2)(A) of the INA provides that “in the
19 case of an alien who is an applicant for admission, if the examining immigration
20 officer determines that an alien seeking admission is not clearly and beyond a
21 doubt entitled to be admitted, the alien shall be detained for a proceeding under
22 section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A). For section 235(b)(2)(A)
23 to apply to Mr. Ovalle Lombana, “several conditions must be met - in particular,
24 an ‘examining immigration officer’ must determine that the individual is: (1) an
25 ‘applicant for admission’; (2) ‘seeking admission’; and (3) ‘not clearly and
26
27
28

beyond a doubt entitled to be admitted.” Lepe v. Andrews, U.S.D.C. No. 1:25-cv-01163-KES-SKO (HC), __ F. Supp. 3d __, 2025 U.S. Dist. LEXIS 187233, at *10 (E.D. Cal. Sep. 23, 2025) (quoting Martinez v. Hyde, U.S.D.C. No. CV 25-11613-BEM, __ F. Supp. 3d __, 2025 U.S. Dist. LEXIS 141724, at *6-*7 (D. Mass. July 24, 2025), and citing Lopez Benitez v. Francis, U.S.D.C. No. 25 Civ. 5937 (DEH), __ F. Supp. 3d __, 2025 U.S. Dist. LEXIS 157214, at *16 (S.D.N.Y. Aug. 13, 2025)).

98. While CBP officers apprehended Mr. Ovalle Lombana near San Luis, Arizona on March 28, 2022, [Exh. G, p. 15], no evidence indicates that a qualified “examining immigration officer” determined that Mr. Ovalle Lombana was an “applicant for admission,” was “seeking admission” to the United States, and was “not clearly and beyond a doubt entitled to be admitted[]” to this country on that date. 8 U.S.C. § 1225(b)(2)(A). Instead, a CBP officer issued a Notice to Appear for removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a, to Mr. Ovalle Lombana, and released him on his own recognizance to await hearings in the United States Immigration Court. [Exh. B, pp. 2-5; Exh. G, p. 15]. Likewise, Mr. Ovalle Lombana’s Form I-213, Record of Deportability / Inadmissibility does not indicate that an examining ICE officer made each of the requisite findings to justify mandatory detention under 8 U.S.C. § 1225(b)(2)(A). The absence of evidence that an “examining immigration officer” made the requisite findings under the statute precludes his mandatory detention for the

1 duration of his removal proceedings under 8 U.S.C. § 1225(b)(2)(A). See
2 Echeverria v. Bondi, U.S.D.C. No. CV-25-03252, __ F. Supp. 3d __, 2025 U.S.
3 Dist. LEXIS 196174, at *13-*14 (D. Ariz. Oct. 3, 2025); Lepe, 2025 U.S. Dist.
4 LEXIS 187233, at *10 (same).

5
6
7 99. The Board’s holdings in Matter of Q. Li and in Yajure Hurtado that
8 noncitizens who are present in the United States without admission are
9 “applicants for admission” who face mandatory detention under section
10 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), regardless of the length of
11 their presence in this country or “whether they ever took any affirmative step to
12 seek admission...ignores the plain meaning of the phrase ‘seeking admission[]’”
13 within the statute. Lepe, 2025 U.S. Dist. LEXIS 187233, at *10 (citing Martinez,
14 2025 U.S. Dist. LEXIS 141724, at *6).

15
16
17
18 100. The plain meaning of the term “seeking” refers to “‘asking for’ or
19 ‘trying to acquire or gain[]’” something. Id. (quoting Merriam-Webster
20 Dictionary, <https://www.merriam-webster.com/dictionary/seeking>). The statute’s
21 “use of a present participle, ‘seeking,’ ‘necessarily implies some sort of present-
22 tense action.’” Id. at *10-*11 (quoting Martinez, 2025 U.S. Dist. LEXIS 141724,
23 at *13). The INA defines the term “admission” as “‘the lawful entry of the alien
24 into the United States after inspection and authorization by an immigration
25 officer[,]’” and an “entry” into the United States “has long been understood to
26 mean ‘a crossing into the territorial limits of the United States.’” Lepe, 2025
27
28

1 U.S. Dist. LEXIS 187233, at *11 (quoting 8 U.S.C. § 1101(a)(13)(A)), and Hing
2 Sum v. Holder, 602 F.3d 1092, 1100-01 (9th Cir. 2010)) (other internal citations
3 omitted). Taken together, “the phrase ‘seeking admission’ means that one must
4 be actively ‘seeking’ ‘lawful entry[]’” into this country. Id. (quoting Lopez
5 Benitez, 2025 U.S. Dist. LEXIS 157214, at *19).

8 101. As someone who has already entered the United States, Mr. Ovalle
9 Lombana is seeking to remain in the United States, rather than seeking lawful
10 entry into this country. See id. (emphasis omitted); see also Lopez-Campos v.
11 Raycraft, U.S.D.C. No. 2:25-CV-12486, __ F. Supp. 3d __, 2025 U.S. Dist.
12 LEXIS 169423, at *16 (E.D. Mich. Aug. 29, 2025), cited in Lepe, 2025 U.S. Dist.
13 LEXIS 187233, at *12 (noting that the term “seeking admission” in 8 U.S.C. §
14 1225(b)(2)(A) “implies action - something that is currently occurring, and in this
15 instance, would most logically occur at the border upon inspection[]”). As the
16 Lopez Benitez court explained,
17

21 [S]omeone who enters a movie theater without purchasing a ticket and
22 then proceeds to sit through the first few minutes of a film would not
23 ordinarily then be described as ‘seeking admission’ to the theater.
24 Rather, that person would be described as already present there. Even
25 if that person, after being detected, offered to pay for a ticket, one
26 would not ordinarily describe them as ‘seeking admission’ (or
27 ‘seeking’ ‘lawful entry’) at that point - one would say that they had
28

1 entered unlawfully but now seek a lawful means of remaining there.

2 As § 1225(b)(2)(A) applies only to those noncitizens who are actively

3 ‘seeking admission’ to the United States, it cannot, according to its

4 ordinary meaning, apply to [petitioner], because he has already been

5 residing in the United States for more than two years.

6
7
8 Lopez Benitez, 2025 U.S. Dist. LEXIS 157214, at *21, quoted in Lepe, 2025

9 U.S. Dist. LEXIS 187233, at *11-*12; see also Echeverria, 2025 U.S. Dist.

10 LEXIS 196174, at *17 (rejecting the Government’s position that “Petitioner

11 somehow existed in a perpetual state of ‘seeking’ admission during the 24-year

12 period between when he first became an ‘applicant for admission’ in 2001, by

13 virtue of his entry into the country, and when he was encountered and inspected

14 by an immigration officer in 2025”). The Government’s classification of Mr.

15 Ovalle Lombana as an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A)

16 because he is allegedly an “alien present in the United States who has not been

17 admitted,” 8 U.S.C. § 1225(a)(1), even though he is already present in this

18 country, would read the term “seeking admission” out of the statute, and would

19 require courts to ignore their obligation to give effect to each word of a statute

20 that Congress passes. See Lepe, 2025 U.S. Dist. LEXIS 187233, at *11-*12-*13

21 (citing Martinez, 2025 U.S. Dist. LEXIS 141724, at *13, and Lopez Benitez,

22 2025 U.S. Dist. LEXIS 157214, at *18); see also Shulman v. Kaplan, 58 F.4th

23 404, 410-11 (9th Cir. 2023) (requiring a court to “‘interpret the statute as a

1 whole, giving effect to each word and making every effort not to interpret a
2 provision in a manner that renders other provisions of the same statute
3 inconsistent, meaningless or superfluous[.]’”) (quoting Rodriguez v. Sony
4 Computer Ent. Am., LLC, 801 F.3d 1045, 1051 (9th Cir. 2015)).

6
7 102. Courts’ construction of statutory terms within 8 U.S.C. § 1225
8 supports a narrowing of mandatory detention under 8 U.S.C. § 1225(b)(2)(A) to
9 noncitizens who are detained while seeking to enter the country, instead of
10 noncitizens who already reside in the United States. See Rodriguez, 779 F. Supp.
11 3d at 1257-58. In Jennings v. Rodriguez, the Supreme Court described
12 inspections under 8 U.S.C. § 1225 as “part of a process that ‘generally begins at
13 the Nation’s borders and ports of entry, where the Government must determine
14 whether an alien seeking to enter the country is admissible.’” Id. at 1258
15 (quoting Jennings, 583 U.S. at 287). The Supreme Court noted that the
16 immigration laws “authorize[] the Government to detain certain [noncitizens]
17 seeking admission into the country under [8 U.S.C.] §§ 1225(b)(1) and (b)(2)[,]”
18 and “also authorize[] the Government to detain certain [noncitizens] already in
19 the country pending the outcome of removal proceedings under [8 U.S.C.]
20 §§1226(a) and (c).” Id. at 289. In Torres v. Barr, a panel of the Ninth Circuit,
21 construing a ground of inadmissibility for a noncitizen who lacked valid entry
22 documents “at the time of application for admission” at 8 U.S.C. §
23 1182(a)(7)(A)(i)(I), discerned that the statutory term “refers to the particular
24
25
26
27
28

1 point in time when a noncitizen submits an application to physically enter into
2 the United States.” Torres v. Barr, 976 F.3d 918, 924 (9th Cir. 2020). The Court
3 rejected the Government’s argument that the “time of application for admission”
4 within 8 U.S.C. § 1182(a)(7)(A)(i)(I) “continues, potentially for years or
5 decades[,]” after an immigrant enters the country. Id. at 926. The Court
6 explained that, “[g]iven that an immigrant submits an ‘application for admission’
7 at a distinct point in time, stretching the phrase ‘at the time of application for
8 admission’ to refer to a period of years would push the statutory text beyond its
9 breaking point.” Id. (quoting 8 U.S.C. § 1182(a)(7)(A)(i)(I), and citing Kyong
10 Ho Shin v. Holder, 607 F.3d 1213, 1220 (9th Cir. 2010)). Likewise, interpreting
11 the phrase “applicant for admission” in 8 U.S.C. § 1235(b)(2)(A) to conclude that
12 noncitizens are still “seeking admission” into the United States years after their
13 entry into this country would “push the statutory text beyond the breaking point.”
14 Echeverria, 2025 U.S. Dist. LEXIS 196174, at *19 (citing Vazquez v. Feeley,
15 U.S.D.C. No. 2:25-cv-01542-RFB-EJY, __ F. Supp. 3d __, 2025 U.S. Dist.
16 LEXIS 182412, at *12-*13 (D. Nev. Sept. 17, 2025).

17
18
19
20
21
22
23
24 103. The statutory context supports limiting the scope of section
25 235(b)(2)(A)’s mandatory detention provision to noncitizens detained while
26 attempting to enter the country, rather than noncitizens who are already present in
27 the United States. First, “the title of a statute and the heading of a section are
28 tools available for the resolution of a doubt about the meaning of a statute.”

1 Yates v. United States, 574 U.S. 528, 54 (2015) (quoting Almendarez-Torres v.
2 United States, 523 U.S. 224, 234 (1998)).

3
4 104. The title of section 235 of the INA, “Inspection by immigration
5 officers; expedited removal of inadmissible arriving aliens; referral for
6 hearing[,]” refers to an “inspection,” a procedure “that occurs at the border or
7 other ports of entry.” Lepe, 2025 U.S. Dist. LEXIS 187233, at *14 (citing Posos-
8 Sanchez v. Garland, 3 F.4th 1176, 1183 (9th Cir. 2021), and 8 C.F.R. § 235.1(a));
9
10 see also Zumba v. Bondi, U.S.D.C. No. 25-CV-14626 (KSH), __ F. Supp. 3d __,
11 2025 U.S. Dist. LEXIS 190052, at *23 (D.N.J. Sept. 26, 2025) (stating, in part,
12 that “the titles and headings of [8 U.S.C.] § 1225 repeatedly cabin its application
13 to Inspections, which...occur at ports of entry, their functional equivalent, or near
14 the border[.]”) (other internal quotation marks omitted). The title “refers to
15 ‘expedited removal,’ which applies to a noncitizen ‘who is arriving in the United
16 States’ and ‘is inadmissible.’” Lepe, 2025 U.S. Dist. LEXIS 187233, at *14
17 (quoting 8 U.S.C. § 1225(b)(1)(A)). The references to “arriving” individuals in
18 the statutory title and text “‘indicat[es] that the statute governs ‘arriving’
19 noncitizens, not those present already.’” Hernandez v. Baltazar, U.S.D.C. No.
20 1:25-cv-03094-CNS, 2025 U.S. Dist. LEXIS 210449, at *15 (D. Colo. Oct. 24,
21 2025) (quoting Barrera v. Tindall, U.S.D.C. No. 3:25-cv-541-RGJ, 2025 U.S.
22 Dist. LEXIS 184356, at *8 (W.D. Ky. Sep. 19, 2025)); see also Coalition for
23 Humane Immigrant Rights v. Noem, __ F. Supp. 3d __, U.S.D.C. No. 25-cv-872

1 (JMC), 2025 U.S. Dist. LEXIS 148615, at *87 (D.D.C. Aug. 1, 2025)
2 (determining that a “noncitizen ‘arriving’ in the United States” under 8 U.S.C. §
3 1225(b)(1)(A) “would be one who is in the process of reaching his or her
4 destination (the United States) and making an appearance here[.]”). Apart from
5 the title, “multiple other provisions” of 8 U.S.C. § 1225 “use ‘arrive,’ or some
6 conjugation thereof, to refer to physical arrival at a port of entry[.]” rather than a
7 person’s physical presence in the United States. Coalition for Humane
8 Immigrant Rights, 2025 U.S. Dist. LEXIS 148615, at *84-*85, *87 (citing 8
9 U.S.C. §§ 1225(b)(1)(F), 1225(b)(2)(C), and 1225(d)(2)).

10
11 105. Congress’ recent amendments to the mandatory detention provisions
12 at 8 U.S.C. §§ 1225 and 1226 undermine the Board’s holding that all noncitizens
13 who are present in the United States without inspection or admission are
14 “applicants for admission,” who qualify for mandatory detention under 8 U.S.C.
15 § 1225(b)(2)(A). In January of 2025, Congress passed the Laken Riley Act,
16 which amended 8 U.S.C. §§ 1225 and 1226, in part, to subject certain
17 inadmissible noncitizens who were “‘present in the United States without being
18 admitted or paroled,’ and who have been arrested, charged with, or convicted of
19 certain crimes[.]” to mandatory detention for their removal proceedings.
20 Rodriguez, 779 F. Supp. 3d at 1259 (quoting Laken Riley Act, Pub. L. No. 119-1,
21 139 Stat. 3 (2025) (codified at 8 U.S.C. § 1226(c)(1)(E), and 8 U.S.C. §
22 1182(a)(6)(A)(i)). If members of Congress thought that every “applicant for
23
24
25
26
27
28

1 admission” who was present in the United States without admission under 8
2 U.S.C. § 1225(a)(1) already faced mandatory detention under 8 U.S.C. §
3 1225(b)(2)(A), they did not need to amend the immigration laws to require the
4 detention of certain inadmissible noncitizens under 8 U.S.C. § 1182(a)(6)(A)(i)
5 who were “charged with, arrested for, or admit[] to” committing certain
6 offenses for their removal proceedings. See Lepe, 2025 U.S. Dist. LEXIS
7 187233, at *15 (quoting 8 U.S.C. § 1226(c)(1)(E)). The construction of section
8 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A) advanced by the Board and
9 other agency pronouncements, see supra ¶ 45, would render 8 U.S.C. §
10 1226(c)(1)(E) superfluous, Lepe, 2025 U.S. Dist. LEXIS 187233, at *15 (citing
11 Gomes, 2025 U.S. Dist. LEXIS 128085, at *18) (other internal citations omitted),
12 and would disregard the Supreme Court’s admonition against construing laws to
13 render statutory terms meaningless. See Corley v. United States, 556 U.S. 303,
14 314 (2009) (stating that “[a] statute should be construed so that effect is given to
15 all its provisions, so that no part will be inoperative or superfluous, void or
16 insignificant”) (quoting Hibbs v. Winn, 542 U.S. 88, 101 (2004)).

17
18
19
20
21
22
23
24 106. Congress enacted the Laken Riley Act “against the backdrop of
25 longstanding agency practice applying Section 1226(a) to inadmissible
26 noncitizens already residing in the country[,]” including noncitizens “who
27 entered the country without inspection.” Rodriguez, 779 F. Supp. 3d at 1259-60.
28 In circumstances “[w]hen Congress adopts a new law against the backdrop of a

1 ‘longstanding administrative construction,’ this Court generally presumes the
2 new provision should be understood to work in harmony with what has come
3 before.” Velázquez v. Bondi, 604 U.S. 712, 725 (2025) (quoting Haig v. Agee,
4 453 U. S. 280, 297-298 (1981)). Indeed, the Board admits that it previously
5 considered noncitizens who were present in the United States without admission
6 or parole to be eligible for bond. See Yajure Hurtado, 29 I. & N. Dec. at 216
7 n.16, cited in Lepe, 2025 U.S. Dist. LEXIS 187233, at *19 (stating that “[w]e
8 acknowledge that for years Immigration Judges have conducted bond hearings
9 for aliens who entered the United States without inspection”); see also Lopez
10 Benitez, 2025 U.S. Dist. LEXIS 157214, at *23 (noting “‘DHS’s longstanding
11 interpretation’ of [8 U.S.C.] § 1226(a) as ‘appl[ying] to those who have crossed
12 the border between ports of entry and are shortly thereafter apprehended[.]’”)
13 (quoting Martinez, 2025 U.S. Dist. LEXIS 141724, at *12 n.9). The
14 “‘longstanding practice of the government - like any other interpretive aid - ‘can
15 inform [a court’s] determination of what the law is.’” Lopez Bright, 603 U.S. at
16 385-86 (quoting NLRB v. Noel Canning, 573 U.S. 513, 525 (2014)). Federal
17 immigration officials’ longstanding application of section 236(a) of the INA, 8
18 U.S.C. § 1226(a), to people in Mr. Ovalle Lombana’s circumstances refutes the
19 Board’s construction of 8 U.S.C. § 1225(b)(2)(A), and supports Mr. Ovalle
20 Lombana’s assertion that 8 U.S.C. § 1225(b)(2)(A) does not mandate his
21 detention by the Respondents. See Lepe, 2025 U.S. Dist. LEXIS 187233, at *19

1 (citing Lopez Benitez, 2025 U.S. Dist. LEXIS 157214, at *23-*24).

2
3 107. As a noncitizen who has remained in the United States continuously
4 since March 29, 2022, [Exh. B, p. 2; Exh. G, p. 15], Mr. Ovalle Lombana is no
5 longer an applicant for admission who is “seeking admission” into the United
6 States at a border crossing or a Port of Entry, within the meaning of 8 U.S.C. §
7 1225(b)(2)(A). Moreover, federal immigration officials have not treated Mr.
8 Ovalle Lombana as a noncitizen, who faces expedited removal and mandatory
9 detention under section 235(b)(1) of the INA, 8 U.S.C. § 1225(b)(1). Instead,
10 federal immigration officials issued a Notice to Appear for removal proceedings
11 under section 240 of the INA, 8 U.S.C. § 1229a, to Mr. Ovalle Lombana, which
12 alleged that he was “an alien present in the United States who has not been
13 admitted or paroled[,]” rather than an “arriving alien.” [Exh. B, p. 3; Exh. C].
14 He has attended hearings in full removal proceedings with federal Immigration
15 Judges in Miami, Florida and in Adelanto, California since his case was filed
16 with the Immigration Court on or about September 1, 2022. [Exh. C].

22 108. Section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), does not
23 mandate Mr. Ovalle Lombana’s continued detention in the Respondents’ custody.
24 Accordingly, he respectfully requests that this Court issue an Order, declaring that
25 the “default rule” set forth at section 236(a) of the INA, 8 U.S.C. § 1226(a),
26 governs his detention. Jennings, 583 U.S. at 288.

28 109. As section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), does

1 not require his detention, Mr. Ovalle Lombana, through counsel, asks this Court
2 to issue an Order, directing his immediate release from the Respondents' custody.
3

4 **VIII.**

5 **PRAYER FOR RELIEF**

6
7 WHEREFORE, the Petitioner prays that this Court grant the following
8 requests for relief:

9
10 1. That this Court grant a writ of habeas corpus, which directs the
11 Respondents to show cause why the Petitioner should not be immediately
12 released from their custody;
13

14 2. That this Court issue an Order, enjoining the Respondents from
15 transferring Mr. Ovalle Lombana to a detention facility outside the United States
16 District Court for the Central District of California, pursuant to the All Writs Act,
17 28 U.S.C. § 1651(a);
18

19 3. That this Court declare that the Petitioner's continued detention in
20 the Respondents' custody violates the Due Process Clause of the Fifth
21 Amendment, and is not required by section 235(b)(2)(A) of the INA, 8 U.S.C. §
22 1225(b)(2)(A);
23
24

25 4. That this Court issue an Order, directing Mr. Ovalle Lombana's
26 immediate release from the Respondents' custody;
27

28 5. That this Court enjoin the Respondents from imposing additional
conditions on Mr. Ovalle Lombana's release from detention, such as a bond or

1 electronic monitoring, unless a neutral decisionmaker determines that such
2 conditions of release are necessary at a pre-deprivation hearing;

3
4 6. That this Court issue an Order, enjoining Mr. Ovalle Lombana's re-
5 arrest and re-detention by the Respondents without constitutional safeguards,
6 including pre-deprivation notice and a hearing before a neutral adjudicator;

7
8 7. That this Court award to the Petitioner and counsel reasonable
9 attorneys' fees, costs, and expenses incurred from bringing this action, in
10 conformity with the Equal Access to Justice Act, 28 U.S.C. § 2412; and
11

12 8. That this Court order any other relief that it deems appropriate.
13

14 Respectfully Submitted,

15 Dated: November 13, 2025

s/ Lori B. Schoenberg

LORI B. SCHOENBERG

LAW OFFICES OF LORI B. SCHOENBERG

611 Wilshire Boulevard, Suite 1006

Los Angeles, CA 90017

19 Attorney for Petitioner

20 Mauricio Alejandro Ovalle Lombana
21
22
23
24
25
26
27
28

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

I represent Petitioner Mauricio Alejandro Ovalle Lombana, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus, Pursuant to 28 U.S.C. § 2241, and Complaint for Declaratory and Injunctive Relief under the Administrative Procedure Act, 5 U.S.C. §§ 702-706, are true and correct to the best of my knowledge. Dated this 13th day of November, 2025.

s/ Lori B. Schoenberg
LORI B. SCHOENBERG