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IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Edgar Ruiz Rojas

Petitioner,

v.

Joshua JOHNSON, CoreCivic Acting Warden
ICE Adelanto Processing Center James CHIANG,
Acting Field Office Director, U.S. Immigration and
Customs Enforcement (ICE) Los Angeles Field
Office; Kristi NOEM, Secretary, United States
Department of Homeland Security; Pamela BONDI,
Attorney General of the United States; Darren K.
MARGOLIN, Director, Executive Office for
Immigration Review

Respondents.

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) PETITION FOR WRIT OF
) HABEAS CORPUS
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Case No.

Agency Case Number:

A 

I. INTRODUCTION

1. Utah Counsel are licensed to practice in and reside in Utah. Both Utah counsel will be seeking pro hac vice admission in this matter.
2. Petitioner Edgar Ruiz Rojas, by and through the above-named counsel of record, submits this Petition for Writ of Habeas Corpus against the above-named Respondents for unlawful detention in violation of the laws and constitution of the United States.
3. Petitioner has been detained without any individualized bond hearing, due to Respondents' novel theory that because the law defines him as an applicant for admission, he is subject to mandatory detention without bond, despite his complete lack of any contact whatsoever with any U.S. immigration officer prior to his arrest on September 30, 2025.
4. Petitioner is a 39-year-old citizen and native of Mexico. Petitioner entered the United States without inspection in April of 2003. (Exhibit A: Affidavit of Fatima Herrera.)
5. Petitioner was convicted of driving under the influence in Utah in 2011. (Exhibit B: State Criminal Court Docket.)
6. Petitioner has three United States citizen minor children and is engaged to a United States citizen. (Exhibit A: Affidavit of Fatima Herrera.) Petitioner and his family all reside in West Valley City, Utah. (*Id.*) Petitioner and his fiancé have been in a relationship since January of 2024 and have been living together since March of 2025. (*Id.*) Petitioner and his fiancé were set to marry two days after ICE detained him. (*Id.*)
7. Petitioner is the main economic provider for his household. Petitioner is active and involved in his children's lives. (*Id.*) Petitioner is a loving and supportive partner to his fiancé. (*Id.*)
8. On the morning of September 30, 2025, Respondents, Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE), detained Petitioner in Utah while he was driving to work. (*Id.*)
9. Respondents provided no arrest warrant, nor have they provided any other factual or legal justification for detaining Petitioner.
10. On September 30, 2025, DHS issued a Notice to Appear to initiate removal proceedings against Petitioner. Respondents thereafter transferred Petitioner to the Adelanto Detention Center in Adelanto, California. (Exhibit C: Notice to Appear.)

11. Subsequently, on November 17, 2025, DHS filed Form I-261, amending allegations 3 and 4 of the Notice to Appear. (Exhibit D: Form I-261 Amending the Notice to Appear.)
12. Petitioner has been detained without a bond hearing at the Adelanto Detention Center in violation of the constitution and laws of the United States. (Exhibit E: ICE Detainee Locator Printout.)
13. Petitioner submits this Petition for Writ of Habeas Corpus and requests an immediate order to show cause against the above-named Respondents because Petitioner is being unlawfully detained—held without bond—in contravention of the laws, regulations, and constitution of the United States.
14. Petitioner’s continued detention without bond is an unlawful violation of due process, an incorrect interpretation of immigration law, a violation of the applicable regulations, and is ultra vires to DHS’s statutory authority.

II. JURISDICTION

15. Petitioner is in the physical custody of Respondents, detained at the Adelanto ICE Processing Center in Adelanto, California. (*Id.*)
16. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause), and 5 U.S.C. § 702.
17. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, 5 U.S.C. § 706 and the All Writs Act, 28 U.S.C. § 1651.

III. VENUE

18. Pursuant to *Burden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court of Central California, the judicial district in which Petitioner is currently detained. Thus, residents of Utah and attorneys who reside in Utah are forced to file this action in California solely because ICE moved the Petitioner from Utah to California.
19. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in California.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

20. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
21. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative relief in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

V. PARTIES

22. Petitioner is a citizen of Mexico. He has been a resident of Utah for more than 20 years. He has resided in the United States since approximately 2003. (Exhibit A: Affidavit of Fatima Herrera.)
23. ICE officials did not issue a warrant prior to arresting Petitioner, nor does it appear that a warrant for his arrest has been issued subsequently, inasmuch as no warrants have been provided to Petitioner’s counsel.
24. Respondent Joshua Johnson is employed by CoreCivic as Acting Warden of the Adelanto ICE Processing Center, where Petitioner is detained. Mr. Johnson has immediate physical custody of Petitioner. He is sued in his official capacity.
25. Respondent James Chiang is the Acting Director of the Las Angeles Field Office of ICE’s Enforcement and Removal Operations Division. As such, Mr. Chiang is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He is named in his official capacity.
26. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. (DHS). DHS is the principal federal department responsible for implementing and enforcing the Immigration and Nationality Act (INA), including the detention and removal of noncitizens. Ms. Noem oversees ICE, which is responsible for Petitioners’ detention. Ms. Noem has ultimate custodial authority over Petitioners and is sued in her official capacity.
27. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department Justice, of which the Executive Office for Immigration Review (EOIR) (the immigration courts) is a component agency. She is sued in her official capacity.

28. Respondent Darren K. Margolin is the Director of the Executive Office for Immigration Review (EOIR), which is the federal agency with the Department of Justice responsible for implementing and enforcing the INA in removal proceedings, including for custody redetermination in bond hearings and appellate review of Immigration Judge decisions. He is sued in his official capacity.

VI. SUMMARY OF PRIOR PROCEEDINGS

29. On the morning of September 30, 2025, Petitioner was driving to work when ICE pulled him over. (Exhibit A: Affidavit of Fatima Herrera.)
30. Petitioner was detained, refused an ICE bond, and transferred to the Adelanto ICE Processing Center in Adelanto, California. (Exhibit E: ICE Detainee Locator Printout.)
31. On September 5, 2025, the Board of Immigration Appeals (BIA), the appellate branch of defendant Executive Office for Immigration Review (EOIR) issued a precedent decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
32. In *Yajure* the BIA ignored the U.S. constitution, the statutory language, the record of Congressional intent, the regulations implementing IRRIRA, and more than two decades of BIA precedent, including a precedent decision issued June 30, 2025, (*Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025)), to hold that EOIR employee Immigration Judges do not have statutory authority to consider bond requests or to grant bonds to any foreign national who entered without inspection, regardless of length of residence or ties to the U.S.
33. The *Yajure Hurtado* decision binds all immigration judges (IJ's) across the United States. Subsequent to that decision, all IJs have been forced to deny bond in cases where the foreign national entered the United States without inspection, regardless of the length of the foreign national's presence in the United States, or the foreign national's ties to the United States. In some cases, IJs are instructing counsel not to "waste the IJ's time" even filing the bond request.
34. As applied to this Petitioner, the agency's ruling in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is an unconstitutional violation of his right to due process of law.
35. The agency's conclusion in *Yajure*, holding that all foreign nationals present in the United States without being admitted are subject to mandatory detention without bond, contradicts the statutory language, the agency's own regulations, the expressed Congressional intent, the agency's own prior precedents, and U.S. Supreme Court and Federal Court precedent.

VII. LEGAL FRAMEWORK

A. CIVIL DETENTION PROVISIONS OF THE INA¹

36. “In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).
37. This fundamental principle of our free society is enshrined in the Fifth Amendment’s Due Process Clause, which specifically forbids the Government to “deprive[]” any “person . . . of . . . liberty . . . without due process of law.” U.S. Const. amend. V.
38. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law”).
39. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 678.
40. The Supreme Court, thus, “has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection,” including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); see also *Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).
41. In 1996, acting within the recognized constraints of constitutional due process, Congress rebalanced and codified three explicit detention regimes for noncitizens. Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. No. 104-208, Div. C. §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.

¹ Petitioner is indebted throughout this section to the thorough history and analysis found in the orders of Judges Frimpong, Wright II and Snyder of the Central District of California. See, e.g., *RUIZ-Yarleque v. NOEM*, 5:25-cv-02836-MEMF-SP, (CD CA Oct. 31, 2025); *GOMEZ-Garcia et. al. v. NOEM*, 5:25-cv-02771-ODW (PDx) (CD. CA Oct. 22, 2025); and *ZARAGOZA-Mosqueda et al v. NOEM*, 5:25-cv-02304 CAS (BFM) (CD CA Sept. 8, 2025).

42. First, as found in 8 U.S.C. § 1225, the statute provides for detention without bond of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other arriving aliens, as defined at 8 C.F.R. §§ 1.2 and 1001.1(q).
43. Second, 8 U.S.C. § 1226 authorizes the issuance of administrative warrants for the detention of noncitizens for standard removal proceedings before an Immigration Judge. *See* 8 U.S.C. § 1229a.
44. Finally, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)-(b).
45. This case concerns the detention provisions at §§ 1225 and 1226.
46. The detention provisions at § 1225 and § 1226 were enacted in 1996 as part of IIRIRA.
47. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).
48. Following enactment of IIRIRA, EOIR drafted new regulations establishing that, in general, people who entered the country without inspection were not subject to the border detention regime of § 1225 and that they were instead subject to the detention provisions of § 1226. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 63 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
49. Individuals arrested and detained pursuant to the procedures of § 1226 are presumed to be entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), unless they have been arrested, charged with, or convicted of certain crimes, in which case they are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).
50. The regulations published at 63 Fed. Reg. 10312, 10323 (Mar. 6, 1997) were consistent with the constitutionally reviewed procedures of decades of prior practice, in which noncitizens present in the U.S.—noncitizens who were not “arriving aliens” as defined at 8 C.F.R. § 1001.1(q)—were entitled to a custody hearing before an Immigration Judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1251(a)).

51. Those regulations are consistent with the record of Congressional intent, as documented in the Report of the Committee on the Judiciary on H.R. 2202, Report No. 104-469, Part I (March 4, 1996) and in the Report of the Conference Committee, Report No. 104-828 (September 24, 1996).
52. The Congressional record shows that Congress was very aware during the drafting of IIRIRA of the constitutional parameters within which they were working. That includes the robust precedent establishing that persons present in the U.S., regardless of their manner of entry, are constitutionally entitled to due process of law, including when they are subject to civil detention. See, e.g., *Yick Wo v. Hopkins*, 118 U.S. 356, (1886); *Yamataya v. Fisher*, (Japanese Immigrant Case) 189 U.S. 86 (1903); *Plyler v. Doe*, 102 S. Ct. 2382 (1982).
53. As explicitly set out in the implementing regulations, individuals (like the Petitioner) arrested and detained in the interior of the United States after months, years or decades of physical presence in the U.S., are presumed to be entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), unless they have been arrested, charged with, or convicted of certain crimes, in which case they are subject to mandatory detention, see 8 U.S.C. § 1226(c).
54. The regulations published at 63 Fed. Reg. 10312, 10323 (Mar. 6, 1997) are consistent with the constitutionally reviewed procedures of decades of prior practice, in which noncitizens present in the U.S.—noncitizens who were not “arriving aliens” as defined at 8 C.F.R. § 1001.1(q)—were entitled to a custody hearing before an Immigration Judge or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1251(a)).
55. Respondents’ predecessor agencies initially proposed regulations which would have done precisely what Respondents now assert Congress intended. That is, the proposed regulations published in January 1997 included explicit language stating, with regard to the 8 U.S.C. 1226, “An immigration judge may not exercise authority provided in this section and the review process described in paragraph (d) of this section shall not apply with respect to: (i) inadmissible aliens in removal proceedings.” 62 F.R. 444, 483 (January 3, 1997) [236.1(c)(5)(i)].
56. Had that regulation remained as proposed, *Matter of Yajure Hurtado* would have been unnecessary: instead, it would have been the law for the past nearly thirty years.

57. But in 1997 when the government published the final regulations that proposed language was explicitly and deliberately removed, with the following explanation:

The supplementary information stated the Department's intended approach, and clause (i) of the proposed regulation was in error. Accordingly, the interim rule removes paragraph (c)(5)(i) of § 236.1 and renumbers the remaining paragraphs (c)(5)(ii), (iii), and (iv). The effect of this change is that inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not.

62 F.R. 10312, 10323 (March 6, 1997). Compare 62 F.R. 10312, 10361 [236.1(c)(5)(i)] with 62 F.R. 444, 483 [236.1(c)(5)(i)].

58. In other words, the BIA's assertion in *Yajure Hurtado* that the Immigration Judges do not have authority to adjudicate bonds for any inadmissible alien, (otherwise defined in 8 U.S.C. § 1225(a) as an "applicant for admission") was considered and explicitly rejected when the implementing regulations were published in 1997.
59. The Ninth Circuit has held that an executive branch agency such as the BIA cannot 'overrule' by adjudication regulations that were promulgated after notice and comment. *Patel v. INS*, 638 F.2d 1199, 1202 (9th Cir. 1980).
60. In the decades that followed implementation of IIRIRA, the common understanding of the law was that 8 U.S.C. § 1226 applied to nearly everyone who entered the United States without inspection.
61. As a result, individuals like the Petitioner, detained after years of physical presence in the United States, were routinely placed in standard removal proceedings and received bond hearings, in accordance with the provisions of 8 U.S.C. § 1226(a) unless their criminal history rendered them ineligible.
62. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United State, were constitutionally entitled to the due process protection of an individual detention hearing before an Immigration Judge or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1251(a)); see also, *Yamataya v. Fisher*, (Japanese Immigrant Case) 189 U.S. 86 (1903).
63. Following the promulgated regulations, in the nearly three decades since IIRIRA, persons such as the Petitioner in this case—noncitizens present in the United States who have never applied for admission or presented themselves for inspection (the class of persons

who ‘entered without inspection’ or EWI’s as they are routinely labeled)—were routinely arrested based on the warrant and other procedures set out in § 1226.

64. Despite the regulations and the nearly three decades of practical implementation, DHS, on July 8, 2025, published a notice titled “Interim Guidance Regarding Detention Authority for Applicants for Admission.” The notice was disseminated internally, to all ICE employees. (Exhibit ??).

65. The consequences of this change of policy are described in *ZARAGOZA-Mosqueda et al v. NOEM*, 5:25-cv-02304 CAS (BFM) (CD CA Sept. 8, 2025), *supra*, note 1 p. 2:

The immigration judges’ decisions were consistent with a recent DHS policy¹ that considers anyone arrested within the United States and charged with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) to be an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A). *Id.* at Ex. Y. Pursuant to section 1225(b)(2)(A) “applicants for admission” who are “seeking admission” are subject to mandatory detention. *Id.* Prior to the new policy, foreign nationals, like petitioners, who were charged with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for being present in the United States without being admitted or paroled were considered detained pursuant to 8 U.S.C. § 1226(a), which allows for release on bond or conditional parole. *Id.* at 1-2.

ZARAGOZA-Mosqueda et al v. NOEM, p. 2; *see also*, *GOMEZ-Garcia et. al. v. NOEM*, 5:25-cv-02771-ODW (PDx) (CD. CA Oct. 22, 2025) at 2.

66. In *GOMEZ-Garcia*, Judge Wright noted that the Board of Immigration Appeals (BIA) adopted this same statutory interpretation in its precedent decision, *Matter of Yajure Hurtado* 29 I&N Dec. 216 (BIA 2025). *Id.*

67. As explained by Judge Frimpong:

[The BIA] issued its decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025), in which it found that an IJ lacks the “authority to hear a bond request filed by an applicant for admission” under 8 U.S.C. § 1225(b), because the noncitizen is an “applicant for admission” as someone “present in the U.S. without admission” and thus subject to “mandatory detention.” *See id.* at 220-24. BIA decisions are binding on IJs. 8 C.F.R. § 1003.1(g).

RUIZ-Yarleque v. NOEM, 5:25-cv-02836-MEMF-SP, (CD CA Oct. 31, 2025) at 4.

68. In other words, despite the conflicting regulatory language, express Congressional intent and long-standing constitutional due process protections required prior to detaining long-term residents of the U.S., it is now the explicit legal position of the U.S. Department of Justice, Executive Office for Immigration Review (EOIR) that all non-citizens present within the United States who have not been lawfully admitted are subject to mandatory

detention without bond or even a bond hearing, regardless of the length of their physical presence or their ties to the United States.

69. The Petitioner is presently detained without bond, based on the Defendants' novel legal interpretation that 8 U.S.C. § 1225(b)(2)(A) applies to him because he is defined as "an applicant for admission" regardless of whether he is presently seeking admission or ever has sought admission.
70. Judges Snyder, Wright, and Frimpong, along with judges in many other courts across the U.S., have held that noncitizens like the Petitioner, who entered the United States without inspection many years ago, are not "arriving aliens" and are not "seeking admission" and are therefore not subject to the mandatory detention regime of 8 U.S.C. § 1225(b)(2)(A).
71. All three judges of the Central District of California have held that noncitizens who are not "seeking admission" are subject to the detention provisions of 8 U.S.C. § 1226(a), which authorize a bond redetermination hearing before an Immigration Judge.
72. All three judges have rejected the government's arguments that long-term residents who entered without inspection and are not seeking admission are subject to the detention regime of 8 U.S.C. § 1225(b)(2)(A). *RUIZ-Yarleque v. NOEM*, 5:25-cv-02836-MEMF-SP, (CD CA Oct. 31, 2025); *GOMEZ-Garcia et. al. v. NOEM*, 5:25-cv-02771-ODW (PDx) (CD. CA Oct. 22, 2025); and *ZARAGOZA-Mosqueda et al v. NOEM*, 5:25-cv-02304 CAS (BFM) (CD CA Sept. 8, 2025).
73. Petitioner has not sought a bond redetermination hearing from the Immigration Judges handling his case, because, as Judge Frimpong noted, "BIA decisions are binding on IJs." *Ruiz-Yarleque, supra*. As a result, following the BIA decision in *Yajure Hurtado*, Immigration Judges no longer have jurisdiction (according to their superiors within EOIR) to grant bonds to individuals in Petitioner's factual circumstances.

B. CONSTITUTIONAL DUE PROCESS

74. In determining whether due process has been violated, the Court should weigh: (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

75. As to the first *Mathews* factor, the private interest affected by the government action, “Petitioner’s liberty interest in remaining free from governmental restraint is of the highest constitutional import.” *Zavala*, 310 F.Supp.2d at 1076; *see also Ashley*, 288 F.Supp.2d at 670-71 (same) (quoting *St. John v. McElroy*, 917 F.Supp. 243, 250 (S.D.N.Y. 1996)).
76. Petitioner is a long-term resident of the United States—with U.S. Citizen children—who has been detained without bond.
77. Petitioner does not have a criminal record that would make him ineligible for an immigration bond. He has nonetheless been prevented from supporting his U.S. citizen children and other family members.
78. As to the second *Mathews* factor, this Court must look to the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards. As explained above, the current procedures cause an erroneous deprivation of the interest of the Petitioner in remaining at liberty, free from detention.
79. As to the third *Mathews* factor, the government’s interest in maintaining the “current” procedure is minimal here. The sole interest of the government is in spending all the resources Congress has granted it to detain all immigrants, regardless of lack of danger, regardless of ties to the U.S., regardless of length of stay, regardless of the requirements of constitutional due process.
80. In order to prevail on a claim asserting the deprivation of due process, a petitioner must also show prejudice. “To show prejudice, [a Petitioner] must present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided.” *Tamayo-Tamayo v. Holder*, 486 F.3d 484, 495 (9th Cir. 2007) (citation omitted) (internal quotations omitted).
81. Prior to the Respondents’ policy change, the Petitioner would have been eligible for a bond hearing before an Immigration Judge.
82. Respondents’ have reinterpreted the statutory language after nearly thirty years.
83. Respondents’ reinterpretation ignores the text of the statute, reading out of the statute a critical modifier. Respondents’ reinterpretation violates the implementing regulations, the express intent documented in the Congressional Record and the fundamental principles of constitutional due process.

84. Respondents' reinterpretation voids without legal authority or justification the prior detention provisions Congress explicitly established to protect the constitutional due process rights of the Petitioner and other similarly situated non-citizens.
85. If the Defendants had permitted the Immigration Judges to exercise the same authority they have exercised on these facts for over sixty years, the Petitioner would have been granted bond, posted it, and been home with his family by now.
86. The continued detention of Petitioner based on the BIA's unconstitutional statutory reinterpretation as announced in *Yajure-Hurtado*, constitutes actual prejudice.
87. Petitioner has no other forum in which to seek judicial review of the constitutional and legal issues raised by his continued detention on the basis of Defendants' actions, memos, and decisions.
88. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas* at 690.
89. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be immediately provided with a bond hearing before an Immigration Judge, and that thereafter he be allowed to pay the bond granted by the Immigration Judges and to be released.

VIII. CLAIMS FOR RELIEF

COUNT I

Violation of the INA and Governing Regulations

90. Petitioner incorporates by reference the facts and law set forth in the preceding paragraphs.
91. Petitioner entered the United States without inspection. He has been present within the United States for more than twenty-two years; he has three U.S. citizen children and a U.S. citizen fiancé who he was scheduled to marry on October 2nd, 2025, two days after ICE took him into custody.
92. Petitioner has been issued a Notice to Appear in removal proceedings pursuant to 8 U.S.C. § 1229a.

93. Respondents' reinterpretation of 8 U.S.C. § 1225(b)(2)(A) as authority for detaining Petitioner without bond not only violates the regulations, it seeks to overrule by agency decision regulations that were promulgated through notice and comment.
94. Respondents' reinterpretation of 8 U.S.C. § 1225(b)(2)(A) as authority for detaining Petitioner without bond is an unconstitutional interpretation of the statutory language, without basis in prior precedent or the record of Congressional intent.

COUNT II

Violation of Fifth Amendment Right to Due Process of Law

95. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
96. The Government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d. 653 (2001).
97. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).
98. The Ninth Circuit has also held that "[r]emaining confined in jail when one should otherwise be free is an Article III injury plain and simple[.]" *Gonzalez v United States Immigr. & Custome Enf't*, 975 F.3d 788, 804 (9th Cir. 2020) (quoting *Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th Cir. 2014)).
99. Petitioner has a fundamental interest in liberty and being free from official restraint.
100. The Government's continued detention of Petitioner, without bond, is a clear violation of his constitutional right to due process under the law.
101. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioners of his liberty.
102. Respondents' continued detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community).

103. There is no credible argument that this Petitioner cannot be safely released back to his community and family.
104. For these reasons, continued detention of the Petitioner violates the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter.
- b. Issue a writ of habeas corpus requiring that Respondents immediately provide Petitioner with a bond hearing, and that Petitioner be allowed to post bond and be released.
- c. Declare that Petitioner's continued detention without bond or any individualized determination of danger or flight risk violates the Due Process Clause of the Fifth Amendment;
- d. Issue an Order prohibiting the Respondents from transferring Petitioners from the district without the court's approval.
- e. Award Petitioner's attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under the law;
and
- f. Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED this 21st day of November, 2025.

STOWELL CRAYK, PLLC

/s/ Marti L. Jones
Attorney for Petitioner

PARKINSON BENSON POTTER

/s/ Brett Parkinson
Attorney for Petitioner

EXHIBIT LIST

- A. Affidavit of Fatima Herrera**
- B. State Criminal Court Docket – 2011 DUI**
- C. Notice to Appear**
- D. Form I-261 Amending the Notice to Appear**
- E. ICE Detainee Locator Printout**
- F. Immigration Court Hearing Notice**
- G. Interim Guidance Regarding Detention Authority for Applicants for Admission**