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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MODESTA ARAUJO-CONTRERAS Plaintiff and Petitioner,	Case No.:
vs.	Hon:
JAMES JANECKA, Warden of the Adelanto Detention Center; ERNESTO SANTACRUZ, Director of the Los Angeles Field Office, United States Immigration and Customs Enforcement; PAM BONDI, Attorney General, United States Department of Justice; KRISTI NOEM, Secretary, United States Department of Homeland Security; TODD LYONS, Acting Director of Unites States Immigration and Customs Enforcement; and DOES 1-5 Defendants-Respondents	**WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUCTIVE RELIEF**

INTRODUCTION

1. This case challenges the unlawful and punitive detention of Plaintiff-Petitioner, who is currently in the custody of Immigration and Customs Enforcement ("ICE") at in B-18 located at 300 North Los Angeles Street, Los Angeles, CA. Petitioner is neither a flight risk nor a danger to the community.

2. Unless the Court orders Petitioner's immediate release, she will continue to be subjected to unlawful and punitive detention.

3. Plaintiff-Petitioner is not challenging or seeking judicial review of the initiation of removal proceedings, the way his removal proceedings are or would be conducted, or the adjudication of immigration relief by the EOIR or USCIS.

4. Through their uniform practices Respondents violate the rights of Petitioner under the due process and equal protection guarantees of the U.S. Constitution, the INA and its regulations, and the Administrative Procedure Act.

JURISDICTION AND VENUE

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

6. This Court has further jurisdiction under 28 U.S.C. § 2241, 2243, art. I § 9, cl. 2 of the United States Constitution ("Suspension Clause"), and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of the authority of the

United States based on the service of a Notice to Appear, and such custody is in violation of the Constitution, laws, or treaties of the United States.

7. This Court also may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651.

8. This court has further remedial authority pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq..

9. The use of the Writ of Habeas Corpus to challenge detention by ICE is not foreclosed by the REAL ID Act. The REAL ID Act of 2005, Pub. L. 109-13, 119 Stat. 231 (May 11, 2005), Title I, Section 106(c), amending INA §§ 242(a)(2)(A), (B), (C) and § 242(g), only deprives the district court of habeas jurisdiction to review orders of removal, not challenges to detention or the denial of constitutional rights. *See INS v. St. Cyr,* 533 U.S. 289, 364-65 (2001) ("The writ of habeas corpus has always been available to review the legality of executive detention.").

10. This Court could enjoin federal officials pursuant to *Ex Parte Young*, 209 U.S. 123 (1908). *See Philadelphia Co. v. Stimson*, 223 U.S. 605, 619–21 (1912) (applying *Ex Parte Young* to federal official); *Goltra v. Weeks*, 271 U.S. 536, 545 (1926) (same).

11. Plaintiff-Petitioner has exhausted all administrative remedies to the extent available and required by law.

12. Venue properly lies within the Central District of California, because each named Defendant-Respondent is present in this district and a substantial part of the events or omissions giving rise to this action occurred and continue to occur in this District. *See* 28 U.S.C. §1391(b). Moreover, Petitioner is currently detained within

this district to wit, at B-18, 300 North Los Angeles Street, Los Angeles, CA. Accordingly, the "restraint complained of" is occurring within the Court's territorial jurisdiction. *See* 28 U.S.C. § 2241(a)

13. No petition for habeas corpus has previously been filed in any court to review this the named Plaintiff-Petitioner's detention.

PARTIES

14. Plaintiff-Petitioner **MODESTA ARAUJO-CONTRERAS** is a 63-year-old national and citizen of Mexico who was arrested by ICE on 17 December 2025 during her adjustment of status interview without a probable cause, without a warrant, without providing her a prior notice or an opportunity to be heard.

15. The U.S. Department of Homeland Security ("DHS") is a cabinet department of the United States federal government with the primary mission of securing the United States.

16. ICE is an agency within DHS with the primary mission of arresting, detaining, and removing non-citizens physically present within the territory of the United States. ICE is also responsible for the custody and care of all detained non-citizens awaiting resolution of their immigration cases or removal after a final order of removal had been entered.

17. Defendant Kristi Noem is the Secretary for DHS. In this capacity, Ms. Noem has responsibility for the administration of immigration laws pursuant to 8 U.S.C. §1103(a), has authority over ICE and its field offices, and has authority to order the release of Plaintiff-Petitioner. At all times relevant to this Complaint, Defendant Noem was acting within the scope and course of her position as the

Secretary for DHS. Defendant Noem is sued in her official capacity.

18. Defendant-Respondent Todd Lyons is the Acting Director and Senior Official Performing the Duties of the Director of ICE. Defendant Lyons is responsible for the implementation of all ICE's policies, practices, and procedures, including those relating to detention of non-citizens. Defendant Lyons is a legal and immediate custodian of Plaintiff. At all times relevant to this Complaint, Defendant Lyons was acting within the scope and course of his position as an ICE official. He is sued in his official capacity.

19. Defendant-Respondent Ernesto Santacruz is the Acting Director of the Los Angeles Field Office of ICE, who currently has immediate and physical custody of Plaintiff-Petitioner. He is sued in his official capacity.

20. Defendant James Janecka is the warden of the Adelanto Detention Facility in San Bernardino County, where Plaintiff-Petitioner will likely be detained. Defendant Janecka is the immediate and/or the physical custodian of Plaintiff. He is named in his official capacity.

21. The true names or capacities, whether individual, corporate, associate or otherwise, of the Defendants-Respondents named herein as Does 1 through 5 are unknown to Plaintiff-Petitioner, who therefore sues said Respondents by such fictitious names, and Plaintiff will amend this Complaint to show their true names and capacities when ascertained. Does 1 through 5 are the immediate, physical custodians of Plaintiff

FACTS RELEVANT TO ALL CAUSES OF ACTIONS

22. Petitioner first entered the United States back in 1983 when she was barely 20 years old. Petitioner's United States children were born on [redacted] and [redacted] respectively.

23. About a month after her child was born Petitioner and her husband were placed in deportation proceedings with the issuance of an order to show cause.

24. In 1996 Petitioner left the United States on a brief trip to visit her sick father with the intent to return to her unrelinquished residence and deportation proceedings.

25. She attempted to enter using an I-94 and an I-551 stamp which the legacy INS deemed to be fraudulent. Rather than continue with the pending deportation proceedings, Respondents placed her in exclusion proceedings and in September 1996 Petitioner accepted an exclusion without understanding the consequences.

26. She was physically removed on or about 17 September 1996 and reentered the next day. Both the exclusion order and the illegal re-entry occurred prior to the effective date of IIRIRA.

27. In March 2001 Petitioner's United States citizen brother filed a form I-130 Petitioner (Family Relative Petition) which accorded Petitioner the status of a 'grandfathered alien' for purposes of section 245(i) adjustment.

28. When her daughter turned 21 in 2005, Christina filed a second I-130 Petition and Petitioner filed a concurrent I-485 application for adjustment of status. The

second set of I-130/I-485 filings render Petitioner a class member and subject to the term of the settlement agreement in *Duran Gonzalez v. DHS,* No. CV 06- 1411-MJP (W.D. Wash., settlement approved Jul. 21, 2014)(provided remedies against reinstatement for class members who like Petitioner filed adjustment of status and I-212 waiver applications within the jurisdiction of the Ninth Circuit on or after August 13, 2004 and on or before November 30, 2007).

29. Respondents denied Petitioner's applications for adjustment of status in 2008 based on denial of her 601waiver finding that the hardship to Petitioner's LPR mother was not sufficiently great.

30. In September 2025 Petitioner filed a new I-485 and I-212/601 waiver based on changed circumstances, to wit, extreme hardship to Petitioner's 83 years old LPR mother who is bedridden and reliant entirely on Petitioner for care with daily function.

31. For over 24 years Petitioner raised her children, worked, took care of her husband and her mother while Respondents adjudicated her applications for relief. medical, daily, survival and ambulatory needs. *See Respondent's declaration.*

32. Respondent has tried several times to file an affirmative application for adjustment of status with the necessary waiver applications. The USCIS will not adjudicate them as long as the exclusion and deportation order remains on her record,

even though there is no executable order of removal in effect against Petitioner because the 1996 order was already executed.

33. Respondents have not reinstated the 1996 removal order.

RELEVANT IMMIGRATION STATUTORY SCHEME

Immigration Detention

47. The INA governs the use of immigration detention both pre- and post-final order. Post-final-order immigration detention is governed by 8 U.S.C § 1231(a); pre-final-order detention for non-citizens present in the country is governed by 8 U.S.C. § 1226(a).

48. In 8 U.S.C. §§ 1226 and 1231 Congress created different, but interrelated, comprehensive frameworks for detaining criminal and non-criminal non-citizens.

49. Section 1226 authorizes the detention of non-citizens during removal proceedings: section 1226(a) controls non-criminal aliens' detentions, while section 1226(c) controls criminal aliens' detentions. *See* 8 U.S.C. § 1226(a)&(c). Once a non-citizen's removal proceedings are completed ICE's detention authority is controlled by section 1231, which also distinguishes between non-criminal and criminal non-citizens. *See* 8 U.S.C. § 1231.

Section 1226(a) and Non-Criminal Non-citizens During Removal Proceedings

50. The Attorney General has discretion to detain a non-criminal non-citizen "pending a decision on whether the alien is to be removed from the United States." *See* 8 U.S.C. § 1226(a). The Attorney General may detain the non-citizen for the

duration of the removal proceedings or release him on bond or conditional parole. *See* 8 U.S.C. § 1226(a)(1)-(2).

51. In connection with § 1226(a), the DHS promulgated regulations setting out the process by which a non-criminal non-citizen may obtain release. The regulations provide that, in order to obtain bond or conditional parole, the "alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." *See* 8 C.F.R. § 1236.1(c)(8).

Section 1226(c) and Criminal Non-citizens
During Removal Proceedings

52. Although the Attorney General has broad discretion to release non-criminal non-citizens during the pendency of their removal proceedings, the INA limits the Attorney General's discretion in the case of criminal non-citizens. Specifically, section 1226(c) mandates that "[t]he Attorney General shall take into custody any alien who . . . is deportable by reason of having committed [certain specified offenses]." *See* 8 U.S.C. § 1226(c)(1)(B).

53. Section 1226(c) provides that the Attorney General may release a criminal non-citizen "only if" necessary for narrow witness protection purposes. *See* 8 U.S.C. § 1226(c)(2). Under § 1226(c), custody is mandatory for criminal non-citizens throughout the entirety of their removal proceedings, and there is no statutory possibility for release on bond.

54. Petitioner was never detained under the authority of section 1226(c) as she has no criminal record of any kind.

Detention Pursuant to 8 U.S.C. § 1225(b)(2) and Respondents New Detention Practices

55. Under § 1225(b)(2), "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." 8 U.S.C. § 1225(b)(2). By contrast, an alien arrested on a warrant issued by the Attorney General "may" be detained but is also eligible for release on bond. 8 U.S.C § 1226(a). Courts have repeatedly held that § 1225 applies to arriving aliens, while § 1226 governs detention of "aliens already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 281 (2018). Petitioner is not an arriving alien nor is she seeking an entry to the US under § 1225 but has resided continuously in the United States for the last 28 years.

56. For decades, long-term residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history or if a prior order of removal is re-instated.

57. In July 2025, however, ICE began asserting that all individuals who entered without inspection should be considered "seeking admission" and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

58. On September 5, 2025, the BIA issued a precedential decision adopting this interpretation, departing from the INA's text, federal precedent, and existing regulations. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

59. Respondents' new legal interpretation is plainly contrary to the statutory framework and its implementing regulations. Indeed, for decades, Respondents had applied § 1226(a) to people like the Petitioner. Defendants' new policies are thus not only contrary to law, but are arbitrary and capricious in violation of the Administrative Procedure Act ("APA"). They were also adopted without complying with the procedural requirements of the APA.

60. The Courts to have addressed the issue have found the Government invocation of the mandatory detention provision under section 1225 unlawful and have ordered release of non-citizens held in detention based of such erroneous reading of the Immigration and Nationality Act and application of § 1225(b) to noncitizens who, like Petitioner, are not apprehended upon arrival in the United States. *See Rodriguez Vasquez* v. *Bostock,* No. 3:25-CV-05240-TMC,---F.Supp.3d---, 2025 WL 1193850 (W.D.Wash. Apr. 24, 2025); *Maldonado Bautista v. Ernesto Santacruz Jr*, No. 5:25-cv-01873-SSS-BFM, (C.D. Cal. filed July 23, 2025)(certifying a class and granting summary judgment to the class holding that Respondents' policy is unlawful) ; *see also Gomes v. Hyde,* No. 1:25-CV- 11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) granting habeas based on same ground); *Diaz A1artinez v. Hyde,* No. CV 25-11613-BEM,---F.Supp. 3d--- 2025 WL 2084238, at *9 (D. Mass. July 24, 2025) (ordering release where noncitizen was redetained based on ICE's assertion of detention authority under§ 1225(b)); *Sampiao v. Hyde,* 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court's disagreement with BIA's analysis in *Yajure Hurtado*); *see also Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Kostak v.*

Trump, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025).

61. Under *Loper Bright v. Raimondo*, this Court should independently interpret the statute and give the BIA's expansive interpretation of § 1225(b)(2) no weight, as it conflicts with the statute, regulations, and precedent. 603 U.S. 369 (2024).

62. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Following IIRIRA, the Executive Office for Immigration Review ("EOIR") issued regulations clarifying that individuals who entered the country without inspection were not considered detained under § 1225, but rather under § 1226(a). *See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

63. The statutory context and structure also make clear that § 1226 applies to individuals who have not been admitted and entered without inspection. In 2025, Congress added new mandatory detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted. *See* The Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025) (8 U.S.C. § 1226(c)(1)(E)).

64. By specifically referencing inadmissibility for entry without inspection under 8 U.S.C. § 1182(6)(A), Congress made clear that such individuals are otherwise covered by § 1226(a). Thus, § 1226 plainly applies to noncitizens charged as inadmissible, including those present without admission or parole.

65. The Supreme Court has explained that § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 297, 2987 (2018). In contrast, Section 1226 "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Id.* at 289 (emphases added).

66. Furthermore, § 1225(b)(2) specifically applies only to those "seeking admission," and the implementing regulations at 8 C.F.R. § 1.2 address noncitizens who are "coming or attempting to come into the United States." The use of the present progressive tense would exclude noncitizens like Petitioner who are apprehended in the interior years after they entered, as they are no longer "seeking admission" or "coming […] into the United States." *See Martinez v. Hyde*, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); *see also Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing "is arriving" in INA § 235(b)(1)(A)(i) and observing that "[t]he use of the present progressive, like use of the present participle, denotes an ongoing process").

67. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner, who last had entered the U.S. approximately 28 years ago.

68. Detention under section 1231

69. Once a non-citizen is subject to a final order of removal detention authority shifts to 8 U.S.C. § 1231(a)." *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022) ("[Section] 1231(a) . . . governs the detention, release, and removal of individuals 'ordered removed.'").

70. The INA directs that "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days. *See* 8 U.S.C. §1231(a)(1)(A). Section 1231(a)(6) of the INA provides, in turn, that an alien "may be detained beyond the removal period" but only if the alien "has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal" or in certain circumstances that are not relevant here. *See* 8 U.S.C §1231(a)(6). Otherwise, "[i]f the alien does not leave or is not removed within the removal period, the alien, pending removal, *shall be subject to supervision* under regulations prescribed by the Attorney General." *See* 8 U.S.C. §1231(a)(3)(emphasis added).

71. Indeed, in *Zadvydas*, the Supreme Court explained that section 1231 provides a "choice . . . not between imprisonment and the alien 'living at large,'" but "between imprisonment and supervision under release conditions that may not be violated." *See Zadvydas*, 533 U.S. at 696. Thus, *Zadvydas* establishes a presumption of *continuing* release on supervision after the removal period expires unless conditions imposed are violated by the non-citizen or the order of removal is executed. *Id.*

72. By enacting 8 C.F.R. §241.4(l)(2) however, Respondents have turned this continuing "supervision under release conditions that may not be violated" into a *discretionary* decision at the whim of deportation officers regardless of any condition violation.

73. But, Congress in section 1231(a) spoke in unambiguous terms in setting a temporal removal period and a direction of release on supervision after the expiration of the 90-day removal period unless specific findings are made by the AG making release not reasonable. By providing "authority" to the agency to enact regulations for the statutory mandated "supervision" and a fill-gap authority to establish "reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien" Congress did not, however, provide unfettered discretion to the agency to revoke the statutory mandated release on supervision for reasons unrelated to violations of conditions of release. Since section 241.4(l)(2)(i) & (iv) are inconsistent with the specific statutory authority delegated to the agency by section 1231(a)(3) and violate the presumption of continuing release on supervision without violation of the "written conditions" on which the supervision was granted, the regulation is violative of the unambiguous language of the statute. Defendants cannot by regulation circumvent the clear and unambiguous language of the statute. *See Pereira v Sessions*, 138 S.Ct. 210, 214 (2018) ("If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress")

Reinstatement of Removal

74. Under § 1231(a)(5):

> If the Attorney General finds that an alien has reentered the United States illegally after having been removed . . . under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.

75. Under § 1231, Respondents have authority to reinstate a noncitizen's prior removal order when he or she reenters the country unlawfully. "The only factual predicates for reinstatement are that (1) petitioner is an alien, (2) who was subject to a prior removal order, and (3) who illegally reentered the United States." *Morales de Soto v. Lynch*, 824 F.3d 822, 825 (9th Cir. 2016) (cleaned up).

76. Respondents, however, are not required to reinstate a removal order; rather officers may exercise prosecutorial discretion and place someone in removal proceedings under INA § 240 in lieu of issuing a reinstatement order under INA § 241(a)(5), Morales de Soto, 824 F.3d at 825; *Villa-Anguiano v. Holder*, 727 F.3d 873, 878 (9th Cir. 2013) (reinstatement of removal under the INA is neither "automatic" nor "obligatory" and citing to *Alcala v. Holder*, 563 F.3d 1009, 1013 (9th Cir.2009)), or proceed to adjudicate an application for relief for which the non-citizen is eligible.

77. When DHS decides to start a reinstatement process DHS procedures require officers to ask whether the person has a fear of return. If the person indicates a fear of return during reinstatement proceedings, DHS must refer him or her to an asylum officer for a reasonable fear interview. 8 C.F.R. §§ 208.31, 241.8(e).

78. If no fear of return is expressed a DHS officer must follow the Regulations applicable to reinstatements. Specifically, the officer must conduct a review of the record and provide the non-citizen with an opportunity to present evidence and rebut any factual findings. 8 C.F.R. § 241.8(b).

79. At the conclusion of the interrogation, the officer completes the top portion of Form I-871, titled "Notice of Intent/Decision to Reinstate Prior Order." This portion of the form contains the factual allegations against the individual, including that he or she is not a U.S. citizen, the date of the prior order, and the date of illegal reentry. It also states that there is no right to a hearing before an immigration judge. The officer must present the notice portion of Form I-871 to the individual to sign and to indicate whether he or she wishes to make a statement contesting the determination. *Id.* ("If the [individual] wishes to make . . . a statement, the officer shall allow the [individual] to do so and shall consider whether the [individual]'s statement warrants reconsideration of the determination.").

80. A different officer then signs the bottom portion of Form I-871, labeled "Decision, Order and Officer's Certification." DHS officers often sign the top and bottom portions of the form at the same time and without following the mandated process, which renders the order immediately executable and begins the 30-day period for filing a petition for review, unless the person expresses a fear of return to his or her country of origin.

81. DHS is also supposed to serve the noncitizen's attorney with a copy of the reinstatement order if the attorney has filed a Notice of Entry of Appearance (Form G-28) with DHS. See 8 C.F.R. § 292.5(a) (requiring notice and service of papers

on counsel or the individual if unrepresented); see also 8 C.F.R. § 103.8(c)(2) (related to personal service of persons in penal or mental institutions, incompetents, and minors under the age of 14).

82. If a non-citizen expresses a fear of return, DHS must refer her for a reasonable fear interview. If the asylum officer determines the person did not establish a reasonable fear, the person may seek review of that determination by an IJ. 8 C.F.R. §§ 208.31(f), (g); 1208.31(f), (g). If the IJ disagrees with the asylum officer's determination, the person then may apply for withholding of removal and CAT protection before the IJ. 8 C.F.R. §§ 208.31(g)(2); 1208(g)(2). If the IJ agrees with the asylum officer's determination, the person cannot appeal to the BIA. 8 C.F.R. §§ 208.31(g)(1); 1208.31(g)(1).

83. Here, Respondents exercised the discretion afforded them under the Act when they accepted Petitioner's I-485 (application for adjustment of status), I-212 waivers, and 601 waiver applications and allowed Petitioner to remain free of any restraint.

The Ameliorative Congressional Scheme under section 245(i) and the LIFE Act

84. One of the most important forms of relief under the INA is adjustment of status, colloquially know as 'an application for a green card'. Section 245(a) of the Act allows a non-citizen who has been inspected and admitted or paroled into the United States to adjust his or her status to that of an person lawfully admitted for permanent residence. To be eligible for adjustment of status under section 245(a), an applicant must make an application for adjustment, be eligible to receive an immigrant visa, be admissible to the United States for permanent residence, and have an immigrant visa immediately

available to him or her at the time the application was filed. The applicant must also demonstrate that he or she merits adjustment of status in the exercise of discretion.

85. Section 245(i) of the Act permits adjustment of status for certain grandfathered aliens who are ineligible under section 245(a) because they entered without inspection or who are barred under section 245(c) of the Act. In addition to having been grandfathered, applicants for adjustment of status under section 245(i) must be admissible to the United States, be eligible to receive an immigrant visa, demonstrate that an immigrant visa is immediately available, and establish that adjustment is warranted in the exercise of discretion. *See* sections 245(i)(2)(A)–(B) of the Act; *see also Matter of Rajah,* 25 I&N Dec. 127, 134 (BIA 2009). In most cases, applicants for adjustment under section 245(i) must also pay a $1,000 penalty fee.

86. As originally enacted, section 245(i) permitted an a non-citizen who had entered the United States without inspection or who was barred under section 245(c) to apply for adjustment of status between October 1, 1994, and October 1, 1997, at which time the provision would "sunset." *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1995, Pub. L. No. 103-317, § 506(b)–(c), 108 Stat. 1724, 1765–66, (effective Oct. 1, 1994). The 1 October 1997 sunset date was later repealed, and Congress created a new requirement that any application for section 245(i) adjustment had to be based on a visa petition that had been filed before 14 January 1998. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-119, § 111(a)–(b), 111 Stat. 2440, 2458 (enacted Nov. 26, 1997).

87. As relevant to Petitioner, the 14 January 1998 deadline for the filing of qualifying visa petitions was later extended to 30 April 2001. *See* LIFE Act Amendments of 2000, Div. B, Pub. L. No. 106-554, § 1502(a)(1), 114 Stat. 2763, 2763A-324 (enacted Dec. 21, 2000) ("LIFE Act Amendments") (effective as if included in the enactment of the Legal Immigration Family Equity Act, tit. XI, Pub. L. No. 106-553, 114 Stat. 2762, 2762A-142 (2000) ("LIFE Act")).

88. After the enactment of the LIFE Act and the LIFE Act Amendments, only non-citizens who were grandfathered by a qualifying visa petition or labor certification remained eligible for section 245(i) adjustment beyond the 30 April 2001 sunset date.

89. Although the term does not appear in the Act, the regulations define a "grandfathered alien" as "an alien who is the beneficiary (including a spouse or child of the alien beneficiary if eligible to receive a visa under section 203(d) of the Act)" of a qualifying visa petition or labor certification that was filed on or before 30 April 2001. 8 C.F.R. § 1245.10(a)(1)(i). Petitioner is one such 'grandfathered alien' who by Congressional pronouncement is forgiven the entry without inspection inadmissibility ground based on the I-130 Petition filed by his sister. See Exhibit C.

COUNT ONE

Detention in Violation of the Fifth Amendment
(substantive due process)
Against all Defendants

90. Petitioner repeats and incorporates by reference all allegations in paragraphs 1 to 89 above.

91. The Fifth Amendment guarantees that no person shall be deprived of liberty 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 Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

92. "Government detention violates the Due Process Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards, or in certain special and non-punitive circumstances 'where a special justification, . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004) (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)).

93. Respondents cannot show any "special justification" or compelling governmental interest which would outweigh Petitioner's constitutional liberty.

94. The governmental interest in the continued detention of these least-dangerous individuals does not and cannot outweigh the liberty interest at stake.

COUNT TWO
Violation of Fifth Amendment Right
Procedural Due Process
Against All Defendants

95. Petitioner repeats and incorporates by reference all allegations in paragraphs 1 to 89 above.

96. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.

97. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

98. Under the *Mathews v. Eldridge* framework, the balance of interests strongly favors Petitioner's release.

99. Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

100. The risk of erroneous deprivation is exceptionally high. Petitioner has never been arrested and has deep ties to the community.

101. The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690.

102. Furthermore, the "fiscal and administrative burdens" of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35.

103. Considering these factors, Petitioner respectfully requests that this Court order her immediate release from custody or in the alternative order that he be provided with a bond hearing before an immigration judge where Respondents bear the burden of proof.

COUNT THREE
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond
Against All Respondents

104. Petitioner repeats and incorporates by reference all allegations in paragraphs 1 to 89 above.

105. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a). Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

106. Petitioner has not been, and will not be, provided with a bond hearing by Respondents as required by law unless the Court so order.

107. Petitioner's continuing detention is therefore unlawful.

COUNT FOUR
Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19
Against All Respondents

108. Petitioner repeats and incorporates by reference all allegations in paragraphs 1 to 89 above.

109. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service ("INS") issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension,

Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

110. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT FIVE

Non-Statutory Ultra Vires Action/Accardi Doctrine Violation Against all Defendants

111. Petitioner repeats and incorporates by reference all allegations in paragraphs 18 to 89 above.

112. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Petitioner under the circumstances of this case.

113. Petitioner has a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires actions in holding him in punitive immigration detention without an opportunity to be heard and apply for a bond.

114. Under the *Accardi* doctrine, Petitioner also has a right to set aside agency action that violated agency procedures, rules, or instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 ("If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").

115. Respondents violated agency regulations governing who and upon what findings it may holding individual without an opportunity for release.

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SUBSTANTIAL LIKELIHOOD OF SUCCESS

116. Petitioner repeats and incorporates by reference all allegations in paragraphs 1 to 115 above.

117. As shown above Petitioner has shown substantial likelihood of success on her statutory and constitutional claims.

NOTICE AND IRREPARABLE HARM

118. Pursuant to Federal Rule of Civil Procedure 65(b)(1) and Local Rules 7-19 and 65-1, immediately after filing this Petition, Petitioner's Counsel will provide a copy of the Petition and notice of intent to seek Rule 65(a) relief ex parte.

119. Petitioner has resided in the United States for over 29 years and have established deep roots in the communities. Because of her unlawful arrests and detention she has been separated from family members, including her children and disabled mother, and friends. She is experiencing severe emotional distress and is not receiving the medical cares she needs.

120. "It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is

necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (cleaned up). Permitting continued violations of federal law would serve "neither equity nor the public interest." *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022). Thus, the public interest weighs in favor of the Petitioner because continued detention without the legal protections afforded by the INA, Due Process, and the prohibition against non-refoulement potentially violates his due process and statutory rights. *See Xuyue Zhang v. Barr*, 612 F.Supp.3d 1005, 1017 (C.D. Cal. 2019) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.").

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Issue a Temporary Restraining Order ordering release of Petitioner or in the alternative that Respondents provide him with a constitutionally valid bond hearing before an Immigration Judge;

(3) Issue a Writ of Habeas Corpus on the ground that Petitioner's continued detention violates the Due Process Clause and order Petitioner's immediate release;

(4) In the alternative, issue injunctive relief ordering Respondents to immediately release Petitioner, on the ground that his continued detention violates Plaintiff's constitutional due process rights;

(5) Issue an injunction ordering Respondents not to arrest and detain Petitioner without a proper finding that he has committed a violation of the conditions of release;

(6) Issue an injunction ordering Respondents not revoke Petitioner's grant of release without providing prior written notice, an opportunity to respond, and be represented by counsel prior to deprivation of liberty;

(7) Issue an injunction prohibiting the transfer of Petitioner outside of the jurisdictional limits of this Court;

(8) Enter a judgment declaring that Respondents' detention of Petitioner is and will be unauthorized by statute and contrary to law;

(9) Award Petitioner reasonable costs and attorney fees.

Date: 12/17/2025

Verified and Submitted by

_____*s/ Nicolette Glazer Esq.*________

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