

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

DENIS YABRENCO HERNADEZ ESPINOZA)

A# )

Petitioner,)

vs.)

CODY YOUGHN, *in his official capacity as*)
Sheriff of Irwin Detention center; and)
LADEON FRANCIS, *Field Office Director for ICE*)
Atlanta Field Office, and)
TODD LYONS, *in his official capacity as Acting*)
Director of Immigration and Customs Enforcement, and)
KRISTI NOEM, *Secretary of Homeland Security, and*)
PAMELA BONDI, *U.S. Attorney General*)

Respondents.)

CASE No:
7:25-cv-201-WLS-AGH
28 U.S.C. § 2241

**PETITIONER'S REPLY TO GOVERNMENTS' RESPONSE OR RESPONSE TO THE
RETURN OF THE ORDER TO SHOW CAUSE**

I. 8 U.S.C. § 1252(e)(3) Does Not Limit This Court's Jurisdiction

Respondents' argument that 8 U.S.C. § 1252(e)(3) strips this Court of jurisdiction is incorrect and rests on a misreading of both the statute and controlling precedent. Section 1252(e)(3) is a narrow provision designed to channel systemic or facial challenges to the validity of the expedited removal "system"—or its implementing regulations and policies—to the U.S. District Court for the District of Columbia. It does not, and was never intended to, bar as-applied, individualized habeas challenges to the legality or constitutionality of a particular noncitizen's detention. Petitioner is not challenging the validity of the expedited removal system; he is asserting that he is being held "pursuant to the erroneous application or interpretation of relevant law."

The Supreme Court's reasoning in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), is instructive. In *Jennings*, the Court clarified that jurisdiction-stripping provisions designed to channel review of removal orders do not bar collateral challenges to the legality of an alien's detention. While *Jennings* analyzed 8 U.S.C. § 1252(b)(9), its core principle applies with equal force here: a claim challenging the statutory authority for detention is not a claim "arising from" a removal proceeding. As the Second Circuit explained when applying this principle, "§ 1252(b)(9) does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined." Petitioner's claim falls squarely into this category. He is not contesting a removal order, but the government's fundamental statutory authority to detain him under § 1225(b) in the first place.

This interpretation is reinforced by clear congressional intent. The legislative history of the REAL ID Act confirms that its jurisdiction-stripping provisions "would not preclude habeas review over challenges to detention that are independent of challenges to removal orders." Petitioner's claim—that Respondents are misapplying § 1225(b) and that § 1226(a) is the proper statutory authority for his custody—is precisely such an independent challenge.

As this Court rightly held in *J.A.M. v. Streeval*, No. 4:25-CV-342 (CDL), 2025 WL 3050094, at *1 (M.D. Ga. Nov. 1, 2025), Petitioner is not challenging the "implementation" of 8 U.S.C. § 1225(b)(2) when he "asserts that Respondents lack statutory authority to detain him under § 1225(b)(2) because that statute does not apply to an alien in his circumstances." That is Petitioner's exact argument here— that any statutory authority for his detention can only be supported under 8 U.S.C. § 1226(a). Accordingly, § 1252(e)(3) does not deprive this Court of jurisdiction to hear his petition.

II. Petitioner Is Subject to Release from Detention Under 8 U.S.C. § 1226(a)

- A. This Court should follow the district precedent and hold that Petitioner is not an arriving alien and is not subject to mandatory detention under 8 U.S.C. § 1225.

The government's detention of Mr. Hernandez Espinoza is unlawful. As Respondents concede (ECF No. 6 at 1-2), this Court's recent decisions in *J.A.M. v. Streeval*, No. 4:25-v-342-CDL-AGH (M.D. Ga. Nov. 1, 2025), and *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025), which rejected the government's novel detention theory under 8 U.S.C. § 1225(b)(2), are controlling. This Court should adhere to its sound legal reasoning in those cases.¹ Petitioner's detention is not authorized by law and he is therefore entitled to immediate release. Immediate release is the appropriate remedy here because the government already previously determined that he is not a flight risk or danger when it released him on the OREC and he was detained after years of full compliance with the OREC.

Respondents' own declaration underscores the inconsistency of their position. While they characterize the 2022 encounter as an "unlawful entry," their subsequent actions prove they did not treat him as a mandatory detention case. The declaration states: "On or around March 25, 2022, a Customs and Border Protection (CBP) encountered the Petitioner at the Del Rio, Texas Border

¹ See also *O.G.L. v. Warden et al.*, No. 4:25-CV-508-CDL-AGH, 2026 WL 36498, at *1 (M.D. Ga. Jan. 6, 2026) (finding the petitioner is currently detained under 8 U.S.C. § 1226(a) and therefore not subject to mandatory detention as required by 8 U.S.C. § 1225(b)(2), citing to *J.A.M. v. Streeval*); *id.* at *1, n2 ("The brevity of this order is appropriate given that the issue presented is exactly the same as the issue previously decided on numerous occasions by the Court and **yet Respondents insist upon denying the relief that the Court has found is required.**" (emphasis added)); *E.E.A.G. v. Warden, et al.*, No. 4:25-CV-510-CDL-AGH, 2026 WL 36499, at *1 (M.D. Ga. Jan. 6, 2026); *A.G.V. v. Warden, et al.*, No. 4:25-CV-511-CDL-AGH, 2026 WL 36535, at *1 (M.D. Ga. Jan. 6, 2026) (same); *J.G.L. v. Warden, et al.*, No. 4:25-CV-518-CDL-AGH, 2026 WL 36537, at *1 (M.D. Ga. Jan. 6, 2026) (same); *V.G.G. v. Warden et al.*, No. 4:25-CV-509-CDL-AGH, 2026 WL 36497, at *1 (M.D. Ga. Jan. 6, 2026); *E.E.R.B. v. Warden, et al.*, No. 7:25-CV-203-WLS-AGH, 2026 WL 36691, at *1 (M.D. Ga. Jan. 6, 2026) (same); *A.H.C.C. v. Warden, et al.*, No. 7:25-CV-192-WLS-ALS, 2026 WL 36692, at *1 (M.D. Ga. Jan. 6, 2026); *A.B.E. v. Warden, et al.*, No. 7:25-CV-195-WLS-AGH, 2026 WL 36693, at *1 (M.D. Ga. Jan. 6, 2026).

Patrol Sector, **following his unlawful entry into the United States.** The Petitioner was subsequently arrested and transported to the Soft Sided Centralized Processing Facility in Eagle Pass, Texas, for processing. Exhibit D, Form I-213, dated March 26, 2022.” Immediately after this processing, Respondents released Petitioner on an OREC under 8 U.S.C. § 1226, an action that is irreconcilable with their current claim that he was subject to mandatory detention under § 1225 all along.

Additionally, a nationwide class in *Maldonado Bautista v. Santacruz* now has been certified, become final, and granted declaratory relief to all class members—including Mr. Hernandez Espinoza—, holding that they are being detained without a bond hearing unlawfully.² Furthermore, the judgement, which is final and binding on Respondents until it is reversed or stayed by a court of appeals, VACATED the July 2025 ICE memo as unlawful under the Administrative Procedures Act (APA). The government cannot detain Petitioner based on a policy that has been declared a legal nullity, which is a stand-alone reason for immediate release.

² On November 25, 2025, in *Maldonado Bautista v. Santacruz*, the U.S. District Court for the Central District of California certified a Bond Eligible Class, comprised of the following individuals:

All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

*2 --- F.R.D. ---, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025); *see* *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). The court declared unlawful under the APA the Administration’s July 8, 2025 “Interim Guidance Regarding Detention Authority for Applicants for Admission” notice that required anyone arrested in the U.S. and being charged as inadmissible as being subject to mandatory detention under 8 U.S.C. § 1225. The *Maldonado Bautista* court then **granted declaratory relief to members of the Bond Eligible Class** and **vacated the Department of Homeland Security policy** requiring ICE agents to treat every person who entered the United States without inspection as “seeking admission” under 8 U.S.C. § 1225(b)(2) and thereby subject to mandatory detention. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3713987, at *1, *32 (C.D. Cal. Dec. 18, 2025), judgment entered sub nom. *Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025).

As a member of the *Maldonado Bautista* class, Petitioner is entitled to the same relief. *See Mohammadi v. Larose*, No. 3:25-CV-3450-JES-BJW, 2025 WL 3731737, at *2 (S.D. Cal. Dec. 26, 2025) (“To the extent that Petitioner’s detention was due to application of this [new DHS policy] notice, this case gives independent support for why Petitioner cannot be subject to mandatory detention in these circumstances.”); *Perez-Regalado v. Feeley, et al.*, No. 2:25-CV-02409-RFB-EJY, 2026 WL 36112, at *1 (D. Nev. Jan. 6, 2026) (“Outside of the Court’s own analysis, the Court also recognizes that Petitioner is a member of the class certified in *Bautista v. Santacruz*, [], and that the District Court’s Order in *Bautista* has recently become final, extending declaratory relief to the class.”); *Mendes v. Hyde*, No. 25-CV-627-JJM-AEM, 2025 WL 3496546, at *3 (D.R.I. Dec. 5, 2025) (The *Bautista* “relief is a declaratory judgment holding that class members are detained under Section 1226(a) rather than Section 1225(b)(2).”). Contrary to Respondents’ claim (ECF No. 6 at 7, n.4), the government’s appeal (which did not include a stay) does not affect the applicability or availability of this declaratory relief.

B. Petitioner’s Release on Recognizance constituted parole pursuant to 8 C.F.R. 236.1(c). Respondents are estopped from re-characterizing his detention status.

Petitioner was released on a Form I-220A, Order of Release on Recognizance (OREC), which documents a custody determination made under 8 U.S.C. § 1226(a) and its implementing regulation, 8 C.F.R. § 236.1. Both federal courts and the Board of Immigration Appeals have repeatedly recognized that an OREC constitutes a release under § 1226(a) pending removal proceedings—not parole under 8 U.S.C. § 1182(d)(5)(A). *See, e.g., Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115-16 (9th Cir. 2007) (holding that a noncitizen released on an “Order of Release on Recognizance” necessarily must have been detained and released under § 1226, including because he was not an “arriving alien” under the regulations governing § 1225 examinations); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 485 (S.D.N.Y. 2025) (Release on

one's own recognizance is done pursuant to § 1226; it is a form of "conditional parole" from detention, authorized under § 1226); *Martinez v. Hyde*, 792 F. Supp. 3d 211, 215 (D. Mass. 2025) (explaining that petitioner's release on her own recognizance "does not indicate that she was examined or detained under section 1225 but instead explicitly premises her release on section 1226 ('[i]n accordance with section 236 of the Immigration and Nationality Act.'");³ *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023) (This binding precedent on Respondents held that release on one's own recognizance is a release under INA 236(a)(2)(B), 8 U.S.C. § 1226(a)(2)(B), therefore § 1225(b) could not possibly apply to Petitioner's case).

Here, DHS's consistent treatment of Mr. Hernandez Espinoza as subject to detention on a discretionary basis under § 1226(a), "is fatal to Respondents' claim that he is now subject to mandatory detention under § 1225(b))." *Lopez Benitez*, 795 F. Supp. 3d at 483–84. Respondents' own evidence clearly demonstrates their determination throughout Mr. Hernandez Espinoza's entire immigration journey that he is—and always has been—subject to only 8 U.S.C. § 1226. The Notices to Appear (NTA) issued in 2018 and 2022, both checked the box stating Petitioner "is an alien present in the United States who has not been admitted or paroled" (ECF Nos. 6-3 and 6-7) and the

³ As the district court in *Martinez v. Hyde*, explained, individuals detained following examination under section 1225 can only be paroled into the United States "for urgent humanitarian reasons or significant public benefit". 792 F. Supp. 3d at 215, (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018) (quoting 8 U.S.C. § 1182(d)(5)(A) ("section 1182(d)(5)(A)")). Tellingly, release on recognizance is not "humanitarian" or "public benefit" "parole into the United States" under section 1182(d)(5)(A) but rather a form of "conditional parole" from detention upon a charge of removability, authorized under § 1226. *Id.* This distinction reflects more than an officer's choice of paperwork because, although both styled as "parole," these two mechanisms serve fundamentally different purposes. *Id.* Parole "into the United States," under section 1182(d)(5)(A), permits a non-citizen to physically enter the country, subject to a reservation of rights by the Government that it may continue to treat the non-citizen "as if stopped at the border." *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). Section 1226 governs a separate (non-mandatory) detention scheme applicable when an individual is "already in the country" and Conditional parole, under section 1226(a)(2)(B), instead releases a non-citizen already in the country from domestic detention. *Martinez*, 792 F. Supp. 3d at 215, citing *Jennings*, 583 U.S. at 289.

2025 NTA indicates the same (*id.* at 6-9). Similarly, the 2022 Order of Release on Recognizance explicitly states that “[i]n accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your recognizance”. *Id.* at 6-6; *see* INA § 236, 8 U.S.C. § 1226; 8 C.F.R. § 236.1(c)(8) (“Any officer authorized to issue a warrant of arrest may, in the officer’s discretion, release an alien [], under the conditions at section 236(a)(2) and (3) of the Act; provided that 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.”). “It is apparent that [Respondents’ Order of Release on Recognizance is] another name for ‘conditional parole’ under § 1226(a). None of the forms issued to [Petitioner] makes any reference whatsoever to ‘parole into the United States’ under § 1182(d)(5)(A).” *See Martinez*, 792 F. Supp. 3d at 216. Thus, in determining that Petitioner was eligible for release under § 1226 and issuing him an OREC, the government necessarily included the legal findings that he was not subject to mandatory detention under § 1225, and that he was not a danger or a flight risk.

Respondents are barred by the doctrine of collateral estoppel from re-characterizing the statutory basis for Petitioner’s detention. This eleventh-hour attempt to retroactively apply § 1225(b) is an impermissible post hoc rationalization that the Court must reject. *Cf. Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 22 (2020) (holding an agency must defend its actions based on the reasons it gave when it acted, not on subsequent justifications). By releasing Petitioner on an Order of Release on Recognizance (OREC) explicitly under the authority of 8 U.S.C. § 1226(a), the government made a binding legal determination that it cannot now abandon simply because it has changed its litigation posture.

The doctrine of collateral estoppel, or issue preclusion, bars a party from re-litigating an

issue of fact or law if four elements are met: (1) the issue is identical to one decided in a prior proceeding; (2) the issue was actually litigated and determined; (3) the determination was a critical and necessary part of the prior decision; and (4) the party against whom estoppel is asserted had a full and fair opportunity to litigate the issue. All four elements are satisfied here.

First, the issue is identical. The question then, as now, is whether Petitioner's custody is governed by the discretionary release framework of 8 U.S.C. § 1226(a) or the mandatory detention framework of 8 U.S.C. § 1225(b).

Second, the issue was actually determined by DHS. The government's own evidence confirms that on March 26, 2022, it issued Petitioner an Order of Release on Recognizance (OREC). That OREC explicitly premised the release on "section 236 of the Immigration and Nationality Act"—8 U.S.C. § 1226. This was a formal agency adjudication of Petitioner's custody status, not a procedural oversight. The government considered the applicable law, made a definitive choice, and issued a formal order based on that determination.

Third, the determination was critical and necessary to the release. A decision to release a noncitizen on their own recognizance is a discretionary act authorized only under § 1226(a). Conversely, § 1225(b) mandates detention. Therefore, the legal finding that § 1226(a) was the governing statute was a prerequisite for the OREC to be lawfully issued. Without that determination, Petitioner's release would have been contrary to law.

Fourth, the party against whom estoppel is asserted—the government—is the same party that made the original determination. DHS had a full and fair opportunity to assess the facts and law when it chose to proceed under § 1226(a). It is now bound by that decision.

For years, Petitioner relied on the government's formal determination, scrupulously complying with all conditions of his release. To permit Respondents to unilaterally reverse their

position now—without any change in facts or law, and for the first time in this litigation—would be fundamentally unfair and would render the agency’s own custody adjudications meaningless. Having made its choice, the government is estopped from claiming § 1226 never applied.

III. The Court Should Order Petitioner’s Immediate and Unconditional Release

Petitioner’s detention is not the result of an initial custody determination but an unlawful re-arrest executed in violation of mandatory federal regulations, his constitutional right to due process, and the agency’s own prior binding finding that he was eligible for discretionary release on recognizance. As such, his detention was unlawful *ab initio*. Given that Petitioner’s detention is unlawful, the appropriate remedy is immediate release, not merely a bond hearing that would prolong his illegal confinement. *See* ECF No. 1 at 47-50; *see also Flores-Boziere v. Bondi et al.*, 5:24-cv-1853-JKP, 2026 U.S. Dist. LEXIS 1859 *12, 2026 LX 29597 (WDTX January 5, 2026) (finding that because Petitioner cannot be detained under 1225(b)(2) and Respondents do not assert that they are detaining Petitioner under 1226, the Court should order outright release).

A. Respondents’ revocation of the OREC violated mandatory regulations and was executed without lawful authority

Respondents admit that Petitioner was previously released on an OREC and also admit that on December 5, 2025, DHS revoked it. ECF Nos. 6, 6-1 at ¶ 9. And Respondents do not contest that Petitioner had never violated his OREC or the Intensive Supervision Appearance Program (ISAP) conditions. Yet, Respondents wholly ignore Petitioner’s valid claim that Respondents unlawfully revoked the OREC in violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and implementing regulations, the Administrative Procedure Act, and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions. By not disputing this claim, Respondents essentially concede that Respondents failed to lawfully or properly revoke the OREC.

As Petitioner outlined in his Petition, Respondents revoked his OREC revocation without providing (a) a written notice revoking his ISAP participation or Order of Supervision; (b) a statement of reasons for his detention; (c) an interview or opportunity to respond; (d) identification of the authorized official who ordered the revocation; or (e) any warrant, charging document. Petitioner just went to his regular check-in and was suddenly detained and was not afforded any opportunity to contest the detention, despite repeatedly inquiring about the reason for his detention. Following his arrest, Petitioner was transferred to 180 Ted Turner Drive SW, Atlanta, Georgia. On December 7, 2025, he was transferred to the Irwin County Detention Center, where he remains detained to date. To date, Respondents have still not provided Petitioner with written revocation notice, no pre-deprivation hearing nor any meaningful opportunity to be heard.

The authority to revoke an Order of Release on Recognizance (OREC) is strictly limited by regulation to a narrow group of high-level officials. 8 C.F.R. § 236.1(c)(9) provides: “When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign), in which event the alien may be taken into physical custody and detained.” This authority is exclusive, and DHS Delegation Order 7030.2 expressly prohibits its redelegation. Any revocation by an unauthorized official is therefore *ultra vires* and invalid.

Furthermore, the regulatory framework for changing a noncitizen’s custody status is explicit and mandatory. To revoke an OREC, DHS must: (1) issue a new custody determination, typically via Form I-286; (2) provide contemporaneous written notice to the noncitizen; and (3) advise the individual of the right to seek prompt review by an Immigration Judge. *See* 8 C.F.R.

§ 236.1(d)(1)–(3). These are not mere formalities but substantive safeguards to ensure any deprivation of liberty is based on individualized information and subject to fair adjudication.

Here, none of these mandatory procedures were followed and this failure to comply renders the revocation invalid. *See, e.g., Santamaria Orellana v. Baker*, No. 1:25-cv-02841 (D. Md. Oct. 7, 2025); *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765, at 10 (E.D.N.Y. Sept. 29, 2025).

B. The OREC Revocation Violated Petitioner’s Fifth Amendment Right to Due Process

Respondents’ argument that Petitioner is owed only the process Congress provides to arriving aliens is fundamentally flawed and ignores the critical facts of this case. The government’s reliance on the plenary power doctrine and cases like *Department of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), is misplaced. This is not a case about the process due to an alien at the border seeking initial admission. It is a case about the constitutional protections owed to an individual who was released into the United States, lived here for years under supervision, and then had his liberty summarily revoked without Due Process.

The government’s position ignores the crucial distinction between an alien at the “threshold of initial entry” and one who has been released into the interior. In *Thuraissigiam*, the noncitizen was apprehended just 25 yards from the border and had been in the country for less than 30 minutes; his detention was part of the initial screening process. In stark contrast, Petitioner was released on an Order of Release on Recognizance (OREC) in March 2022 and lived openly in the United States for over three years, fully complying with all conditions of his supervision.

Once the government released Petitioner, he acquired a significant, constitutionally protected liberty interest in his continued freedom that is far greater than that of an applicant for admission. His situation is therefore governed not by cases concerning initial entry, but by the Supreme Court’s decision in *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). In *Morrissey*, the

Court recognized that the revocation of conditional liberty inflicts a “grievous loss” that triggers robust due process protections. The government’s decision to release a noncitizen on supervision creates an “implicit promise,” upon which that individual may rely, that their liberty “will be revoked only if [they] fail[] to live up to the... conditions [of release].” *Pinchi v. Noem*, 792 F. Supp. 3d 1025 (N.D. Cal. 2025)⁴ (quoting *Morrissey*, 408 U.S. at 482).

See also Chavarria v. Chestnut, No. 25-cv-01755-DAD-AC, 2025 WL 3533606, at *3 (E.D. Cal. Dec. 9, 2025).

The government cannot now ignore the liberty interest it created. Having determined Petitioner was not a flight risk or danger and released him, it cannot strip him of his freedom based on a “flawed legal theory” without affording him any process whatsoever. The summary revocation of Petitioner’s OREC, without notice, a statement of reasons, or an opportunity to be heard, is a flagrant violation of the Fifth Amendment’s Due Process Clause.

The government already determined Petitioner was not a flight risk or danger when it released him on his own recognizance. Because his re-detention is based on a flawed legal theory and infringes on his heightened liberty interest, outright release is the only just remedy.

Numerous courts in identical circumstances have so ordered:

- In *Pineda v. Chestnut*, No. 1:25-CV-01970-DC-JDP (HC), 2026 WL 25510, at *4-6 (E.D. Cal. Jan. 5, 2026), the court ordered that the petitioner “shall be released immediately from the Respondents’ custody with the same conditions she was subject to

⁴ The *Pinchi* court explained that the petitioner’s release from ICE custody after her initial apprehension reflected a specific regulatory determination by the government that she was neither a flight risk nor a danger to the community, citing 8 C.F.R. § 1236.1(c)(8). And the two years that she has spent out of custody only heightened her liberty interest in remaining out of detention unless she no longer meets those criteria. Therefore, the court ordered that the government may not re-detain Ms. Pinchi during the pendency of these proceedings without providing her with a pre-detention bond hearing before a neutral immigration judge at which the government must demonstrate by clear and convincing evidence, that she is a flight risk or a danger to the community and that no conditions other than her detention would be sufficient to prevent such harms.

immediately prior to her detention.” “Respondents shall not impose any additional restriction on her, such as electronic monitoring, unless that is determined to be necessary at a future pre-deprivation/custody hearing;” and “[i]f the government seeks to re-detain Petitioner, it [] must hold a pre-deprivation bond hearing before a neutral arbiter, at which Petitioner’s eligibility for bond must be considered.”

- In *Barrientos v. Chestnut*, No. 1:25-CV-01490-SKO (HC), 2025 WL 3677319, at *5 (E.D. Cal. Dec. 18, 2025), the court ordered immediate release and forbade re-detention unless the government could prove at a pre-deprivation bond hearing before a neutral decisionmaker by clear and convincing evidence at a hearing that the petitioner was a flight risk or danger to the community such that her physical custody is legally justified.
- In *Mendes v. Hyde*, No. 25-CV-627-JJM-AEM, 2025 WL 3496546, at *2 (D.R.I. Dec. 5, 2025), the court found immediate release appropriate “because the Government has put forth no evidence to suggest that Mr. Mendes poses a flight risk or is a danger to the community.”

This Court should order the same relief here. *See e.g., Arizmendi v. Noem*, No. 25-CV-7056, 2025 WL 3723960 (E.D. NY Dec. 24, 2025) (immediate release granted in a TRO); *Ye v. Maldonado*; 25-CV-6417; 2025 WL 3521298 (EDNY Dec. 8, 2025) (Court grants habeas, orders immediate release.); *Ibarra v. Warden of the Federal Detention Center Philadelphia*; 25-cv-6312; 2025 WL 3294726, (E.D. Pa. Nov. 25, 2025). (Grants habeas and orders release.); *Buele Morocho v. Jaminson*; 5:25-cv-05930; 2025 WL 3296300 (E.D. Pa. Nov. 26, 2025). (Grants habeas and orders immediate release. If redetained, government must afford him due processing, including a bond hearing upon request.); *Ousmane Soumare v. Jamal L. Jamison*; CV 25-6490; 2025 WL 3461542 (E.D. Pa. Dec. 2, 2025). (Grants habeas, orders immediate release.) *Yilmaz v. Warden of*

Fed. Det. Ctr. Philadelphia; CV 25-6572; 2025 WL 3459484 (E.D. Pa. Dec. 2, 2025). (Court orders immediate release, finding no flight risk or danger); *Anirudh v. McShane*, No. 25-6458, 2025 WL 3527528 (E.D. Penn. Dec. 9, 2025). (Grants habeas and order release); *Alberto Picon v. O'Neill*; CV 25-6731, 2025 WL 3634212 (E.D. Pa. Dec. 15, 2025). (Grants habeas and orders immediate release) *see also* *Mendes v. Hyde*, No. 25-CV-627-JJM-AEM, 2025 WL 3496546, at *2 (D.R.I. Dec. 5, 2025) (Finding that Mr. Mendes is constitutionally entitled to a bond hearing but also holding that “because the Government has put forth no evidence to suggest that Mr. Mendes poses a flight risk or is a danger to the community, the Court finds that his **immediate release is appropriate.**”) (emphasis added); *Barrera Rodriguez v. Hyde*, No. 25-cv-607-JJM-PAS, 2025 WL 3274606, at *2 (D.R.I. Nov. 25, 2025) (same); *Cordova v. Ladwig*, No. 1:25-CV-03037-TLP-JAY, 2025 WL 3679764, at *7 (W.D. Tenn. Dec. 18, 2025) (finding Petitioner is therefore subject to the discretionary bond process under § 1226 and entitled to a bond hearing but also ordering immediate release pending the bond hearing); *Javier De Jesus Aguilar v. English*, No. 3:25-CV-898 DRL-SJF, 2025 WL 3280219 (N.D. Ind., Nov. 25, 2025) (Granting immediate release without bond to a Petitioner detained under 8 U.S.C. § 1225(b)(2) who has been in the country for 19 years and twice bonded in immigration proceedings in the past. “All this begs the question whether the court should order immediate release or a hearing. The court is uninclined to order a hearing consistent with the procedures under §1226(a) and give the government a pass for not securing a warrant before Mr. De Jesús Aguilar’s arrest, particularly when the government has not asserted this a basis for his continued detention” ... [where there is no] “basis for his continued detention today or extraordinary circumstances or some likelihood of his escape (perhaps a tough position when he has been in the country for 19 years and twice bonded in immigration proceedings).” ... “The simple matter is this: the government has not established a lawful basis for detention— or, otherwise put, Mr. De Jesús

Aguilar has established his detention is today unlawful—and the government must live by the rules that Congress has instituted.).

IV. All Named Government Respondents Are Necessary Parties to Afford Complete and Final Relief.

Respondents improperly disregarded the federal respondents beyond the warden. See ECF no. 6 at 1, n.1 (“Respondent has substituted the Warden of Irwin Detention Center as the sole appropriately named respondent in this action.”). Retaining all named Respondents—including those beyond the immediate habeas custodian—is essential for this Court to grant complete and effective relief.⁵ While the “immediate custodian” rule from *Rumsfeld v. Padilla*, 542 U.S. 426 (2004) is true for core habeas claims, it does not control the distinct claims for declaratory and injunctive relief that are vital to securing a meaningful remedy.

The Supreme Court’s holding in *Rumsfeld v. Padilla* was created to address the specific jurisdictional requirements of the habeas statute and prevent forum shopping in challenges to physical custody. It does not, however, foreclose naming other federal officials as respondents in parallel claims for prospective equitable relief brought under the Administrative Procedure Act, 5 U.S.C. § 702, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202 and declaratory and injunctive orders under 28 U.S.C. § 1331. For these distinct non-habeas claims, the proper defendants are the officials who exercise the “legal reality of control” over the policies and actions at issue. See *Padilla v. Rumsfeld*, 352 F.3d 695, 707 (2d Cir. 2003), *rev’d on other grounds*, 542 U.S. 426 (2004). An injunction must bind the party with the actual power to act. Here, the

⁵ Petitioner acknowledges that under *Rumsfeld v. Padilla*, the proper respondent to the habeas claim is the immediate custodian (Respondent Normand), and he does not rely on the named Respondent officials from DHS, ICE, and the U.S. Department of Justice (DOJ) (such as Lyons, Noem, Bondi) as “habeas respondents.” 542 U.S. 426 (2004). See ECF 1, Complaint. To the extent the Court deems them improper Respondents on the habeas count, Petitioner respectfully requests that any dismissal be limited to that claim and without prejudice to their continued status as Respondents-Defendants on the non-core claims, so that effective, agency-directed relief can issue to the officials with authority to implement it.

immediate custodian at Stewart Detention Center is merely an agent acting at the direction of ICE and DHS. The non-habeas Respondents—the Secretary of Homeland Security and the ICE Field Office Director—are the officials with the exclusive legal authority to order Petitioner’s release, implement bond orders, and set conditions of supervision pursuant to federal regulations. *See* 8 C.F.R. §§ 236.1, 1003.19. To dismiss the officials in control would render any prospective order from this Court a nullity.

Furthermore, retaining these policymaking officials Respondents is critical to prevent the government from frustrating judicial review and providing a final, complete remedy. First, dismissing the non-habeas Respondents creates a significant risk that the government could moot this litigation by simply transferring Petitioner to a different facility outside this district—a tactic that would create serious jurisdictional hurdles. The *Padilla* litigation itself highlights this exact danger. *See Rumsfeld*, 542 U.S. at 441 (noting *Padilla* was moved before the petition was filed). Keeping the officials with national and regional transfer authority as parties ensures the Court’s power to adjudicate the claims and provide “complete relief,” consistent with the principles of Federal Rule of Civil Procedure 19.

Second, the necessity of retaining the federal Respondents extends beyond preventing the mooted of this litigation. Even if this Court grants the writ and orders Petitioner’s immediate release, that order would be hollow if the non-habeas Respondents are not bound by a corresponding injunction. Having been dismissed from the action, these officials—who wield the ultimate authority to detain—would be free to re-detain Petitioner under the same unlawful interpretation of their authority the moment he is released. This would nullify the Court’s ruling and force Petitioner to begin this entire process anew, transforming the Great Writ into a revolving door of litigation. The prospective declaratory and injunctive relief sought is therefore not ancillary

but essential to ensure any remedy is both meaningful and final. Only by keeping the officials with the power to detain as parties can the Court enjoin them from re-detaining Petitioner without due process and prevent such a perverse outcome. This comprehensive approach is consistent with this Court's own holding in *J.A.M. v. Streeval*, No. 4:25-v-342-CDL-AGH (M.D. Ga. Nov. 1, 2025), and the dozens of other district court decisions cited in the Complaint, which have uniformly retained non-habeas federal officials to ensure their orders could be effectively implemented. None of these courts dismissed the non-habeas Respondents.

Therefore, Petitioner respectfully requests that the Court to confirm in its final order that all named government Respondents/Defendants remain in this action. While the Warden is the proper Respondent for the § 2241 challenge to current physical custody under *Rumsfeld v. Padilla*, the non-habeas Respondents are necessary and proper defendants for the claims seeking prospective declaratory and injunctive relief, which are essential to ensuring that any remedy afforded is both complete and final.

In conclusion, Petitioner seeks an order granting him immediate and unconditional release from custody, as a result of Respondent's unlawful revocation of his Order of Release on Recognizance.

Respectfully Submitted,

This 8th day of January, 2026

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CERIFICATE OF SERVICE

I hereby certify that on January 8, 2026, the foregoing document was served, via electronic delivery to Respondents' counsel via the CM/ECF system, which will forward copies to Counsel of Record.

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