UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JULIO ENRIQUE AHUMADA GARCIA,

MARIA ALEJANDRA MONTOYA JIMENEZ,

Petitioners,

v.

MIGUEL VERGARA, *in his official capacity* as Field Office Director of Enforcement and Removal Operations, San Antonio Field Office, Immigration and Customs Enforcement;

Warden of Karnes County Immigration Processing Center;

TODD M. LYONS, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

KRISTI NOEM, *in her official capacity* as Secretary, U.S. Department of Homeland Security; and

PAMELA JO BONDI, *in her official capacity* as Attorney General of the United States;

Respondents.

C/A No. 5:26-cv-00511

VERIFIED JOINT PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Agency # [redacted];

[redacted]

INTRODUCTION

1. Petitioners Julio Enrique Ahumada Garcia and Maria Alejandra Montoya Jimenez ("Petitioners") are citizens of Colombia who have resided in the United States for over two years. They entered the United States on or about December 22, 2023, and have since established their residence and livelihood in this country.
2. On information and belief, Petitioners were apprehended by immigration authorities on January 13, 2026, in Minnesota, and they remain in immigration detention pending removal proceedings.
3. On information and belief, Petitioners are currently detained at the Karnes County Immigration Processing Center, 409 FM 1144, Karnes City, Texas 78118.
4. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision that unlawfully reinterpreted the Immigration and Nationality Act ("INA"). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Prior to this decision, noncitizens like Petitioners who had lived in the U.S. for years and were apprehended by ICE in the interior of the country were detained pursuant to 8 U.S.C. § 1226(a) and eligible to seek bond hearings before Immigration Judges ("IJs"). Instead, in conflict with nearly thirty years of legal precedent, Petitioners are now considered subject

to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and has no opportunity for release on bond while his removal proceedings are pending.

5. Petitioners' detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioners, who have resided in the U.S. for two years and who were only recently apprehended in the interior of the U.S., should not be considered an "applicant for admission" who is "seeking admission." Rather, they should be detained pursuant to 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond.

6. Petitioners seek declaratory relief that they are subject to detention under § 1226(a) and its implementing regulations and asks that this Court either order Respondents to release Petitioners from custody or provide them with a bond hearing.

CUSTODY

7. Petitioners are currently in the custody of Immigration and Customs Enforcement ("ICE") at Karnes County Immigration Processing Center, 409 FM 1144, Karnes City, Texas 78118. They are therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

8. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.*

9. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

10. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

11. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless Petitioners are not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless, for good cause, additional time, not exceeding twenty days, is allowed." *Id.*

12. Petitioners are "in custody" for the purpose of § 2241 because Petitioners were detained by Respondents.

VENUE

13. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because Petitioners are currently detained in Karnes County, at the Karnes County Immigration Processing Center, 409 FM 1144, Karnes City, Texas 78118.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

14. The Fifth Circuit has long held that exhaustion may be excused when administrative remedies are (i) unavailable, (ii) wholly inadequate, (iii) patently futile, or (iv) when a constitutional challenge is advanced that is unsuitable for determination in an administrative proceeding. See *Fuller v. Rich*, 11 F3d 61, 62 (5th Cir 1994); *Garner v US Department of Labor*, 221 F3d 822, 825 (5th Cir 2000).

15. Exhaustion is excused here because further administrative review would be futile. The immigration judges are compelled by the Board of Immigration Appeals' recent precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which holds that individuals who entered the United States without inspection are deemed "applicants for admission" subject to mandatory detention under INA § 235(b)(2)(A). As a result, IJs are categorically deprived of authority to conduct bond hearings for individuals

in Petitioners' positions. *See also Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (recognizing that *Yajure Hurtado* renders administrative exhaustion futile).

16. Because IJs are bound by this precedential interpretation, any further request for bond or custody redetermination would be denied as a matter of law, rendering additional administrative exhaustion wholly ineffective and unavailable in practice. See *Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999) (excusing exhaustion where administrative relief is foreclosed).

17. Moreover, the agency lacks jurisdiction to adjudicate Petitioners' claim that their continued detention violates the Due Process Clause. Constitutional challenges to the legality of detention fall outside the scope of the agency's authority, and exhaustion is therefore not required. *See Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 119 S. Ct. 936, 142 L. Ed. 2d 940 (1999) (exhaustion excused where the agency lacks jurisdiction to address constitutional claims).

18. Accordingly, Petitioners are not required to exhaust further administrative remedies. The administrative process has already confirmed that no bond hearing is available, and the agency is powerless to address the constitutional infirmities of Petitioners' continued detention. Because the available

procedures are ineffective, unavailable in practice, and futile, exhaustion serves no practical purpose and should be excused.

PARTIES

19. Petitioners are from Colombia and have resided in the United States since December 2023. Petitioners are husband and wife. They are currently detained in the Karnes County Immigration Processing Center, 409 FM 1144, Karnes City, Texas 78118.

20. Respondent Miguel Vergara, Field Office Director of Enforcement and Removal Operations, San Antonio Field Office, Immigration and Customs Enforcement and Warden of Karnes County Immigration Processing Center, is sued in his official capacity. Respondent Vergara is a legal custodian of Petitioners.

21. Respondent Warden of Karnes County Immigration Processing Center is sued in his or her official capacity. Respondent Warden of Karnes County Immigration Processing Center is a legal custodian of Petitioners.

22. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioners.

23. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland

Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioners' ultimate legal custodian.

24. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

LEGAL BACKGROUND AND ARGUMENT

25. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.

26. First, individuals detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a bond hearing, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (immigration judges may review custody determinations made by DHS), 1236.1(d) (same).

27. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) as well as other recent arrivals deemed to be "seeking admission" under § 1225(b)(2).

28. Third, the INA authorizes detention of noncitizens who have received a final order of removal, including those in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

29. 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, 300-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

30. Following the enactment of the IIRIRA, the U.S. Department of Justice's Executive Office of Immigration Review ("EOIR") drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained 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 (referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

31. Thus, in the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an IJ, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

32. 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.

33. 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).

34. 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).

35. Defendants' new legal interpretation is plainly contrary to the statutory framework and its implementing regulations. Indeed, for decades, Defendants had applied § 1226(a) to people like the Petitioners. 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.

36. Numerous federal courts have rejected this interpretation and instead have consistently found that § 1226, not § 1225(b)(2), authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country. *See e.g.*, *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court's disagreement with BIA's analysis in *Yajure Hurtado*); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *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); *see also Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC) (E.D.

Cal. Sept. 23, 2025), *Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM (M.D. Fla. Sept. 25, 2025), and *Chafla v. Scott*, No. 2:25-cv-00437-SDN (D. Maine Sept. 21, 2025).

37. Under the Supreme Court's recent decision in *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).

38. 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").

39. 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)).

40. 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.

41. 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).

42. 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

Petitioners who were 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").

43. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioners, who had entered the U.S. over two years ago.

44. Although neither the Constitution nor the federal habeas statutes delineate the necessary content of habeas relief, *I.N.S. v. St. Cyr*, 533 U.S. 289, 337 (2001) (Scalia, J., dissenting) ("A straightforward reading of [the Suspension Clause] discloses that it does not guarantee any content to . . . the writ of habeas corpus"), implicit in habeas jurisdiction is the power to order release. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) ("[T]he habeas court must have the power to order the conditional release of an individual unlawfully detained.").

45. The Supreme Court has noted that the typical remedy for unlawful detention is release from detention. *See, e.g.*, *Munaf v. Geren*, 553 U.S. 674 (2008) ("The typical remedy for [unlawful executive detention] is, of course, release."); *see also Wajda v. United States*, 64 F.3d 385, 389 (8th Cir. 1995) (stating the function of habeas relief under 28 U.S.C. § 2241 "is to obtain release from the duration or fact of present custody").

46. That courts with habeas jurisdiction have the power to order outright release is justified by the fact that, "habeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513 U.S. 298, 319 (1995), and that as an equitable remedy, federal courts "[have] broad discretion in conditioning a judgment granting habeas relief [and are] authorized . . . to dispose of habeas corpus matters 'as law and justice require.'" *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (citing 28 U.S.C. § 2243). An order of release falls under the Court's broad discretion to fashion relief. *See, e.g.*, *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 636 (D. Mass. 2018) ("Habeas corpus is an equitable remedy. The court has the discretion to fashion relief that is fair in the circumstances, including to order an alien's release.").

47. Respondents detained Petitioners without a warrant of arrest. Immediate release is the proper remedy in this case.

STATEMENT OF FACTS

48. Petitioners are citizens of Colombia.

49. Upon information and belief, Petitioners have resided in the U.S. since December 2023.

50. Petitioners were encountered by Respondents after entering the United States without inspection and were placed in removal proceedings before the Executive Office for Immigration Review ("EOIR").

51. Upon information and belief, Respondents encountered Petitioners, processed them, and released them under an Order of Release under their own Recognizance (OREC).

52. Upon information and belief, Petitioners have been compliant with all conditions of their release.

53. Upon information and belief, Petitioners have not committed an offense that implicates 8 U.S.C. § 1226(c).

54. Upon information and belief, Petitioners filed an asylum application.

55. Upon information and belief, on or about January 13, 2026, Respondents detained Petitioners.

56. Petitioners are now detained at the Karnes County Immigration Processing Center, 409 FM 1144, Karnes City, Texas 78118.

57. Without relief from this Court, the Petitioners face continued detention without a bond hearing.

REMEDY

58. Respondents' detention of Petitioner under 8 U.S.C. § 1225(b)(2) violates the Due Process Clause of the United States Constitution. Petitioner's ongoing detention violates the Fifth Amendment's guarantee that "[n]o person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const., Amend. 5.

59. Due Process requires that detention "bear [] a reasonable relation to the purpose for which the individual [was] committed." *Zadvydas, v. Davis*, 533 U.S. 678, 690 (2001) (citing *Jackson v. Nicaraguana*, 406 U.S. 715, 738 (1972)).

60. Petitioner seeks immediate release to the extent that Respondents justify his detention on 8 U.S.C. § 1225(b)(2), which plainly does not apply to him.

61. Although neither the Constitution nor the federal habeas statutes delineate the necessary content of habeas relief, *I.N.S. v. St. Cyr*, 533 U.S. 289, 337 (2001) (Scalia, J., dissenting) ("A straightforward reading of [the Suspension Clause] discloses that it does not guarantee any content to . . . the writ of habeas corpus"), implicit in habeas jurisdiction is the power to order release. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) ("[T]he habeas court must

have the power to order the conditional release of an individual unlawfully detained.").

62. The Supreme Court has noted that the typical remedy for unlawful detention is release from detention. *See, e.g., Munaf v. Geren*, 553 U.S. 674 (2008) ("The typical remedy for [unlawful executive detention] is, of course, release."); *see also Wajda v. US*, 64 F.3d 385, 389 (8th Cir. 1995) (stating the function of habeas relief under 28 U.S.C. § 2241 "is to obtain release from the duration or fact of present custody.").

63. That courts with habeas jurisdiction have the power to order outright release is justified by the fact that, "habeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513 U.S. 298, 319 (1995), and that as an equitable remedy, federal courts "[have] broad discretion in conditioning a judgment granting habeas relief [and are] authorized . . . to dispose of habeas corpus matters 'as law and justice require.'" *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987), quoting 28 U.S.C. § 2243. An order of release falls under court's broad discretion to fashion relief. *See, e.g., Jimenez v. Cronen*, 317 F. Supp. 3d 626, 636 (D. Mass. 2018) ("Habeas corpus is an equitable remedy. The court has the discretion to fashion relief that is fair in the circumstances, including to order an alien's release.").

64. Alternatively, Petitioner requests a constitutionally adequate custody redetermination hearing in which he is not erroneously treated as detained pursuant to 8 U.S.C. § 1225(b)(2) and is instead treated as a detainee under 8 U.S.C. § 1226(a) within three calendar days.

CAUSE OF ACTION

COUNT ONE

Violation of 8 U.S.C. § 1225(B)(2)

65. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

66. Section 1225 of Title 8 of the U.S. Code governs aliens arriving at the border and seeking admission from outside the country. *See* 8 U.S.C. § 1225.

67. 8 U.S.C. § 1225(b)(2)(A), specifically, cannot apply as it only applies to those "applicants for admission" who are "seeking admission" at the time of detention and Petitioner was not "seeking admission" at the time he was detained, nor is he doing so now. 8 U.S.C. § 1225(b)(2)(A).

68. As Respondents assert authority to detain Petitioner under 8 U.S.C. § 1225(b)(2)(A), and no such authority exists under that provision, he requests that he be immediately released.

COUNT TWO

Violation of 8 U.S.C. § 1226(A)

69. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

70. Section 1226 of Title 8 of the U.S. Code governs the detention of aliens pending a determination of removal from the United States.

71. Such an alien "may [be] release[d] ... on bond of at least $1,500." 8 U.S.C. § 1226(a)(2)(A).

72. The denial of Petitioner's bond eligibility is in violation of 8 U.S.C. § 1226(a)(2)(A), which specifically makes him eligible for bond.

73. If Respondents do not release Petitioner without any conditions, he requests that he be afforded the opportunity to present his case for release in a bond hearing pursuant to 8 U.S.C. § 1226(a)(2)(A).

COUNT THREE

Violation of the Fourth Amendment to the U.S. Constitution, 8 U.S.C. § 1357(a)(2), and 8 C.F.R. § 287.3(d) Unlawful Arrest

74. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

75. The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. Amend.

IV. Immigration arrests and detentions are seizures within the meaning of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that deportation proceedings are civil, but the Fourth Amendment still applies to the "seizure" of the person).

76. The Fourth Amendment requires that all arrests entail a neutral, judicial determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). "Probable cause requires a 'substantial probability; based on facts related to the individual." *Ramirez Ovando v. Noem*, No. 1:25-CV-03183-RBJ, 2025 WL 3293467, at *15 (D. Colo. Nov. 25, 2025) (quoting *Storey v. Taylor,* 696 F.3d 987, 992 (10th Cir. 2012) (finding probable cause for immigration arrests lacking). That determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in the form of a prompt judicial probable cause determination. *See id.*

77. It must, however, occur within 48 hours of detention, which includes weekends, unless there is a bona fide emergency or other extraordinary circumstances. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

78. There is a strong preference that immigration arrests be based on warrants. *See Arizona v. U.S.*, 567 U.S. 387, 407–08 (2012). The INA thus provides immigration agents with only limited authority to conduct warrantless arrests. 8 U.S.C.§ 1357(a)(2). Specifically, an officer must have probable cause to

believe the person is violating the immigration laws *and* that the person "is likely to escape before a warrant can be obtained," *i.e.*, is a flight risk *Id.*; *see also Ramirez Ovando*, 2025 WL 3293467, at *2. Federal regulations track the strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

79. Petitioner's warrantless arrest occurred without probable cause that Petitioner posed a flight risk. "Courts have ... made the self-evident finding that the likelihood of escape is lower when the individual has resided in the country for a lengthy period of time and has strong community ties." *Escobar Molina v. U.S. Dep't of Homeland Sec.*, No. CV 25-3417 (BAH), 2025 WL 3465518, at *13 (D.D.C. Dec. 2, 2025) (collecting cases).

80. Without a statutory basis to arrest, Respondents were required under the Fourth Amendment to secure a prompt judicial probable cause determination to continue holding Petitioner. *Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57. Petitioner received no such judicial determination, yet his detention continued well beyond 48 hours, rendering it presumptively unconstitutional.

81. Regulations also provide that noncitizens arrested without a warrant must receive a custody determination within 48 hours of the arrest, unless there is "an emergency or other extraordinary circumstance" that requires "an

additional reasonable period of time" to make the custody determination. 8 C.F.R. § 287.3(d)

82. During that custody determination, the immigration officer must make findings as to whether "release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). Similarly, upon information and belief, Petitioner has received no such custody determination.

COUNT FOUR

Declaratory Relief

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

84. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that 8 U.S.C. § 1254a(d)(4) prohibits his detention.

85. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that he is eligible for release from Respondents' custody.

86. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner is not subject to detention under to 8 U.S.C. § 1225(b)(2) and must be released unless Respondents assert authority to detain him under 8 U.S.C. § 1226(c).

87. In the event Respondents assert that Petitioner is detained under 8 U.S.C. § 1226(a), Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner is eligible for release from Respondents' custody pursuant to a bond as set forth at 8 U.S.C. § 1226(a)(1).

COUNT FIVE

Violation of the Fifth Amendment

88. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

89. The Fifth Amendment Due Process Clause protects against arbitrary detention and requires that detention be reasonably related to its purpose and accompanied by adequate procedures to ensure that detention is serving its legitimate goals.

90. Petitioner is not subject to mandatory custody under the Immigration & Nationality Act and is therefore entitled to a bond hearing in which a neutral arbiter may determine the justification for her continued detention under 8 U.S.C. § 1226(a)(2)(A), the denial of which constitutes a violation of the Fifth Amendment's guarantee of due process.

COUNT SIX

Violation of 8 C.F.R. §§ 236.1, 1236.1 and 1003.19
Unlawful Denial of Release on Bond

91. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

92. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service 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 (emphasis added).

93. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before immigration courts under 8 U.S.C. § 1226 and its implementing regulations.

94. Nonetheless, DHS and EOIR have adopted a policy and practice of applying § 1225(b)(2) to Petitioner and others in the same position.

95. 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.

96. As such, the Court must order the Respondents afford Petitioner a bond hearing to comport with these regulatory requirements.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court will:

1. Assume jurisdiction over this matter;
2. Order that they not be transferred outside of this District;
3. Issue an Order to Show Cause ordering Respondents to show cause why their Petition should not be granted within three days;
4. Declare that Petitioners' detention is unlawful;
5. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioners from custody pursuant to their Order of Release on Recognizance;
6. Order Petitioners' immediate release because they were not detained with a warrant of arrest, Form I-200;
7. Alternatively, order Respondents to provide Petitioners with a bond hearing pursuant to 8 U.S.C. § 1226(a) or the Due Process Clause within seven days;
8. Award them attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
9. Grant any further relief this Court deems just and proper.

Respectfully submitted, Date: January 28, 2026

/s/ David L. Wilson
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Attorney for the Petitioners

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

I represent the Petitioners, Julio Enrique Ahumada Garcia and Maria Alejandra Montoya Jimenez, and submit this verification on their behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Dated this Wednesday, January 28, 2026

/s/David L. Wilson
DAVID L. WILSON