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2 **UNITED STATES DISTRICT COURT**
3 For the Western District of Texas

4 CARLOS RICARDO HERRERA SOLIS,

5
6 Petitioner,

7
8 v.

9 CHARLOTTE COLLINS, WARDEN of T. Don
10 Hutto Detention Center, TODD M. LYONS,
11 Acting Director of U.S. Immigration and
12 Customs Enforcement, MIGUEL VERGARA,
13 Director of San Antonio Field Office, U.S.
14 Immigration and Customs Enforcement;
15 KRISTI NOEM, U.S. Secretary of Homeland
16 Security; and PAM BONDI, U.S. Attorney
17 General, in their official capacities,

18
19 Respondents,

Case No. 1:26-cv-00344

20 **PETITION UNDER 28 U.S.C § 2231 FOR A WRIT OF HABEAS CORPUS**

21 **INTRODUCTION**

- 22 1. Petitioner, CARLOS RICARDO HERRERA SOLIS is a citizen and national of the country
23 of MEXICO.
24 2. Petitioner is currently in the physical custody of Respondents at the T. Don Hutto Detention
25 Center in Taylor, Texas.
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- 1 3. Petitioner, CARLOS RICARDO HERRERA SOLIS entered the United States on or about
2 the year 2001, approximately 24 years ago. Petitioner remained in the United States.
- 3 4. On or about November 2025, Petitioner was arrested and detained in his hometown of
4 Pflugerville, Texas by Immigration Customs and Enforcement (“ICE”) during a private
5 event. A warrant for Petitioner’s arrest was executed on November 16, 2025, in addition to
6 the execution of a charging document to initiate removal proceedings against Petitioner,
7 i.e. the Notice to Appear dated November 16, 2025. See Exhibit 1 – Petitioner’s NTA and
8 Warrant.
- 9 5. Petitioner is charged with, *inter alia*, having entered the United States without admission
10 or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i)
- 11 6. Based on these charges in Petitioner’s removal proceedings, DHS will deny Petitioner
12 release from immigration custody, consistent with a new DHS policy issued on July 8,
13 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider
14 anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States
15 without admission or inspection—to be subject to detention under 8 U.S.C. §
16 1225(b)(2)(A) and therefore ineligible to be released on bond.
- 17 7. Furthermore, on September 5, 2025, the Board of Immigration Appeals (“BIA”) issued a
18 precedent decision, binding on all immigration judges, holding that an immigration judge
19 has no authority to consider bond requests for any person who entered the United States
20 without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The
21 Board determined that such individuals are subject to detention under 8 U.S.C. §
22 1225(b)(2)(A) and therefore ineligible to be released on bond.
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8. Furthermore, on February 6, 2026, the Fifth Circuit Court of Appeals affirmed the BIA's interpretation of Section 1225(b)'s mandatory detention provision, effectively holding the precedent in *Matter of Yajure Hurtado*, binding. See *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 32330 (5th Cir. 2026).

9. However, Petitioner still contends that detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

10. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

11. Indeed, the Government itself has made an abrupt about-face on this issue. Respondents should be judicially estopped from asserting their current interpretation of 8 U.S.C. § 1225(b)(2)(A), because they previously prevailed in litigation after asserting the opposite interpretation. As explained in *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial estoppel applies when a party assumes a position in a legal proceeding, succeeds in maintaining that position, and then adopts a contrary position in a subsequent proceeding to gain an unfair advantage. Here, Respondents previously, and successfully, argued that individuals who entered the United States without inspection were subject to detention under § 1226(a), and not § 1225(b)(2)(A), and courts accepted that position. Respondents now reverse course and assert that such individuals are subject to mandatory detention

1 under § 1225(b)(2)(A), thereby denying them bond hearings. This shift in legal position
2 undermines the integrity of the judicial process and imposes an unfair detriment on
3 Petitioners who relied on the prior interpretation. Accordingly, Respondents should be
4 estopped from asserting this inconsistent position.

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6 12. Critically, DHS itself alleged in the Notice to Appear that Petitioner “entered the United
7 States without inspection and without parole or lawful admission,” a factual assertion that
8 squarely contradicts the Government’s current position—adopted wholesale by the Board
9 of Immigration Appeals—that Petitioner is ineligible to apply for bond before EOIR.

10 13. On November 20, 2025, the district court granted partial summary judgment on behalf of
11 individual plaintiffs and on November 25, 2025, certified a nationwide class and extended
12 declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-
13 CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20,
14 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners);
15 *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025
16 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners’
17 proposed nationwide Bond Eligible Class, incorporating and extending declaratory
18 judgment from Order Granting Petitioners’ Motion for Partial Summary Judgment).

19
20 14. The declaratory judgment held that the Bond Denial Class members are detained under 8
21 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under §
22 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

23
24 15. Petitioner, CARLOS RICARDO HERRERA SOLIS is a member of the Bond Eligible
25 Class, as he:

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- a. does not have lawful status in the United States and is currently detained at the .
T. Don Hutto Detention Center. He was apprehended by immigration
authorities on November 2025.
- b. entered the United States without inspection over 3 years ago and was not
apprehended upon arrival, *cf. id.*; and
- c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

16. After apprehending Petitioner on November of 2025, the DHS placed him in removal
proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being
inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States
without inspection.

17. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full “force
and effect of a final judgment.” 28 U.S.C. § 2201(a). Nevertheless, Respondents continue
to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful
detention despite his clear entitlement to consideration for release on bond as a Bond
Eligible Class member.

18. Immigration judges have informed class members in bond hearings that they have been
instructed by “leadership” that the declaratory judgment in *Maldonado Bautista* is not
controlling, even with respect to class members, and that instead IJs remain bound to follow
the agency’s prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

19. Despite Petitioner being classified as a class member, the Immigration Judge still denied
bond stating that he still lacked jurisdiction over the Petitioner.

20. Because Respondents are detaining Petitioner in violation of the declaratory judgment
issued in *Maldonado Bautista*, the Court should accordingly order that within one day,
Respondent DHS must release Petitioner.

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21. However, even if the Fifth Circuit's precedential decision in *Buenrostro-Mendez*, is correct, Habeas petitions before this court does not need to only rely on that specific argument. Claims can be brought forth on procedural due process grounds. *Zafra v. Noem*, No. EP-25-CV-00541-DB, 2025 WL 3239526 (W.D. Tex. Nov. 20, 2025) ("The parties argue about Respondents' novel interpretation regarding mandatory detention under Section 1225(b) and whether Petitioner falls within it. Even assuming without deciding Respondent's reading is correct, the Court will not address these arguments because the Court finds Petitioner is entitled to procedural due process in his as-applied challenge.").

22. Lastly, this Court has granted habeas petitions under due process claims with similar fact patterns, see *Maya Contreras v. Warden*, No. EP-3-26-cv-00290-DB, Unpublished (W.D. Tex. February 10, 2026).¹

23. Accordingly, Petitioner seeks a writ of habeas corpus requiring that she be released unless Respondents provide a bond hearing under § 1226(a) within seven days as a matter of due process under the Fifth and Fourteenth Amendment of the U.S. Constitution.

24. The Court should expeditiously grant this petition.

JURISDICTION

¹ This court found that immigration habeas cases brought by petitioners subject to mandatory detention under the Government's new interpretation of 8 U.S.C. § 1225(b),² need not rely solely on interpretation arguments but can be ruled under due process claims. The court citing *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. 2026) issued on February 6, 2026, "determining Respondents' statutory interpretation of Section 1225(b)'s mandatory detention provision is correct. However, *Buenrostro-Mendez* does not change this case's outcome on procedural due process grounds. In its original due process analysis, this Court accepted without deciding Respondents' interpretation was true. See, e.g., *Zafra v. Noem*, No. EP-25-CV-00541-DB, 2025 WL 3239526 (W.D. Tex. Nov. 20, 2025) ("The parties argue about Respondents' novel interpretation regarding mandatory detention under Section 1225(b) and whether Petitioner falls within it. Even assuming without deciding Respondent's reading is correct, the Court will not address these arguments because the Court finds Petitioner is entitled to procedural due process in his as-applied challenge.").

1 25. This action arises under the Constitution of the United States and the Immigration and
2 Nationality Act (INA), 8 U.S.C. § 1101 et. seq.

3 26. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) and (5) (habeas corpus), 28 U.S.C.
4 § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution
5 (the Suspension Clause).

6 27. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act,
7 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651, and the Administrative
8 Procedure Act at 5 U.S.C.A. § 704.

10 **VENUE**

11 28. Venue is proper because Petitioner is in the physical custody of Respondents. Petitioner is
12 detained at the T. Don Hutto Detention Center in Taylor, Texas. Venue is further proper
13 because a substantial part of the events or omissions giving rise to Petitioner's claims
14 occurred in this District, where Petitioner is now in Respondent's custody. 28 U.S.C. §
15 1391(e).

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

18 29. The Court must grant the petition for writ of habeas corpus or order Respondents to show
19 cause "forthwith" why the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order
20 to show cause is issued, Respondents must file a return "within three days unless for good
21 cause additional time, not exceeding twenty days, is allowed." *Id.*

22 30. Habeas corpus is "perhaps the most important writ known to the constitutional law . . .
23 affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
24 confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application
25 for the writ usurps the attention and displaces the calendar of the judge or justice who
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entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

31. Petitioner is “in custody” for the purpose of § 2241 because Petitioner is arrested and detained by Respondent

PARTIES

32. Petitioner, CARLOS RICARDO HERRERA SOLIS, is an individual, who is a citizen and national of the country of Mexico. Petitioner is currently detained at the T. Don Hutto Detention Center in Taylor, Texas, in the custody, and under the direct control, of Respondents and their agents.

33. CHARLOTTE COLLINS is the WARDEN of T. Don Hutto Detention Center, and she has immediate physical custody of Petitioner pursuant to the facility’s contract with the U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Collins is a legal custodian of Petitioner

34. Respondent TODD M. LYONS is the Acting Director of U.S. Immigration and Customs Enforcement. He is responsible with the enforcement of US immigration laws and criminal investigations and is responsible for Petitioner’s detention. Mr. Lyons has custodial authority over Petitioner and is sued in his official capacity.

35. MIGUEL VERGARA, Director of San Antonio Field Office, U.S. Immigration and Customs Enforcement; however, on information and belief, the DHS is rotating their Field Office Director without publishing a schedule of rotation. As such, Miguel Vergara or his unknown, unannounced provisional replacement is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He or his acting counterpart is named in his or her official capacity.

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1 36. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is
2 responsible for the implementation and enforcement of the Immigration and Nationality
3 Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem
4 has ultimate custodial authority over Petitioner and is sued in her official capacity.
5

6 37. Respondent (through its agent Secretary Noem) Department of Homeland Security (DHS)
7 is the federal agency responsible for implementing and enforcing the INA, including the
8 detention and removal of noncitizens.

9 38. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible
10 for the Department of Justice, of which the Executive Office for Immigration Review and
11 the immigration court system it operates is a component agency. She is sued in her official
12 capacity.
13

14 39. Respondent (through its director Attorney General Bondi) Executive Office for
15 Immigration Review (EOIR) is the federal agency responsible for implementing and
16 enforcing the INA in removal proceedings, including for custody redeterminations in bond
17 hearings.
18

19 LEGAL FRAMEWORK

20 40. The Immigration and Nationality Act (INA) authorizes immigration officers to arrest
21 noncitizens without a warrant only under limited circumstances. Pursuant to 8 U.S.C. §
22 1357(a)(2), such an arrest is lawful only if the officer has probable cause to believe that the
23 individual is (a) in violation of immigration laws and (b) likely to escape before a warrant
24 can be obtained.

25 41. The implementing regulations at 8 C.F.R. §§ 287.5(c)(1) and 287.8(c)(2)(i)–(iii) impose
26 additional procedural requirements. These include: (a) The officer must identify
27

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1 themselves “as soon as it is practical and safe to do so.” 8 C.F.R. § 287.5(c)(2)(iii)(A–B);

2 (b) The officer must state that the person is under arrest and the reason for the arrest; (c)

3 The officer must document specific, articulable facts supporting both the immigration
4 violation and the likelihood of escape.

5
6 42. An arrest executed without a warrant or without a documented flight risk assessment
7 violates the INA, its regulations, and binding agency policy. Such conduct constitutes: (a)
8 Unlawful agency action under the Administrative Procedure Act (APA), 5 U.S.C. §
9 706(2)(A–D); (b) Ultra vires action, exceeding statutory authority and subject to judicial
10 review.

11
12 43. Courts have consistently invalidated immigration enforcement actions that disregard
13 statutory and regulatory limits. See: *Judulang v. Holder*, 565 U.S. 42, 53 (2011); *Calderon*
14 *v. Sessions*, 330 F. Supp. 3d 944, 955–59 (S.D.N.Y. 2018); *Ramirez v. ICE*, 338 F. Supp. 3d
15 1, 41–43 (D.D.C. 2018).

16
17 44. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not bar collateral APA
18 challenges to unlawful arrest and detention. Such claims are reviewable under: (a) 28
19 U.S.C. § 1331 (federal question jurisdiction); (b) 28 U.S.C. § 2241 (habeas corpus). See
20 also: *INS v. St. Cyr*, 533 U.S. 289, 308–09 (2001); *Jennings v. Rodriguez*, 138 S. Ct. 830,
21 841 (2018); *Canal A Media Holding v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020).

22
23 45. The Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A–D), provides that courts
24 shall set aside agency action that is arbitrary, capricious, an abuse of discretion, in excess
25 of statutory authority, or taken without observance of procedure required by law. An arrest
26 executed without a warrant or flight risk assessment, in violation of the statutory and

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1 regulatory framework, as well as the agency's own published policy enacting those laws,
2 constitutes unlawful agency action under the APA.

3 46. Agency action that exceeds statutory authority is also ultra vires. Where immigration
4 officers act outside the bounds of their delegated powers—such as by failing to satisfy the
5 mandatory predicates for warrantless arrest—the resulting detention is unauthorized. The
6 Supreme Court has recognized that ultra vires agency action is subject to judicial review
7 and may be enjoined. See *Leedom v. Kyne*, 358 U.S. 184, 188 (1958).

9 47. The APA provides a cause of action to challenge such agency misconduct, and courts have
10 consistently invalidated immigration enforcement actions that disregard statutory limits or
11 binding agency rules. See *Judulang v. Holder*, 565 U.S. 42, 53 (2011); *Calderon v.*
12 *Sessions*, 330 F. Supp. 3d 944, 955–59 (S.D.N.Y. 2018); *Ramirez v. ICE*, 338 F. Supp. 3d
13 1, 41–43 (D.D.C. 2018).

15 48. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not apply to this APA claim.
16 The claim does not challenge a final order of removal, does not arise from removal
17 proceedings, and does not implicate a discretionary decision. It is a collateral legal
18 challenge to the legality of Petitioner's arrest and detention, reviewable under 28 U.S.C.
19 §§ 1331 and 2241. See *INS v. St. Cyr*, 533 U.S. 289, 308–09 (2001); *Jennings v. Rodriguez*,
20 138 S. Ct. 830, 841 (2018); *Canal A Media Holding v. USCIS*, 964 F.3d 1250, 1257 (11th
21 Cir. 2020).

23 49. The availability of declaratory relief in this context is well established. In *Nielsen v. Preap*,
24 139 S. Ct. 954, 962 (2019), the Supreme Court affirmed that district courts retain
25 jurisdiction to entertain requests for declaratory relief even where injunctive relief may be
26 limited under 8 U.S.C. § 1252(f)(1).

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1 50. In *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044–47 (1984), the Court declined to apply the
2 exclusionary rule in civil immigration proceedings, in part, because it reasoned that
3 declaratory relief remains available as an alternative for individuals in custody. The Court
4 noted that the INS had developed rules and procedures to protect Fourth Amendment rights
5 and that suppression might still be appropriate in cases involving “egregious violations of
6 Fourth Amendment or other liberties that might transgress notions of fundamental fairness”
7 or “widespread violations” of constitutional protections. See *id.* at 1050–51.

8
9 51. The INA prescribes three basic forms of detention for the vast majority of noncitizens in
10 removal proceedings.

11 52. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal
12 proceedings before an IJ. See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are
13 generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§
14 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or
15 convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

16
17 53. Second, the INA provides for mandatory detention of noncitizens subject to expedited
18 removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission
19 referred to under § 1225(b)(2).

20
21 54. Last, the INA also provides for detention of noncitizens who have been ordered removed,
22 including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)–(b).

23 55. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

24 56. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal
25 Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-
26 –208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section

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1 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L.
2 No.119-1, 139 Stat. 3 (2025).

3 57. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in
4 general, people who entered the country without inspection were not considered detained
5 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and
6 Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal
7 Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

8
9 58. Thus, in the decades that followed, most people who entered without inspection and were
10 placed in standard removal proceedings received bond hearings, unless their criminal
11 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was
12 consistent with many more decades of prior practice, in which noncitizens who were not
13 deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer.
14 *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting
15 that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).
16

17 59. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it defies the
18 INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the
19 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like
20 Petitioner.
21

22 60. Section 1226(a) applies by default to all persons “pending a decision on whether the
23 [noncitizen] is to be removed from the United States.” These removal hearings are held
24 under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

25 61. The text of § 1226 also explicitly applies to people charged as being inadmissible, including
26 those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s
27

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1 reference to such people makes clear that, by default, such people are afforded a bond
2 hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress
3 creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those
4 exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257
5 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400
6 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

8 62. Section 1226 therefore leaves no doubt that it applies to people who face charges of being
9 inadmissible to the United States, including those who are present without admission or
10 parole.

11 63. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently
12 entered the United States and were not free to mingle with the general population after
13 being free from official restraint. The statute’s entire framework is premised on inspections
14 at the border of people who are “seeking admission” to the United States. 8 U.S.C. §
15 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention
16 scheme applies “at the Nation’s borders and ports of entry, where the Government must
17 determine whether a] [noncitizen] seeking to enter the country is admissible.” *Jennings v.*
18 *Rodriguez*, 583 U.S. 281, 287 (2018).

20 64. The Respondents are Defendants in *Maldonado Bautista*, and are thus bound by the ruling
21 there, which has the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a). It is a
22 “basic proposition that all orders and judgments of courts must be complied with
23 promptly,” *Maness v. Meyers*, 419 U.S. 449, 458 (1975), and thus, in “suits against
24 government officials and departments, [courts] assume that they will comply with
25 declaratory judgments.” *United Aeronautical Corp. v. United States Air Force*, 80 F.4th
26

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1 1017, 1031 (9th Cir. 2023). This is because declaratory judgments like the one in
2 *Maldonado Bautista* have "the same effect as an injunction in fixing the parties' legal
3 entitlements." *Florida ex rel. Bondi v. U.S. Dep't of Health & Hum. Servs.*, 780 F. Supp. 2d
4 1307, 1316 (N.D. Fla. 2011). This understanding of declaratory judgments—and thus this
5 court's obligation to comply with the declaratory judgment in *Maldonado Bautista* —is
6 consistent with the decisions of many courts. See, e.g., *Sanchez-Espinoza v. Reagan*, 770
7 F.2d 202, 208 n.8 (D.C. Cir. 1985) (Scalia, J.) ("[T]he discretionary relief of declaratory
8 judgment is, in a context such as this where federal officers are defendants, the practical
9 equivalent of specific relief such as injunction or mandamus, since it must be presumed
10 that federal officers will adhere to the law as declared by the court."), abrogated on other
11 grounds by, *Schieber v. United States*, 77 F.4th 806 (D.C. Cir. 2023), cert. denied, 144 S.
12 Ct. 688 (2024); *Smith v. Reagan*, 844 F.2d 195, 200 (4th Cir. 1988) (describing declaratory
13 relief as "the functional equivalent of a writ of mandamus"); *Pub. Citizen v. Carlin*, 2 F.
14 Supp. 2d 18, 20 (D.D.C. 1998) ("The government's decision to appeal this Court's ruling
15 does not affect the validity of the declaratory judgment unless and until the judgment is
16 reversed on appeal or the government seeks and is granted a stay pending appeal."), rev'd
17 on other grounds, 184 F.3d 900 (D.C. Cir. 1999).

20 CLAIMS FOR RELIEF

21 COUNT I

22 Violation of the Bond Regulations

23 65. Petitioner incorporates by reference the allegations of fact set forth in preceding
24 paragraphs.
25

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66. 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). 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.

67. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individual like Petitioner.

68. 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 II **Violation of Due Process**

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

70. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

71. Petitioner has a fundamental interest in liberty and being free from official restraint.

COUNT III **Judicial Estoppel**

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2 72. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in
3 the preceding paragraphs as if fully set forth herein.

4 73. The Government is judicially estopped from asserting that Petitioner is subject to
5 mandatory detention under 8 U.S.C. § 1225(b)(2)(A). In prior litigation,
6 including *Jennings v. Rodriguez*, the Government prevailed, and in doing so argued that
7 individuals who entered without inspection and were not apprehended near the border or
8 within 14 days were subject to discretionary detention under § 1226(a), not mandatory
9 detention under § 1225(b)(2)(A). See *Jennings v. Rodriguez*, No. 15-1204, Tr. of Oral Arg.
10 at 7–8 (Nov. 30, 2016).
11

12 74. Courts accepted that position. Now, the Government reverses course and asserts the
13 opposite interpretation to deny bond hearings. Under *New Hampshire v. Maine*, 532 U.S.
14 742 (2001), judicial estoppel applies where a party assumes a position, prevails, and then
15 adopts a contrary position to gain an unfair advantage. The Government's reversal
16 undermines the integrity of the judicial process and prejudices Petitioners who relied on
17 the prior interpretation.
18

19 **COUNT IV**

20 **Violation of the INA**

21 **Request for Relief Pursuant to *Maldonado Bautista***

22 75. Petitioner incorporates by reference the allegations of fact set forth in the preceding
23 paragraphs.

24 76. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
25 noncitizens residing in the United States who are subject to the grounds of inadmissibility.
26 As relevant here, it does not apply to those who are accused by DHS of having “entered”
27

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1 the United States. Those actions by DHS, followed by the Petitioner's concession to those
2 charges before EOIR, represent a quasi-judicial determination by an agency which
3 precludes further litigation of the issue unless new, material, and previously unavailable
4 facts emerge. Such noncitizens continue to be detained under § 1226(a), unless they are
5 subject to § 1225(b)(1), § 1226(c), or § 1231.
6

7 77. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention
8 and violates the INA.

9 78. Additionally, as a member of the Bond Eligible Class, Petitioner is entitled to consideration
10 for release on bond under 8 U.S.C. § 1226(a).

11 79. The order granting partial summary judgment in *Maldonado Bautista* holds that
12 Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2)
13 to class members.
14

15 80. The order granting class certification in *Maldonado Bautista* further orders that "[w]hen
16 considering this determination with the MSJ Order, the Court extends the same declaratory
17 relief granted to Petitioners to the Bond Eligible Class as a whole."

18 81. Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory
19 judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).
20

21 82. By denying Petitioner a bond hearing under § 1226(a) and asserting he is subject to
22 mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights
23 under the INA and the Court's judgment in *Maldonado Bautista*.

24 **COUNT V**

25 **Relief under the Administrative Procedure Act**

26
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1 83. Petitioner incorporates by reference the allegations of fact and legal standards set forth in
2 the preceding paragraphs.

3 84. Respondents' arrest and continued detention of Petitioner were unlawful under the APA.
4 The arrest was executed without a warrant and without a contemporaneous or documented
5 assessment of flight risk, in violation of 8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.8(c)(2), and
6 the *Nava Settlement Agreement*. These requirements are mandatory and binding.
7

8 85. The arrest and continued detention of Petitioner, executed without a warrant and without
9 any documented flight risk assessment, were unlawful ab initio and remain unlawful. The
10 detention constitutes a continuing seizure of Petitioner's person and is a direct and
11 uninterrupted extension of the original unlawful arrest.

12 86. Respondents' actions constitute final agency action under 5 U.S.C. § 704, as they reflect
13 the consummation of the agency's decision-making process and determine Petitioner's
14 legal rights and obligations.
15

16 87. Under 5 U.S.C. § 706(2)(A), (C), and (D), the APA requires courts to set aside agency
17 action that is arbitrary, capricious, an abuse of discretion, not in accordance with law, in
18 excess of statutory authority, or taken without observance of procedure required by law.
19 Respondents' arrest and detention violate all of these provisions.
20

21 88. Petitioner's APA claim is not barred by 8 U.S.C. § 1252. The jurisdiction-stripping
22 provisions of § 1252 do not apply because this claim does not challenge a final order of
23 removal, does not arise from removal proceedings, and does not implicate a discretionary
24 decision. It is a collateral legal challenge to the legality of the arrest and detention,
25 reviewable under 28 U.S.C. §§ 1331 and 2241.
26

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1 89. Respondents' conduct also exceeds the scope of their statutory authority and is ultra vires.
2 DHS officers are only authorized to arrest without a warrant when both statutory
3 predicates—immigration violation and likelihood of escape—are satisfied. Where they are
4 not, the agency acts beyond its delegated powers.

5
6 90. Petitioner therefore seeks declaratory relief under the APA declaring the arrest and
7 detention unlawful, and injunctive relief enjoining Respondents from continuing or
8 repeating detention based on the same unlawful arrest.

9 91. Petitioner further seeks a declaration that suppression is available in this case under the
10 APA due to the egregious nature of the Fourth Amendment violation, or in the alternative,
11 due to widespread violations of constitutional and statutory protections, as recognized in
12 *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1050–51 (1984).

13
14 **PRAYER FOR RELIEF**

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

- 16 a. Assume jurisdiction over this matter;
- 17 b. Order that Petitioner shall not be transferred while this habeas petition is pending;
- 18 c. Issue an Order to Show Cause ordering Respondents to show cause why this
19 Petition should not be granted within three days;
- 20 d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner within
21 one day
- 22 e. Alternatively, issue a writ of habeas corpus requiring Respondents to release
23 Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
- 24 f. Declare that Respondents' arrest of Petitioner was unlawful under the
25 Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (C), and (D), as it was
26

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1 executed without a warrant or flight risk assessment, in violation of 8 U.S.C. §
2 1357(a)(2), 8 C.F.R. § 287.8(c)(2)

3 g. Declare that Respondents acted ultra vires in arresting and detaining Petitioner
4 without statutory authority, and that the ongoing detention is a continuation of that
5 unlawful seizure and remains unauthorized;
6

7 h. Enjoin Respondents from continuing Petitioner's detention or initiating future
8 detention based on the same unlawful arrest or, in the alternative, order that
9 Petitioner be granted a bond hearing;

10 i. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
11 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
12 law; and
13

14 j. Any further relief the Court deems proper.

15 DATED this 12th February 2026

16 Respectfully Submitted,

17
18 

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

I represent Petitioner, CARLOS RICARDO HERRERA SOLIS, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 12TH OF FEBRUARY 2026.



Christopher Ulises Ramirez,
Texas State Bar No. 24123982

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