IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ELIAS ISAI AGUILAR GARCIA Petitioner v. **JACOB WELSH**, et al., Respondents	Case No. 26-3028

FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR AN ORDER TO SHOW CAUSE

PRELIMINARY STATEMENT

1. On February 16, 2026, Petitioner Elias Isai Aguilar Garcia filed his initial petition for a writ of habeas corpus, etc. based primarily on the argument that Respondents were holding him without bond due to an argument that the Immigration Court lacked jurisdiction under *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), and the legal arguments outlined therein. This amended petition is being filed pursuant to Fed. Rule Civ Pro 15(a) as it is being filed within 21 days of the initial petition.

2. On March 3, 2026, the Department of Homeland Security continued to argue in a bond hearing before the Kansas City Immigration Court, that the court lacked jurisdiction to hear the bond request under *Yajure-Hurtado.* However, the Kansas City

Immigration Court, a part of the Department of Justice, held that it had jurisdiction to hear the bond request, but denied the request for release on bond despite Petitioner not being placed in removal proceedings pursuant to 8 U.S.C. § 1229a, and not having any pending criminal charges against him.

3. Instead, in violation of his Due Process rights, the Kansas City Immigration Court denied bond based on Homeland Security Investigation reports filed less than 24-hours prior to hearing, and not tied to any existing criminal charges, as well as placing the burden of proof on Petitioner to respond to unfounded allegations. The immigration court then held a bond hearing, but one that was constitutionally defective.

4. This is consistent with national reporting indicating that while bond hearings are now being conducted, they are essentially sham hearings where those seeking bond are being denied on flight risk or dangerous findings that are unsupported by the evidence. See, "Judges keep ordering immigration hearings —but say the results are often a sham," By Kyle Cheney, Politico, March 6, 2026.[1]

5. To date, Petitioner remains detained since February 6, 2026 - then on or about March 7, 2026, the DHS finally filed his Notice to Appear with the Kansas City Immigration Court which would place him in removal proceedings pursuant to 8 U.S.C. § 1229a, fully a month after they detained him.

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[1] https://www.politico.com/news/2026/03/06/immigration-case-hearings-judges-00815660 (accessed 03/07/2026).

6. Because Respondents are detaining Petitioner in violation of his Due Process rights, and a future bond hearing before the immigration court would be fruitless due to the Respondent's erroneous legal conclusion with respect to jurisdiction to consider him for bond, the Court should accordingly order that within one day, Respondent DHS must release Petitioner.

7. The Court should expeditiously grant this petition.

JURISDICTION

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

9. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Chase County jail.

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

11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE AND TRIAL LOCATION DESIGNATION

12. Venue is proper because Petitioner is detained at Chase County Jail in Cottonwood Falls, Kansas which is within the jurisdiction of this District.

13. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States reside and a substantial part of the events or

omissions giving rise to his claims occurred in this District. No real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243 AND

APPLICATION FOR AN ORDER TO SHOW CAUSE

14. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause 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. (emphasis added).'

15. The Court should grant the petition for writ of habeas corpus "forthwith," as Petitioner's Due Process rights were violated by Respondents, and a future bond hearing by Respondents would result in a finding that they lack jurisdiction to consider his release on bond given their clearly erroneous legal conclusions.

16. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who 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).

17. Pursuant to 28 U.S.C. § 2243, Petitioner, ("Petitioner or ") respectfully requests that the Court issue an order to all Respondents requiring them to show cause why the Petitioner's Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief pursuant to 28 U.S.C. § 2241; 28 U.S.C § 1331; Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; the Administrative Procedure Act, 5 U.S.C. § 701; and the Declaratory Judgment Act, 28 U.S.C. § 2201 should not be granted and why Respondents should not be ordered to release Petitioner from detention.

18. Pending adjudication of these claims, Petitioner asks for an order enjoining Respondents from transferring Petitioner from the jurisdiction of the Kansas City Field Office of the Immigration & Customs Enforcement ("ICE") Office of Enforcement and Removal Operations ("ERO") and this District.

PARTIES

19. Petitioner is currently detained in Chase County, Kansas. He entered the United States without authorization several years ago, in about 2008. He has three minor United States citizen children aged 10-18. Aguilar Garcia's wife has been a Lawful Permanent Resident of the United States for almost twenty years. He is also Pastor of the [redacted] Church in Shawnee, Kansas. Mr. Aguilar Garcia was arrested by the Department of Homeland Security but was not placed in removal proceedings until about March 7, 2026. He has been held in the Respondent's custody since February 6, 2026.

20. Respondent Jacob Welsh is the Chase County, Kansas Sheriff and Warden of the Chase County Jail. He has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Welsh is the legal custodian of Petitioner.

21. Respondent Christopher Chamberlain is the Assistant Field Office Director of the Kansas City Field Office, Immigration and Custom's Enforcement, Respondent Chamberlain is a legal custodian of Petitioner and has authority to release him.

22. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. In this capacity, Respondent Bondi is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees the Immigration Court system via the Executive Office for Immigration Review ("EOIR"), a part of the Department of Justice. This agency, under her control, is responsible for conducting Bond hearings, ordering the release of individuals in removal proceedings, like Petitioner.

23. Respondent Kristi Noem was sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS) She has since been replaced with Acting Secretary Markwayne Mullin. In this capacity, Respondent is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement, the component agency

responsible for Petitioner's arrest and detention. Respondent is a legal custodian of Petitioner.

STATEMENT OF THE CASE

Factual Background

24. Petitioner entered the United States without authorization in about 2008. He was not detained by the Respondents at that time, and has resided in the United States ever since.

25. He has three minor United States citizen children aged 10-18. Aguilar Garcia's wife has been a Lawful Permanent Resident of the United States for almost twenty years. He is also Pastor of the [redacted] Church in Shawnee, Kansas. Additionally, he works full-time remodeling homes in the area.

26. Petitioner was detained by Respondents on or about February 6, 2026 and has been detained by them ever since. However, Respondents failed to properly file a Notice to Appear to initiate removal proceedings against him until about March 7, 2026 according to the Immigration Court and its online docketing system.

27. The Immigration Court held a bond hearing on March 3, 2026 for Petitioner. On or about March 2, 2026, the Respondents filed redacted notes regarding a Homeland Security Investigation (HSI) which contained unsubstantiated Hearsay and double Hearsay. These records are not supported by any arrests or charges currently pending before any court.

28. At the March 3, hearing, the Immigration Court allowed these materials into the record over objections from counsel. In fact, in denying release on bond, the IJ relied solely upon the HSI investigation records to determine that the mere allegations were sufficient to continue his detention, even though at that moment, no removal proceedings were even pending against Petitioner.

Legal Background

Detention Provisions of the Immigration and Nationality Act

29. Congress drafted separate sections of the INA to deal with different bases for the detention of people coming to or already in the United States, who find themselves in removal proceedings.

30. 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge (IJ). *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

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

33. The dispute here deals with sections §§ 1226(a) and 1225(b)(2). These detention provisions 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. Section 1226(a) was most recently amended last year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

34. After Congress enacted IIRIRA, EOIR promulgated its own regulations which stated that those 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).

35. For almost thirty years, noncitizens who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229

(1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

36. Congress itself has amended who is subject to mandatory detention under 8 U.S.C. § 1226, adding the commission of certain crimes requiring people in removal proceedings to no longer be eligible for release on bond. See, Laken Riley Act. If Congress viewed all persons in the country without authorization subject to 8 U.S.C. § 1225, there would have been no need for the Laken Riley Act at all. Thus, under the Supreme Court's statutory interpretation canons, it follows that Congress did not intend for § 1225 to apply to noncitizens in the country who have not been inspected or admitted.

37. Last year that all changed when ICE, "in coordination with" the Department of Justice (DOJ) issued a policy on July 8, 2025, that rejected the well-established understanding of the statutory framework and reversed decades of practice.

38. "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[2] states that anyone who entered the United States without inspection is to be deemed subject to the mandatory detention provisions of § 1225(b)(2)(A), regardless of when they entered, where they entered, or when they were arrested by DHS, even if they had been physically present in the United States for decades.

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[2] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

39. The BIA issued *Matter of Yajure Hurtado* on September 5, 2025, which adopts this same argument, turning on its head decades of practice in the immigration courts. The Board found that any and all noncitizens placed in removal proceedings who entered without inspection or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

40. The overwhelming majority of District Courts have found that the government's change of position with respect to mandatory detention of all persons found to have previously entered the country without authorization is contrary to the plain language of the statute.[3] This includes several courts within the Tenth Circuit: *Diaz Colin v. Holt*, 2025 WL 3645176 (W.D. Okla. Dec. 16, 2025); *Duran Serrato v. Kopp*, 25-cv-245 (D. Wyo. Nov. 18, 2025); *Cortez-Gonzalez v. Noem*, No. 2:25-CV-00985-MLG-KK, 2025 WL 3485771 (D.N.M. Dec. 4, 2025); and *Jimenez Facio v. Baltazar*, 2025 WL 3559128 (D. Colo. Dec. 12, 2025), et al.[4]

41. Respondents, therefore, take the position that all person who enter the United States without authorization are to be deemed subject to detention under 8 U.S.C. §

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[3] See, "Courts have ruled 4,400 times that ICE jailed people illegally. It hasn't stopped." By Nate Raymond, Kristina Cooke and Brad Heath, Reuters, updated Feb. 14, 2026. https://www.reuters.com/legal/government/courts-have-ruled-4400-times-that-ice-jailed-people-illegally-it-hasnt-stopped-2026-02-14/

[4] We note that recently the Fifth Circuit issued a decision reaching the opposite conclusions, agreeing with the position of the Respondents over a strenuous objection which sides with the majority of District Courts, including this one, who have found otherwise. See, *Buenrostro-Mendez v. Bondi*, Case No. 25-20496 (5th Circuit. 02/06/2026)[https://www.ca5.uscourts.gov/opinions/pub/25/25-20496-CV0.pdf].While the Fifth Circuit is the first to reach a decision, there are several Circuits in which decisions are expected shortly, and in any event the Fifth Circuit's decision does not bind this Court.

1225(b)(2)(A) and therefore ineligible to be released on bond. The plain language of section 1225(b)(2)(A) does not apply to persons like Mr. Aguilar Garcia, who entered the United States in the past and were residing here at the time they were encountered by DHS - instead, Mr. Aguilar Garcia is subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond. Section 1226(a) expressly applies to people who, like Mr. Aguilar Garcia, are charged as inadmissible for having entered the United States without inspection. In fact, the Kansas City Immigration Court held its defective bond hearing solely because it believed at the time that it was ordered to do so by *Maldonado Bautista*.

42. Recently, the Ninth Circuit stayed the impact of *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (CD Cal. 2026) outside of the Central District of California, meaning a future bond hearing at the Kansas City Immigration Court would simply result in that court finding it has no jurisdiction under *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). See, *Maldonado Bautista v. DHS*, Case No. 26-1044 (9th Cir. 03/06/2026).

Due Process Rights in Removal Proceedings

43. The Due Process clause of the Fifth Amendment protects non-native persons in the United States from being "deprived of life, liberty, or property, without due process of law." The Supreme Court has clearly, and repeatedly found that "the Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*,

533 U.S. 678, 693 (2001)(Citations omitted). The Tenth Circuit has specifically found that where constitutional challenges such as this are brought, the courts have jurisdiction via Habeas. *Hoang v. Comfort*, 282 F.3d 1247, 1253 (10th Cir. 2002), *rev'd on other grounds*, 538 U.S. 1010 (2003) ("[C]ourts retain jurisdiction over habeas petitions which include constitutional challenges.").

44. Mr. Aguilar Garcia has a "liberty interest" in his not being detained by the Respondents. "Freedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause. Government detention violates the Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards or a special justification outweighs the individual's liberty interest." *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana,* 504 U.S. 71, 80, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992).

45. Additionally, Petitioner seeks an "opportunity to be heard 'at a meaningful time and in a meaningful manner'" required by due process. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)(quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). What happened to Mr. Aguilar Garcia during his bond hearing is similar to *Rosa Pineda v. Nessinger*, Case No. 1:25-CV-522-MSM-AEM (D.R.I. 11/24/25), finding that "an uncorroborated police report cannot, alone, be "clear and convincing evidence sufficient for a finding of dangerousness." *Alvarez Puerta v. Nessinger*, Case No. 1:25-cv-108-JJM-AEM (D.R.I. June 17, 2025); cf. *Rosa v. Garland*, 114 F.4th 1, 17

(1st Cir. 2024) (finding, in the context of hearings concerning adjustment of status, that "the agency may not give 'substantial weight' to a police report in the absence of 'a conviction or corroborating evidence of the allegations contained' in the report") (quoting *In Re Arreguin De Rodriguez*, 21 I. & N. Dec. 38, 42 (BIA 1995))."

46. While the HSI records are not police reports, the similarity is clear where an agency has written down derogatory information about a person, but no criminal charges are pending anywhere, no prosecutor has deemed them worthy of charge, and no Court has heard the claim or given the Petitioner an opportunity to confront them.

47. Unfortunately, there is no mechanism for Petitioner to seek review of these claims through the immigration court system, as neither the immigration court nor the Board of Immigration Appeals have jurisdiction to consider the constitutional claims presented. See *Matter of Cruz de Ortiz*, 25 I&N Dec. 601, 605 (BIA 2011) ("[N]either we nor the Immigration Judges have authority to rule on the constitutionality of the statutes we administer.")

48. A number of District Courts have found jurisdiction to grant Habeas petitions on constitutional grounds in similar situations: *Garcia v. Hyde*, Case No. 25-cv-585-JJM-PAS (D.R.I. 12/03/2025)(Ordering immediate release where the IJ relied on an old warrant and failed to address key evidence presented, thereby providing a constitutionally defective hearing); *Rosa Pineda v. Nessinger*, Case No. 1:25-CV-522-MSM-AEM (D.R.I. 11/24/25)(Ordering immediate release after the IJ relied on an uncorroborated police report to find dangerousness); *A.D. v. Oddo*, Case No. 3:25-

cv-00460-SLH-MPK (W.D. Pa. 02/12/26)(Ordering immediate release where the IJ did not provide a constitutionally sufficient bond hearing); *Said v. Noem*, Case No. 3:25-cv-938-MOC (W.D. N.C. 02/04/2026)(Ordering immediate release due to denial of Due Process rights in prior bond hearing before the IJ).

49. Under the *Mathews v. Eldridge* framework, the balance of interests strongly favors Petitioner's release. Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."). The risk of erroneous deprivation is exceptionally high. Petitioner has deep ties to the community, developed over nearly twenty years, including three U.S. citizen children, a Lawful Permanent Resident wife, and a Church he is the Pastor of.

50. The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. Furthermore, the "fiscal and administrative burdens" of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35. In *Montalvan Reyes v. Warden*, Case No. 1:26-cv-00441-DC-JDP (W.D. Cal. 02/13/26) the court

looked at the *Mathews* test for someone who had been in the United States for several years and then detained (in that case re-detained), finding that the government interest in detention was low.

51. Considering these factors, Petitioner respectfully requests that this Court order his immediate release from custody.

Remedies

Direct Release or a Bail Hearing Held By This Court Are the Appropriate Remedies

52. The "equitable and flexible nature of habeas relief" affords district courts significant discretion over the appropriate remedies for violations of law and the Constitution. *Schlup v. Delo*, 513 U.S. 298, 319 (1995) ("[H]abeas corpus is, at its core, an equitable remedy"). This Court should order a remedy that fully addresses the statutory and constitutional violations in this case and is efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the habeas statute "does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted").

53. Release is the customary remedy in habeas proceedings. *See* 28 U.S.C. § 2243 (the habeas should shall "dispose of the matter as law and justice require."); *Preiser v. Rodriguez,* 411 U.S. 475, 484 (1973) (finding "that the traditional function of the writ is to secure release from illegal custody"). The most appropriate remedy in a case like this, where Petitioner had been held for one month before being even being placed in removal proceedings, and then being given a wholly inadequate bond hearing in

violation in violation of both the INA and due process, is release on recognizance without further conditions of release.

54. Dozens of courts across the country have agreed. *See, e.g., Munoz Materano v. Arteta*, 2025 WL 2630826, at *20 (S.D.N.Y. Sept. 12, 2025) (ordering immediate release); *Chipantiza- Sisalema v. Francis*, 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025) (same); *Rueda Torres v. Francis*, No. 25-cv-8408, 2025 WL 3168759, at *6 (S.D.N.Y. Nov. 13, 2025) (same); *Cifuentes v. Soto*, No. 25-cv-18029, 2025 WL 3771380, at *4 (D.N.J. Dec. 31, 2025) (same); *Gonzalez Centeno v. Lowe*, No. 3:25-cv-2518, 2026 WL 94642, at *4 (M.D. Pa. Jan. 13, 2026) (same); *Feisal O. v. Noem,* No. 26-cv-81, 2026 WL 92857, at *3 (D. Minn. Jan. 13, 2026) (same); *Garcia Covarrubias v. Holston*, No. 2:25-cv-02445, 2026 WL 25970, at *4 (D. Nev. Jan. 5, 2026) (same) *Kenzhebaev v. Noem*, No. 1:25-cv-1786, 2025 WL 3737975, at *9 (W.D. Mich.Dec. 29, 2025) (same); *Kobilov v. O'Neill*, No. 26-cv-0058, 2026 WL 73475, at *3 (E.D. Pa. Jan. 8, 2026) (same, finding a bond hearing unnecessary where there was no record indication petitioner was a danger or flight risk); *Ortega-Aguirre v. Noem*, No. 4:25-cv-04332, 2025 WL 3684697, at *4 (S.D. Tex. Oct. 10, 2025) (same); *Bumbila Iza v. Arnott*, No. 6:25-cv-3392, 2026 WL 67152, at *5 (W.D. Mo. Jan. 8, 2026) (same); *see also Mata Velasquez v. Kurzdorfer*, --- F. Supp. 3d ---, No. 25-cv-493, 2025 WL 1953796 (W.D.N.Y. July 16, 2025) (ordering release and that petitioner could not be re-detained without a pre-deprivation hearing); *Gil v. Warden, Otay Mesa Det. Ctr.*, No. 3:25-cv-03279, 2025 WL 3675153, at *4 (S.D. Cal. Dec. 17,

2025) (same); Sekhon v. Warden of Golden State Annex Det. Facility, No. 1:25-cv-1692, 2026 WL 74151, at *4 (E.D. Cal. Jan. 9, 2026) (same).

55. Release is the only appropriate remedy for the constitutional violations in this case, including the lack of pre-deprivation notice or individualized review before Petitioner's arrest, which cannot be remedied by a post-deprivation hearing. *See Alfaro Herrera v. Baltazar*, No. 1:25-cv-04014, 2026 WL 91470, at *13 (D. Colo. Jan. 13, 2026) (given that petitioner had been previously released to the community and holding a bond hearing would prolong his unlawful detention, "[r]espondents' violations of Petitioner's rights are best remedied by ordering Petitioner's immediate release from immigration detention."); *Qasemi v. Francis*, No. 25-cv- 10029, 2025 WL 3654098 at *14, (S.D.N.Y. Dec. 17, 2025) (a bond hearing would not be an adequate remedy for the due process violations in petitioner's sudden arrest and detention); *Crespo Tacuri v. Genalo*, No. 25-cv-06896, 2026 WL 35569, at *7 (E.D.N.Y. Jan. 6, 2026)(ordering release, finding that post-deprivation review cannot remedy the due process violation of detaining petitioner with no process or individualized assessment); *Moctezuma Macias v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that the government's repeated use of unlawful detention policies across the country, causing petitioners to "sit in jail waiting for a judicial decision," the court would order immediate release instead of causing additional delay through a bond hearing).

56. We note again that he was arrested on February 6, 2026 without his charging document being filed in Immigration Court for a month, he has given a constitutionally defective bond hearing, and denied release in violation of his Fifth Amendment Due Process rights. Ordering his immediate release and facilitating his return to his residence is the most appropriate remedy in this case.

Bail Hearing by the Habeas Court

57. In the alternative, the habeas court can hold its own custody hearing and determine whether the government can prove by clear and convincing evidence that Petitioner must remain in custody, or whether he may be released on recognizance, an appropriate bond in light of his ability to pay, or supervised release. This is a more efficient and effective remedy than ordering an immigration judge to conduct a hearing, which may lead to additional enforcement proceedings and delays before the unlawful detention in this case is remedied. *See L.G.M. v. LaRocco*, 788 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025) (ordering a bond hearing held by the habeas court, as this would be more efficient than delegating the task to the agency and ensure proper constitutional oversight); *Flores-Powell v. Chadbourne*, 677 F.Supp.2d 474-78 (D. Mass 2010) (granting petition and discussing at length habeas court's equitable power, which includes power to hold its own bail hearing); *see also Santos v. Lowe*, No. 1:18-CV-1553, 2020 WL 4530728, at *4 (M.D. Pa. Aug. 6, 2020) (finding that habeas court-ordered bond hearing was not individualized and did not comport with due process, and granting motion to enforce to hold the court's own bond determination);

Ramirez v. Watkins, No. 10-cv-126, 2010 WL 6269226, at *19-20 (S.D. Tex. Nov. 3, 2010), *rep. and rec not reached,* (S.D. Tex. Dec. 8, 2010) (dismissing case as moot) (recommending the habeas court conduct its own bail inquiry, as it would be more efficient, ensure supervision over any compliance issues, and avoid further proceedings).

58. In this case, Mr. Aguilar Garcia has three United States citizen children, a Lawful Permanent Resident spouse, with whom he has been paying taxes in the United States. He has been Pastor of the Ministerios Ebenezer Kansas Church in Shawnee, Kansas since about 2014. He has no significant criminal history, despite the allegations contained in the HSI reports, no charges related to any of those allegations have ever been lodged against him in any court. Thus he has lengthy and substantial ties to the United States and is not a danger to his community. The Court should order him released immediately or else hold a custody hearing to consider the issue itself.

CAUSES OF ACTION

Count I- Violation of Fifth Amendment Right to Substantive Due Process

59. The allegations in the above paragraphs are realleged and incorporated herein.

60. "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).

61. Immigration detention is "civil, not criminal" and must be "nonpunitive in purpose and effect." *Id.* Accordingly detention is only permitted in order to serve two goals:

"ensuring the appearance of [noncitizens] at future immigration proceedings" and "preventing danger to the community." *Id.*

62. Subjecting Mr. Aguilar Garcia to unlawful detention violates his Fifth Amendment right to freedom from detention.

Count II - Violation of Fifth Amendment Rights to Procedural Due Process

63. The allegations in the above paragraphs are realleged and incorporated herein.

64. Under the Fifth Amendment to the United States Constitution, those threatened with the loss of liberty or property due to actions by the federal government are entitled to 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*, 533 U.S. at 690 .

65. Mr. Aguilar Garcia has a fundamental interest in liberty and being free from official restraint.

66. The government's detention of Mr. Aguilar Garcia violates his right to due process, where the bond hearing afforded to him was constitutionally defective.

67. Respondents denied Mr. Aguilar Garcia release from custody in violation of his Due Process rights, based on flawed legal analysis, which is inherently arbitrary and capricious.

Count III- Violation of the Administrative Procedure Act

68. Mr. Aguilar Garcia realleges and incorporates by reference the allegations above.

69. The Administrative Procedure Act provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

70. Respondents denied Mr. Aguilar Garcia release from custody in violation of his Due Process rights, based on flawed legal analysis, which is inherently arbitrary and capricious.

71. Mr. Aguilar Garcia's continued detention and the threat of removal has caused and continues to cause him irreparable harm.

Count IV - Violation of the INA

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

73. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a). Respondents would violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members should this Court order a new bond hearing in the future.

74. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. Mr. Aguilar Garcia entered the United States almost 18 years ago, and was never apprehended by DHS. As such he is not an arriving alien. He has no significant criminal history and therefore, cannot be subject to any of the mandatory detention provisions based on criminal history. Noncitizens such as Mr. Aguilar

Garcia are properly detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

RELIEF REQUESTED

76. WHEREFORE, Petitioner prays that this Court:

a. Assume jurisdiction over the matter;

b. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner;

c. Alternatively, conduct a bond hearing at which the Respondents would bear the burden of showing by clear and convincing evidence that Petitioner must remain in custody;

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

e. Enjoin Respondents from transferring the Petitioner outside the jurisdiction of the District of Kansas pending the resolution of this case;

f. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

g. Grant any further relief this Court deems just and proper.

Respectfully submitted this 9th day of March, 2026:

By: */s/* Jonathan Willmoth
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Counsel for the Petitioner

Verification

I declare under penalty of perjury that the facts set forth in the foregoing Verified First Amended Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

/s/ Jonathan Willmoth
Jonathan Willmoth

Mar. 9, 2026