UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

Elio Asdrubal GONZALEZ OJEDA,

Petitioner,

v.

Kevin RAYCRAFT, in his official capacity as Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; Angela DUNBAR, in her official capacity as Warden of the North Lake Correctional Facility; Kristi NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, in her official capacity as U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents.

Case No. 1:26-cv-909

Hon.

PETITION FOR WRIT OF HABEAS CORPUS AND IMMEDIATE RELEASE

INTRODUCTION

1. Petitioner Elio Asdrubal Gonzalez Ojeda seeks a writ of habeas corpus ordering his **immediate release** due to his unlawful detention by Respondents.

2. Petitioner fled Venezuela after he [redacted] Petitioner entered the United States on July 6, 2022. Customs and Border Protection ("CBP") held him overnight before releasing him on parole pursuant to 8 U.S.C. § 1182(d)(5). *See* Parole Stamp, attached hereto as Exhibit A.

3. Petitioner's parole expired September 5, 2022, and he was issued a Notice to Appear in Immigration Court, which erroneously designated him as having entered without inspection and charged him with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). *See* Notice to Appear, attached hereto as Exhibit B.

4. Respondents then commenced removal proceedings against Petitioner in immigration court. On June 29, 2023, Petitioner timely applied for asylum and withholding of removal based on his fear of returning to Venezuela.

5. Petitioner's immigration counsel was unaware of Petitioner's grant of parole until March 3, 2026. In his removal proceedings, Petitioner had already plead to the erroneous Notice to Appear, admitting to the allegation that he "was not then admitted or paroled after inspection by an Immigration Officer" upon arriving in the United States.

6. On January 22, 2026, an Immigration Judge denied Petitioner's application for asylum. On February 12, 2026, Petitioner timely filed an appeal of his denial of asylum with the Board of Immigration Appeals ("BIA"). *See* BIA Appeal Receipt, attached hereto as Exhibit C. That appeal remains pending, and no briefing deadlines have been set as of the date of filing the instant petition. Respondent's order of removal is automatically stayed during the pendency of the appeal. 8 C.F.R. § 1003.6(a).

7. On February 5, 2026, Petitioner was driving and was pulled over by unidentified law enforcement agents, presumably Immigration and Customs Enforcement ("ICE"). He was detained and transferred to the North Lake Correctional Facility in Baldwin, Michigan, where he remains in custody.

8. On information and belief, Petitioner has no criminal history, aside from traffic tickets and dismissed charges for driving without a license, and was detained solely due to his January 22, 2026 removal order, which is stayed pending appeal, and his Venezuelan nationality.

9. Petitioner attempted to request a bond hearing before an Immigration Judge on March 3, 2026. The immigration court rejected his request for a bond hearing due to his pending BIA appeal. *See* Bond Request Rejection Notice, attached hereto as Exhibit E. Therefore, Petitioner will remain detained indefinitely.

10. Petitioner's detention violates the Fifth Amendment Due Process Clause because he has not and will not receive an individualized determination of the necessity of his detention. Petitioner's request for a bond hearing was rejected, and, upon information and belief, Respondents are detaining Petitioner pursuant to the mandatory detention provisions set forth in 8 U.S.C. § 1225(b)(2).

11. Upon information and belief, Petitioner is being subject to mandatory detention either on account of his grant of parole under 8 U.S.C. § 1182(d)(5), or, in the alternative, on account of his designation as having entered without inspection and pursuant to the policy directive highlighted by the BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). In either case, Respondents' application of § 1225(b)(2) would thus render Petitioner ineligible for bond even if he were to secure a bond hearing. 8 C.F.R. § 1003.19(h)(2)(i)(B).

12. Whether Respondents consider Petitioner to have been paroled or to have entered without inspection, Petitioner has been unlawfully detained without an individualized assessment of whether he is a danger or a flight risk. Petitioner therefore asks this Court to find that his detention by Respondents violates his constitutional right to due process by depriving him of his liberty without any consideration of whether such a deprivation is warranted, and, in the alternative, also violates the Immigration and Nationality Act ("INA").

13. Accordingly, to vindicate Petitioner's rights, this Court should grant the instant petition for a writ of habeas corpus and order Petitioner's **immediate release**.

JURISDICTION

14. Petitioner Elio Asdrubal Gonzalez Ojeda is in the physical custody of Respondents. Petitioner is detained at the North Lake Correctional Facility in Baldwin, Michigan.

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

16. 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

17. Venue is proper in the Western District of Michigan under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. Petitioner is presently in Respondents' custody at the North Lake Correctional Facility in Baldwin, Michigan.

REQUIREMENTS OF 28 U.S.C. § 2243

18. The Court must grant the petition for a writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a

return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

19. 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).

PARTIES

20. Petitioner Elio Asdrubal Gonzalez Ojeda is a citizen of Venezuela who has resided in the United States since July 6, 2022. He has been in immigration detention since February 5, 2026, and is currently detained at North Lake Correctional Facility under the direct control of Respondents. After taking custody of Petitioner, ICE did not set bond. Petitioner requested review of his custody (i.e., a bond hearing) by an IJ at the Detroit Immigration Court. On March 5, 2026, Petitioner was denied eligibility for bond by an IJ on the basis of his pending appeal before the BIA. *See* Exhibit E.

21. Respondent Kevin Raycraft is the Director of the Detroit Field Office of ICE's Enforcement and Removal Operations division. As such, Director Raycraft

is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

22. Respondent Angela Dunbar is the warden of the North Lake Correctional Facility where Petitioner is detained by ICE. The North Lake Correctional Facility holds immigration detainees pursuant to a contract with ICE. As Warden, she is a legal custodian of Petitioner.

23. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

24. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

25. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates are component agencies. She is sued in her official capacity.

26. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

27. Respondents individually and collectively will be referred to as "Respondents."

FACTS

28. Petitioner Elio Asdrubal Gonzalez Ojeda has resided in the United States since July 6, 2022 and lives in Pontiac, Michigan. Petitioner is 50 years old.

29. Petitioner fled Venezuela after he [redacted]

Petitioner entered the United States on July 6, 2022. Customs and Border Protection ("CBP") held him overnight before releasing him on parole pursuant to 8 U.S.C. § 1182(d)(5). The grant of parole expired on September 5, 2022. *See* Exhibit A.

30. On November 29, 2022, Petitioner was issued a Notice to Appear in Immigration Court, which erroneously designated him as having entered without inspection and charged him with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). *See* Exhibit B.

31. Respondents then commenced removal proceedings against Petitioner in immigration court. On June 29, 2023, Petitioner timely applied for asylum and withholding of removal based on his fear of returning to Venezuela.

32. Petitioner's immigration counsel was unaware of Petitioner's grant of parole until March 3, 2026. In his removal proceedings, Petitioner had already plead to the erroneous Notice to Appear, admitting to the allegation that he "was not then

admitted or paroled after inspection by an Immigration Officer" upon arriving in the United States.

33. On January 22, 2026, an Immigration Judge denied Petitioner's application for asylum. *See* Decision of the Immigration Judge, attached hereto as Exhibit C.

34. On February 5, 2026, Petitioner was working as a delivery driver and was pulled over by unidentified law enforcement agents, presumably ICE. One car pulled in front of him, and one car pulled behind him. Officers showed Petitioner a photograph of himself on one of their phones and detained him. The officers explained that they detained him because they ran his plates and discovered that he had a removal order. At this time, Petitioner's removal order was not final as he was within the 30-day appeal window. As such, his removal order was automatically stayed. Petitioner has remained detained at North Lake Correctional Facility in Baldwin, Michigan ever since.

35. On February 12, 2026, Petitioner timely filed an appeal of his denial of asylum with the Board of Immigration Appeals ("BIA"). *See* BIA Appeal Receipt, attached hereto as Exhibit D. That appeal remains pending, and no briefing deadlines have been set as of the date of filing the instant petition. Petitioner's order of removal is automatically stayed during the pendency of the appeal. *See* 8 C.F.R. § 1003.6(a).

36. Following Petitioner's detention, ICE has not provided an opportunity to post bond or be released under other conditions.

37. On January 20, 2025, President Donald Trump issued several executive actions related to immigration, including "Protecting the American People Against Invasion," an executive order ("EO") setting out a series of interior immigration enforcement actions. The EO instructs the DHS Secretary "to take all appropriate action to enable" ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures including the use of mass detention.

38. In particular, President Trump has targeted immigrants from certain countries, including those from Venezuela. On June 4, 2025, he issued EO 10949, "Restricting the Entry of Foreign Nationals to Protect the United States from Foreign Terrorists and Other National Security and Public Safety Threats," restricting the entry of nationals from a group of countries including Venezuela. In response to the National Guard shooting that took place on November 26, 2025, in Washington, D.C., USCIS also placed a hold on pending benefit requests for noncitizens from countries listed in EO 10949.

39. On information and belief, Petitioner was arrested and detained not based on an individualized assessment of whether he is a flight risk or a danger to the community, but due to his Venezuelan nationality. On information and belief,

Respondents seek to continue detaining Petitioner regardless of the individual facts and circumstances of his case.

40. Petitioner requested a bond hearing before an IJ on March 3, 2026. On March 5, 2026, an IJ rejected his request for a bond hearing, providing no reasoning other than "appeal pending." *See* Exhibit E. The Court did not make any factual findings or in any way suggest that Petitioner is a flight risk or danger to the community.

41. Petitioner is neither a flight risk nor a danger to the community.

42. Petitioner is a loving husband and father to three daughters. He works hard as a delivery driver to help support his family. They have lived together in the metro-Detroit area over the last few years and during that time have developed strong ties to their community, particularly through the All Saints' Episcopal Church. Several members of the church community have requested to submit letters in support of his release from detention. *See* Letters of Support Included with March 3, 2026 Bond Request, attached hereto as Exhibits F-J. The family's pastor Rev. Dr. Christopher A. Johnson describes Petitioner as "honorable," "a faithful husband and caring parent," with a "a strong, positive work ethic." *See* Exhibit F. Rev. Donna Lockhart describes Petitioner as a man who "carrie[s] himself with humility, integrity, and quiet strength" and notes that he and his family have volunteered their time and labor to support the church community. *See* Exhibit G.

43. Petitioner has no criminal convictions. He has had only minor traffic infractions and two misdemeanor charges for driving without a license which were dismissed.

44. Undersigned counsel is working with Petitioner as his immigration attorney and filed Petitioner's Notice of Appeal with the BIA. *See* EOIR-27 Notice of Entry of Appearance as Attorney before the BIA, attached hereto as Exhibit D. Petitioner is committed to seeing his asylum claim through the appeals process.

45. In detention, Petitioner has been suffering under medical issues related to untreated sleep apnea, including high blood pressure and left ventricular hypertrophy. He has requested but has been unable to access appropriate treatment for his sleep apnea, such as a CPAP machine, and has not been able to see a cardiologist as recommended by his doctor.

46. Meanwhile, Petitioner's family has been suffering from the loss of his income and company.

47. Without relief from this court, Petitioner faces the prospect of months—or even years—in immigration custody, separated from family and community and unable to access adequate medical care to meet his needs.

LEGAL FRAMEWORK

I. PETITIONER'S DETENTION VIOLATES THE FIFTH AMENDMENT'S DUE PROCESS CLAUSE.

48. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the very liberty that [the Due Process Clause] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citation omitted). The Fifth Amendment's Due Process Clause extends to all persons, regardless of status. See *A.A.R.P. v. Trump*, 145 S. Ct 1364, 1367 (2025). Thus, noncitizens, such as Petitioner, are entitled to its protections. See *id.*; see also *Chavez-Acosta v. Garland*, No. 22-3045, 2023 WL 246837, at *3 (6th Cir. Jan. 18. 2023).

49. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or they pose a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

50. "[I]t is unconstitutional for the Government to detain a person without explanation, without a hearing, without notice, or without any means of challenging that detention," which is exactly what the Government did here. *See Larrazabal-Gonzalez v. Mason*, No. 2:26-cv-00049, 2026 WL 221706, at *4 (S.D. W. Va. Jan. 28, 2026).

51. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), the Court must consider the following three factors: "(1) the private interest that will be affected by official action; (2) the risk of erroneous deprivation of that interest; and (3) the

government's interest, including the fiscal and administrative burdens that the additional or substitute procedures entail." *See Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771, 785 (E.D. Mich. 2025) (citing *Mathews*, 424 U.S. at 335).

52. The first *Mathews* factor clearly weighs in favor of Petitioner. Here, Respondents granted Petitioner parole into the United States, determining that Petitioner was not a flight risk or danger. Since then, Petitioner has only further established that he is neither a flight risk nor danger. Petitioner applied for asylum and attended all of his scheduled hearings before the Immigration Court. He has no criminal history, aside from minor traffic infractions and two charges for driving without a license which were dismissed. Respondents are now holding Petitioner in conditions "indistinguishable from criminal incarceration." *Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1187 (D. Minn. 2025). He is "experiencing [many of] the deprivations of incarceration, including loss of contact with friends and family, loss of income earning, . . . lack of privacy, and, most fundamentally, the lack of freedom of movement." *See Günaydin*, 784 F. Supp. 3d at 1187. There is no dispute that Petitioner has a significant private interest in avoiding detention, as one of the "most elemental of liberty interests" is to be free from detention. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (citation omitted).

53. The second *Mathews* factor also weighs in Petitioner's favor. The risk of erroneous deprivation of Petitioner's liberty interest is incontrovertibly high.

Upon information and belief, he has been wrongfully classified as an arriving alien or applicant for admission—either based on his grant of parole under 8 U.S.C. § 1182(d)(5)(A) or based on his designation as "entered without inspection"—subjecting him to mandatory detention unreviewable by an immigration judge. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B).

54. Since his detention on February 5, 2026, Petitioner has been afforded *no* process. Respondents have not informed him upon which statutory basis he has been detained, and he has had no opportunity to be heard regarding the necessity or lawfulness of his detention and will not be scheduled before an immigration judge due to his pending BIA appeal. A decision on Petitioner's appeal could take months or even years. Meanwhile, he will be detained indefinitely.

55. Further, Respondents paroled Petitioner into the United States in July 2022. Petitioner has been living, working, and pursuing asylum in the United States for nearly four years. ICE has not identified any changed circumstances justifying Petitioner's re-detention as a flight risk or a danger to the community since his release on parole in 2022. *See Rodrigues De Oliviera v. Joyce*, No. 2:25-cv-00291-LEW, 2025 WL 1826118, at *6 (D. Me. July 2, 2025) (bond hearing warranted on due process grounds where petitioner was detained nine years after parole into the United States).

56. Finally, regarding the third *Matthews* factor, Respondents cannot establish a significant interest in Petitioner's continued detention. Courts recognize that the Government "does, indeed, have a legitimate interest in ensuring noncitizens' appearance at removal proceedings and preventing harms to the community." *See Sampiao v. Hyde*, 799 F. Supp. 3d 14, 33 (D. Mass. Sep. 9, 2025) (citation omitted). However, Respondents cannot show that they have a significant interest in this Petitioner's detention. First, Respondent's case is on appeal before the BIA and there are no future hearings in removal proceedings for which his presence must be secured. Additionally, rather than alleviating fiscal and administrative burdens on the Government, continuing to detain Petitioner will impose more financial and administrative costs upon the Government, as it would be required to continue funding and overseeing Petitioner's detention. *See id.* If concerned about flight risk, the government has alternatives to detention which are effective and much cheaper. Any costs associated with providing Petitioner additional process would be minimal in comparison with the cost of Respondents' continued and indefinite detention of Petitioner.

57. Further, "[p]erhaps more importantly, such unnecessary detention imposes substantial societal costs," as it "separates families and removes from the community breadwinners, caregivers, parents, siblings and employees." *Hernandez-*

Lara v. Lyons, 10 F.4th 19, 33 (1st Cir. 2021) (citing, in part, *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020)).

58. Respondents are violating Petitioner's constitutional rights, and the *Matthews* factors compel this Court to grant relief. *See* 28 U.S.C. § 2241(c)(3). The appropriate remedy is immediate release from detention.

II. PETITIONER'S DETENTION UNDER § 1225(b) VIOLATES THE INA.

59. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

60. First, 8 U.S.C. § 1226 generally authorizes the detention of noncitizens who are in removal proceedings. *See* 8 U.S.C. § 1229a; *see also Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (explaining that section 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings"). Under section 1226(a), individuals who are taken into immigration custody pending a decision on whether they are to be removed are generally entitled to seek release on bond.[1] Custody determinations under section 1226(a) are individualized and require a case-specific review of whether the noncitizen is a flight risk or poses a danger to the community.

[1] Section 1226 contains an exception for noncitizens who have been arrested, charged with, or convicted of certain crimes and are thus subject to mandatory detention without bond. 8 U.S.C. § 1226(c). That exception does not apply to Petitioner here.

61. Second, the INA provides for mandatory detention of certain recently arrived noncitizens, namely those subject to expedited removal under 8 U.S.C. § 1225(b)(1), and other recent arrivals seeking admission under section 1225(b)(2). *See Jennings*, 583 U.S. at 287, 289 (explaining that section 1225(b)(2)'s mandatory detention scheme applies "at the Nation's borders and ports of entry" to noncitizens "seeking admission into the United States.").

62. Third, the INA provides for the detention of noncitizens who have already been ordered removed. 8 U.S.C. § 1231. Section 1231 is not relevant here because Petitioner does not have a removal order that is administratively final. 8 U.S.C. §1231(a)(1)(B).

63. This case challenges 1) Respondents' application of the mandatory detention provisions set forth in § 1225(b)(2) to Petitioner, despite his prior grant of parole and presence in the United States for nearly four years; and, in the alternative, 2) Respondents' application of the mandatory detention provisions set forth in § 1225(b)(2) to Petitioner based on his designation as having entered without inspection. On information and belief, Respondents are detaining Petitioner under § 1225(b)(2) due their erroneous classification of him as an "arriving alien."

A. Respondents err in classifying Petitioner as an arriving alien based on his grant of parole.

64. While the INA does not provide a statutory definition of "arriving alien," the regulations define the term to include any "applicant for admission

coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2. The regulations further state that an arriving alien "remains an arriving alien even if paroled pursuant to section 212(d)(5) of the [INA], and even after any such parole is terminated or revoked." *Id.*

65. The label "arriving alien" carries significant legal consequences for noncitizens so designated. Section 1225(b)(1) not only subjects certain arriving aliens to the expedited removal process but additionally mandates detention of arriving aliens during their immigration proceedings. Immigration judges are also forbidden by regulation from redetermining conditions of custody imposed by DHS with respect to arriving aliens. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B). Thus, once charged as an arriving alien, a noncitizen is subject to mandatory detention and cannot seek release from an immigration judge.

66. However, as set forth in 8 U.S.C. § 1182(d)(5)(A), "applicants for admission may be temporarily released on parole 'for urgent humanitarian reasons or significant public benefit.'" *Jennings*, 583 U.S. at 288. Then, when the purpose of such parole has been served, the noncitizen "shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A).

67. Upon his arrival, Petitioner was granted parole pursuant to 8 U.S.C. § 1182(d)(5)(A) after a determination that he was neither a flight risk nor a danger to the community. *See* 8 C.F.R. § 212.5(b); Exhibit A. That parole has since expired. Respondents are now treating Petitioner as if he was never paroled into the United States and is once again an "arriving alien," even though he arrived nearly four years ago.

68. Petitioner is no longer "arriving in the United States" within the meaning of 8 U.S.C. § 1225(b)(1)(A)(i). Petitioner arrived, was paroled, entered, and has now been present in the United States for nearly four years. As several courts have found, a noncitizen in these circumstances can no longer be considered an "arriving alien" within the plain meaning of the INA. *See Qasemi v. Francis*, No. 25-cv-10029, 2025 U.S. Dist. LEXIS 261199, at *18 (S.D.N.Y. Dec. 17, 2025) ("It would try any plain understanding of the term arrival to classify an individual like [the petitioner] who has lived and worked in the United States for over a year prior to his re-detention as an arriving alien."); *see also Daza v. Albarran*, No. 25-cv-10214-RFL, 2026 U.S. Dist. LEXIS 5708, at *7-10 (N.D. Cal. Jan. 12, 2026); *Montiel v. Raycraft*, No. 1:25-cv-1610, 2026 U.S. Dist. LEXIS 1726, at *4-9 (W.D. Mich. Jan. 6, 2026); *Rodriguez-Acurio v. Almodovar*, No. 2:25cv-6065 (NJC), 2025 U.S. Dist. LEXIS 233224, at *57-63 (E.D.N.Y. Nov. 28, 2025); *Salgado Bustos v. Raycraft*, No. 25-13202, 2025 U.S. Dist. LEXIS 213487, at *14-15 (E.D. Mich. Oct.

29, 2025); *Coal. For Humane Immigrant Rights v. Noem*, No. 25-cv-872 (JMC), 2025 U.S. Dist. LEXIS 148615, at *87 (D.D.C. Aug. 1, 2025).

69. Respondents re-detained Petitioner nearly four years after his initial entry and parole into the country. Accordingly, Petitioner's detention properly falls under the discretionary framework of § 1226(a), which governs the detention of noncitizens "already in the [United States] pending the outcome of removal proceedings," the very situation in which Petitioner finds himself. *Jennings*, 583 U.S. at 289. Respondents' detention of Petitioner under the mandatory provision set forth at 8 U.S.C. §1225(b)(2) thus violates the INA because Petitioner can no longer be considered an "arriving alien."

70. Insofar as the regulation at 8 C.F.R. § 1.2 defines "arriving alien" so expansively that it captures individuals like Petitioner who were previously paroled and have resided inside the country for years, it is entitled to no deference. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024) ("[C]ourts need not and under the [Administrative Procedure Act] may not defer to an agency interpretation of the law simply because a statute is ambiguous.").

B. Respondents err in classifying Petitioner as an arriving alien based on his designation as having entered without inspection.

71. 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, 582–583, 585.

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

72. Following the 1996 enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not 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. 10,312, 10,323 (Mar. 6, 1997) (explaining that "[d]espite being applicants for admission, [noncitizens] 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.").

73. Thus, in the three decades that followed, people who entered without inspection and were subsequently placed in removal proceedings received bond hearings if ICE chose to detain them, unless their criminal history rendered them ineligible. 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)).

74. However, on July 8, 2025, ICE, "in coordination with" the Department of Justice, suddenly announced a new governmental policy that rejected the well-established understanding of the statutory framework and reversed decades of agency practice.

75. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection are subject to mandatory detention without bond under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even for decades or since infancy.

76. In decision after decision, federal courts—both nationwide and here in the Western District of Michigan—have rejected Respondents' sudden reinterpretation of the statutory scheme, and have instead held that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *See, e.g.*, *Demirel v. Fed. Det. Ctr. Phila.*, 25-cv-5488, 2025 WL 3218243, at *5-13 (E.D. Pa. Nov. 18, 2025) (cataloging ***288 cases*** granting habeas relief as of November 18, 2025); *Maldonado Bautista v. Santacruz*, No. 25-cv-01873, 2025 WL 3713987, at *32 (C.D. Cal. Dec. 18, 2025) (granting relief to a nationwide class that includes the Petitioner here).

77. On September 5, 2025, the BIA issued a precedential decision that rejected the overwhelming consensus of the federal courts. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That decision held that all noncitizens who entered the United States without admission or parole are ineligible for bond hearings before an Immigration Judge.

78. The *Yajure Hurtado* decision—like the government policy it seeks to uphold—defies the INA. As court after court has explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people who allegedly entered without inspection.

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

80. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256-57 (W.D.

Wash. Apr. 24, 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

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

82. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). *See Jennings*, 583 U.S. at 287 (explaining that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.").

83. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people who have already entered and were long residing in the United States at the time they were apprehended by immigration authorities and detained. Because § 1226(a), not § 1225(b), is the applicable statute, Petitioner's detention without eligibility for bond is unlawful.

84. Furthermore, the Central District Court of California vacated ICE's July 8 policy under the Administrative Procedure Act (APA) and issued declaratory relief rejecting the government's reading of the INA and the BIA's reasoning in

Yajure Hurtado. *See Maldonado Bautista v. Santacruz*, No. 25-cv-01873, 2025 WL 3713987, at *12 and *22 (C.D. Cal. Dec. 18, 2025). The *Maldonado Bautista* court subsequently vacated *Yajure Hurtado* due to Respondents' failure to abide by its previous final judgments. 2026 WL 468284 (C.D. Cal. Feb. 18, 2026).

85. However, in the numerous identical habeas corpus petitions that have been filed nationwide, EOIR and the Attorney General are often respondents and have consistently affirmed via briefing and oral argument that individuals like Petitioner are applicants for admission and subject to detention under § 1225(b)(2)(A). *See*, *e.g.,* Resp. to Pet., *Lopez Campos v. Raycraft*, No. 25-cv-12546 (E.D. Mich. Aug. 9, 2025), Dkt. 9.

III. THIS COURT SHOULD GRANT IMMEDIATE RELEASE

86. Petitioner seeks relief from this Court because he has already once requested a bond hearing, and the Immigration Court has rejected his request based on his pending BIA appeal. A new request for a bond hearing would be futile.

87. Even if this Court orders Respondents to provide Petitioner a bond hearing, they are unlikely to provide an individualized custody determination by a neutral arbiter, as required by Petitioner's due process rights.

88. Upon finding a person is in custody in violation of the laws of the United States, a district court may grant a writ of habeas corpus and "dispose of the

matter as law and justice so require." 28 U.S.C. §§ 2241, 2243. This Court has authority to grant a writ of habeas corpus ordering the release of Petitioner.

A. Respondents Cannot Be Trusted to Provide Due Process for Petitioner

89. Respondents are holding pretextual bond hearings in response to habeas corpus orders and have attempted to codify the default denial of all BIA appeals.[2]

90. The Fifth Amendment guarantees 'due process of law,' not just 'some process of law.' *D.B. v. Cardall*, 826 F.3d 721, 741 (4th Cir. 2016) (citing *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976)). (citing *Davidson v. City of New Orleans*, 96 U.S. 97, 107 (1877) (Bradley, J., concurring)).

91. Beginning in or around the first week of January 2026, a seismic shift in bond hearing outcomes for individuals who had been granted federal habeas relief and ordered bond hearings by this Court. *See* Exhibit K.

92. Prior to this shift, while bond amounts had increased in recent months, bond was routinely granted in post-habeas cases where individuals demonstrated: lack of significant criminal history, strong family ties in the United States, lengthy residence in the country, viable claims for relief from removal, and community support including stable housing and employment prospects. This pattern abruptly and uniformly ceased. In numerous cases, Immigration Judges have denied bond in

[2] *See* Appellate Procedures for the Board of Immigration Appeals, Interim Final Rule, 91 FR 5267 (Feb. 6, 2026), https://www.govinfo.gov/content/pkg/FR-2025-04-14/pdf/2025-06294.pdf.

circumstances that, weeks earlier, would have resulted in bond being set. *See* Exhibit K.

93. The consistency, timing, and uniformity of these denials cannot be readily explained by coincidence, changes in individual case facts, or independent judicial decision-making. The pattern appears systematic and suggests coordinated institutional direction. *See* Exhibit K.

94. Indeed, Respondents are telegraphing the result of these hearings before they occur. Both DHS and DOJ use the term "immigration judge" and "deportation judge" interchangeably.[3] Adjudicators promoted as "deportation judges" are not neutral and cannot be expected to act with impartiality.

95. Deportation Judges are now, as a result of hundreds of habeas corpus petitions, outright denying bond based on illusory findings. These judges are typically basing their findings not on the lack of evidence, but on the weight of evidence. In almost all of these cases, Petitioners present some combination of the following: proof of work authorization, pending relief applications, family ties, sponsorship, no criminal record, and a majority of the eight (8) Guerra factors. *See* Exhibit K.

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[3] **"Help write the next chapter of America. Apply today to become a deportation judge and you may be entitled to these benefits,"** U.S. Dep't of Justice, https://join.justice.gov/ (last visited Mar. 16, 2026); **"Help write the next chapter of America. Apply today to become a deportation judge and define America for generations,"** Homeland Security Careers, U.S. Dep't of Homeland Sec., https://www.dhs.gov/homeland-security-careers (last visited Mar. 16, 2026).

96. Respondents do not hide the fact that these hearings are not being decided on individual merits. Some Deportation Judges are, on the record at post-habeas bond hearings, requiring an argument by Petitioners as to why authority exists to conduct post-habeas bond hearings. *See* Exhibit K.

97. Likewise, many Deportation Judges are categorically misrepresenting evidence and statements during these hearings in their bond orders, including fabricating statements that were never presented during the hearings and misapplying the burden of proof. *See* Exhibit K.

98. Deportation Judges are relying nearly exclusively on a single piece of hearsay evidence presented by the government: I-213, Record of Deportable/Inadmissible Alien. In most criminal or civil contexts, this document would be scrutinized under the rules of evidence regarding hearsay. Deportation Judges, however, are often finding a self-serving two-page hearsay statement presented by the government as more probative than dozens of pieces of evidence presented by Petitioners. *See* Exhibit K.

99. Additionally, immigration attorneys from across the country have observed a concerning change in the judges who preside over post-habeas bond hearings. During the final weeks of January, many of the judges who were previously presiding over bond hearings for months were suddenly moved off of the detained docket and replaced with judges who are either unfamiliar with post-habeas bond

hearings and, on occasion, openly protest the district-court ordered hearings. *See* Exhibit K

100. One court recently compiled an appendix that identifies at least 96 court orders that ICE has violated in 74 cases since January 1, 2026. *Juan T.R. v. Noem*, No. 26-CV-0107, 2026 WL 232015, at *1 (D. Minn. Jan. 28, 2026) ("ICE has likely violated more court orders in January 2026 than some federal agencies have violated in their entire existence.").

101. Based on the above, Respondents have forfeited any deference they would otherwise be due from a federal court. A court may choose to rule upon the merits of the issues presented when the "legal question is 'fit' for resolution and delay means hardship." *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000) (citation omitted).

B. Petitioner is Neither a Danger to the Community nor a Flight Risk and Should be Ordered Released by this Court

102. Under *Matter of Guerra*, 24 I. & N. Dec. 37 (B.I.A. 2006), Petitioner must prove that he is neither a danger to the community nor a flight risk per 8 C.F.R. § 236.1(c)(8).

103. Respondents previously made a determination that Petitioner was neither a danger to the community nor a flight risk when they previously released him from custody, granting him parole and allowing him to enter the United States.

104. Petitioner has no criminal record that would indicate any danger to the community. He has had just a few traffic tickets and two charges for driving without a license which were dismissed.

105. Petitioner is not a flight risk. He has a fixed address in Pontiac, Michigan, where he has been living with his wife, daughters, and son-in-law. Petitioner has lived in Michigan for nearly four years. Over the last few years, Petitioner and his family have developed strong ties to their community, particularly through the All Saints' Episcopal Church. Several members of the church community have requested to submit letters in support of Petitioner's release from detention. *See* Letters of Support Included with March 3, 2026 Bond Request, attached hereto as Exhibits F-I. Petitioner has a valid work permit and has been working consistently to support himself and his family. Petitioner has taken care to pay the fines on all his traffic tickets and comply with such laws and procedures. Petitioner has never missed an immigration court hearing and is committed to seeing his case through the appeals process.

106. Based on the above, this Court should exercise its authority under 28 U.S.C. § 2241 to release Petitioner on his own recognizance or on a bond amount of the Court's choosing.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

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

108. Respondents are unlawfully detaining Petitioner without bond pursuant to the mandatory detention provision at 8 U.S.C. § 1225(b)(2).

109. Section 1225(b)(2) does not apply to Petitioner, who was previously paroled from Respondents' custody under 8 U.S.C. § 1182(d)(5)(A) and resided in the United States for nearly four years before being re-detained by Respondents.

110. Instead, Petitioner should be subject to the detention provisions of § 1226(a) and is therefore entitled to a custody determination by ICE, and if custody is continued, to a custody redetermination (i.e., a bond hearing) by an immigration judge.

111. Respondents' application of 8 U.S.C. § 1225(b)(2) to Petitioner results in Petitioner's unlawful detention without the opportunity for a bond hearing and violates the INA.

COUNT II

Violation of Due Process

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

113. 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. at 690. The constitutional right to due process is accorded to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693.

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

115. Respondents' detention of Petitioner without an opportunity for an individualized custody determination to decide whether he is a flight risk or danger violates Petitioner's right to due process.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;

c. Declare that 8 U.S.C. § 1226(a)—and not 8 U.S.C. § 1225(b)(2)(A)—is the appropriate statutory provision that governs Petitioner's detention and eligibility for bond because Petitioner is not a recent arrival "seeking admission" to the United States, and instead has been residing in the United States for nearly four years and was previously paroled from custody by Respondents;

d. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody;

e. If this Court grants relief in the form of a bond hearing before an Immigration Judge, declare that Respondents bear the burden of justifying Petitioner's detention by clear and convincing evidence. *See Soto-Medina v. Lynch*, 2026 U.S. Dist. LEXIS 11113 (W.D. Mich. Jan. 21, 2026);

f. Enjoin Respondents from transferring Petitioner from the jurisdiction of this District pending these proceedings;

g. Award Petitioner 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

h. Grant any other and further relief that this Court deems just and proper.

Dated: March 19, 2026

Respectfully submitted,

/s/ Alexandra Andre

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