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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Jose Wilber Herrera Orellana,

Petitioner,

v.

Eric Rokosky, Warden, Eloy Detention Center; John Cantu, Field Office Director, Phoenix Field Office, Immigration and Customs Enforcement; Markwayne Mullin, Secretary of the United States Department of Homeland Security; and Todd Blanche, Acting Attorney General of the United States,

Respondents.

_____/

Case No.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Jose Wilber Herrera Orellana is a nineteen-year-old citizen of El Salvador who entered the United States as an unaccompanied child at age seventeen, fleeing poverty and violence in El Salvador.

2. After his entry on October 9, 2023, Petitioner was arrested by United States Border Patrol on October 10, 2023 in the interior of the United States near El Paso, Texas, designated as an Unaccompanied Alien Child, and transferred to the custody of the United States Department of Health and Human Services, Office of Refugee Resettlement ("HHS/ORR"), as required by federal law.

3. On December 9, 2023, HHS/ORR released Petitioner to his uncle and sponsor, Jose Geronimo Orellana Rodriguez, a lawful permanent resident of the United States residing in Salinas, California, pursuant to the Trafficking Victims Protection Reauthorization Act ("TVPRA"), 8 U.S.C. section 1232.

4. Petitioner turned eighteen years old on September 20, 2024, while under the legal custody of HHS/ORR and residing with his uncle pursuant to the authorized release.

5. For over two years, from December 9, 2023 until April 7, 2026, Petitioner resided in the United States with his uncle. During this time he complied with all conditions of his release. He pursued lawful immigration status by filing Form I-589, Application for Asylum and for Withholding of Removal, with U.S. Citizenship and Immigration Services ("USCIS"). He has obtained employment authorization from USCIS and worked legally in the United States as an agricultural worker. His uncle petitioned for, and obtained, legal guardianship over Petitioner under the laws of the State of California, and the Superior Court of California issued Special Immigrant Juvenile predicate findings in Petitioner's favor. Petitioner has also filed a Petition for Special Immigrant Juvenile Status (Form I-360) with USCIS. If USCIS approves that petition, Petitioner will be eligible to apply for lawful permanent residence as a Special Immigrant Juvenile upon the availability of an immigrant

visa. Petitioner has every incentive to appear at all scheduled hearings and appointments and to continue pursuing his lawful immigration status, which he does not want to jeopardize in any way.

6. On April 7, 2026, immigration officers arrested Petitioner at a highway checkpoint while he was returning from Yuma, Arizona to his home in Salinas, California. Petitioner presented his valid Employment Authorization Document to the officers. Immigration officers arrested Petitioner based on a claim that he is subject to mandatory detention without bond under 8 U.S.C. section 1225(b)(2)(A).

7. This detention is unlawful and Petitioner should be immediately released.

8. First, Petitioner's detention violates the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), specifically 8 U.S.C. section 1232(c)(2)(B). The protections of section 1232(c)(2)(B) extend to unaccompanied children who turn eighteen while under the legal custody of HHS and residing in the United States pursuant to release agreements. Such was the case with Petitioner, and he is entitled to the TVPRA's protections, which require consideration of placement in the least restrictive setting, including placement with an individual sponsor, and eligibility for alternatives to detention. Respondents' re-detention of Petitioner over two years after his statutorily-compliant release, without any material change in circumstances, violates the TVPRA and constitutes arbitrary and capricious agency action in violation of the Administrative Procedure Act.

9. Second, section 1225(b)(2) does not apply to noncitizens arrested in the interior of the United States who are not actively seeking admission into the country; rather, such individuals are governed by section 1226(a). Section 1225 applies only to noncitizens actively seeking admission into the country, not to individuals like Petitioner who entered without inspection as a child, were initially arrested in the interior of the United States, were released by federal authorities, and have been residing in the interior for over two years.

Petitioner's detention under section 1225(b)(2) is therefore contrary to law and he should be immediately released.

10. Third, Respondents violated Petitioner's Fifth Amendment right to due process by re-detaining him without a hearing after he had been living under authorized release for over two years. Because Petitioner's prior release reflected a determination by HHS/ORR and immigration authorities that he was neither a flight risk nor a danger to the community, and because he complied with all release conditions for over two years, any change in his custody status should only be permitted after a hearing at which Respondents prove by clear and convincing evidence that circumstances have materially changed. The re-detention without such a hearing violates due process and requires immediate release.

11. In the alternative, should the Court determine that immediate release is not warranted, Petitioner is a member of the Bond Eligible Class certified in Maldonado Bautista v. Noem, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025), and is therefore entitled to an individualized custody determination under section 1226(a). The Court should order Respondents to provide Petitioner with a bond hearing before an Immigration Judge.

12. If the Court orders a bond hearing, Petitioner requests that the Court exercise its equitable authority to ensure that any favorable bond determination is not rendered futile by Respondents' invocation of the automatic stay provision at 8 C.F.R. section 1003.19(i)(2).

JURISDICTION AND VENUE

13. This Court has jurisdiction over this matter pursuant to 28 U.S.C. section 2241, which authorizes federal district courts to grant writs of habeas corpus to persons held in custody in violation of the Constitution or laws of the United States.

14. Venue is proper in the District of Arizona because Petitioner is detained at the Eloy Detention Center, located at 1705 East Hanna Road, Eloy, Arizona 85131, which is within this judicial district.

PARTIES

15. Petitioner Jose Wilber Herrera Orellana is a citizen of El Salvador who is currently detained at the Eloy Detention Center in Eloy, Arizona.

16. Respondent Eric Rokosky is the Warden of the Eloy Detention Center, where Petitioner is held, and is sued in his official capacity.

17. Respondent John Cantu is the Field Office Director of the Phoenix Field Office, Immigration and Customs Enforcement, is responsible for Petitioner's detention, and is sued in his official capacity.

18. Respondent Markwayne Mullin is the Secretary of the United States Department of Homeland Security, is responsible for the administration and enforcement of the nation's immigration laws, and is sued in his official capacity.

19. Respondent Todd Blanche is the Acting Attorney General of the United States, is responsible for supervising the immigration courts and the Board of Immigration Appeals, and is sued in his official capacity.

STATEMENT OF FACTS

A. Petitioner's Entry, Designation as Unaccompanied Alien Child, and Release to Sponsor

20. Petitioner is a native and citizen of El Salvador, born on [redacted] in Ilobasco, El Salvador. (Ex. A, Birth Certificate of Jose Wilber Herrera Orellana.)

21. On October 9, 2023, Petitioner entered the United States without inspection near Santa Teresa, New Mexico. He was seventeen years old at the time of entry and was unaccompanied by a parent or legal guardian. (Ex. B, Form I-213, Record of Deportable/Inadmissible Alien.)

22. On October 10, 2023, a Border Patrol agent encountered Petitioner in the El Paso, Texas Border Patrol Sector's area of responsibility and determined that Petitioner had entered the United States without inspection. Petitioner was arrested. (Ex. B.)

23. Also on October 10, 2023, the Department of Homeland Security served Petitioner with Form I-862, Notice to Appear. (Ex. C, Notice to Appear.) The Notice to Appear charged Petitioner with being subject to removal pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. section 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. (Ex. C.)

24. Also on October 10, 2023, the Department of Homeland Security issued a Form I-200, Warrant for Arrest of Alien, asserting authority to arrest Petitioner under section 236 of the Immigration and Nationality Act, 8 U.S.C. section 1226. (Ex. D, Form I-200, Warrant for Arrest of Alien.) On the same date, the Department of Homeland Security served Petitioner with Form I-286, Department of Homeland Security Notice of Custody Determination, likewise stating that Petitioner would be detained pursuant to the authority contained in section 236 of the Immigration and Nationality Act (8 U.S.C. section 1226). (Ex. E, Form I-286, Department of Homeland Security Notice of Custody Determination.) Both documents confirm that the government's original arrest and custody determination were made under section 1226, not section 1225.

25. Petitioner was recognized as an unaccompanied juvenile and designated as an Unaccompanied Alien Child by immigration officials. (Ex. B.)

26. Pursuant to 8 U.S.C. section 1232(c)(2)(A), due to being classified as an Unaccompanied Alien Child, Petitioner was transferred to the custody of HHS/ORR. (Ex. F, HHS/ORR Verification of Release.)

27. On December 9, 2023, pursuant to section 462 of the Homeland Security Act of 2002 (6 U.S.C. section 279) and section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, codified at 8 U.S.C. section 1232(c)(2)(A), HHS/ORR released Petitioner to his uncle and sponsor, Jose Geronimo Orellana Rodriguez, a lawful permanent resident of the United States who resides in Salinas, California. (Ex. F.)

28. Petitioner turned eighteen years old on September 20, 2024, while under the legal custody of HHS/ORR and residing with his uncle pursuant to the sponsorship agreement. (Ex. A.)

B. Two Years of Lawful Residence and Community Integration

29. From December 9, 2023 until April 7, 2026, a period of over two years, Petitioner resided continuously with his uncle and sponsor, Jose Geronimo Orellana Rodriguez, in Salinas, California. (Ex. K.)

30. Throughout his over two years of release, Petitioner complied with all conditions of his release and requirements imposed by immigration authorities. (Ex. K.)

31. Petitioner has no criminal history in the United States or El Salvador. (Ex. K.)

C. Pursuit of Lawful Immigration Status

32. On May 24, 2024, prior to turning eighteen, Petitioner filed a Form I-589, Application for Asylum and for Withholding of Removal, with United States Citizenship and Immigration Services under the Trafficking Victims Protection Reauthorization Act as an Unaccompanied Alien Child. (Ex. G, Form I-589 Filing Receipt.) Because Petitioner filed his asylum application as an unaccompanied alien child, USCIS retains initial jurisdiction over his application. 8 U.S.C. section 1158(b)(3)(C). His asylum application remains pending.

33. United States Citizenship and Immigration Services subsequently approved Petitioner's application for employment authorization pursuant to 8 C.F.R. section 274a.12(c)(8). Petitioner's Employment Authorization Document is valid from May 7, 2025 through May 6, 2030. (Ex. H, Employment Authorization Approval Notice.) Petitioner has worked legally in the United States, including as a seasonal agricultural worker in Salinas, California and Yuma, Arizona. (Ex. K.)

34. On September 19, 2025, Petitioner's uncle petitioned the Superior Court of California for guardianship of Petitioner. On November 19, 2025, the Superior Court of

California appointed Mr. Orellana Rodriguez as Petitioner's legal guardian under the laws of the State of California. On the same date, the Court issued Special Immigrant Juvenile predicate findings, determining that Petitioner suffered parental abandonment in El Salvador and that it was not in Petitioner's best interest to return to El Salvador because his health, safety, and welfare would be at risk there. (Ex. I, Superior Court of California Guardianship Order (Form GC-240) and Special Immigrant Juvenile Findings (Form GC-224).)

35. On January 2, 2026, Petitioner filed a Petition for Special Immigrant Juvenile Status (Form I-360) with United States Citizenship and Immigration Services. (Ex. J, Form I-360 Filing Receipt.) The petition has a priority date of January 2, 2026, and remains pending. Special Immigrant Juvenile Status is a form of humanitarian protection created by Congress for children who have been abused, neglected, or abandoned by one or both parents. Upon approval of the I-360 petition by USCIS, Petitioner will be classified as a Special Immigrant Juvenile and will be eligible to apply for lawful permanent residence upon the availability of an immigrant visa. Petitioner has made substantial and sustained efforts to pursue all available avenues of lawful immigration status and has every incentive to continue to do so.

D. Re-Detention by ICE

36. On April 7, 2026, Petitioner was stopped by immigration officers at a highway checkpoint while returning from Yuma, Arizona to Salinas, California. Petitioner presented his valid Employment Authorization Document to the officers. Immigration officers arrested Petitioner based on a claim that he is subject to mandatory detention under 8 U.S.C. section 1225(b)(2)(A). Petitioner's re-detention did not follow a pre-arrest custody redetermination hearing. He received no prior notice of any intent to re-detain him and was afforded no opportunity to be heard before a neutral decisionmaker before he was taken into custody.

37. Petitioner's re-detention was not based on any criminal activity, any violation of release conditions, or any change in circumstances since his release by HHS/ORR on

December 9, 2023.

38. Petitioner remains detained in ICE custody at the Eloy Detention Center, 1705 East Hanna Road, Eloy, Arizona 85131.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

39. There is no statutory requirement under 28 U.S.C. section 2241 to exhaust administrative remedies before filing a petition for habeas corpus. See Laing v. Ashcroft, 370 F.3d 994, 997 (9th Cir. 2004). While courts may require exhaustion as a prudential matter, it may be excused where, as here, pursuing administrative remedies would be futile, or where the agency lacks authority to grant the requested relief. Hernandez v. Sessions, 872 F.3d 976, 988 (9th Cir. 2017).

40. Exhaustion is futile in this case because the agency has predetermined the issue. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a binding precedential decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), holding that noncitizens present in the United States without admission are subject to mandatory detention under 8 U.S.C. section 1225(b)(2) and are ineligible for bond hearings. The Immigration Judge at the Eloy Immigration Court is bound by this precedent and lacks the authority to deviate from it. Requiring Petitioner to request a bond hearing from an Immigration Judge who is legally compelled to deny jurisdiction would be a futile exercise. See, e.g., Beltran v. Noem, No. 25-cv-2650-LL-DEB, ECF No. 9, at 8 (S.D. Cal. Nov. 4, 2025) (waiving exhaustion because "appeals to the BIA would be futile because it will find Petitioners subject to mandatory detention pursuant to Matter of Yajure Hurtado").

41. Furthermore, requiring Petitioner to appeal the denial of a bond hearing to the BIA would be irrational. The BIA is the very entity that issued the erroneous statutory interpretation Petitioner now challenges. It would be "nonsensical" to require Petitioner to exhaust administrative remedies by asking the BIA to overturn its own recent, binding precedent. Vazquez v. Feeley, No. 2:25-cv-01542-RFB-EJY, ECF No. 30, at 17 (D. Nev.

Sept. 17, 2025); see also Amaya v. Noem, No. 3:25-cv-02892-BTM-DEB, ECF No. 9, at 2 (S.D. Cal. Nov. 13, 2025) (holding that "exhaustion would be futile because of the [BIA's] recent decision in Matter of Yajure Hurtado").

42. Finally, Petitioner raises substantial constitutional claims that the agency lacks jurisdiction to resolve. Petitioner challenges his summary re-detention without a pre-deprivation hearing as a violation of the Due Process Clause of the Fifth Amendment. The BIA and Immigration Judges lack the authority to rule on the constitutionality of the statutes and regulations they administer. See Matter of G.K., 26 I&N Dec. 88, 96-97 (BIA 2013); Coyt v. Holder, 593 F.3d 902, 905 (9th Cir. 2010). Because the administrative agency cannot adjudicate Petitioner's constitutional claims, and because Petitioner is suffering irreparable harm every day he remains unlawfully detained, this Court should exercise jurisdiction immediately.

CLAIMS FOR RELIEF

COUNT I

PETITIONER'S DETENTION VIOLATES THE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT

43. Petitioner incorporates by reference all prior allegations as if fully set forth herein.

A. Petitioner was under the legal custody of HHS at the time of his April 7, 2026 arrest by DHS.

44. 8 U.S.C. section 1232(c)(2)(B) provides that if an unaccompanied child in HHS custody "reaches 18 years of age and is transferred to the custody of the Secretary of Homeland Security, the Secretary shall consider placement in the least restrictive setting available after taking into account the alien's danger to self, danger to the community, and risk of flight." Section 1232(c)(2)(B) further provides that "[s]uch aliens shall be eligible to participate in alternative to detention programs."

45. The protections of section 1232(c)(2)(B) are not limited to minors who attain majority while in the physical custody of HHS and are transferred to DHS custody. "The protections of Section 1232(c)(2)(B) ... extend beyond those over whom the HHS exercises physical custody; they apply to UACs who turn eighteen while in the legal custody of the HHS and on release pursuant to sponsorship agreements." Lopez v. Sessions, 2018 WL 2932726, at *9 (S.D.N.Y. June 12, 2018).

46. In Garcia Ramirez v. U.S. Immigration and Customs Enforcement, the court addressed scenarios encompassing the facts of Petitioner's case: unaccompanied children who were released to sponsors pursuant to federal law while still minors, who turned eighteen while living with those sponsors, and were later detained by DHS. Garcia Ramirez v. U.S. Immigration and Customs Enforcement, No. 1:18-cv-00508-RC, ECF No. 436 (D.D.C. Dec. 12, 2025). The court held that "[t]he protections Section 1232(c)(2)(B) affords age-outs remain in effect until the age-out's immigration proceedings conclude," regardless of whether the individual is in the physical custody of HHS at the time of their subsequent detention by DHS. Id. at 33. The Garcia Ramirez court emphasized that once DHS makes a compliant placement decision -- such as releasing an age-out to live with family or a sponsor -- the government "cannot provide a compliant placement decision" and then "claw back that consideration" months or years later "without a material change in circumstances." Id. at 32. Allowing the government to re-arrest an individual without a change in flight risk or danger would "open a loophole allowing easy evasion of the statutory provision's basic purposes" and produce an "unreasonable and absurd result." Id. at 30-31.

47. Other courts have arrived at similar results. See, e.g., Mejia v. Rokosky, No. 2:26-cv-01346-PHX-JJT, ECF No. 10, at 2-3 (D. Ariz. Apr. 23, 2026); F.S.S.M. v. Wofford, No. 1:25-cv-01518-TLN-AC, ECF No. 16, at 7-9 (E.D. Cal. Dec. 9, 2025); Sandoval v. Rokosky, No. 2:25-cv-17229-SDW, ECF No. 8, at 4 (D.N.J. Nov. 17, 2025); Perez v. Casey, No. 3:26-cv-00655-JES-BLM, ECF No. 3, at 3-4 (S.D. Cal. Feb. 10, 2026); Diaz Aguilar v.

Hermosillo, No. 2:26-cv-00537-BAT, ECF No. 11, at 5-6 (W.D. Wash. Mar. 13, 2026).

B. The authority to detain Petitioner is governed by 8 U.S.C. section 1232(c)(2)(B) and not 8 U.S.C. section 1225(b)(2).

48. Petitioner cannot be simultaneously subject to both section 1225(b)(2) and the TVPRA because their detention schemes are facially incompatible: while section 1225(b)(2) mandates detention, the TVPRA requires consideration of the least restrictive setting and does not mandate detention. F.S.S.M., ECF No. 16, at 7; Sandoval, ECF No. 8, at 4.

49. Because section 1232(c)(2)(B) is a "specific provision applying to a very specific situation," it "governs the custody of age-outs and overrides Section 1225(b), the more general provision." Garcia Ramirez, ECF No. 436, at 25 (citing Morton v. Mancari, 417 U.S. 535, 550-51 (1974)).

50. Even if both section 1225(b)(2) and section 1232(c)(2)(B) apply simultaneously, Respondents' detention of Petitioner must comply with section 1232(c)(2)(B)'s requirements.

51. The obligation to comply with section 1232(c)(2)(B) "arises upon [an age-out's] transfer to DHS custody and does not turn on the statutory authority under which a particular former unaccompanied minor is detained." Garcia Ramirez, ECF No. 436, at 17.

52. All former UACs transferred to DHS custody "regardless of the detention authority under which they are detained" must receive section 1232(c)(2)(B)'s protections. Id.

53. Thus, any mandatory detention under section 1225(b)(2) must be implemented in a manner consistent with section 1232(c)(2)(B) -- namely, in the least restrictive setting available after taking into account the statutory factors, with the alien eligible to participate in alternative to detention programs.

C. Petitioner's April 7, 2026 arrest and current detention by ICE violate the TVPRA.

54. Here, Respondents released Petitioner to his uncle and sponsor on December 9, 2023, and over two years later re-detained him without any material change in circumstances.

55. Petitioner continuously resided in the United States from his release on December 9, 2023 until his re-detention on April 7, 2026.

56. Petitioner complied with all conditions of his release and requirements imposed by immigration authorities throughout the entire over-two-year period.

57. Petitioner has no criminal history in the United States or El Salvador.

58. Petitioner filed an application for asylum and is pursuing lawful immigration status. (Ex. G.) He has also obtained a legal guardianship order and Special Immigrant Juvenile predicate findings from the Superior Court of California, and has filed a Petition for Special Immigrant Juvenile Status with USCIS, through which he is pursuing lawful permanent residence. (Exs. I, J.)

59. There has been no material change in Petitioner's circumstances since his release by HHS/ORR on December 9, 2023 that would justify his re-detention.

60. Respondents' re-detention of Petitioner over two years after his statutorily-compliant release, without any material change in his flight risk or danger to the community, violates section 1232(c)(2)(B) of the TVPRA.

61. Petitioner should be immediately released and allowed to resume residing in the least restrictive setting with his uncle and family, where he has resided for over two years.

D. Respondents' detention of Petitioner should be set aside pursuant to the Administrative Procedure Act.

62. Respondents' detention of Petitioner under section 1225(b)(2) without complying with section 1232(c)(2)(B)'s requirements constitutes final agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" in violation of the Administrative Procedure Act, 5 U.S.C. section 706(2)(A). See, e.g., Lopez

v. Sessions, 2018 WL 2932726, at *10 (S.D.N.Y. June 12, 2018).

63. An agency action is "not in accordance with law" when it fails to comply with statutory requirements. Id.

64. By detaining Petitioner under a statutory scheme that is incompatible with the TVPRA's individualized placement determination requirement, Respondents have acted unlawfully, and their detention decision should be set aside.

COUNT II

PETITIONER'S DETENTION UNDER 8 U.S.C. SECTION 1225 VIOLATES THE LAW

65. Petitioner incorporates by reference all prior allegations as if fully set forth herein.

66. The statutory text of 8 U.S.C. section 1225 demonstrates that it applies only to noncitizens who are actively seeking admission into the United States, not to individuals arrested in the interior of the United States after they have been residing here for years.

67. The Supreme Court has distinguished between the detention of noncitizens seeking admission at the border and those already present in the country. Jennings v. Rodriguez, 583 U.S. 281, 289 (2018) (explaining that section 1225 applies to aliens seeking admission into the country while section 1226 authorizes detention of aliens already in the country pending the outcome of removal proceedings). Section 1226(a) is the "default rule" governing the arrest and detention of aliens "inside the United States." Id. at 288, 303.

68. Federal district courts across the country have overwhelmingly rejected the government's attempt to apply section 1225(b)(2) mandatory detention to noncitizens arrested in the interior of the United States who have been residing here. These courts hold that such individuals are governed by the discretionary detention statute, 8 U.S.C. section 1226(a). In the District of Arizona, courts have repeatedly applied this principle: Echevarria v. Bondi, No. CV-25-03252-PHX-DWL (ESW), ECF No. 13 (D. Ariz. Oct. 3, 2025) (holding that

section 1226(a), not section 1225(b)(2), applies to noncitizens apprehended after entering without inspection and living in the United States); Rosado v. Figueroa, No. CV 25-02157 PHX DLR (CDB), ECF No. 14 (D. Ariz. Aug. 11, 2025) (holding that a noncitizen released into the United States years prior was subject to section 1226, not section 1225). Courts throughout the Ninth Circuit have ruled similarly. See, e.g., Garcia v. Noem, No. 3:25-cv-03759-LL-BLM, ECF No. 6 (S.D. Cal. Jan. 26, 2026); Lopez v. Lyons, No. 2:25-cv-03174-DJC-CKD, ECF No. 8, at 3-5 (E.D. Cal. Nov. 7, 2025); Salcedo Aceros v. Kaiser, No. 3:25-cv-06924-EMC, ECF No. 23, at 13-21 (N.D. Cal. Sept. 12, 2025); Beltran v. Noem, No. 3:25-cv-02650-LL-DEB, ECF No. 9, at 11-14 (S.D. Cal. Nov. 4, 2025); Vazquez v. Feeley, No. 2:25-cv-01542-RFB-EJY, ECF No. 30, at 20-29 (D. Nev. Sept. 17, 2025).[1]

69. Ninth Circuit authority confirms that section 1225 concepts are temporally limited and do not extend indefinitely into an alien's period of residence. The Ninth Circuit has held that an application for admission is submitted "at a distinct point in time" and that stretching the phrase "at the time of application for admission" to cover years of subsequent residence "would push the statutory text beyond its breaking point." Torres v. Barr, 976 F.3d 918, 926 (9th Cir. 2020) (en banc). The court has similarly "rejected the view that an alien remains in a perpetual state of applying for admission." United States v. Gambino-Ruiz, 91 F.4th 981, 989 (9th Cir. 2024).

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[1] The Fifth Circuit's decision in Buenrostro-Mendez v. Bondi, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026), does not control this case. That decision is not binding in the Ninth Circuit, is inconsistent with the overwhelming majority of courts in this Circuit, and does not address the distinct circumstances presented here, especially in light of Petitioner's classification as an Unaccompanied Alien Child by DHS and the applicability of the TVPRA to his case. Buenrostro-Mendez says nothing about whether section 1225(b)(2)(A) requires mandatory detention, in an immigration detention center, in the case of an individual classified by DHS as an Unaccompanied Alien Child, without considering placement in the "least restrictive setting" and making available "alternative to detention programs. See 8 U.S.C. section 1232(c)(2)(B).

70. Petitioner's detention has always been governed by 8 U.S.C. section 1226(a), rather than section 1225(b)(2). Petitioner entered the United States without inspection on October 9, 2023 near Santa Teresa, New Mexico. He was arrested by Border Patrol the following day, on October 10, 2023 in the interior of the United States near El Paso, Texas. (Ex. B). The immigration officials who detained him correctly identified section 236 of the Immigration and Nationality Act, 8 U.S.C. section 1226, as the detention authority, as reflected in both the Form I-200, Warrant for Arrest of Alien, and the Form I-286, Notice of Custody Determination, each of which expressly cites section 236 as the governing authority. (Exs. D, E.)

71. When immigration officers arrested Petitioner on April 7, 2026, he was not seeking admission to the United States. He was traveling through the interior of the country, over two years after his release to his uncle by HHS/ORR. He was not detained while "seeking admission" within the meaning of section 1225.

72. The government's original custody determination in 2023 correctly identified section 1226 as the detention authority. Petitioner's circumstances have not changed in any way that would justify applying a different statutory framework. He remains subject to section 1226(a), not section 1225(b)(2). Respondents acted unlawfully in detaining Petitioner under section 1225, and their detention decision must be set aside.

73. Because Respondents' asserted detention authority under section 1225(b)(2) is unlawful, the appropriate remedy is Petitioner's immediate release, not merely a bond hearing. When the statute invoked to justify detention does not apply, the detention is void ab initio. A bond hearing before an Immigration Judge, which would require the parties and the court to proceed under section 1226(a)'s framework, cannot retroactively validate a detention that was unlawful from the moment it began. The proper remedy is to return Petitioner to the status quo ante -- his life in the community prior to his unlawful arrest. See, e.g., Garcia v. Noem, No. 3:25-cv-03759-LL-BLM, ECF No. 6, at 6 (S.D. Cal. Jan. 26, 2026)

(holding that the proper remedy for unlawful detention is petitioner's immediate release, not a post-deprivation bond hearing).

COUNT III

PETITIONER'S RE-DETENTION WITHOUT A HEARING VIOLATED THE FIFTH AMENDMENT

74. Petitioner incorporates by reference all prior allegations as if fully set forth herein.

75. The Fifth Amendment's Due Process Clause forbids the government from depriving any person of liberty without due process of law. Freedom from physical detention lies at the heart of the liberty protected by the Due Process Clause. Zadvydas v. Davis, 533 U.S. 678, 690 (2001). This protection applies to all persons within the United States, regardless of immigration status. Id. at 693.

76. When the government releases a noncitizen from custody, it creates a protected liberty interest in remaining free from detention. Morrissey v. Brewer, 408 U.S. 471, 482 (1972) (finding an implicit promise that parole will be revoked only if an individual fails to live up to the parole conditions). "Even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody." Pinchi v. Noem, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025).

77. Courts in this District and throughout the Ninth Circuit have recognized that noncitizens released from immigration custody possess this protected liberty interest, and that re-detaining them without a prior hearing violates Due Process. Rosado v. Figueroa, No. CV 25-02157 PHX DLR (CDB), ECF No. 14, at 21 (D. Ariz. Aug. 11, 2025); Singh v. Cantu, No. CV-26-00860-PHX-KML (MTM), ECF No. 8, at 1-2 (D. Ariz. Feb. 10, 2026) (citing authority that individuals released from immigration detention are entitled to a pre-deprivation hearing prior to any rearrest); Garcia v. Noem, No. 3:25-cv-03759-LL-BLM,

ECF No. 6, at 4-6 (S.D. Cal. Jan. 26, 2026).

78. The specific procedures required by the Due Process Clause are determined by applying the balancing test set forth in Mathews v. Eldridge, 424 U.S. 319, 335 (1976), which requires consideration of: (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of that interest through the procedures used, and the probable value of additional safeguards; and (3) the government's interest.

79. First, Petitioner's private interest is the most elemental of liberty interests -- freedom from physical detention. Hamdi v. Rumsfeld, 542 U.S. 507, 529 (2004). Petitioner arrived in the United States as a child of seventeen and has spent formative years here. He was released by HHS/ORR to his uncle in December 2023 and has resided continuously in the United States for over two years, having turned eighteen here on September 20, 2024. He has pursued lawful immigration status through an asylum application, obtained employment authorization, and is pursuing lawful permanent residence through the Special Immigrant Juvenile process. His freedom in the United States comes with opportunities for education, employment, and the safety and stability that were unavailable to him in El Salvador. He had every reasonable expectation that he would remain free absent a showing by the government, before a neutral decisionmaker, that circumstances had materially changed.

80. Second, the risk of an erroneous deprivation is high. Petitioner was re-detained summarily, based solely on a legal classification that he is an applicant for admission under section 1225(b)(2)(A), without any individualized assessment of whether detention is actually warranted. He was provided no opportunity to contest this legal classification, to present evidence to a neutral decisionmaker, or to challenge whether the government's asserted basis for his detention is correct.

81. Third, the government's interest does not outweigh Petitioner's liberty interest. The government's legitimate interests in ensuring Petitioner's appearance for removal proceedings and protecting public safety can be adequately protected through a bond hearing

at which the government can present evidence. Bond hearings are routine procedures that impose minimal administrative burdens on the government. The government has not articulated any justification for why its interests required taking Petitioner into custody immediately, without any prior hearing. See Garcia v. Noem, No. 3:25-cv-03759-LL-BLM, ECF No. 6, at 6 (S.D. Cal. Jan. 26, 2026) (government's interest in detaining petitioner without notice, reasoning, and a hearing is low, and there is no indication that providing proper notice and a pre-deprivation hearing would be fiscally or administratively burdensome).

82. Because all three Mathews factors weigh in favor of requiring a pre-deprivation hearing, the government violated the Fifth Amendment's Due Process Clause when it re-detained Petitioner on April 7, 2026 without first providing him any opportunity to be heard before a neutral decisionmaker. This Court should order Petitioner's immediate release or, in the alternative, order a bond hearing at which Respondents bear the burden of proof. See Singh v. Holder, 638 F.3d 1196, 1203 (9th Cir. 2011) (holding that when there is a substantial liberty interest at stake, the government bears the burden of proving by clear and convincing evidence that an individual is a danger or flight risk before depriving the individual of their liberty).

COUNT IV

PETITIONER IS A MEMBER OF THE MALDONADO BAUTISTA BOND ELIGIBLE CLASS

83. Petitioner incorporates by reference all prior allegations as if fully set forth herein.

84. As demonstrated in Counts I, II, and III, Petitioner's detention violates the TVPRA, is contrary to law under section 1225(b)(2), and violates the Fifth Amendment's guarantee of due process. His re-detention without a pre-deprivation hearing showing materially changed circumstances established by clear and convincing evidence is unlawful.

Petitioner should be immediately released from custody without the need for a bond hearing before an Immigration Judge.

85. In the alternative, should the Court decline to order immediate release, the Court should order Respondents to provide Petitioner with an individualized bond hearing under section 1226(a) because Petitioner is a member of the Bond Eligible Class certified in Maldonado Bautista v. Noem, No. 5:25-cv-01873-SSS-BFM, ECF No. 93 (C.D. Cal. Dec. 18, 2025).

86. On December 18, 2025, the United States District Court for the Central District of California issued a final judgment in Maldonado Bautista v. Noem, certifying a nationwide class and holding that the Department of Homeland Security's policy of detaining noncitizens under section 1225 based on interior arrests violates the Immigration and Nationality Act. Id.

87. The court certified the Bond Eligible Class, defined as: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. section 1226(c), section 1225(b)(1), or section 1231 at the time the Department of Homeland Security makes an initial custody determination. Maldonado Bautista, ECF No. 93, at 51.

88. Petitioner is a member of the Bond Eligible Class. He entered the United States without inspection on October 9, 2023 near Santa Teresa, New Mexico, and was arrested on October 10, 2023, in the interior of the United States, near El Paso, Texas; he was not apprehended upon arrival. He is not subject to detention under section 1226(c) because he has not been convicted of any qualifying offense specified in that section. He is not subject to detention under section 1225(b)(1) because he was never subjected to expedited removal proceedings. He is not subject to detention under section 1231 because he does not have a final order of removal.

89. The Maldonado Bautista court held that DHS's interpretation of section 1225, which treats all noncitizens arrested in the interior as applicants for admission subject to mandatory detention, is contrary to the unambiguous text of the statute and therefore violates the Administrative Procedure Act. Maldonado Bautista, ECF No. 93, at 35.

90. For members of the Bond Eligible Class, detention under section 1225 is unlawful and they are entitled to bond hearings under section 1226(a).

91. If the Court orders a bond hearing, it should ensure that any favorable bond determination is not rendered futile by Respondents' invocation of the automatic stay provision of 8 C.F.R. section 1003.19(i)(2). That regulation permits DHS to automatically stay an Immigration Judge's release order upon filing a notice of appeal, detaining the noncitizen for months or longer while the Board of Immigration Appeals considers the appeal, and empowering the government to unilaterally nullify an Immigration Judge's determination that detention is not warranted. Courts have recognized that this regulation raises serious due process concerns. See Vazquez v. Feeley, No. 2:25-cv-01542-RFB-EJY, ECF No. 30, at 37 (D. Nev. Sept. 17, 2025) (ruling that the lack of challenge procedures under the automatic stay renders the regulation unconstitutional in all applications); Otilio B.F. v. Andrews, No. 1:25-cv-01398-KES-EPG (HC), ECF No. 12, at 14 (E.D. Cal. Nov. 11, 2025) (finding that the automatic stay itself is a separate act of detention that must satisfy due process); Silva v. LaRose, No. 3:25-cv-02329-JES-KSC, ECF No. 16, at 8 (S.D. Cal. Sept. 29, 2025) (describing 8 C.F.R. section 1003.19(i)(2) as "anomalous in our legal system" because it allows the losing party to unilaterally override a judicial decision). This Court should enjoin Respondents from invoking the automatic stay to delay Petitioner's release if an Immigration Judge determines that his release is warranted.

92. At any bond hearing ordered pursuant to this Count or pursuant to Counts I, II, or III, Respondents must bear the burden of proving by clear and convincing evidence that Petitioner is a danger to the community or a flight risk. Singh v. Holder, 638 F.3d 1196, 1203

(9th Cir. 2011); see also Garcia v. Noem, No. 3:25-cv-03759-LL-BLM, ECF No. 6, at 7 (S.D. Cal. Jan. 26, 2026) (ordering that at any future hearing, the government shall bear the burden of establishing by clear and convincing evidence that petitioner poses a danger to the community or a risk of flight).

93. As a member of the Bond Eligible Class, Petitioner is entitled to the relief provided by the Maldonado Bautista judgment: a determination that his detention is governed by section 1226(a), not section 1225(b)(2), and an individualized custody determination with the possibility of release on bond.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Declare that Respondents' detention of Petitioner violates 8 U.S.C. section 1232(c)(2)(B) of the Trafficking Victims Protection Reauthorization Act;

2. Declare that Respondents' actions constitute arbitrary, capricious, and unlawful agency action in violation of the Administrative Procedure Act, 5 U.S.C. section 706(2)(A);

3. Declare that Petitioner's detention under 8 U.S.C. section 1225(b)(2) is unlawful;

4. Declare that Respondents violated the Due Process Clause of the Fifth Amendment by re-detaining Petitioner, who had been released pursuant to the TVPRA for over two years, without providing him notice, a pre-deprivation custody redetermination hearing, or a finding of changed circumstances before a neutral decisionmaker;

5. Issue a Writ of Habeas Corpus ordering Respondents to IMMEDIATELY RELEASE Petitioner from custody and allow him to resume residing in the least restrictive setting with his uncle, where he was originally placed on December 9, 2023, or under reasonable conditions of supervision;

6. Permanently enjoin Respondents from re-detaining Petitioner absent a showing of materially changed circumstances established by clear and convincing evidence at a

pre-deprivation hearing before a neutral decisionmaker that satisfies the requirements of the Due Process Clause;

7. In the alternative, should the Court decline to order immediate release:

a. Find that Petitioner is a member of the Bond Eligible Class certified in Maldonado Bautista v. Noem, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025), and is therefore entitled to an individualized custody determination under 8 U.S.C. section 1226(a);

b. Order Respondents to provide Petitioner with an individualized bond hearing before an Immigration Judge pursuant to 8 U.S.C. section 1226(a) within seven (7) days of this Court's order, at which the government bears the burden of proving by clear and convincing evidence that Petitioner is a flight risk or danger to the community; and

c. Order that, should the Immigration Judge grant bond or otherwise order Petitioner's release, Respondents are enjoined from invoking the automatic stay provision of 8 C.F.R. section 1003.19(i)(2) to stay Petitioner's release, and that the Immigration Judge's release order shall be effective immediately upon Petitioner's compliance with any conditions set by the Immigration Judge;

8. Award Petitioner reasonable costs and attorney's fees pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. section 2412, and any other basis justified under law; and

9. Grant such other and further relief as the Court deems just and proper.

Dated: April 23, 2026

Respectfully submitted,

s/ Andrew M. Kaufman

ANDREW M. KAUFMAN
Attorney for Petitioner

VERIFICATION

I, Andrew M. Kaufman, am the attorney of record for Petitioner Jose Wilber Herrera Orellana. I have read the foregoing Verified Petition for Writ of Habeas Corpus and know its contents. Based on my review of the case file, my communications with Petitioner, and my review of publicly available court records and legal authorities, I declare under penalty of perjury under the laws of the United States of America that the factual allegations set forth in the Petition are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 23, 2026 at Walnut Creek, California.

s/ Andrew M. Kaufman

ANDREW M. KAUFMAN
Attorney for Petitioner

EXHIBIT LIST

Exhibit A:	Birth Certificate of Jose Wilber Herrera Orellana
Exhibit B:	Form I-213, Record of Deportable/Inadmissible Alien
Exhibit C:	Notice to Appear
Exhibit D:	Form I-200, Warrant for Arrest of Alien
Exhibit E:	Form I-286, Notice of Custody Determination
Exhibit F:	HHS/ORR Verification of Release
Exhibit G:	Form I-589 Filing Receipt
Exhibit H:	Employment Authorization Approval Notice
Exhibit I:	Superior Court of California Guardianship Order (Form GC-240) and Special Immigrant Juvenile Findings (Form GC-224)
Exhibit J:	Form I-360 Filing Receipt
Exhibit K:	Declaration of Jose Geronimo Orellana Rodriguez

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Jose Wilber Herrera Orellana

Petitioner,

v.

Eric Rokosky, Warden, Eloy Detention Center; John Cantu, Field Office Director, Phoenix Field Office, Immigration and Customs Enforcement; Markwayne Mullin, Secretary of the United States Department of Homeland Security; and Todd Blanche, Acting Attorney General of the United States,

Respondents.

_____/

Case No.

INDEX OF EXHIBITS