UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

FRANKLIN JESSMY MUNGIA ESCALANTE, Petitioner, v. WARDEN of Irwin County Detention Center; KRISTIN SULLIVAN, Acting Director of Immigration and Customs Enforcement and Removal Operations ("ICE/ERO") Atlanta Field Office; MARKWAYNE MULLIN, Secretary of the Department of Homeland Security ("DHS"); and TODD BLANCHE, Acting Attorney General of the United States, in their official capacities, Respondents.	)	Case No. 4:26 cv 682 **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner Franklin Jessmy Mungia Escalante, a citizen of Honduras, respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C.

§ 2241 to challenge the legality of his detention by Immigration and Customs Enforcement ("ICE"), a component of the U.S. Department of Homeland Security ("DHS"). He was arrested by ICE on March 26, 2026, during an ICE check-in appointment and after having lived in the interior of the country since August 2016. Petitioner is currently detained at the Irwin County Detention Center in Ocilla, Georgia, where he has been held unlawfully since March 26, 2026.

2. This Court has recently considered whether a noncitizen who is already present in the United States, not at its port of entry seeking admission, is deemed an "applicant for admission" subjecting him to mandatory detention under Section 1225(b)(2) or, if not, subjecting him to discretionary detention with a right to a bond hearing under Section 1226(a). *See, e.g., J.A.M. v. Streeval*, No. 4:25-cv-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025) (finding petitioners' detention governed by 8 U.S.C. § 1226(a)); *P.R.S. v. Streeval*, No. 4:25-cv-343-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025) (same). These recent rulings have rejected that 8 U.S.C. § 1225(b)(2)(A) applies to individuals who lived in the country for years before being detained.

3. An order from this Court requiring immediate release, or in the alternative a bond hearing with extra safeguards, is required here because ordering a bond

hearing alone will not reliably remedy Petitioner's unlawful detention. Experience in recent cases demonstrates that, absent clear guidance or safeguards, bond determinations may fail to meaningfully engage with individualized assessments of flight risk or danger.[1]

4. As such, Petitioner seeks a writ of habeas corpus requiring that he be released immediately, or in the alternative, ensuring Respondents conduct a *constitutionally sufficient* bond hearing within seven (7) business days and subsequently file with this Court a status report.

5. To the extent this Court orders a bond hearing rather than release, Petitioner seeks that this Court's order include the following safeguards:

   (1) Make explicit that Respondents bear the burden to show flight risk or danger to society. *See, e.g., J.G. v. Warden, Irwin County Detention Center*, 501 F. Supp. 3d 1331, 1335 (M.D. Ga. 2020) (finding that the Government "must bear the burden of proof to justify a noncitizen's detention pending removal proceedings"); and

   (2) Order Respondents to give a status report to this Court within three (3) days of any ordered bond hearing, stating whether Petitioner has been granted bond, and, if his request for bond was denied, the reasons for that denial, to certify compliance with this Opinion.

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[1] Counsel is aware, based on recent litigation experience and communications with other immigration practitioners, that many similarly situated noncitizens have faced bond denials following habeas relief on grounds that do not meaningfully address individualized risk, showing that an order requiring a bond hearing without also ordering safeguards does not reliably remedy unlawful detention. *See e.g.*, Ex. 1, *Romero-Nolasco v. McDonald*, No. 25-cv-12492-MJJ, ECF No. 22 at 5n.2 (D. Mass. Jan. 14, 2025) ("[I]t is clear that the IJ simply did not apply the factors relevant to assessing whether a person is a flight risk to the evidence.").

JURISDICTION AND VENUE

6. This action arises under the Constitution of the United States and the INA, 8 U.S.C. § 1101 *et seq.*

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

8. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

9. "A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, may, . . . be brought in any judicial district in which a defendant in the action resides . . . *See* 28 U.S.C. § 1391(e).

10. The Supreme Court articulated in *Rumsfeld v. Padilla* the standard for determining if a court has jurisdiction to consider a habeas corpus petition, which breaks down into two subquestions— (1) who is the proper respondent to the petition, and (2) does the Court have jurisdiction over that respondent. *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004).

11. Under *Padilla*, the "immediate custodian" of the detained petitioner is the proper respondent in such habeas actions, which is typically the warden of the facility in which the petitioner is being housed. *See id.* at 443 ("The plain language of the habeas statute thus confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement.")

12. Here, under *Padilla*, the immediate custodian of the Petitioner, and thus the proper Respondent, is the Warden of the Irwin Detention Center in Irwin County, Georgia. *See id.* Because this Court has jurisdiction over actions arising in Irwin County, the venue is proper in this case.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

13. Petitioner has exhausted his administrative remedies to the extent required by law. There is no statutory exhaustion requirement in 28 U.S.C. § 2241. However, "that does not mean that courts may disregard a failure to exhaust and grant relief on the merits if the respondent properly asserts the defense." *Santiago-Lugo v. Warden*, 785 F.3d 467, 475 (11th Cir. 2015). "To properly exhaust administrative remedies, a petitioner must comply with an agency's deadlines and procedural rules." *Straughter v. Warden, FCC Coleman - Low*, 699 F. Supp. 3d 1304, 1306 (M.D. Fla. 2023) (citing *Woodford v. Ngo*, 548

U.S. 81, 90–91 (2006) (discussing the Prison Litigation Reform Act's (PLRA) exhaustion requirement)). It is the Respondent's burden to prove that the Petitioner has "failed to exhaust all available administrative remedies." *Id.* at 1307.

14. Any request for bond through EOIR would be futile at this stage while the Ninth Circuit's stay of the final ruling in *Maldonado Bautista* remains in effect, as *Matter of Hurtado* still applies. *See* Ex. 2, *Maldonado Bautista v. U.S. Dep't of Homeland Sec.*, No. 26-1044 (9th Cir. Mar. 6, 2026) (order granting temporary administrative stay); *see also McCarthy v. Madigan*, 503 U.S. 140, 146-49 (1992) *superseded by statute on other grounds as stated in Booth v. Churner*, 532 U.S. 731 (2001) (noting that traditional exceptions include where exhaustion would cause "undue prejudice to subsequent assertion of a court action" or "irreparable harm" to the petitioner, where there is "some doubt as to whether the agency was empowered to grant effective relief," or where it would be futile because "the administrative body is shown to be biased or has otherwise predetermined the issue before it") (internal quotation marks omitted).

15. Accordingly, this Court should find that Petitioner has sufficiently exhausted all administrative remedies.

REQUIREMENTS OF 28 U.S.C. § 2243

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

17. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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).

PARTIES

18. Petitioner is a noncitizen who is currently detained at the Irwin County Detention Center. He is in the custody, and under the direct control, of Respondents and their agents.

19. Respondent Warden of the Irwin County Detention Center is sued in their official capacity. Respondent Warden is the immediate custodian of the Petitioner.

20. Respondent Kristin Sullivan is sued in her official capacity as the Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, Atlanta Field Office. Respondent Sullivan is a legal custodian of Petitioner and has authority to release him.

21. Respondent Markwayne Mullin is sued in his official capacity as the Secretary of the DHS. In this capacity, Respondent Mullin is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Mullin is a legal custodian of Petitioner.

22. Respondent Todd Blanche is sued in his official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, he has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA. Respondent Blanche is a legal custodian of Petitioner.

STATEMENT OF FACTS

23. Petitioner, a noncitizen, faces unlawful detention because the DHS and Executive Office of Immigration Review ("EOIR") have concluded he is subject to mandatory detention based on a recently released ICE memo directing a new interpretation of the law. *See* Ex. 3, ICE Memo "Interim Guidance Regarding Detention Authority for Applicants for Admission" dated July 8, 2025 (hereinafter "ICE Memo"). This memo admittedly states that it "has revisited its legal position on detention and release authorities." *See id.* It further states that the DHS policy was issued "in coordination with the Department of Justice (DOJ)." (*See id.*).

24. Petitioner, a 38-year-old native and citizen of Honduras, fled his home country after experiencing violence and threats, including [redacted] (*See* Ex. 4, Credible Fear Packet).

25. Petitioner entered the United States on or about August 3, 2016, at or near the Hidalgo, Texas Port of Entry, where he affirmatively presented himself to immigration authorities and applied for asylum. (*See* Ex. 5, Form I-860 - Notice and Order of Expedited Removal). On August 4, 2016, Petitioner was processed for expedited removal under 8 U.S.C. § 1225(b)(1), as he lacked valid entry documents. *See id.*

26. Petitioner requested asylum and was given a credible fear interview on August 11, 2016, during which he affirmed under oath that he feared returning to Honduras. (*See* Ex. 4, Credible Fear Packet). Petitioner was found to have a credible fear of persecution in Honduras. (*See id.*).

27. On September 7, 2016, Respondents issued Petitioner a Notice to Appear ("NTA"), which took him out of the expedited removal process and placed him into 8 U.S.C. § 1229 removal proceedings to allow him to present his asylum claim to an immigration judge. (*See* Ex. 6, Notice to Appear dated September 7, 2016 ("NTA")).

28. The NTA charged Petitioner as removable under § 212(a)(7)(A)(i)(l) of the Immigration and Nationality Act ("INA"), which states: "You did not possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document." (*See* Ex. 6, Notice to Appear dated September 7, 2016 ("NTA")). The NTA categorized the Petitioner as an "arriving alien." *See id.*

29. While his removal proceedings were pending, the Department of Homeland Security released the Petitioner and paroled him into the U.S. under humanitarian parole, 8 C.F.R. 212.5(B). (*See* Ex. 7, CBP Form I-94).

30. On October 21, 2019, the Immigration Judge held a hearing and issued an oral decision denying Petitioner's applications for asylum, withholding of

removal, and protection under the Convention Against Torture, and ordered Petitioner removed to Honduras pursuant to INA § 212(a)(7)(A)(i)(I). (*See* Ex. 8, Immigration Judge Oral Decision and Order). The Petitioner appeared *pro se* for this hearing. (*See id.*).

31. On or about November 20, 2019, Petitioner timely filed a Notice of Appeal with the Board of Immigration Appeals ("BIA") challenging the Immigration Judge's decision. (*See* Ex. 9, Filing Receipt for Appeal). On November 22, 2019, the BIA acknowledged receipt of Petitioner's appeal. (*See id.*).

32. On May 28, 2021, the BIA issued a Notice of Briefing Schedule in Petitioner's case, confirming that the matter remained pending on appeal and granting Petitioner until June 18, 2021 to submit a brief in support of his appeal. (*See* Ex. 10, Notice of Briefing Schedule). Petitioner filed a timely brief in support of his appeal, which still remains pending, several years later.[2] (*See* Ex. 11, EOIR Case Status Screen Shot).

33. While Petitioner's immigration proceedings and appellate review remained pending, Petitioner complied with all requirements imposed by immigration authorities, including appearing for scheduled check-in appointments with

[2] Throughout these proceedings, Petitioner has consistently sought protection from removal and has not abandoned his claims for relief. Notwithstanding Petitioner's pursuit of appellate review, the administrative process has been prolonged and incapable of providing timely relief from the consequences of the removal order, including the ongoing harm associated with enforcement of that order.

U.S. Immigration and Customs Enforcement ("ICE"). (*See* Ex. 12, ICE Reporting History).

34. On or about March 26, 2026, Petitioner, along with his wife and child, had a scheduled ICE check-in appointment. Prior to the appointment, ICE officers instructed Petitioner's wife that only Petitioner was required to appear. In compliance with those instructions, Petitioner appeared for the scheduled check-in appointment as directed. Upon his arrival, ICE officers detained Petitioner without prior notice. During the encounter, ICE officers informed Petitioner, in substance, that he "did not appear in the system," and, on that basis, took him into custody.

35. Petitioner has remained detained since March 26, 2026, and is currently confined at Irwin County Detention Center at 132 Cotton Dr, Ocilla, GA 31774.

36. Petitioner remains detained without having received an individualized bond hearing to determine whether his continued detention is justified based on danger, flight risk, or whether conditions of release could reasonably ensure his appearance at future proceedings.

37. Petitioner's continued detention is premised on the Government's incorrect legal position that § 1225(b)(2)(A) applies to noncitizens who are arrested in the interior for years after entry.

38. Respondents' position effectively treats Petitioner as if he were an applicant for admission at the border, despite that his 2026 arrest occurred in the interior of the United States nearly a decade after his entry.

39. Under the statutory scheme, § 1225 governs the inspection and detention of "applicants for admission" at or near the threshold of entry, whereas § 1226(a) governs arrest and detention of noncitizens already in the United States pending removal proceedings and provides eligibility for release on bond or conditional parole. Petitioner's most recent detention took place almost ten years after his last entry, at an ERO field office in the interior. Because Petitioner was arrested in the interior of the United States—rather than at or near the border—and only after years of residence and participation in removal proceedings, his detention falls squarely within the scope of 8 U.S.C. § 1226(a), not § 1225(b). Petitioner therefore contends that he is detained under 8 U.S.C. § 1226(a) and is entitled to an individualized custody hearing.

40. Despite Petitioner's interior arrest, this Court's prior rulings, and the absence of any individualized custody hearing, Respondents continue to detain Petitioner without a bond hearing based solely on the asserted application of § 1225(b)(2)(A). This interpretation is contrary to the statutory framework, which reserves § 1225(b) for individuals at the

threshold of entry and requires that individuals like Petitioner—who are apprehended within the United States—be afforded the procedural protections of § 1226(a), including a bond hearing. Petitioner thus remains illegally detained as of the date of this Petition.

41. This Action follows.

LEGAL FRAMEWORK

42. U.S.C. § 2241(c)(3) authorizes federal courts to grant habeas relief to prisoners or detainees who are "in custody in violation of the Constitution or laws or treaties of the United States." Federal courts retain jurisdiction under § 2241 to review purely legal statutory and constitutional claims regarding the government's detention authority, but jurisdiction does not extend to "discretionary judgment," "action," or "decision" by the Attorney General with respect to either detention or removal. *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (citing, *inter alia*, *Demore v. Kim*, 538 U.S. 510, 516-17 (2003)).

43. In May 2025, the Board of Immigration Appeals ("BIA") decided *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). The BIA held that a noncitizen who entered the United States without inspection and was arrested without a warrant while "arriving" is an "applicant for admission" under INA § 235(b)

and therefore is subject to mandatory detention under § 235(b) and ineligible for a bond hearing under INA § 236(a). The case involved a Chinese national who crossed the southern border without inspection, was arrested shortly thereafter, and then released on parole under INA § 212(d)(5)(A). After her parole was later terminated, she was detained again and sought a bond hearing. The BIA affirmed the immigration judge's denial, holding that because her detention was under § 235(b), immigration judges lack authority to grant bond under § 236(a).

44. The BIA's reasoning turned on the statutory definition of "applicant for admission," which the BIA interpreted to cover someone who has not been formally admitted and was arrested upon arrival or shortly thereafter, regardless of whether the arrest occurred at a formal port of entry.

45. On July 8, 2025, ICE issued an internal memo, the July 8, 2025 "Interim Guidance Regarding Detention Authority for Applicants for Admission" (hereinafter "ICE Memo") that expanded the logic of *Q. Li*. Under the Memo, ICE directed officers to treat virtually all noncitizens in the United States who have not been formally admitted, including those present for years, as "applicants for admission" subject to mandatory detention under INA § 235(b), and thus to refrain from issuing custody-determination forms under § 236(a). (*See* Ex. 3, ICE Memo).

46. The ICE Memo expanded the reasoning in *Q. Li* beyond individuals who were arrested immediately after entry and applied it broadly, including to people detained long after arrival, by classifying them as "applicants for admission" simply because they had not been formally admitted or paroled.

47. The ICE Memo states as follows:

> Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286.

48. In September 2025, the BIA again expanded this interpretation in *Matter of Yajure Hurtado* to cover all individuals who entered without inspection and admission at any point in the past, even if they had been present in the U.S. for years. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

49. As a result of these decisions, Petitioner is currently detained at the Irwin County Detention Center at 132 Cotton Dr, Ocilla, GA 31774, and is the subject of a pending removal proceeding.

50. The Central District of California in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (Dec. 18, 2025 C.D. Cal.), recently declared that the ICE memo violated the Administrative Procedure Act ("APA") and vacated *Matter of Yajure Hurtado*.[3] However, the Ninth Circuit temporarily stayed the district court's order pending a ruling on the government's emergency motion for a stay pending appeal. *See* Ex. 2, *Maldonado Bautista v. U.S. Dep't of Homeland Sec.*, No. 26-1044 (9th Cir. Mar. 6, 2026) (order granting temporary administrative stay). Thus, although that judgment will remain fully in effect in the Central District of California, *Matter of Hurtado* is otherwise still in effect and being relied on widely by immigration judges nationwide.

51. Notably, however, most federal courts to consider this issue, including this Court, have agreed that noncitizens who are arrested long after entry should not be treated as arriving aliens. *See, e.g., J.A.M. v. Streeval*, No. 4:25-cv-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025) (finding petitioners' detention governed by 8 U.S.C. § 1226(a)); *P.R.S. v. Streeval*, No. 4:25-cv-343-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025) (same).

[3] On December 18, 2025, the U.S. District Court for Central District of California issued a final judgment declaring that Bond Eligible Class Members are detained under 8 U.S.C. § 1226(a), and are not subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See* Ex. 2, *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (Dec. 18, 2025 C.D. Cal.). On February 18, 2026, District Court Judge Sunshine Suzanne Sykes of the Central District of California granted Plaintiffs' motion to enforce and issued an order vacating the Board's decision in *Matter of Yajure Hurtado*.

52. Petitioner accordingly asserts that (1) his Fifth Amendment right to due process of law was violated when the Respondents subjected him to mandatory detention with no individualized bond hearing; (2) the Respondents' actions violated the INA when they detained him under 8 U.S.C. § 1225(b)(2)(A), rather than 8 U.S.C. § 1226(a); and (3) the Respondents' actions violated the APA when they detained him under 8 U.S.C. § 1225(b)(2)(A), rather than 8 U.S.C. § 1226(a).

1. Due Process

53. The Due Process Clause of the Fifth Amendment provides Petitioner with important protections regarding his detention. As the Supreme Court has explained, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint— lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

54. The INA envisions three basic forms of detention for noncitizens in removal proceedings. First is detention for noncitizens in regular, non-expedited removal proceedings. *See* 8 U.S.C. § 1226(a), (c). Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, while noncitizens who have committed certain crimes are subject to mandatory detention. *See id.* § 1226(c).

55. The INA also provides for mandatory detention for noncitizens in expedited removal proceedings, 8 U.S.C. § 1225(b)(1), and detention for noncitizens whose immigration cases are completed, *id.* § 1231(a)(6). *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111-13 (W.D. Wash. 2019) (providing overview of INA's detention authorities).

56. To guarantee against arbitrary detention and to guarantee the right to liberty, due process requires "adequate procedural protections" that ensure the government's asserted justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

57. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id.; Demore*, 538 U.S. 510, 522, 528 (2003). The government may not detain a noncitizen based on any other justification.

58. To justify immigration detention, this Court has held that the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. *See J.G. v. Warden, Irwin County Detention Center*, 501 F. Supp. 3d 1331, 1335 (M.D. Ga. 2020) (holding that

the Government "must bear the burden of proof to justify a noncitizen's detention pending removal proceedings").

59. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), "the Supreme Court held that [section] 1226(a) does not mandate that a clear and convincing evidence burden be placed on the government in bond hearings, [but] it left open the question of whether the Due Process Clause does." *Darko v. Sessions*, 342 F. Supp. 3d 429, 434–35 (S.D.N.Y. 2018). In considering the question left open by *Jennings*, both the First and Second Circuits, along with several district courts (in addition to this Court), have found that due process requires that the government bear the burden of justifying a noncitizen's § 1226(a) detention. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 39 (1st Cir. 2021) (concluding "that the government must bear the burden of proving dangerousness or flight risk in order to continue detaining a noncitizen under section 1226(a)"); *Velasco Lopez v. Decker*, 978 F.3d 842, 855–57 (2d Cir. 2020) (holding that the government must bear the burden of proving danger and flight risk by clear and convincing evidence if an individual faces prolonged detention); *see, e.g. Molina Ochoa v. Noem*, No. 1:25-cv-00881-JB-LF, 2025 WL 3125846, at *13 (D.N.M. Nov. 7, 2025) (holding that the government must "bear the burden at a § 1226(a) bond hearing of proving by clear and convincing evidence that Petitioner is a

flight risk or a danger to the community"); *Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *8 (N.D. Ill. Oct. 16, 2025) (same).

60. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

61. First, incarceration deprives noncitizens of a "profound" liberty interest—one that always requires some form of procedural protections. *Diouf*, 634 F.3d at 1091- 92; *see also Foucha*, 504 U.S. at 80 ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)).

62. Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and frequently lack English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 762-63 (1982) (requiring clear and convincing evidence at parental termination proceedings because "numerous factors combine to magnify the risk of erroneous factfinding" including that "parents subject to termination proceedings are often poor, uneducated, or members of minority groups" and "[t]he State's attorney usually will be expert on the issues contested").

Moreover, Respondents detain noncitizens in prison-like conditions that

severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing.

63. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen's immigration records and other information that it can use to make its case for continued detention.

64. In light of these considerations, "[t]he overwhelming majority of courts to consider the question . . . have concluded that imposing a clear and convincing standard would be most consistent with due process." *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted).

65. Due process also requires that a neutral decisionmaker consider available alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE's alternatives to detention program—the Intensive Supervision Appearance Program (ISAP)—has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th

Cir. 2017) (observing that ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings"). It follows that alternatives to detention must be considered in determining whether further incarceration is warranted, particularly where, as here, the Petitioner was regularly attending ICE check ins and in fact was arrested while attending one.

66. Immigration detainees face severe hardships while incarcerated. Immigration detainees are held in lock-down facilities, with limited freedom of movement and access to their families: "the circumstances of their detention are similar, so far as we can tell, to those in many prisons and jails." *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); *accord Chavez-Alvarez v. U.S. Att'y Gen.*, 783 F.3d 478 (3d Cir. 2015); *Ngo v. INS*, 192 F.3d 390, 397-98 (3d Cir. 1999); *Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1218, 1221 (11th Cir. 2016). "And in some cases[,] the conditions of their confinement are inappropriately poor." *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting) (citing Dept. of Homeland Security (DHS), Office of Inspector General (OIG), DHS OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE Detention Facilities (2017) (reporting instances of invasive procedures, substandard care, and mistreatment, e.g., indiscriminate strip searches, long waits for medical care and hygiene

products, and, in the case of one detainee, a multiday lock down for sharing a cup of coffee with another detainee)).

67. These conditions and obstacles only further underscore the serious due process concerns that immigration detention poses for noncitizens like the Petitioner, and reflect the need for a decision before a *neutral* decisionmaker regarding further detention.

68. Where detention has been found unlawful, habeas relief must be effective, not merely formal. A bare order for a bond hearing does not necessarily cure a constitutional violation where the adjudicator retains unbounded authority to deny release without meaningful engagement with individualized flight risk or danger.

69. In such circumstances, District Courts have the authority to order release or in the alternative, a bond hearing with appropriate safeguards in place. *See, e.g.*, Ex. 13, *Soto-Medina v. Lynch et al.*, No. 1:25-cv-01704-JMB-MV, ECF No. 8 at 22 (W.D. Mich. Jan. 21, 2026) (ordering respondents "to provide Petitioner with an individualized bond hearing before an immigration judge, at which time the government will have the burden to demonstrate dangerousness or flight risk by clear and convincing evidence, or, in the alternative, immediately release Petitioner from custody" as well as "to file a status report within six business days of the date of this Court's Opinion and

Judgment to certify compliance with this Opinion and the corresponding Judgment.").

2. INA

70. The Petitioner is not properly detained under 8 U.S.C. § 1225(b)(2)(A), as the immigration judge asserted in the denial of bond, and as Respondents will now assert, but under 8 U.S.C. § 1226(a). Under 8 U.S.C. § 1225(b)(2)(A):

> in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title [i.e., removal proceedings].

71. Petitioner maintains that he is detained under 8 U.S.C. § 1226(a), which provides that:

> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) [mandating the detention of certain criminal aliens] and pending such decision, the Attorney General -
>
> (1) may continue to detain the arrested alien; and
>
> (2) may release the alien on -
>
> (A) bond of at least $1,500 with security approved by, and containing conditions described by, the Attorney General;
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> or (B) conditional parole; but
>
> (3) may not provide the alien with work authorization ... unless the alien is lawfully admitted for permanent residence or

otherwise would ... be provided such authorization.

72. "Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985). Thus, the Court's "first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Id.* (citing, *inter alia, Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 477 (1992)).

73. Thus, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), was wrongly decided and should not be given weight. In that case, the Board held that "[b]ased on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission." *Id.*

74. This Court has previously rejected the reasoning and holding of *Yajure Hurtado*. As this Court noted in the recent case *J.A.M. v. Streeval*, No.

4:25-cv-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025), "under no reasonable interpretation is 'alien seeking admission' synonymous with 'any alien present in the United States who has not been admitted.'" *See J.A.M.*, No. 4:25-cv-342-CDL at *5; *see also J.A.M. v. Streeval*, No. 4:25-CV-342 (CDL), 2025 WL 3050094, at *1 (M.D. Ga. Nov. 1, 2025) ("The Court has previously rejected Respondents' broad interpretation of § 1225(b)(2) that detention is mandatory for any alien who has not been lawfully admitted.").

75. Further, by its own terms, section 1225(b)(1) applies to an alien "who is *arriving* in the United States or is described in clause (iii)." 8 U.S.C. § 1225(b)(1) (emphasis added). Clause (iii) applies only to a noncitizen "who has not been admitted or *paroled* into the United States." 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (emphasis added).

76. As the Eastern District of New York recently held in a habeas case with a materially identical posture, § 1225(b)(1) does not authorize the expedited removal and detention of noncitizens who have been, at any point in time, paroled into the United States. *Rodriguez-Acurio v. Almodovar*, 811 F. Supp. 3d. 274, 295 (E.D.N.Y. 2025). In that case, the petitioner applied for asylum and was taken into detention after her credible fear interview. *Id.* at 285–88.

77. The Court in that case rejected the government's alternative arguments that 8 U.S.C. §§ 1225(b)(1) or (b)(2) applied to the petitioner. *Id.* at 297

(noting that other district courts have agreed on the same issue (citing *Coal. for Humane Immigrant Rts. v. Noem*, 805 F. Supp. 3d 48, 83, 94 (D.D.C. 2025) [hereinafter *Coalition*]; *Bustos v. Raycraft*, No. 25-cv-13202, 2025 WL 3022294, at *6 (E.D. Mich. Oct. 29, 2015); *Munoz Materano v. Arteta*, 804 F. Supp. 3d 395, 413–14 (S.D.N.Y. 2025); *Aviles Mena v. Kaiser*, No. 25-cv-6783, 2025 WL 2578215 (N.D. Cal. Sept. 5, 2025))).

78. The Court first concluded that the phrase "has not been . . . paroled into the United States" prohibits "the expedited removal of noncitizens who have been, at any time, paroled into the United States." *Id.* at 299 (quoting *Coalition*, 805 F. Supp. 3d at 83). It reasoned that the petitioner's placement in expedited removal was predicated on her classification as an arriving alien, but once DHS affirmatively chose to authorize the petitioner's parole, it made the determination that it no longer intended to fast-track her removal. *Id.* at 301. It rejected the government's contention that the petitioner's parole meant she was treated constitutionally as if she was still at the border. *Id.* at 301–04.

79. The Court also determined that the petitioner was not an arriving alien under 8 U.S.C. § 1225(b)(1)(A)(i). *Id.* at 305. Although the government argued that the petitioner was subject to mandatory detention because she was originally detained near a point of entry in Texas and later

discretionarily paroled into the United States, the Court found that the plain meaning of "arriving" under 8 U.S.C. § 1225(b)(1)(A)(i) meant "being 'in the process of reaching' a destination." *Id.* at 306–07 (quoting *Coalition*, 805 F. Supp. 3d at 90). It therefore concluded that despite her original arrest near a point of entry, the petitioner was not an arriving alien when she was detained years later in the interior. *Id.* at 307.

80. The Court also determined that 8 U.S.C. § 1225(b)(2)(A) did not apply to the petitioner in that case, and specifically rejected the holding of *Matter of Hurtado* as "not persuasive." *Id.* at 308–11. It concluded that the petitioner's detention was actually governed by 8 U.S.C. § 1226(a). *Id.* at 311–12. Analyzing the *Mathews* factors, the Court found that the petitioner's detention violated her due process rights. *Id.* at 301–19. Notably, the Court found that a simple bond determination "would not remedy the core constitutional violation at issue" because her "detention was unlawful from its inception because ICE detained her under the wrong statute and without any notice or opportunity to be heard, much less the procedures required under Section 1226(a)." *Id.* at 319–20. It therefore granted the habeas petition, ordered the petitioner's immediate release, and, "pending the issuance of any final removal order" against her, enjoined the government

from detaining her again without bond on the basis of 8 U.S.C. § 1225(b). *Id.* at 320–21.

3. APA

81. Under the APA, a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

82. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

CLAIMS FOR RELIEF

COUNT ONE

Respondents Violated Petitioner's Fifth Amendment Right to Due Process

Procedural Due Process

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

84. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

85. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

86. Here, Petitioner is entitled to due process protections under the Fifth Amendment of the U.S. Constitution. Respondents arrested Petitioner on March 26, 2026, at a scheduled ICE check-in appointment in the interior of the United States—nearly ten years after his entry and after years of compliance with ICE reporting requirements—yet have refused to provide him with an individualized bond hearing. Respondents' refusal to provide Petitioner with such a hearing—and their reliance on Matter of *Yajure-Hurtado* to deny jurisdiction—violated Petitioner's rights under the Due Process Clause.

87. Under the three-part test of *Mathews*, 424 U.S., the balance overwhelmingly favors Petitioner. Petitioner has a substantial liberty interest as a long-term resident who lived in the United States with his wife and child and complied

with ICE supervision for years before his sudden arrest. The Government's blanket detention policy under *Yajure Hurtado* creates an extreme risk of erroneous deprivation by denying him any opportunity to demonstrate eligibility for release. That risk is particularly acute here, where Petitioner was detained not at the border but at a routine check in appointment in the interior, without any individualized assessment. The Respondents' interest in ensuring appearance can be served by far less restrictive means. Accordingly, due process requires an individualized bond hearing under § 1226(a).

88. Respondents have shown neither that the continued detention of Petitioner following his arrest is reasonably related to the original purpose nor that the *Mathews* test is satisfied. At no point did Respondents evaluate Petitioner's history of compliance, family ties, or lack of danger to the community. And importantly, no procedural safeguards were provided to the Petitioner.

89. Petitioner is a long-term resident of the United States arrested in the interior, yet DHS asserts mandatory detention under INA § 235 despite the fact that Petitioner's 2026 arrest did not occur at or near the border, but almost 10 years after his arrival. Civil detention without an individualized determination of danger or flight risk is unconstitutional. *See Zadvydas*, 533

U.S. 678; *Demore*, 538 U.S. 510 (as limited by subsequent authority); U.S. Const. amend. V.

90. As the Supreme Court noted in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), civil immigration detention is constitutionally permissible only so long as it bears a reasonable relationship to its underlying purpose. Here, Petitioner's detention bears no such relationship, as it is based solely on a categorical legal determination rather than any individualized findings. Therefore, where detention persists without an effective mechanism for individualized justification, it loses its legal foundation.

91. Should this Court find that Petitioner is owed a bond hearing, there is a real and grave risk that Petitioner will not receive a *constitutionally sufficient* bond hearing absent further action from this Court to ensure it. And a remedy that exists in name only is no remedy at all.

92. Accordingly, this Court should order Petitioner's immediate release or impose additional safeguards to any ordered bond hearing.

COUNT TWO

Statutory Violation: Petitioner is Detained Under INA § 236, Not § 235

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

94. Here, it clear that § 1225(b)(1) does not apply because Petitioner is not "arriving in the United States," *see* 8 U.S.C. § 1225(b)(1)(A)(i), and he was previously paroled into the United States, *see id.* § 1225(b)(1)(A)(iii)(II). Once the government has exercised its discretion to parole Petitioner into the United States under 8 U.S.C. § 1182(d)(5)(A), Petitioner was no longer subject to the expedited removal procedures under 8 U.S.C. § 1225. *See Rodriguez-Acurio*, 811 F. Supp. 3d at 299, 307. The government cannot now argue that every noncitizen it paroles in this manner remains "arriving in the United States" and subject to mandatory, unreviewable detention as if they were arriving at the border in perpetuity. *See id.* at 307–08.

95. Petitioner entered the United States in 2016 through a port of entry and was issued a Notice to Appear that placed him into regular removal proceedings. Respondents chose to parole him into the U.S. via a humanitarian parole document. Since then, he's lived in the United States while pursuing relief, including appealing the Immigration Judge's 2019 removal order against him to the BIA. His relevant arrest did not occur at the border or in connection with any attempt to enter the country, but rather at a scheduled ICE check-in appointment in March 2026. Accordingly, his detention is governed exclusively by INA § 236(a). Respondents did not initiate expedited removal proceedings at the time of his 2026 arrest, and did not

treat him as an applicant for admission under the statutory framework. The IJ's reliance on *Hurtado* was thus contrary to the statutory framework, which mandates bond jurisdiction in § 236(a) cases.

96. Further, contrary to the language of § 1225(b), § 1226(a) does not specify a class or classes of aliens who should be detained under the provision, but governs more generally the "apprehension and detention of aliens." As opposed to the inspection regime for aliens entering the United States set forth in § 1225, the Supreme Court has characterized § 1226(a) as "authoriz[ing] the government to detain certain aliens already in the country pending the outcome of removal proceedings[.]" *Jennings*, 583 U.S. at 289 (emphasis added).

97. Petitioner had appeared for an ICE check-in when he was detained suddenly and without warning. He had been living in the interior of the United States for nearly a decade, complying with immigration authorities, and appearing for required check-ins.

98. By treating Petitioner as subject to § 1225(b) detention despite his interior arrest, prior placement in removal proceedings, and long-term presence in the United States, Respondents improperly extended § 1225 beyond its statutory scope. By treating Petitioner as subject to § 1225(b) detention

without statutory authorization, Respondents acted ultra vires and contrary to law.

99. Because Petitioner is detained under § 236(a), he is entitled to an individualized custody hearing, and the IJ's refusal to consider bond violated the INA. Petitioner was entitled to a bond hearing "at the outset of detention" as established by existing federal regulations. *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

100. This Court came to the same conclusion in recent habeas decisions regarding the applicability of INA § 236 and § 235 to detained immigrants who had lived in the interior of the country for years before being arrested. *See J.A.M. v. Streeval*, No. 4:25-cv-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *P.R.S. v. Streeval*, No. 4:25-cv-343-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025).

101. Petitioner is therefore entitled immediate release or in the alternative, a constitutionally sufficient bond hearing.

COUNT THREE

Respondents Violated of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)

Not in Accordance with Law and in Excess of Statutory Authority Unlawful Detention

102. Petitioner restates and realleges all paragraphs as if fully set forth here.

103. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

104. Here, Respondents detained Petitioner following his appearance at a routine ICE check-in appointment, without any individualized findings and based solely on an asserted legal classification under § 1225(b) that does not apply to his circumstances. By doing so, Respondents have violated the APA.

105. Respondents have made no finding that Petitioner is a danger to the community.

106. Respondents have made no finding that Petitioner is a flight risk.

107. The IJ's refusal to conduct a bond hearing based on *Matter of Yajure-Hurtado* constitutes final agency action that is contrary to statutory text, unsupported by facts, and irrational. Petitioner is a long-term U.S. resident apprehended at an ICE check-in in the interior after years of compliance with immigration authorities. Applying *Hurtado* to these facts—where § 1226(a) governs—constitutes an arbitrary expansion of §

1225(b) beyond its statutory limits. The resulting deprivation of bond eligibility is therefore unlawful under the APA.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;
2. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
3. Declare that the Petitioner's detention violates the INA;
4. Declare that the Petitioner's detention violates the APA;
5. Issue a Writ of Habeas Corpus ordering Petitioner immediately released, or in the alternative, ordering Respondents to conduct a constitutionally sufficient bond hearing within seven (7) days, with the following safeguards in place:
    a. Declare that Respondents bear the burden to show flight risk or danger to society; and
    b. Order Respondents to give a status report to this Court within three (3) days showing compliance with this Court's Opinion.
6. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
7. Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Brittany S. Pierce
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Counsel for Petitioner

Dated: April 23, 2026

EXHIBITS

EX. 1 - *Romero-Nolasco v. McDonald,* No. 25-cv-12492-MJJ, ECF No. 22 at 5n.2 (D. Mass. Jan. 14, 2025)

EX. 2 - *Maldonado Bautista v. U.S. Dep't of Homeland Sec.*, No. 26-1044 (9th Cir. Mar. 6, 2026)

EX. 3 - ICE Memo

EX. 4 - Credible Fear Packet

EX. 5 - Form I-860 - Notice and Order of Expedited Removal

EX. 6 - Notice to Appear dated September 7, 2016

EX. 7 - CBP Form I-94

EX. 8 - Immigration Judge Oral Decision and Order

EX. 9 - Filing Receipt for Appeal

Ex. 10 - Notice of Briefing Schedule

EX. 11 - EOIR Case Status Screen Shot

EX. 12 - ICE Reporting History

EX. 13 - *Soto-Medina v. Lynch et al.*, No. 1:25-cv-01704-JMB-MV, ECF No. 8 at 22 (W.D. Mich. Jan. 21, 2026)

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

I represent Franklin Jessmy Mungia Escalante, and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 22nd day of April, 2026,

s/Brittany S. Pierce
Brittany S. Pierce