FILED
U.S. District Court
District of Kansas
05/01/2026
Clerk, U.S. District Court
By: SND Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JONNY JOSE ABREU

Petitioner,

v.

JACOB WELSH, Sheriff of Chase County, in his official capacity; SAMUEL OLSON, Field Office Director for the ICE Chicago Field Office, in his official capacity; TODD LYONS, Acting Director of Immigration and Customs Enforcement, in his official capacity; MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security, in his official capacity; and TODD BLANCHE, Acting U.S. Attorney General, in his official capacity,

Respondents.

Case No.: 26-3113-JWL

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Jonny Jose Abreu is a 31-year-old man who fled Venezuela and is currently in the custody of the Department of Homeland Security ("DHS") at the Chase County Jail in Cottonwood, Kansas. DHS is unlawfully detaining him, claiming that he is subject to mandatory detention under 8 U.S.C. §1225(b)(2) rather than detention under 8 U.S.C. §1226. In the alternative, Mr. Abreu's detention is unlawful because DHS unlawfully revoked his prior release on recognizance.

2. Petitioner, Mr. Abreu entered the United States on September 24, 2023, with his wife and minor son. At that time, he and his family were released on their own recognizance pursuant to 8 U.S.C. §1226.

3. Mr. Abreu and his family were placed in removal proceedings and charged, *inter alia,* with being present in the United States without being admitted or paroled. 8 U.S.C. § 1182(a)(6)(A)(i). Mr. Abreu is eligible and has applied for Asylum, Withholding of Removal, and Convention Against Torture Protection under 8 U.S.C. §1158.

4. On March 18, 2026, Immigration and Customs Enforcement ("ICE") detained Mr. Abreu outside of traffic court in Chicago, Illinois. He was then transferred to the Chase County Detention Center in Kansas.

5. DHS is erroneously subjecting Mr. Abreu to mandatory detention pursuant to 8 U.S.C. §1225(b)(2). On July 8, 2025, DHS issued a new policy instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under Section 1182(a)(6)(A)(i) – i.e., those who entered the United States without inspection – to be an "applicant for admission" under Section 1225(b)(2)(A) and therefore subject to mandatory detention. Consistent with this policy, DHS has denied Mr. Abreu release from immigration custody. On April 13, 2026, an Immigration Judge denied bond, declaring that the immigration court lacked jurisdiction under *Matter of Yajure-Hurtado,* 29 I&N Dec. 216 (BIA 2025).

6. Petitioner's detention violates the plain language of the Immigration and Nationality Act (INA). Section 1225(b)(2) does not apply to Mr. Abreu, who entered the United States nearly three years ago and who was recently apprehended hundreds of miles from any border or port of entry. Instead, such individuals are subject to discretionary detention under Section 1226(a), which allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

7. Alternatively, Respondents have revoked their prior decision to release Mr. Abreu on recognizance in violation of due process and the Administrative and Procedure Act (APA). Due process requires the government to provide a noncitizen previously released on recognizance with an opportunity to be heard prior to re-detention. The APA requires an agency to make individualized determination and provide contemporaneous reasoning when it reverses a prior determination to release a noncitizen on recognizance. None of these procedural protections were provided to the Petitioner. *See Conejo Arias v. Noem,* 2026 WL 255706, at *1 (W.D. Tex. 2026) (Biery, J.) (ordering release of impermissibly detained father and son and noting that "[t]hey seek nothing more than some modicum of due process and the rule of law").

8. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released, or in the alternative, that he be provided with a prompt bond hearing under Section 1226(a) and that the burden be placed on Respondents to show why Mr. Abreu is danger to the community and flight risk.

9. Each day, Mr. Abreu remains in detention, he suffers irreparable harm. The deprivation of a constitutional right "for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns,* 427 U.S. 347, 373 (1976).

JURISDICTION

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

11. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Chase County Detention Center in Cottonwood Falls, Kansas.

12. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. §1331 (federal question), and Article 1, section 9, clause 2 of the United States Constitution (the Suspension Clause).

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

VENUE

14. Venue is proper in the District of Kansas under 28 U.S.C. § 2241 and 28 U.S.C. § 1391 because Petitioner is detained in the Chase County, Kansas Detention Center and is in the immediate custody of Respondent Welsh.

15. Venue is also proper in this Court pursuant to 28 U.S.C. §1391(e) because Respondents are officers, employees, and agencies of the United States, and because a substantial part of the events or omission giving rise to the claims and relevant facts occurred in the District of Kansas. *See generally Rumsfeld v. Padilla,* 542 U.S. 426, 434 (2004) ("the proper respondent to a habeas petition is 'the person who has custody over the petitioner'") (citing 28 U.S.C. § 2242) (cleaned up).

REQUIREMENTS OF 28 U.S.C. §2243

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

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

writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

18. Petitioner Mr. Abreu is a citizen of Venezuela who has resided in the United States since approximately September 2023. He has been in immigration custody since March 18, 2026.

19. Respondent Samuel Olson is the ICE Field Office Director for the Chicago Area of Responsibility, which includes Kansas. As such, Mr. Olson is responsible for Petitioner's detention and removal. He is named in his official capacity.

20. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the INA and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has the ultimate custodial authority over Petitioner and is sued in his official capacity.

21. Respondent Todd Blanche is the Acting Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

22. Respondent Todd Lyons is the Acting Director of ICE. As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Petitioner. As such, he is also a legal custodian of Petitioner. He is sued in his official capacity.

23. Respondent Jacob Welsh is the Sheriff of Chase County and therefore oversees the Chase County Jail, where Petitioner is currently detained. He is the immediate custodian of Petitioner. He is sued in his official capacity.

FACTUAL BACKGROUND

24. Mr. Abreu fled Venezuela with his family because he feared harm due to [redacted] He entered without inspection with his wife and young child on September 23, 2023. They were subsequently detained by immigration authorities. On October 3, 2023, Mr. Abreu and his family were released on an Order of Release on Recognizance, which stated that their release from custody was pursuant to "section 236 of the Immigration and Nationality Act" (8 U.S.C. 1226).

25. Mr. Abreu and his family moved to Chicago, Illinois, where they found a local shelter to take them in. They have established their lives in Chicago. Mr. Abreu's wife recently gave birth to their second child in Chicago; that child is currently three months old.

26. Although Mr. Abreu and his family missed an immigration court hearing on July 23, 2024, this was due to a misunderstanding about the date of the hearing. Upon realizing that they had missed their court date, they promptly filed a Motion to Reopen and maintained an updated address with the Court. On August 26, 2024, an Immigration Judge reopened their case.

27. Mr. Abreu and his family filed an asylum application on September 24, 2024, *pro se*.

28. Mr. Abreu is currently represented by counsel in his removal proceedings. He continues to seek asylum and seeks to remain in the United States with his family, including his three-month-old United States citizen infant child.

29. Petitioner remains detained unlawfully. The Immigration Court has ruled that it does not have jurisdiction to hold a custody determination hearing. Absent relief from this Court, he faces the prospect of months in immigration detention, separated from his community.

30. Neither an immigration judge nor the Board of Immigration Appeals (BIA) can rule on petitioner's claims. *See Matter of R-A-V-P-*, 27 I&N Dec. 803, 804 n.2 (BIA 2020) (holding that immigration judges and the BIA lack any authority to consider the constitutionality of the statutes or regulations governing immigration detention that they administer and are bound to follow); *Matter of C--*, 20 I&N Dec. 529, 532 (BIA 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."); *see also Gonzalez v. O'Connell,* 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that "the BIA has no jurisdiction to adjudicate constitutional issues.")

31. Further, on April 13, 2026, an Immigration Judge ruled that he did not have jurisdiction to redetermine Petitioner's custody under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) and differentiated Mr. Abreu from the class in *Maldonado Bautista.*

ARGUMENT

I. Mr. Abreu Was Unlawfully Placed in Mandatory Detention

a. The INA's Detention Framework.

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

33. First, 8 U.S.C. §1226 authorizes the detention of noncitizens "already in the country." *See Jennings v. Rodriguez,* 583 U.S. 281, 289 (2018). Section 1226(a) "sets out the default rule: The Attorney General may issue a warrant for the arrests and detention of a [noncitizen] pending a decision on whether the [noncitizen] is to be removed from the United States. *Id.* at 288 (quoting 1226(a)). Individuals in Section 1226(a) detention are generally entitled to a bond hearing at the outset of their detention. *See* §1226(a)(2); 8 C.F.R. §§1003.19(a), 1236.1(c)(8), (d)(1); *Rodriguez Vazquez v. Bostock,* 779 F. Supp. 3d 1239, 1247 (W.D. Wash.

2025)("those detained under Section 1226(a) are entitled to a bond hearing before an [immigration judge] at any time before entry of a final removal order.") They may also be released on "conditional parole," known as release on recognizance. 8 U.S.C. §1226(a)(2)(B).

34. Section 1226(c) "carves out a statutory category" of noncitizens from Section 1226(a) for whom detention is mandatory, composed of individuals who have committed certain "enumerated…criminal offenses [or] terrorist activities." *Jennings,* 583 U.S. at 289 (citing §1226(c)(1)). Among the individuals carved out and subject to mandatory detention are certain categories of "inadmissible" noncitizens. §1226(c)(1)(A), (D), (E). Reference to such inadmissible noncitizens makes clear that, by default, people who are applicants for admission but encountered in the interior are afforded a bond hearing under subsection 1226(a).

35. Numerous courts have recently confirmed this understanding of Section 1226. *See Rodriguez Vasquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)) ("When Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies."); *see also e.g., Gomes v. Hyde,* No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *6 (D. Mass. July 7, 2025) ("inadmissibility on one of the three grounds specified in Section 1226(c)(1)(E)(i) is not by itself sufficient to except [a noncitizen] from Section 1226(a)'s discretionary detention framework.")

36. Second, the INA provides for mandatory detention of certain categories of noncitizens "seeking entry into the United States" under 8 U.S.C. §1225(b). *Jennings,* 583 U.S. at 297; *see* §1225(b) ("Inspection of applicants for admission.")

37. In *Jennings*, the Supreme Court explained that this mandatory scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a

[noncitizen] *seeking to enter* the country is inadmissible." *Jennings*, 583 U.S. at 287 (emphasis added.) Noncitizens subject to mandatory detention under Section 1225 may not be released except "for urgent humanitarian reasons or significant public benefit" under the parole authority provided by 8 U.S.C. 1182(d)(5)(A). *See id.* at 300.

38. Section 1225 is split into two categories. Section 1225(b)(1) provides for mandatory detention of noncitizens charged with enumerated grounds of inadmissibility *and placed* in expedited removal proceedings. 8 U.S.C. §1225(b)(1)(A)(i). Meanwhile Section 1225(b)(2) applies only to recently arrived noncitizens seeking entry at a border or port of entry. *See infra* subsection b.

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

40. Mr. Abreu is not subject to mandatory detention under Section 1226(c) because he does not have any criminal convictions. He has not been ordered removed, so Section 1231 is inapposite. Accordingly, this case concerns the detention provisions at Section 1226(a) and 1225(b)(2).

41. Since last year, Respondents have taken various steps seeking to unlawfully expand their use of mandatory detention under Section 1225(b)(2) beyond what Congress provided for in the statute's plain language.

42. On May 15, 2025, the Board of Immigration Appeals issued a decision in *Matter of Q. Li*, expanding its definition as to who is an arriving noncitizen by holding that "...an applicant for admission who is arrested and detained without a warrant while arriving in the United States, *whether or not at a port of entry,* and subsequently placed in removal proceedings is detained under

section 235(b) of the Immigration and Nationality Act." *Matter of Q. Li,* 29 I&N Dec. 66 (BIA 2025) (emphasis added.)

43. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. *See* U.S. Immigration and Customs Enforcement, Interim Guidance Regarding Detention Authority Applicants for Admission (July 8, 2025), https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-forapplications-for-admission.

44. The new policy claims that all persons who entered the United States without inspection shall now be subject to mandatory detention under Section 1225(b)(2)(A). Respondents seek to apply this policy to noncitizens regardless of when a person is apprehended, even to those who have resided in the United States for months, years, and decades.

45. On September 5, 2025, the Board of Immigration Appeals (BIA) issued a published decision adopting the same position. *See Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025). That decision holds that all noncitizens who entered the United States without admission or parole are considered to be "seeking admission" and are ineligible for bond hearings before an Immigration Judge. *Id.* at 221.

46. On April 28, 2026, the Second Circuit held that Section 1225(b)(2)(A) does not apply to noncitizens who are present in the United States after the country without inspection. *Barbosa da Cunha v. Freden*, No. 25-3141, 2026 WL 1146044 (2d Cir. Apr. 28, 2026)

47. On February 18, 2026, the U.S. District Court for the Central District of California held that nationwide class members were entitled to a bond hearing and vacated *Matter of Yajure Hurtado*. Although the Ninth Circuit stayed that decision on March 31, 2026, it based its stay on procedural considerations rather than the merits of the case.

b. Respondent's Policy on Section 1225(b)(2) Is Incorrect.

48. Independently, Respondents' policy, that all undocumented noncitizens who entered without inspection are considered to be "seeking admission" and subject to mandatory detention under Section 1225(b)(2)(A), is incorrect. Instead, the statutory text, the statutory framework, Congressional intent, the longstanding practice of the agency, and the decisions of hundreds of federal courts across the nation – including this one – limit Section 1225(b)(2)'s scope to recently arrived noncitizens seeking admission at a border or port of entry.

i. The plain text of the INA unambiguously provides that Mr. Abreu is detained under Section 1226(a) and not Section 1225(b)(2), because he is not an arriving noncitizen applicant for admission.

49. The text of Section 1225, along with its placement in the overall detention scheme of the INA, make clear that the term "seeking admission" in Section 1225(b)(2) does not include individuals who have entered without inspection and are apprehended when already inside the United States.

50. Section 1225 is titled: "Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing." (Emphasis added.) As courts have recognized, "[t]he added word of 'arriving' indicates that the statute governs 'arriving' noncitizens, not those present already." *Galdamez Orellana v. Welsh et. al.,* No. 26-3019-JWL, 2026 WL 710121 (D. Kan. Mar. 13, 2026). This limitation is particularly clear when compared to Section 1226's general title "Apprehension and detention of aliens."

51. Further, Section 1225(b)(2)'s specific subheading, "Inspection of Other Aliens," subsection 1225(b)(2)(B)'s mention of "crem[e]n and "stowaway[s]." and subsection 1225(b)(2)(C)'s use of the active language "arriving," reinforce the limited scope of Section 1225(b)(2)'s applicability to those who have recently arrived at a border or port of entry.

52. Finally, the term "seeking" in "seeking admission" implies action – something that is currently occurring, and in this instance, would most logically occur at the border upon inspection." Noncitizens who are present in the country for years are not "seeking admission." *Galdamez Orellana v. Welsh et. al.,* No. 26-3019-JWL, 2026 WL 710121, at *2-3 (D. Kan. Mar. 13, 2026).

ii. The Statutory Detention Scheme Provides that Section 1226(a) Applies to Noncitizens Who Have Entered Without Being Admitted or Inspected.

53. The statutory framework supports that Section 1225(b)(2) does not apply to noncitizens like Mr. Abreu, who has lived in the United States for an extended period and who was apprehended while residing within the United States.

54. The INA's entire framework is premised on Section 1225 governing detention of "arriving [noncitizens] while Section 1226 "applies to [noncitizens] already present in the United States." *Jennings,* 583 U.S. at 288, 301; *see also Lopez Benitez v. Francis,* No. 25 CIV 5927 (DEH), 2025 WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025) ("[T]he line historically drawn between sections 1225 and 1226, which makes sense of their text and the overall statutory scheme, is that section 1225 governs detention of noncitizens 'seeking admission into the country,' whereas section 1226 governs detention of noncitizens 'already in the country.") (cleaned up) (quoting *Martinez v. Hyde,* 792 F. Supp. 3d 211, 221 (D. Mass 2025)).

55. A fundamental principle of statutory construction is that courts must interpret statutes to give meaning to all provisions and avoid reading out or rendering superfluous any single provision. *Corley v. United States,* 556 U.S. 303, 313 (2009) ("one of the most basic interpretive canons … [a] statute should be construed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant.") (cleaned up). The government's current reading of Section 1225(b)(2) violates this principle.

56. Section 1226(c) includes carve-outs for certain categories of inadmissible noncitizens, who would otherwise fall under Section 1226(a), that are instead subject to mandatory detention. 8 U.S.C. § 1226(c)(1)(A), (D), (E). The inclusion of these carve-outs in Section 1226(c) indicates that, contrary to Respondents' interpretation, there are noncitizens who have not been admitted and that are not governed by Section 1225's mandatory detention scheme. Indeed, if the government's interpretation were correct, it would render these portions of Section 1226(c) superfluous, since those same individuals would already be subject to mandatory detention under Section 1225(b)(2).

57. The recent amendment to Section 1226(c) confirms this statutory framework. In 2025, Congress passed the Laken Riley Act, which added additional categories of Section 1226(a) carve-outs that are now subject to mandatory detention under Section 1226(c). Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). Specifically, the Laken Riley Act mandates the detention of noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens "present in the United States without being admitted or paroled"), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and who have been arrested for, charged with, or convicted of certain crimes. *Id.* Again, if Section 1225(b)(2) were already meant to subject these groups of inadmissible noncitizens to mandatory detention, it would render the main portion of the Laken Riley redundant. *See Beltran Barrera,* 2025 WL 2690565, at *4; *Lopez-Campos,* 2025 WIL 2496379, at *8.

iii. Congressional Intent and Longstanding Agency Practice Supports the Finding that Section 1226(a) Applies to Noncitizens Who Have Entered Without Being Inspected or Admitted.

58. Congressional intent and longstanding historical practice underscore Petitioner's reading of the statute.

59. The current detention system has been in place since the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585.

60. Following the enactment of the IIRIRA, the Executive Office for Immigration Review drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under Section 1225 and that they were instead detained under Section 1226(a) and eligible for bond and bond redetermination. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

61. In the almost three decades that followed, most people who entered without inspection and were apprehended inside the United States were detained under Section 1226(a) and received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an immigration judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that Section 1226(a) simply "restates" the detention authority previously found at Section 1252(a)).

62. At no point in the last three decades did Congress seek to amend section 1226(a) to clarify that noncitizens who had not been admitted were subject to mandatory detention, as might have been expected had they intended for all except a minority of deportable noncitizens to be subject to mandatory custody. Rather, the only amendment to section 1226(a) was the Laken Riley Act, which would have been wholly unnecessary had Congress intended for all noncitizens subject to inadmissibility grounds to already be subject to mandatory custody.

c. Recent Federal Court Decisions Support Mr. Abreu's Claim that Section 1226(a) Applies to Noncitizens Who Have Entered Without Being Inspected or Admitted.

63. Numerous federal courts, including in this District, have reached conclusions consistent with Petitioners' position. For example, after immigration judges in the Tacoma, Washington, stopped providing bond hearings for persons who entered the United States without inspection, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that Section 1226(a), not Section 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239. Other courts have reached the same conclusion, rejecting Respondent's erroneous interpretation of the INA both prior to and since ICE implemented its July 8, 2025, interim guidance. *See, e.g.*, *Alvarez v. Welsh,* 5:26-cv-03051-JWL (Kan. March 24, 2026); *Solaya Clavero v. Welsh,* 5:25-cv-03278-JWL (Kan. March 16, 2026); *Martinez Herrera v. Olson,* 4:26-cv-52-DJH, 2026 WL 561101 (W.D. Ky. Feb. 27, 2026); *Herrera Torralba v. Knight*, 2:25-cv-03166-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Jacinto v. Trump, et al.*, 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025).

64. The BIA's decision in *Yajure Hurtado* has not slowed the steady flow of decisions rejecting Respondents' position. *See, e.g., Edahi*, 2025 WL 3466682, at *13; *Reyes Arizmendi v Noem*, No. 25 C 13041, 2025 WL 3089107 (N.D. Ill. Nov. 5, 2025); *Tumba Huamani v. Francis*, No. 25-CV-8110 (LJL), 2025 WL 3079014 (S.D.N.Y. Nov. 4, 2025); *Ayala Amaya v. Bondi*, No.

25-CV-16428-ESK, 2025 WL 3033880 (D.N.J. Oct. 30, 2025); *Martinez-Elvir v. Olson*, No. 3:25-CV-589-CHB, 2025 WL 3006772 (W.D. Ky. Oct. 27, 2025); *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Merino v. Ripa*, No. 25-23845-CIV, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025); *Alejandro v. Olson*, 1:25-cv-2027,2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *A.A. v. Olson*, No. 25-cv-03381-JWB-DJF, 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Beltran Barrera*, 2025 WL 2690565; *Singh*, 2025 WL 2699219; *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025).

65. The Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi* and Eighth Circuit's decision in *Avila v. Bondi* are inapposite. On February 6, 2026, the Fifth Circuit ruled that noncitizens who were not inspected or admitted were "applicants for admission" to the United States who were "seeking admission," and thus were subject to INA's mandatory detention provision under section 1225(b). *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). The Eighth Circuit held similarly. *Avila v. Bondi*, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 2026). This Court should not find these decisions persuasive as they disregard the statutory text, the statutory framework, Congressional intent, the longstanding practice of the agency, and federal decisions across the nation – including from this Court – concluding that section 1225(b)(2) applies to recently arrived noncitizens seeking admission at a border or port of entry and not to individuals who were detained in the interior after entering without being inspected or admitted.

66. Moreover, as mentioned below, these decisions do not preclude Mr. Abreu's Due Process Claim, because they were confined to a question of statutory interpretation. *See, e.g.*, *Marceau v. Noem*, 2026 WL 368953, at *2 (W.D. Tex. Feb. 9, 2026) (Cardone, J.) ("In sum,

Buenrostro-Mendez has no bearing on this Court's determination of whether Marceau is being detained in violation of her constitutional right to procedural due process"); *Hassen v. Noem*, 3:26-cv-00048-DB (W.D. Tex. Feb. 9, 2026) (Briones, J.) (noting that *Buenrostro-Mendez v. Bondi* "does not change the case's outcome on procedural due process grounds"); *Clemente Ceballos v. Garite*, 3:26-cv-00312-DB (W.D. Tex. Feb 10, 2026) (Briones, J.) (same).

67. Nor does Mr. Abreu's prior apprehension near the border mean that section 1225(b)(2)(A) governs his custody. Mr. Abreu was released on an Order of Recognizance citing that the governing law for his release was under Section 1226(a). He was never placed in expedited proceedings.

68. Second, as this Court held in *Solaya Clavero v. Welsh,* because Mr. Abreu is in regular removal proceedings and not in expedited removal proceedings, section 1226(a) applies. *Solaya Clavero v. Welsh et al.,* 5:25-cv-03278 (D. Kan. March 16, 2026).

69. Mr. Abreu's re-arrest in March 2026 was not a continuation of his initial border inspection. At the time of his arrest, Mr. Abreu was living in the community with a pending asylum case and an Employment Authorization Document. As such, Mr. Abreu's detention is subject to 1226(a). *See Rodriguez v. Perry,* 747 F. Supp. 3d 911, 916 (E.D. Va. 2024); *Del Cid v. Bondi,* 3:25-cv-00304, 2025 WL 2985150, at *14-15 (W.D. Pa. Oct. 23, 2025*); Inlago Tocagon v. Moniz,* 25-cv-12453, 2025 WL 2778023, at *4-5 (D. Mass. Sept. 29, 2025).

d. The Court Should Find Persuasive the Decision in the Second Circuit Supporting Mr. Abreu's Position that Section 1226(a) Applies to Noncitizens Who Have Entered Without Being Inspected or Admitted.

70. On April 28, 2026, the court in *Barbosa da Cunha v. Freden*, No. 25-3141, 2026 WL 1146044 (2d Cir. April 28, 2026), rejected the government's position, finding that individuals who entered the United States without inspection are detained under Section 1226(a) and are

therefore entitled to a bond hearing. The court concluded, "The government's attempt to muddy these textually clear waters defies the statute's context, structure, history, and purpose; contradicts the Supreme Court's dicta in *Jennings* and longstanding Executive Branch practice; and its interpretation of the statute raises serious constitutional questions that should be avoided even if the statutory language were ambiguous."

e. The Court Should Find Persuasive the Class Action Decision in *Maldonado Bautista* Support Mr. Abreu's Position that Section 1226(a) Applies to Noncitizens Who Have Entered Without Being Inspected of Admitted.

71. On November 20, 2025, the court in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-73-SSS-BFM (C.D. Cal. Nov. 20, 2025), also rejected the government's position, finding that individuals who entered the United States without inspection are detained under Section 1226(a) and are therefore entitled to a bond hearing. *Maldonado Bautista v. Santacruz,* No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). *Maldonado Bautista* is a nationwide class action, and the court granted class certification on November 25, 2025, applying its earlier summary judgment decision to the now-certified class. *See id.* at *9.

72. On December 18, 2025, upon motion from petitioners seeking clarification as to the scope of the prior order, the Court entered a final judgment pursuant to Fed. R. Civ. P. 54(b). The Court further clarified that, although the underlying complaint did not challenge *Matter of Yajure Hurtado* because it was filed before that decision was issued, "*Yajure Hurtado* is no longer controlling: the legal conclusion underlying the decision is no longer tenable." *Id.* The Court also vacated the July 8, 2025, DHS memo under the Administrative Procedure Act (APA). *Id.*; *see supra* ¶¶ 41-42. Moreover, on February 18, 2026, the Central District of California clarified its prior order, explaining that it granted declaratory relief and vacatur of *Matter of Yajure Hurtado* under

the Administrative Procedure Act. *See Maldonado Bautista v. Santacruz et al.*, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284 (C.D. Cal. Feb. 18, 2026).

73. Although on March 31, 2026, the United States Court of Appeals for the Ninth Circuit stayed the Central District of California's December 18, 2025, class certification order and declaratory judgment and February 18, 2026, order enforcing the judgment and vacating *Matter of Yajure Hurtado*, this District Court should nonetheless find *Maldonado Bautista* persuasive. As noted above, the Ninth Circuit's stay was based on procedural grounds and did not address the merits of the case.

II. Mr. Abreu's Detention Pursuant to Section 1225(b)(2) Violates the INA and Due Process Clause.

74. Mr. Abreu's detention is not authorized under Section 1225(b)(2).

75. As discussed above, mandatory detention under Section 1225(b)(2) applies only to recently arrived noncitizens seeking admission at a border or port of entry, not individuals who entered without inspection and were later detained inside the country.

76. Mr. Abreu entered without inspection. At the time of his arrest, Mr. Abreu was living inside the United States after having previously been released on his own recognizance pursuant to Section 1226(a). In addition, Mr. Abreu's Notice to Appear charges him as a noncitizen "present in the United States who has not been admitted or paroled" and not as an "arriving [noncitizen]."

a. Mr. Abreu's Detention Violates the INA

77. Mr. Abreu's detention without a bond hearing is not authorized under Section 1226(a). As discussed above, Section 1226(a)'s discretionary detention framework provides for a bond hearing to make an individualized custody determination based on Petitioner's risk of flight or dangerousness. Mr. Abreu is neither a flight risk nor a danger to the community. When

Respondents granted Mr. Abreu's release on his own recognizance, they necessarily made a determination that Mr. Abreu was not a danger or a flight risk. 8 C.F.R. § 236.1(c)(8). No material change in circumstances has occurred since that determination.

78. Lacking any statutory basis for their detention, Respondents must release Mr. Abreu or in the alternative, promptly hold a bond hearing in front of a neutral arbiter to determine whether he should remain in custody.

b. Mr. Abreu's Detention Violates the Due Process Clause.

79. Noncitizens are entitled to due process of the law under the Fifth Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). To determine whether civil detention violates a noncitizen's Fifth Amendment due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

80. Under *Mathews*, courts weigh the following three factors: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335.

i. Private Interest

81. As to the first *Mathews* factor, "[t]he interest in being free from physical detention" is "the most elemental of liberal interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 531 (2004). Mr. Abreu has been detained for over a month at the Chase County Detention Center in conditions that are indistinguishable from criminal incarceration. This detention prevents Mr. Abreu from

being with his family, including his recently born child, and his community and deprives him of any privacy and freedom of movement.

ii. Risk of Erroneous Deprivation

82. As to the second *Mathews* factor, courts must "assess whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks." *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at *8 (D. Minn. May 21, 2025). The current procedures cause an erroneous deprivation of Mr. Abreu's liberty interest in remaining free from detention.

83. As discussed above, the statutory text, statutory framework, Congressional intent, the longstanding practice of the agency, and the decisions of many federal courts across the nation leave no doubt that Section 1225(b)(2) applies only to recently arrived noncitizens seeking entry at a border or port of entry, not noncitizens who entered without inspection and were detained inside the country.

84. Here, Mr. Abreu was not arriving at a border or port of entry seeking admission when he was detained. Instead, he entered without inspection with his family, was released on his own recognizance pursuant to Section 1226(a), lived in the United States for nearly three years while complying with all the requirements of his release, and had filed his asylum application. He was detained while living inside the country and his Notice to Appear designates him as present in the country as opposed to arriving. As such, Mr. Abreu is not subject to mandatory detention under Section 1225(b)(2).

85. Therefore, it is clear that the government's current procedure, subjecting Mr. Abreu to mandatory detention under Section 1225(b)(2), creates a substantial risk of erroneous deprivation of Mr. Abreu's interest in being free from arbitrary confinement.

iii. Government Interest

86. As to the third *Matthews* factor, the government's interest in maintaining the current procedure is minimal. The new interpretation of Section 1225(b)(2) – that people like Mr. Abreu who have resided in the United States for years are now subject to mandatory detention – flies in the face of the statutory text, statutory framework, Congressional intent, almost three decades of prior practice, and the decisions of federal courts across the nation. Any government interest in public safety or ensuring that Mr. Abreu attends future proceedings would be satisfied through proper application of Section 1226(a), which requires a bond redetermination hearing where an immigration judge will consider Petitioner's individualized facts and circumstances to determine whether each is a danger to the community or flight risk.

87. Additionally, immigration detention is civil; it cannot have a punitive purpose. The government's only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas,* 533 U.S. at 690. Here, the government cannot plausibly assert that it had an interest in detaining Mr. Abreu while he was abiding by his release on recognizance, living in the community with his family and with a timely filed asylum application and Employment Authorization Document.

III. Due Process Requires Immediate Release or, Alternatively, a Bond Hearing at Which the Government Bears the Burden of Justifying Mr. Abreu's Ongoing Detention by Clear and Convincing Evidence.

88. Respondents' ability to provide an impartial bond hearing to Mr. Abreu is questionable. The Kansas City Immigration Court has already held that it lacked jurisdiction to consider his request for custody redetermination on April 13, 2026, following *Matter of Yajure Hurtado.*

89. Moreover, in the past several months, immigration judges have denied bond based on flight risk at significantly higher rates than they ever had previously. Former Immigration Judge Lawrence O. Burman, who was an immigration judge for 27 years and presided over detained cases, describes this trend as possible bias within the Immigration Court system. Although immigration judges are expected to act as neutral adjudicators, immigration judges have experienced institutional intimidation and the perception that decisions unfavorable to the government could negatively affect judicial tenure.

90. To demonstrate its authority and its ability to terminate immigration judges, EOIR replaced experienced immigration judges with newly-appointed judges—some receiving notification of their termination while presiding over their dockets and still on the bench.

91. The concern of institutional intimidation and the perception that decisions unfavorable to the government could negatively affect judicial tenure have affected how immigration judges rule on bond requests. For instance, former Immigration Judge Burman shares that "[i]t was rare for a bond to be denied solely based on flight risk; more often, a higher bond amount was imposed to ensure the individual's appearance at future hearings."

92. However, the current trend is that immigration judges are denying bond requests based on flight risk solely because of a person's manner of entry into the United States or because they had not yet applied for relief before being encountered by immigration officials. He notes that "[s]uch factors were never the main reason for denial, and generally not considered at all." Immigration judges are also denying bond requests based on flight risk even when a noncitizen had a fixed address, a job, a proposed application for relief, or family ties to the United States—which was rare before. The extremely high bond amounts are also alarming because a person's

ability to pay a bond should be considered when adjudicating a bond request, and because immigration bonds generally require payment of the full amount to post.

93. Therefore, this Court should find persuasive former Immigration Judge Burman's declaration and the BIA's decision in *Matter of Yajure Hurtado*—demonstrating impartiality and a strong lack of adherence to Due Process—and order Mr. Abreu's immediate release.

94. Release is the customary remedy in habeas proceedings. *See Preiser v. Rodriguez,* 411 U.S. 475, 484 (1973). The most appropriate remedy in a case like this, where Mr. Abreu was previously released into the community and has been re-detained in violation of both the INA and due process, is release on recognizance without further conditions of release. Dozens of courts have agreed. *See, e.g., Munoz Materano v. Arteta*, 2025 WL 2630826, at *20 (S.D.N.Y. Sept. 12, 2025) (ordering immediate release); *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025) (same); *Rueda Torres v. Francis*, No. 25-cv-8408, 2025 WL 3168759, at *6 (S.D.N.Y. Nov. 13, 2025) (same); *Cifuentes v. Soto*, No. 25-cv-18029, 2025 WL 3771380, at *4 (D.N.J. Dec. 31, 2025) (same); *Gonzalez Centeno v. Lowe*, No. 3:25-cv-2518, 2026 WL 94642, at *4 (M.D. Pa. Jan. 13, 2026) (same); *Feisal O. v. Noem,* No. 26-cv-81, 2026 WL 92857, at *3 (D. Minn. Jan. 13, 2026) (same); *Garcia Covarrubias v. Holston*, No. 2:25-cv-02445, 2026 WL 25970, at *4 (D. Nev. Jan. 5, 2026) (same) *Kenzhebaev v. Noem*, No. 1:25-cv-1786, 2025 WL 3737975, at *9 (W.D. Mich. Dec. 29, 2025) (same); *Kobilov v. O'Neill*, No. 26-cv-0058, 2026 WL 73475, at *3 (E.D. Pa. Jan. 8, 2026) (same, finding a bond hearing unnecessary where there was no record indication petitioner was a danger or flight risk); *Ortega-Aguirre v. Noem*, No. 4:25-cv-04332, 2025 WL 3684697, at *4 (S.D. Tex. Oct. 10, 2025) (same); *Bumbila Iza v. Arnott*, No. 6:25-cv-3392, 2026 WL 67152, at *5 (W.D. Mo. Jan. 8, 2026) (same); *see also Mata Velasquez v. Kurzdorfer*, --- F. Supp. 3d ---, No. 25-cv-493, 2025 WL 1953796 (W.D.N.Y. July 16, 2025)

(ordering release and that petitioner could not be re-detained without a pre-deprivation hearing); *Gil v. Warden, Otay Mesa Det. Ctr.*, No. 3:25-cv-03279, 2025 WL 3675153, at *4 (S.D. Cal. Dec. 17, 2025) (same); *Sekhon v. Warden of Golden State Annex Det. Facility*, No. 1:25-cv-1692, 2026 WL 74151, at *4 (E.D. Cal. Jan. 9, 2026) (same).

95. If the Court does not order his immediate release from DHS detention, the Court should still order the immigration court to hold an impartial bond hearing. Due process requires that, at the bond redetermination hearing, the government must justify Mr. Abreu's ongoing detention by clear and convincing evidence, since "civil commitment for any purpose constitutes a significant deprivation of liberty," *Addington v. Texas*, 441 U.S. 418, 425 (1979). As discussed above, Mr. Abreu's ongoing detention constitutes a serious deprivation. *See Foucha v. Louisiana*, 504 U.S. 71, 75-76 (1992). Considering the exact issues presented here, numerous courts have recognized that imposing the burden on the government is consistent with due process. *See, e.g.*, *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *8 (N.D. Ill. Oct. 16, 2025) (ordering bond hearing under Section 1226(a), "at which the Government shall bear the burden of justifying, by clear and convincing evidence of dangerousness or flight risk, Ochoa Ochoa's continued detention"); *Alvarez Ortiz v. Freden*, No. 25-CV-960-LJV, 2025 WL 3085032, at *12 (W.D.N.Y. Nov. 4, 2025) ("constitutional due process requires the government to bear the burden of proving by clear and convincing evidence that the individual is either a danger to the community or a flight risk even at an initial bond hearing under section 1226(a)"); *Orellana Cantarero v. Bondi*, No. 9:25-CV-00250-MJT-ZJH, 2025 WL 3252402, at *2 (E.D. Tex. Nov. 20, 2025).

96. As the First Circuit recognized in *Hernandez-Lara*, "[p]lacing the burden of proof on the government at a § 1226(a) hearing to show by clear and convincing evidence that the noncriminal alien should be detained pending completion of deportation proceedings is more

faithful to *Addington* and other civil commitment cases . . . [b]ecause it is improper to ask the individual to share equally with society the risk of error when the possible injury to the individual—deprivation of liberty—is so significant." *Hernandez-Lara v. Lyons*, 10 F.4th 19, 39 (1st Cir. 2021) (internal quotations and citations omitted); *Velasco Lopez v. Decker*, 978 F.3d 842, 855-57 (2d Cir. 2020) (affirming the clear and convincing burden of proof is on the government after prolonged detention under 1226(a)).

97. These courts have held that, under well-established Supreme Court precedent, when the government seeks to deprive someone of liberty, it bears the burden of proving that such deprivation is justified.

98. Due process also requires consideration of alternatives to detention. The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). 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).

99. Finally, due process likewise prohibits the government from "imprisoning a defendant solely because of his lack of financial resources." *Bearden v. Georgia*, 461 U.S. 660, 661 (1983); *see also Turner v. Rogers*, 564 U.S. 431, 447–48 (2011) (holding that due process requires specific findings as to an individual's "ability to pay" before incarcerating him for civil contempt). Accordingly, due process requires consideration of a noncitizen's ability to pay a bond *and* alternative release conditions. *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978); *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (concluding that due process likely requires "consideration of the [noncitizen's] financial circumstances, as well as of possible

alternative release conditions . . . to ensure that the conditions of their release will be reasonably related to the governmental interest in ensuring their appearance at future hearings").

IV. Alternatively, Respondent Failed to Comply with Procedural Protections and Due Process when Revoking Mr. Abreu's Prior Release on Recognizance.

100. On October 3, 2023, Respondents issued Mr. Abreu on an Order of Release on Recognizance, which states that his release from custody is pursuant to "section 236 of the Immigration and Nationality Act" (8 U.S.C. § 1226).

101. When the government promulgates regulations "with the force and effect of law," agencies are bound to follow their own "existing valid regulations." *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). To prove an *Accardi* claim, the claimant must also "demonstrate prejudice resulting from the violation." *Am. Farm Liens v. Black Ball Freight Serv.*, 397 U.S. 532 (1970). Prejudice may be presumed when "compliance with the regulation is mandated by the Constitution" and "where an entire procedural framework, designed to ensure the fair processing of an action affecting an individual is created but then not followed by an agency." *Delgado-Corea v. Immigr. & Naturalization Serv.*, 804 F.2d 261, 263 (4th Cir. 1986).

102. "Release on recognizance" in this context has been understood by courts and agencies to flow from the "conditional parole" authority at 8 U.S.C. § 1226(a)(2)(B). *See, e.g., In re of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 747 (BIA 2023); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007); *Mejia Diaz v. Noem*, No. 3:25-CV-960-CCBSJF, 2025 WL 3640419 at *7 (N.D. Ind. Dec. 16, 2025); *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765, at *6 (E.D.N.Y. Sept. 29, 2025) (citing *Cruz-Miguel v. Holder*, 650 F.3d 189, 191, 198 (2d Cir. 2011))("[R]elease on recognizance constitutes a form of conditional parole from detention housed in the provisions of § 1226's discretionary detention."). The corresponding regulatory authority is contained at 8 C.F.R. § 236.1(c)(8).

103. According to 8 C.F.R. § 236.1(c)(9), when a noncitizen is arrested, taken into custody, and released, "such release may be revoked at any time in the discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign) . . ."

104. On March 18, 2026, Respondents once again detained Mr. Abreu without providing notice and an opportunity to contest the revocation of his release. He was never presented with any document signed by an officer with the authority to revoke his release. Prejudice is significant in this case, as the government has deprived Mr. Abreu of his liberty for the last month and a half. This sudden unjustified deprivation of liberty violates both his due process rights and the requirements of the APA.

a. Respondent's failure to provide notice and an opportunity to contest violates due process.

105. Due process requires that if DHS seeks to revoke the release of a person like Mr. Abreu – who has been diligent in applying for relief – the government must provide notice and afford them an opportunity to be heard to contest the basis for the revocation.

106. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

107. Consistent with this principle, individuals released on parole or other forms of conditional release have an interest in their "continued liberty." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Such liberty is protected by the Fifth Amendment because, "although indeterminate, [it] includes many of the core values of unqualified liberty," such as the ability to

be gainfully employed and live with family, "and its termination inflicts a 'grievous loss' on the [released individual] and often on others." *Id.*

108. To protect against arbitrary re-detention and to ensure the right to liberty, due process requires "adequate procedural protections" that test whether 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 (citation modified).

109. Due process thus guarantees notice and an opportunity to contest the revocation of an individual's release. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) ("The fundamental requisite of due process of law is the opportunity to be heard . . . at a meaningful time in a meaningful manner.") (cleaned up); *see also, e.g.*, *Morrissey*, 408 U.S. at 485 (requiring "preliminary hearing to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed . . . a violation of parole conditions" and that such determination be made "by someone not directly involved in the case" (cleaned up)).

110. Numerous courts have recognized that these principles apply with respect to the re-detention of the many noncitizens that DHS has recently begun taking back into custody, often after such persons have been released for months or years. Some of these cases deal with noncitizens released on parole, while others involve noncitizens released subject to an order of release on recognizance or an order of supervision, but the legal analysis is the same, regardless of the nomenclature.

111. For example, in *Ramos v. LaRose*, No. 25-CV-3726 JLS (DEB), 2025 WL 3769997 (S.D. Cal. Dec. 30, 2025), the court held that the government had violated the Due Process Clause where it re-detained a noncitizen without notice, reasoning, or a pre-deprivation hearing. In so holding, it reasoned that "[a]lthough the initial decision to detain or release an individual may be

within the government's discretion, 'the government's decision to release an individual from custody creates "an implicit promise," upon which that individual may rely, that their liberty "will be revoked only if [they] fail[ ] to live up to the ... conditions [of release]."'" *Id.* at *2 (quoting *Pinchi v. Noem*, 792 F. Supp. 3d 1025 (N.D. Cal. 2025).

112. In *J.C.L.A. v. Wofford*, 2025 WL 2959250 (E.D. Cal. Oct. 17, 2025), the court determined that the petitioner's "release on his own recognizance pending his removal proceedings is similar" to the scenarios in *Morrissey* and other Supreme Court cases, finding that the petitioner "has a protected liberty interest" in his release on recognizance. *Id.* at *4. The *J.C.L.A.* court applied the framework from *Mathews v. Eldridge*, 424 U.S. 319 (1976), to hold that the petitioner's re-detention could not occur absent a pre-deprivation bond hearing. Id. at *5-7.

113. In applying the three *Mathews* factors, the *J.C.L.A.* court held that the petitioner "has a significant private interest in remaining free from detention … Petitioner had been out of custody for over a year, and during that time, he obtained a work authorization, and he lived with and cared for his family, including his two minor children. His detention denies him that freedom." *Id.* at *6. The court further explained that the risk of an erroneous deprivation of liberty is high "where, as here, the petitioner has not received any bond or custody redetermination hearing." *Id.* (cleaned up). Finally, the court explained that "the Government's interest in detaining petitioner without a hearing is low. In immigration court, custody hearings are routine and impose a minimal cost." *Id.* at *7 (cleaned up). As a result, the court ordered the petitioner's immediate release. *Id.* at *8.

114. Other courts have reached similar conclusions in similar scenarios. *See, e.g.*, *Faizyan v. Casey*, No. 3:25-cv-02884-RBM-JLB, 2025 WL 3208844 (S.D. Cal. Nov. 17, 2025) (ordering immediate release of petitioner who was re-detained without a hearing after having

previously been released on his own recognizance); *E.A. T.-B. v. Wamsley,* 795 F. Supp. 3d 1316 (W.D. Wash. 2025) (same); *Valdez v. Joyce*, 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Pinchi v. Noem*, 792 F. Supp. 3d 1025 (similar); *Maklad v. Murray*, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar); *Rodriguez v. Kaiser*, 2025 WL 2855193 (E.D. Cal. Oct. 8, 2025), at *6 (similar).

115. The same framework and principles apply here and compel immediate release.

b. Respondents' actions are arbitrary and capricious under the Administrative Procedure Act (APA)

116. The APA requires courts to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." 5 U.S.C. § 706(2)(A). Agency action is arbitrary and capricious if the agency fails to "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

117. An order of release on recognizance requires a prior determination "that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8); *cf. Pinchi,* 792 F.Supp.3d at 1034 ("As ICE was not authorized to release [petitioner] if she was a danger to the community or a flight risk, the Court must infer from [her] release that ICE determined she was neither").

118. Prior to revoking an order of release on recognizance, the government must consider the noncitizen's individual circumstances and articulate a reason for changing its prior determination. When it fails to follow these steps, "[t]his absence of contemporaneous explanation

renders the decision arbitrary and capricious" in violation of the APA. *Ledesma Gonzalez v. Bostock*, No. 2:25-cv-01404-JNW-GJL, 2025 WL 2841574 at *5 (W.D. Wash. Oct. 7, 2025).

119. Petitioner received no reasoned explanation for Respondents' change of course on March 18, 2026, nor was he provided any indication that an individualized determination was made. Mr. Abreu was detained outside of his traffic case. Therefore, his re-detention was arbitrary and capricious, and, therefore, unlawful.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA (Unlawful detention under § 1225(b)(2)

120. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

121. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being detained and placed in removal proceedings by Respondents, or to those who entered the U.S. as unaccompanied minors. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

122. The application of Section 1225(b)(2) to Petitioner unlawfully mandates their continued detention and violates the INA.

COUNT II

Violation of Due Process (Deprivation of Right to Bond Hearing)

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

124. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).

125. Mr. Abreu's detention violates the Due Process Clause because it is not rationally related to any immigration purpose, because it is not the least restrictive mechanism for accomplishing any legitimate purpose the government could have in imprisoning him; and because it lacks any statutory authorization.

COUNT III

Violation of the APA (arbitrary and capricious revocation of release on recognizance)

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

127. The APA requires courts to hold unlawful agency action that is arbitrary and capricious. An order of release on recognizance requires determinations regarding a noncitizen's flight risk and danger to the community. Revocation of such a release is arbitrary and capricious where the government fails to make an individualized determination and provide a reasoned explanation for reversing its prior determination.

128. Respondents revoked Mr. Abreu's release on recognizance without providing any reasoning or evidence of an individualized determination. Because Respondents have failed to provide Mr. Abreu with these required procedures, this revocation was arbitrary and capricious in violation of the APA.

COUNT IV

Violations of Due Process (Unlawful Revocation of Release on Recognizance)

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

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

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

132. Petitioner was released on recognizance by Respondents. This release required a determination that Petitioner was not a danger to the community nor a flight risk.

133. Petitioner dutifully complied with every condition of his release, and no change in circumstances exists to warrant the revocation of their release.

134. Respondents had no legitimate, non-punitive objective in revoking Petitioner's release.

135. Because Petitioner's detention has been unaccompanied by the procedural protections that such a significant deprivation of liberty requires under the Due Process Clause of the Fifth Amendment to the U.S. Constitution, his continued detention is unlawful.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring that Respondents immediately release Petitioner or, in the alternative provide Petitioner with a bond hearing pursuant to 8 U.S.C. 1226(a) within 7 days where:

    a. DHS bears the burden of establishing by clear and convincing evidence that continued detention is justified; and

    b. The adjudicator is required to meaningfully consider alternatives to imprisonment such as community-based alternatives to detention including conditional release or parole, as well as Petitioner's ability to pay a bond;

c. Enjoin Respondents from moving Petitioner outside the jurisdiction of this Court pending adjudication of this petition;

d. Declare that Petitioner's continued detention violates the INA, the Due Process Clause of the Fifth Amendment and the Administrative Procedure Act (APA);

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

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

Dated: May 1, 2026

Respectfully submitted,

/s/Guadalupe Perez*
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**Pro Hac Vice* application pending

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

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

Dated: May 1, 2026

/s/Guadalupe Perez
Guadalupe Perez (Il Bar. 6324481)
Assistant Public Defender