UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

MARIO MARROQUIN

Petitioner

V.

Case No. **1:26-cv-23128**

Agency File [redacted]

TODD BLANCHE, U. S. Attorney General;

MARKWAYNE MULLIN, Secretary of the United States Department of Homeland Security;

WARDEN, Miami Federal Detention Center;

FIELD OFFICE DIRECTOR, Miami Field Office, U.S. Immigration and Customs Enforcement;

Respondents

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The petitioner, Mario Marroquin, submits this Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, by and through undersigned counsel, and alleges as follows:

INTRODUCTION

1. Mario Alberto Marroquin is a 54-year-old man who has lived in the United States continuously for more than three decades.

2. He entered this country as a minor in 1988 and has resided in South Florida since 1993, where he worked consistently and established deep ties to his community.

3. He was taken into custody by immigration authorities on or about April 16, 2026 while working in Miami and has remained detained since that date.

4. Petitioner is currently in §1229a removal proceedings with the next hearing scheduled for May 6, 2026.

5. Although removal proceedings have now been initiated, Mr. Marroquin has never been afforded an individualized custody determination before a neutral adjudicator.

6. Instead, he has been subjected to detention without bond based on the Government's categorical position that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

7. That position is inconsistent with due process, the statutory framework of the Immigration and Nationality Act and has been rejected by courts across the country, including within this District. *See, e.g., Gramajo-Zabaleta v. Blanche,* No. 1:26-cv-22617-DPG, ECF No. 7 (S.D. Fla. Apr. 27, 2026) (Gayles, J.); see also *Cumbe Lema v. Garite,* No. EP-26-CV-00049 (W.D. Tex. Feb. 9, 2026); *Hassen v. Noem,* No. EP-26-CV-00052 (W.D. Tex. Feb. 10, 2026).

8. Mr. Marroquin is not an arriving noncitizen. He was not apprehended at or near the border. He has lived in the United States for over thirty-five years before his arrest. As such, his detention is governed by 8 U.S.C. § 1226(a),

which entitles him to an individualized bond hearing. His continued detention without such a hearing violates the Immigration and Nationality Act and, independently, the Due Process Clause of the Fifth Amendment.

9. Petitioner's detention is governed by 8 U.S.C. § 1226(a), but Respondents are treating him as if he were subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

10. DHS and EOIR each have nationwide policies mandating the detention of all persons who entered without admission or parole, regardless of whether that person was apprehended upon arrival. Most recently, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals (BIA) held that all persons who have entered the United States without admission or parole are now subject to mandatory detention under § 1225(b)(2)(A).

11. Respondents' application of § 1225(b)(2) to Petitioner is inconsistent with the statutory framework and, at minimum, cannot justify continued detention without an individualized custody determination

12. Accordingly, Petitioner seeks a writ of habeas corpus. Petitioner requests an order requiring his release unless the respondents provide a new bond hearing under § 1226(a) within fourteen days.

JURISDICTION

13. This action arises under the Constitution of the United States, 28 U.S.C. § 2241 et seq., the Immigration and Nationality Act, and the Administrative Procedure Act. This Court has jurisdiction under 28 U.S.C. §§ 2241 and

1331. Habeas corpus "is, at its core, an equitable remedy" for unlawful executive detention. *Munaf v. Geren*, 553 U.S. 674, 693 (2008).

14. The Court also has authority to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201–02 and to compel agency action unlawfully withheld under 5 U.S.C. § 706.

VENUE

15. Venue is proper in this district under 28 U.S.C. §§ 1391(e)(1) & 2241 because: (1) "a substantial part of the events or omissions giving rise to the claim occurred" in this district; and (2) this is the district where the "the custodian can be reached by service of process." *Rasul v. Bush,* 542 U. S. 466, 478–79 (2004); *See* 28 U.S.C. §§ 1391(e), 2241.

16. Additionally, the Petitioner is being held in the custody of the respondents in this district.

PARTIES

17. Petitioner, **Mario Marroquin**, is a citizen of Mexico. He was present in the United States as a result of entering the United States sometime in 1988, via the border, and was only recently arrested and placed in detention by the respondents. He is being held in ICE custody at the Miami Federal Detention Center, located in Miami, Florida, under the jurisdiction of the respondents.

18. 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

19. Respondent, **Markwayne Mullin** is sued in his official capacity as the Secretary of the Department of Homeland Security (DHS). Because ICE is a subagency for the DHS, Secretary Mullin is a legal custodian of the Petitioner, and is responsible for the prolonged detention of the Petitioner.

20. Respondent, **Warden, Miami Federal Detention Center,** is sued in their official capacity as immediate physical custodian of the petitioner under *Rumsfeld v. Padilla,* 542 U.S. 426 (2004).

21. Defendant, **Field Office Director,** Miami Field Office, U.S. Immigration and Customs Enforcement is sued in his or her official capacity. In this capacity, the Field Office Director has jurisdiction over the detention facility in which the petitioner is held, is authorized to release the petitioner, and is a legal custodian of the petitioner

EXHAUSTION OF REMEDIES

22. No exhaustion requirement bars this Court's review. Section 2241 does not impose a jurisdictional exhaustion requirement, and exhaustion is excused where it would be futile. *Santiago-Lugo v. Warden,* 785 F.3d 467, 474 (11th Cir. 2015). Because immigration judges are currently declining bond jurisdiction based on the Government's categorical interpretation of § 1225, any administrative pursuit of a bond hearing would be futile.

23. Additionally, constitutional claims are not subject to administrative exhaustion because the agency lacks authority to grant the relief sought. *See Haitian Refugee Ctr., Inc. v. Nelson,* 872 F.2d 1555, 1561 (11th Cir. 1989).

24. And with respect to the petitioner's APA claim, an agency's failure to take action is reviewable agency action, *Norton v. S. Utah Wilderness Alliance*, 542 U. S. 55, 61–62 (2004), and there are no administrative remedies available that the petitioner is required to exhaust under *Darby v. Cisneros*, 509 U. S. 137 (1993).

25. Exhaustion is excused because any attempt to obtain a bond hearing before the immigration court would be futile. Respondents' detention of Petitioner is premised on the categorical legal position that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Where the Government maintains that position, immigration judges lack authority to conduct bond hearings under 8 U.S.C. § 1226(a), and routinely decline to exercise jurisdiction on that basis. Because the denial of a custody determination would be dictated by Respondents' legal position—not by any individualized assessment—requiring Petitioner to pursue administrative remedies would serve no purpose.

REQUIREMENTS OF 28 U.S.C. § 2243

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

27. 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 (CA 9 2000)(citation omitted); *See also, Johnson v. Rogers,* 917 F.2d 1283, 1284 (10th Cir. 1990).

FACTUAL ALLEGATIONS

28. Mr. Marroquin entered the United States in 1988 as a minor and has remained continuously present for more than thirty-five years.

29. He has lived in Miami since approximately 1993. During that time, he has worked consistently in maintenance and related fields and has developed substantial ties to the community.

30. He has no history of violent criminal conduct and presents no danger to the community. He has significant equities, including long-term residence, steady employment, and cooperation with law enforcement as a victim of a violent crime.

31. On or about April 16, 2026, Mr. Marroquin was arrested by federal immigration officers while working in Miami. He was taken into custody without any meaningful explanation of the basis for his arrest and was transferred through multiple facilities before arriving at the Miami Federal Detention Center.

32. Removal proceedings were initiated on or about April 29, 2026, and a master calendar hearing has been scheduled for May 6, 2026. However, at no point

before or after the initiation of proceedings has Mr. Marroquin been provided with an individualized custody determination.

33. He remains detained solely based on the Government's position that he is subject to mandatory detention under § 1225(b)(2), despite his decades-long residence in the United States and interior arrest.

34. Immigration judges have declined to provide a custody determination based on Respondents' position that Petitioner is subject to mandatory detention under § 1225.

LEGAL FRAMEWORK

8 U.S.C. § 1225 & §1226

35. The Immigration and Nationality Act establishes distinct statutory provisions governing the detention of noncitizens. The applicability of those provisions turns on the procedural posture of the noncitizen and the nature of their presence in the United States.

36. Section 1225 governs the inspection and processing of individuals who are seeking admission to the United States, typically at or near a port of entry or upon recent arrival. Under § 1225(b)(2), certain applicants for admission are subject to mandatory detention during the pendency of admissibility determinations.

37. By contrast, 8 U.S.C. § 1226(a) governs the detention of noncitizens who are already present in the United States and are placed into removal proceedings under 8 U.S.C. § 1229a. That provision authorizes detention "pending a

decision on whether the alien is to be removed," but expressly permits release on bond or conditional parole. See 8 U.S.C. § 1226(a)(2).

38. Federal regulations implementing § 1226(a) provide that individuals detained under that provision are entitled to an individualized custody determination before an immigration judge. See 8 C.F.R. § 1003.19(a). That framework reflects the longstanding understanding that noncitizens apprehended within the interior of the United States and placed into removal proceedings are subject to discretionary—not mandatory—detention.

39. The Government has recently advanced the position that all noncitizens who entered without admission are categorically subject to § 1225(b)(2), regardless of how long they have resided in the United States or where they were apprehended. Courts across the country, including within this District, have rejected that interpretation as inconsistent with the statutory text, structure, and history of the INA.

40. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like the petitioner, who have already entered and were residing in the United States at the time they were apprehended.

41. The Government's reliance on *Matter of Yajure Hurtado,* 29 I. & N. Dec. 216 (BIA 2025), does not cure the statutory defect in its detention of Mr. Marroquin. *Yajure Hurtado* held that all persons who entered without admission or parole are subject to mandatory detention under § 1225(b)(2)(A), regardless of the length or nature of their presence in the United States. That holding is wrong for three independent reasons, which

are developed fully in Count I and Count III below, and which this Court must resolve independently under *Loper Bright Enterprises v. Raimondo,* 603 U.S. 369 (2024).

42. First, *Yajure Hurtado* is contrary to the plain text of § 1225(b)(2), which applies only to "applicants for admission" — a defined term that does not encompass a person who entered in 1988, has resided in the United States for thirty-five years, and was arrested in the interior while working. Second, it represents an unexplained departure from decades of settled BIA practice, rendering it arbitrary and capricious under the APA. Third, it is entitled to no deference — *Chevron* has been abolished, *see Loper Bright,* 603 U.S. at 385, and *Skidmore* deference does not apply where, as here, the agency's interpretation lacks reasoned analysis and conflicts with the statutory text.

43. Second, *Yajure Hurtado* represents a sharp departure from decades of settled BIA practice, under which persons arrested in the interior and placed into § 1229a removal proceedings were understood to be governed by § 1226(a). An agency that reverses course on a matter of longstanding practice must provide a reasoned explanation for that change — it cannot simply adopt a new rule without acknowledging the prior practice and the reliance interests it generated. *See FCC v. Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009); *Encino Motorcars, LLC v. Navarro,* 579 U.S. 211, 221–22 (2016). *Yajure Hurtado* contains no such explanation, rendering it arbitrary and capricious under the APA regardless of whether it is otherwise entitled to deference.

44. Third, even setting aside those defects, *Yajure Hurtado* is not entitled to *Chevron*-style deference — which the Supreme Court has in any event abolished, *see Loper Bright Enterprises v. Raimondo,* 603 U.S. 369 (2024) — nor to *Skidmore* deference, given its lack of reasoned analysis and its conflict with the statutory text. Where, as here, the question is one of pure statutory interpretation, this Court must independently determine the meaning of the statute, unconstrained by the BIA's erroneous reading. *See Loper Bright,* 603 U.S. at 385.

Due Process Framework

45. The Fifth Amendment provides that no person shall be deprived of liberty without due process of law. The Supreme Court has made clear that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001).

46. Civil immigration detention, while permissible in certain circumstances, must remain reasonably related to its regulatory purpose and must be accompanied by adequate procedural safeguards. *See Demore v. Kim,* 538 U.S. 510, 523 (2003). At a minimum, due process requires a meaningful opportunity to be heard before a neutral decisionmaker.

47. Where detention occurs without an individualized custody determination, the risk of erroneous deprivation of liberty is substantial. Under the balancing framework set forth in *Mathews v. Eldridge,* 424 U.S. 319 (1976), the private

liberty interest at stake, the risk of error inherent in categorical detention, and the limited administrative burden of providing a hearing all weigh in favor of requiring an individualized custody determination.

Administrative Procedure Act Framework

48. The Administrative Procedure Act authorizes federal courts to review agency action and to "hold unlawful and set aside" actions that are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A). The APA further authorizes courts to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).

49. Agency action includes not only affirmative acts, but also failures to act where the agency is required to do so. See 5 U.S.C. § 551(13); *Norton v. S. Utah Wilderness Alliance,* 542 U.S. 55, 61–62 (2004).

50. In the context of immigration detention, the Government's categorical refusal to provide custody determinations based on an interpretation of the INA that is inconsistent with the statute constitutes agency action not in accordance with law. Additionally, the failure to provide a custody determination where required by statute and regulation constitutes agency action unlawfully withheld within the meaning of § 706(1).

CLAIMS FOR RELIEF

COUNT I:
Violation of the Immigration and Nationality Act

51. The allegations in paragraphs 1-50 are realleged and incorporated herein.

52. Petitioner is not an arriving noncitizen and was not apprehended at or near the border; he is a long-term interior resident whose detention is governed by 8 U.S.C. § 1226(a), not § 1225(b)(2).

53. 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 apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

55. There is no plausible reading of the INA under which a man who has lived in the United States for more than three decades and was arrested while working in the interior of the country is treated as an "applicant for admission" subject to mandatory detention.

56. Accordingly, Respondents' continued detention of Petitioner without a bond hearing violates the INA and must be remedied by affording him an individualized custody determination under § 1226(a

COUNT II:
Unlawful Detention in Violation of Due Process

57. The allegations in paragraphs 1-50 are realleged and incorporated herein.

58. The Fifth Amendment provides that no person shall be deprived of liberty without due process of law. The Supreme Court has made clear that "[f]reedom from imprisonment — from government custody, detention, or other forms of physical restraint — lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001). Civil immigration detention, while permissible in certain circumstances, must remain reasonably related to its regulatory purpose and must be accompanied by adequate procedural safeguards. *See Demore v. Kim,* 538 U.S. 510, 523 (2003).

59. Where, as here, the Government detains an individual without an individualized custody determination, the constitutional sufficiency of that detention is assessed under the balancing framework established in *Mathews v. Eldridge,* 424 U.S. 319 (1976). That framework requires the Court to weigh the following three factors.

60. The Private Liberty Interest. The private interest at stake here is among the most fundamental recognized by law: freedom from physical confinement. Zadvydas, 533 U.S. at 690. That interest is not diminished by Mr. Marroquin's immigration status. See *Mathews,* 424 U.S. at 333 ("The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss.'") (citation omitted). Mr. Marroquin has resided in the United States continuously for over thirty-five years, having entered as a minor in 1988. He has lived in South Florida since 1993, maintained consistent employment in

maintenance and related fields, and established deep community ties over the course of more than three decades. He has no history of violent criminal conduct and has cooperated with law enforcement as a victim of a violent crime. The deprivation of liberty suffered by a person with these equities — arrested without warning while working, transferred through multiple facilities, and detained without any individualized hearing — is severe, concrete, and ongoing. Every day of continued detention without a bond hearing compounds that injury.

61. The Risk of Erroneous Deprivation. The current procedure — categorical mandatory detention with no individualized assessment — presents an exceptionally high risk of erroneous deprivation. The Government's position rests entirely on the legal conclusion that § 1225(b)(2) applies to Mr. Marroquin by virtue of his manner of entry in 1988. That legal conclusion, as demonstrated above, is wrong. But more fundamentally, a categorical rule that forecloses individualized inquiry is, by design, incapable of accounting for the specific circumstances of any particular detainee. It cannot account for Mr. Marroquin's thirty-five years of continuous residence, his lack of any criminal history, his strong community ties, his employment history, or any of the other factors that bear directly on whether he poses a flight risk or danger. The probable value of a bond hearing is therefore substantial: an individualized assessment before a neutral adjudicator — with the opportunity to present evidence and contest the Government's characterization — would substantially reduce the risk that a person who

poses no flight risk and no danger to the community remains confined without justification. Courts applying Mathews in the immigration detention context have recognized as much. See, e.g., *Diop v. ICE/Homeland Security,* 656 F.3d 221, 233 (3d Cir. 2011); *Ly v. Hansen,* 351 F.3d 263, 272 (6th Cir. 2003).

62. The Government's Interest. The Government's interest in detaining Mr. Marroquin categorically, without any individualized hearing, is minimal. The Government plainly has a legitimate interest in ensuring the appearance of noncitizens at removal proceedings and in protecting the community from dangerous individuals. But those interests are fully served — not undermined — by an individualized bond hearing. A hearing does not require the Government to release Mr. Marroquin; it requires only that the Government make its case before a neutral adjudicator. The administrative burden of conducting a bond hearing is negligible: immigration judges conduct such hearings routinely, and the regulatory framework for doing so already exists. See 8 C.F.R. § 1003.19(a). The Government cannot credibly claim that the marginal cost of a single bond hearing — for a man who has lived in this country for thirty-five years and has never been subject to removal proceedings before — outweighs the profound liberty interest at stake. Where the Government's categorical detention policy rests on a statutory interpretation that is, at minimum, seriously contested, the Mathews balance tips sharply in favor of requiring a hearing.

63. The *Mathews* balancing analysis set forth above compels the conclusion that Mr. Marroquin's continued detention without an individualized custody determination violates the Due Process Clause of the Fifth Amendment. The private interest — thirty-five years of continuous residence, steady employment, community ties, and freedom from physical confinement — is of the highest constitutional magnitude. The risk of erroneous deprivation under a categorical rule that admits of no individualized inquiry is substantial. And the Government's interest in avoiding a bond hearing is, at most, administrative convenience — a consideration that cannot justify the ongoing deprivation of liberty of a man who has lived in this country since he was a teenager.

64. Accordingly, the petitioner is entitled to a writ of habeas corpus ordering that he be afforded a bond hearing before an immigration judge or this Court, at which the Government bears the burden of demonstrating by clear and convincing evidence that he is a danger to the community or a flight risk. *See Tijani v. Willis,* 430 F.3d 1241, 1242 (9th Cir. 2005); *Ly v. Hansen,* 351 F.3d at 272.

COUNT III:
Violation of the Administrative Procedures Act

65. The allegations in paragraphs 1-50 are realleged and incorporated herein.

66. The APA authorizes federal courts to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A), or that is taken "without observance of procedure required by law," 5 U.S.C. § 706(2)(D). The APA

further empowers courts to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). "Agency action" includes "an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). Mr. Marroquin's APA claim rests on two independent grounds, either of which is sufficient to warrant relief.

A. The BIA's Decision in Matter of Yajure Hurtado Is Arbitrary and Capricious.

67. The BIA's decision in *Matter of Yajure Hurtado,* 29 I. & N. Dec. 216 (BIA 2025), which reversed decades of settled agency practice by categorically applying § 1225(b)(2) to all persons who entered without admission regardless of the length or nature of their presence in the United States, constitutes arbitrary and capricious agency action under 5 U.S.C. § 706(2)(A).

68. An agency is free to change its policies, but it must comply with the APA when it does so. *FCC v. Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009). Where an agency reverses a longstanding rule or practice, it must at minimum: (1) acknowledge that it is departing from prior practice; (2) provide a reasoned explanation for the change; and (3) address the reliance interests that the prior policy generated. Id.; *Encino Motorcars, LLC v. Navarro,* 579 U.S. 211, 221–22 (2016). "The requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it is changing position." *Fox Television,* 556 U.S. at 515.

69. *Yajure Hurtado* satisfies none of these requirements. For decades prior to that decision, the BIA and immigration courts operated under the settled understanding that persons apprehended in the interior of the United States and placed into § 1229a removal proceedings were governed by § 1226(a) and entitled to individualized bond hearings. *Yajure Hurtado* abandoned that practice without acknowledging the departure, without explaining why the prior interpretation was wrong, and without addressing the substantial reliance interests of the thousands of noncitizens — including long-term residents like Mr. Marroquin — who had structured their lives in the United States under the prior framework. That failure of reasoned decisionmaking is precisely what the APA prohibits. S*ee Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (agency action is arbitrary and capricious when the agency "entirely failed to consider an important aspect of the problem" or "offered an explanation for its decision that runs counter to the evidence before the agency").

70. The application of *Yajure Hurtado* to Mr. Marroquin — a fifty-four-year-old man who has resided in the United States for thirty-five years, who entered as a minor, and who was arrested in the interior while working — illustrates precisely the kind of arbitrary outcome that results when an agency abandons individualized assessment in favor of a categorical rule untethered from reasoned analysis. The Respondents' detention of Mr. Marroquin pursuant to that decision is therefore unlawful under § 706(2)(A) and must be set aside.

B. The Failure to Provide an Individualized Custody Determination Constitutes Agency Action Unlawfully Withheld.

71. Independently, the Respondents' categorical refusal to provide Mr. Marroquin with a bond hearing constitutes agency action unlawfully withheld within the meaning of 5 U.S.C. § 706(1). Where a statute and its implementing regulations require an agency to take a discrete action, a court may compel that action. *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 63–64 (2004).

72. As set forth above, 8 U.S.C. § 1226(a) and its implementing regulation, 8 C.F.R. § 1003.19(a), require that persons detained under § 1226(a) be afforded an individualized custody determination before an immigration judge. That requirement is not discretionary — it is mandated by the statutory and regulatory framework. The Respondents' refusal to provide such a hearing, premised entirely on their legally erroneous characterization of Mr. Marroquin as an "applicant for admission" subject to § 1225(b)(2), is a failure to perform a legally required discrete agency action. *See Norton,* 542 U.S. at 64. The immigration court's refusal to exercise bond jurisdiction over Mr. Marroquin — based on the Government's categorical position that he is a § 1225 detainee — compounds this violation. The failure of EOIR, a component agency of the Department of Justice, to provide the hearing required by its own regulation is agency action unlawfully withheld under § 706(1), and this Court is empowered to compel it.

C. The Respondents' Actions Are Not in Accordance with Law.

73. The Respondents' detention of Mr. Marroquin under § 1225(b)(2) is also independently unlawful under 5 U.S.C. § 706(2)(A) and (C) as action "not in

accordance with law" and "in excess of statutory jurisdiction, authority, or limitations." The statutory authority to detain under § 1225(b)(2) extends only to applicants for admission. Mr. Marroquin is not an applicant for admission. The Respondents' detention of him under that provision therefore exceeds their statutory authority and must be set aside.

PRAYER FOR RELIEF

WHEREFORE, the petitioner prays that the Court grant the following relief:

(a) Assume jurisdiction over this matter and issue the writ of habeas corpus or, in the alternative, an order to show cause directed to Respondents pursuant to 28 U.S.C. § 2243;

(b) Set this matter for expedited consideration pursuant to 28 U.S.C. § 1657, given that Petitioner has been detained without any individualized custody determination since April 16, 2026, and his next immigration court appearance is scheduled for May 6, 2026;

(c) Issue a temporary restraining order and/or preliminary injunction pursuant to Federal Rule of Civil Procedure 65 prohibiting Respondents from transferring Petitioner outside the jurisdiction of this Court during the pendency of this proceeding, given that transfer would deprive this Court of jurisdiction over Petitioner's custodian and would render any relief granted illusory;

(d) Grant the writ of habeas corpus and declare that the statutory basis for Petitioner's detention is 8 U.S.C. § 1226(a) and that 8 U.S.C. § 1225(b)(2)(A)

does not apply to Petitioner, a long-term interior resident arrested far from any port of entry;

(e) Hold unlawful and set aside the Respondents' application of *Matter of Yajure Hurtado,* 29 I. & N. Dec. 216 (BIA 2025), to Petitioner as arbitrary, capricious, and not in accordance with law, pursuant to 5 U.S.C. § 706(2)(A);

(f) Compel Respondents to provide Petitioner with an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) and 8 C.F.R. § 1003.19(a) within fourteen days of this Court's order, at which hearing the Government shall bear the burden of demonstrating by clear and convincing evidence that Petitioner is a danger to the community or a flight risk;

(g) In the alternative, if Respondents fail to provide such a hearing within fourteen days, order Petitioner's immediate release from custody on reasonable conditions of supervision;

(h) In the further alternative, conduct a de novo bond hearing before this Court at which the Government bears the burden of demonstrating by clear and convincing evidence that Petitioner is a danger to the community or a flight risk;

(i) Award Petitioner attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable legal basis; and

(j) Grant such other and further relief as this Court deems just and proper.

Dated May 3, 2026

/s/Bonnie Smerdon
Bonnie Smerdon

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Attorney for Petitioner

VERIFICATION BY SOMEONE ACTING ON THE PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I, Bonnie Smerdon, am submitting this verification on behalf of the petitioner because I am the petitioner's attorney. I am acting on behalf of the petitioner, Mario Marroquin, based on discussions with him. On the basis of these discussions and reviewing the record, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: May 3, 2026

/s/Bonnie Smerdon
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