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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

DIEGO JUAN FELIPE *Petitioner,* v. JEREMY CASEY, Facility Administrator at the Imperial Regional Detention Facility, GREGORY J. ARCHAMBEAULT, Director of the U.S. Immigration and Customs Enforcement San Diego Field Office, TODD LYONS, acting Director of U.S. Immigration and Customs Enforcement, MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security, and TODD BLANCHE, Acting U.S. Attorney General.	**VERIFIED EMERGENCY PETITION FOR A WRIT OF HABEAS CORPUS, ORDER TO SHOW CUASE WITHIN THREE DAYS AND COMPLAINT FOR DECLARATORY RELIEF** **'26CV3290 CAB JLB**

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. §2241

INTRODUCTION

1. Petitioner Diego Juan Felipe is in the physical custody of Respondents at the Imperial Regional Detention Facility (IRDF). He is being unlawfully detained because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded that Petitioner is subject to mandatory detention.

2. Petitioner is charged with, inter alia, being an alien present in the United States who has not been admitted or paroled. Ex. A. The Notice To Appear (NTA) alleges that he entered the United States unknown time and place and that he was not in possession of a visa, reentry permit, or other valid entry document. *See* 8 U.S.C. § 1182(a)(6)(A)(i). *Id.*

3. Mr. Felipe applied for Deferred Action for Childhood Arrivals (DACA) on August 9, 2012. Ex. B. He provided his home address and appeared for a biometrics appointment with United States Citizenship and Immigration Service (USCIS) on September 19, 2012. *Id.* His application was denied on March 26, 2023, because USCIS found that he had not established that he had continuously resided in the United States since June 15, 2007. *Id.*

4. Mr. Felipe has continued to live at the same address in Ft. Meyers, Florida since the time he filed his DACA application.
5. Petitioner was detained on April 14, 2026, in Ft. Meyers, Florida and has been in custody since then.
6. Petitioner was detained consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
7. On September 5, 2025, the Board of Immigration Appeals (BIA) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
8. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who entered without inspection. Instead, such

individuals are subject to a different statute, § 1226(a), that 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.

9. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

10. Mr. Felipe had remained at liberty in the community after he filed his application for DACA, and it was denied. Mr. Felipe must therefore be released from custody unless and until DHS proves to a neutral adjudicator, by clear and convincing evidence that he is a flight risk or a danger to the community.

11. Because Mr. Felipe had been previously allowed to remain at liberty in the United States by the immigration authorities, he possesses a protected liberty interest. *Fernandez Lopez v. Wofford*, Case. No. 25-cv-01226-KES-SKO (HC), 2025 WL 2959319, at *7 (E.D. Cal. Oct. 17, 2025). Because he has a protected liberty interest, Due Process requires the government to provide him with notice and a hearing prior to his detention. Detention without prior notice, a showing of changed circumstance, or a meaningful opportunity to respond, violates procedural due process under the Fifth Amendment. *See Ramirez-Bibiano v. LaRose*, No. 25-CV-3429-JLS (SBC), 2025 WL 3632748, at *4–5 (S.D. Cal.

Dec. 15, 2025) (ordering immediate release subject to conditions of petitioner's preexisting parole where DHS had summarily revoked parole and re-detained without notice or a hearing); *see also Maceo-Aguilera v. LaRose*, 26-CV-532-LL-MSB, 2026 WL 381633 (S.D. Cal. Feb. 11, 2026); *Escamilla Alvarado v. Casey* Case No. 26-cv-2593-JO-BJW (S.D. Cal. May, 7, 2026), Dkt. No. 6; *Magana-Hernandez v. Casey* Case No. 26-cv-2952-JLS (MSB) (S.C. Cal. May 18, 2026), Dkt. No. 5.

12. Failure to provide Mr. Felipe with notice and a hearing prior to determining that he should not be released from immigration detention does not satisfy the procedural requirements of the Fifth Amendment.

JURISDICTION AND VENUE

13. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201-02 (declaratory relief), and art. I sec. 9, cl. 2 of the United States Constitution (Suspension Clause), as Mr. Felipe is presently in custody under the authority of the United States and challenges his detention as in violation of the Constitution, laws, or treaties of the United States.

14. The federal district courts have jurisdiction under Section 2241 to hear habeas claims by individuals challenging the lawfulness of their detention by ICE. *See Jennings v. Rodriguez*, 583 U.S. 281, 290-92 (2018).

15. "A federal district court has habeas jurisdiction under 28 U.S.C. § 2241 to review bond hearing determinations for "constitutional claims and legal error." *Singh v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011), 638 F.3d at 1200-01; *De La Cruz Sales v. Johnson,* 323 F. Supp. 3d 1131, 1139 (N.D. Cal. 2017) (concluding that immigrant's claims were reviewable by district court where bond determination challenged as constitutionally flawed); *Martinez v. Clark*, 124 F.4th 775, 785 (9th Cir. 2024)(concluding that a federal court has discretion to review a bond denial when a "district court…ordered the bond hearing under the Due Process Clause"); *Hasratyan v. Bondi*, 2026 WL 288909 at *3-4 (C.D. Cal. Feb. 2, 2026)(ordering the release of an immigration detainee following the court's review of an IJ's bond denial that was based on procedural and legal error); *Mayancela v. FCI Berlin, Warden*, No. 25-cv-348-LM-TSM, 2025 WL 3215638, at *4 (D.N.H. Nov. 18, 2025) (If the government does not meet its burden and the IJ determines that the noncitizen must remain in custody, then "a petition for a writ of habeas corpus, filed in the appropriate district court, is the only mechanism by which a noncitizen may seek judicial review of an IJ's bond decision."). (citations omitted).

16. Venue is proper in the Southern District of California, pursuant to 28 U.S.C. §§ 1391 and 2241(d) because Mr. Felipe is detained at IRDF in Calexico, California.

REQUIREMENTS OF 28 U.S.S. § 2243

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

18. Court have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint and confinement. *Fay v. Noia*, 372 U.S. 391, 400 (1963) (overruled on other grounds by *Wainwright v. Sykes,* 433 U.S. 72 (1977)) (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

19. Petitioner Diego Juan Felipe is currently detained by Respondents in the Imperial Regional Detention Facility.

20. Respondent Jeremy Casy is the facility administrator at the Imperial Detention Facility in San Diego, California where Mr. Felipe in currently detained. He is thus Petitioner's immediate custodian. He is sued in his official capacity.

21. Respondent Patrick Divver is the Director of ICE's San Diego Field Office, which has jurisdiction over ICE detention facilities in San Diego and Imperial County, including the Imperial Regional Detention Center, and is thus Petitioner's immediate custodian. He is sued in his official capacity.

22. Respondent Todd Lyons is the Director of ICE. He is responsible for the administration of ICE and the implementation and enforcement of the immigration laws, including immigrant detention. As such, Mr. Lyons is a legal custodian of Mr. Felipe. He is sued in his official capacity.

23. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security (DHS), which is responsible for the administration of ICE, a subunit of DHS, and the implementation and enforcement of the immigration laws. As such, Mr. Mullin is the ultimate legal custodian of Mr. Felipe. He is sued in his official capacity.

24. Respondent Todd Blanche is the Attorney General of the United States and head of the Department of Justice, which encompasses the Board of Immigration Appeals and the Immigration Courts. Mr. Blanche shares responsibility for implementation and enforcement of the immigration laws with Respondent

Mullin. Mr. Blanche is a legal custodian of Mr. Felipe. He is sued in his official capacity.

LEGAL FRAMEWORK

25. The INA prescribes three basic forms of detention for most noncitizens in removal proceedings.

26. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

27. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

28. Last, 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).

29. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

30. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of

1996, Pub. L. No. 104—208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

31. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 but were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

32. Thus, in the decades that followed, most people, including people like Mr. Felipe, who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)). Indeed, Mr. Felipe had previously applied for DACA with USCIS and had lived at liberty in the United States with

the knowledge of USCIS since 2012. Ex. B. There is no reason for him to be subject to mandatory detention now.

33. 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. Respondents' new policy turns the well-established understanding of immigration detention and bond on its head and violates the statutory scheme.

34. In an about face, the new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

35. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

36. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

37. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

38. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g.*, *Lopez-Mendez v. LaRose,* No. 25-cv-03037-BAS-DDL, 2025 WL 3295331 (S.D. Cal. Nov. 26, 2025); *Vasquez-Diaz v. LaRose,* No. 25-cv-3038-TWR-JLB (S.D. Cal. Nov. 13, 2025); *N.A. v. LaRose* 2025 WL 2841989 (S. D. Cal. Oct. 7, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025),

report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *1 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670, at *8 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025), *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *see also, e.g.*, *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566 at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No.

4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same); *Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ken Sep 19. 2025).

39. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

40. Mr. Felipe is a member of the Bond Eligible Class certified in *Maldonado Bautista v. Santa Cruz,* No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025) reconsideration granted in part, --- F. Supp. 3d ---, 2025 WL 3713982 (C.D. Cal. Dec. 18, 2025) ("*Maldonado Bautista*") (entering final judgment as to the Bond Eligible Class). On November 25, 2025, the U.S. District Court for the Central District of California issued an order in *Maldonado Bautista*, certifying a nationwide class of noncitizens who are in immigration detention and being denied access to a bond hearing based on the government's allegation that they entered the U.S. without admission or inspection.

41. On February 18, 2026, the district court issued an order vacating the Board's decision in *Matter of Yajure Hurtado* and enforcing the Petitioner's request for a final judgement. *Bautista v. Santacruz,* ---F. Supp. 3d---, No. 25-CV-1873-SSS-BFM, WL 468284 (C.D. Cal. Feb. 18, 2026). The Government filed a notice of

appeal and on March 6, 2026, the Ninth Circuit issued a temporary stay pending a ruling on the government's emergency motion for a stay pending appeal. *See* 25-CV-1873 Dkt. No. 129.

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

43. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

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

45. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

46. Moreover, the government's recent decision to apply §1225(b) to people like Petitioner who are already present in the United States is inconsistent with the recently passed Laken Riley Act, which added a new subsection under §1226(c) that mandates detention for individuals who entered the United States without inspection or admission and have been charged with certain criminal offenses. District courts have noted "If 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here, then adding §1226(c)(1)(E) to the statutory scheme was pointless." *See Barrera v. Tindall,* 2025 WL 2690565 (W.D. Ken Sep 19. 2025) (quoting *Lopez-Campos v. Raycraft*, 2025 WL 2496379 at *8 (E.D. Mich. Aug 29, 2025). "If Congress has intended for Section 1225 to govern all noncitizens present in the country, who had not been admitted, then it would not have recently adopted an

amendment to Section 1226 that prescribes a subset of noncitizens exempt from the discretionary bond framework." *Id.*

47. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who entered the United States without inspection.

STATEMENT OF FACTS

48. Mr. Felipe was born in Guatemala [redacted]. Ex. A. He arrived in the United States in December 2008. Prior to his detention, he was living with his wife and U.S. citizen daughter, [redacted], in the home he has lived in since 2008.

49. Paulina was born with a congenital deformity of head macrocephaly and needs specialized medical care.

50. Mr. Felipe's wife is currently pregnant with their second child.

51. Before being detained by ICE, Mr. Felipe worked for [redacted] in Ft. Meyers, Florida since 2018. Ex. C. His wife does not work, and Mr. Felipe is the sole breadwinner for the family.

52. The branch manager at [redacted] in Ft. Meyers, Florida describes Mr. Felipe as being a "valued member of our team since approximately July 2018." Ex. C., He further states that "he is one of the most reliable and responsible individuals I have ever worked with." *Id.* He also notes that "what stands out most about Felipe is his character. He leads by example, treats others

with respect, and is always willing to step in and help wherever needed. He has earned the respect of everyone around him through his actions, not just his words. He is the kind of employee every manager hopes to have." *Id.*

53. Mr. Felipe has also attended the Iglesia de Dios Pentecostal for three years. The church reports that "he is a responsible, honest, and dedicated man. He has distinguished himself as an exemplary father, consistently showing love, care, and commitment to his wife and daughter." Ex. E.

54. Other members of his community describe him in positive terms. One friend notes, "his work ethic is exceptional." Furthermore, "he is a respectful young man who would be an asset to our great nation." Ex. D.

55. Mr. Felipe was denied bond by the immigration judge pursuant to Matter of Yajure Hurtado on May 22, 2026. Ex. F.

56. Mr. Felipe intends to apply for cancellation of removal for non-permanent residents. His next court date is June 9, 2026, at the Imperial Immigration Court.

57. If he is released from custody, Mr. Felipe will return to live with his family at his home Ft. Meyers, Florida where he has lived since 2008.

58. Mr. Felipe has no criminal history and is a valued member of his community.

59. Petitioner has been held in detention for over one month. Without relief from this court, he faces the prospect of additional months, or even years, in immigration custody.

CLAIMS FOR RELIEF

COUNT ONE

Violation 8 U.S.C. § 1226(a)

60. Mr. Felipe re-alleges and incorporates by reference each allegation contained above.

61. 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 are charged with having entered without inspection. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

63. Instead, Mr. Felipe should be subject to §1226(a) and eligible for immediate release from detention or release on immigration bond.

COUNT TWO

Violation of the Administrative Procedure Act Unlawful Denial of Bond

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

65. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they originally entered the United States without inspection or parole. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231. 57.

66. The application of § 1225(b)(2) to bar Petitioner from release or from receiving a bond hearing before an immigration judge is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).

COUNT THREE

Violation of Procedural Due Process

67. Petitioner re-alleges and incorporates by reference each allegation contained above.

68. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty 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 Due

Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

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

70. The government's detention of Petitioner without a pre-deprivation bond hearing to determine whether he is a flight risk or danger to others violates his right to due process.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter.
2. Order that Mr. Felipe shall not be transferred outside the Southern District of California.
3. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Mr. Felipe because he had previously applied for DACA with USCIS, provided his current address, and attended a biometrics appointment. *See Lopez-Mendez v. LaRose,* No. 25-cv-03037-BAS-DDL, 2025 WL 32995331 (S.D. Cal. Nov. 25, 2025). Event after his application was denied, at no point during this process was he detained. He was permitted to remain at liberty for almost 14 years. Aside from *Matter of Yajure Hurtado,* the government has

alleged no meaningful change in circumstances such that detention is warranted now. If the Court is not prepared to order immediate release, in the alternative, the Court should order Respondents to provide Petitioner with a bond hearing pursuant to 8 U.S.C. §1226(a) within seven days where the burden of proof is on the government to establish through clear and convincing evidence that Mr. Felipe is a danger or a flight risk if released. *See Sadeqi v. LaRose* No. 25-cv-2587-RSH-BJW, 2025 WL 3154520, at *4 (S.D. Cal. Nov. 12, 2025) (citing *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)) ("Petitioner is entitled to a prompt and individualized bond hearing, at which Respondents must justify her continued detention by a showing of clear and convincing evidence that Petitioner would likely flee or pose a danger to the community if released."). The Court should further require the government to provide him with a bond hearing before a "fair, neutral, and open-minded immigration judge." *Domingos v. Casey*, No. 3:26-cv-01151-BTM-JLB, 2026 LX 176120, at *9 (S.D. Cal. Mar. 23, 2026).

4. Issue an Order to Show Cause why this Petition should not be granted within three days and set a hearing on this Petition within five days of the return pursuant to 28 U.S.C. § 2243.

5. Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Mr. Felipe.

6. Declare that Mr. Felipe's detention violates the Immigration and Nationality Act.

7. Declare that Mr. Felipe's detention violates the Due Process Clause of the Fifth Amendment.

8. Grant such further relief as this Court deems just and proper.

Respectfully submitted,

Cassandra Lopez
AL OTRO LADO

Pro Bono Counsel for Petitioner

Dated: May 28, 2026

VERIFICATION BY ATTORNEY ACTING ON MR. FELIPE'S BEHALF PURSUANT TO 28 U.S.C. §2242

I am submitting this verification on behalf of Mr. Felipe because I am his attorney. As Mr. Petitioner's attorney, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: May 28, 2026 By: /s/ Cassandra Lopez