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'26CV3736 AGS BJW

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

Sergio Javier Buitrago Sarmiento
Petitioner,

v.

Markwayne Mullin, in his official capacity as Secretary of Homeland Security, Christopher J. LAROSE, in his official capacity as Warden of Otay Mesa Detention Center, Gregory J. ARCHAMBEAULT, in his official capacity as San Diego Field Office Director, ICE Enforcement Removal Operations; Todd LYONS, in his official capacity as Acting Director of ICE; and TODD BLANCHE, U.S. acting Attorney General; IMMIGRATION AND CUSTOMS ENFORCEMENT; DEPARTMENT OF HOMELAND SECURITY,
Respondents.

Immigration Agency [redacted]

Case No.

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Sergio Javier Buitrago Sarmiento, petitions this Court for a writ of habeas corpus under 28 U.S.C. section 2241 to remedy Respondents' detaining him unlawfully and states as follows:

INTRODUCTION

1. Petitioner Sergio Javier Buitrago Sarmiento is a Colombian asylum seeker detained at Otay Mesa Detention Center in San Diego, California. He was detained in the United States upon entering the country around May 2026 and charged as an alien present without admission or parole. He was not charged as an arriving alien. He indicated he had a fear of returning to Colombia. He passed a credible fear interview. He is now in removal proceedings in Otay Mesa, CA.

2. Petitioner is unlawfully detained pursuant to the mandatory detention policies recently adopted by the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR). The DHS and EOIR have improperly concluded that the Petitioner, despite being physically in the United States and charged as such on the DHS Notice to Appear, should be deemed to be seeking admission to the United States and therefore subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

3. DHS has placed Petitioner in removal proceedings pursuant to 8 USC §1229 and has charged him with being present in the United States without admission or parole. Based on this DHS and EOIR deem Petitioner subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A).

4. DHS and EOIR 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, 291. & 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).

5. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act 8 USC 1101. Such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond, Indeed, § 1226(a) expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection and being present without admission.

6. Respondents' new legal interpretation is also plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner, who is present within the United States.

7. Respondents' new legal interpretation of the INA also violates Petitioner's right to due process. All individuals within the United States have constitutional rights. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." Zadvydas v. Davis, 533 U.S. 678, 693 (2001).

8. Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a).

JURISDICTION

9. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Otay Mesa Detention Center in San Diego, CA

10. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. §1346 (original jurisdiction) art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and 28 U.S.C. § 1651 (All Writs Act).

11. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. See Demore v. Kim, 538 U.S. 510, 516-17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); Zadvydas v. Davis, 533 U.S. 678, 787 (2001) (same); Y-Z-LH v. Bostock, No. 3:25-CV-965-SI, 2025 WL 1898025, at *3 (D. Or. July 9, 2025) (same); Garcia v. Andrews, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (same).

12. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201, et seq., the All Writs Act, 28 U.S.C. § 1651, and the Court's inherent equitable powers.

VENUE

13. Venue is proper because Petitioner is in Respondents' legal and physical custody at Otay Mesa Detention Center in San Diego, California. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondents' legal and physical custody, including his current and ongoing detention under the legal and physical custody of Respondent LaRose, warden of Otay Mesa Detention Center. 28 U.S.C. § 1391(e); Rumsfeld v. Padilla, 542 U.S. 426, 443 (2004) (habeas petition must be addressed to the federal district court of confinement); Wairimu v. Dir., Dep't of Homeland Sec., No. 19-CV-174-BTMMDD, 2019 WL 460561, at *2 (S.D. Cal. Feb. 5, 2019) (district of confinement is the preferable forum even if the Court

otherwise has personal jurisdiction). For these same reasons, venue should be found proper under Local Civil Rule HC.1. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Southern District of California, the judicial district in which Petitioner currently is detained.

14. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of California.

REQUIREMENTS OF 28 U.S.C. § 2241, 2243

15. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to the Respondents "forthwith," unless 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.

16. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." Fay v. Noia, 372 U.S. 391, 400 (1963).

17. Mr. Buitrago is "in custody" for the purpose of 28 U.S.C. section 2241 because he was arrested by Respondents and remains in their legal and physical custody at Otay Mesa Detention Center in San Diego, California. He is under Respondents' and their agents' direct control

PARTIES

18. Mr. Buitrago ("Petitioner") is a citizen of Colombia. He arrived in the U.S. on or about May 2026. He entered the United States without inspection. He was apprehended shortly thereafter within the United States and indicated to the immigration enforcement officers that he was afraid of return to Colombia. He was detained and is now in removal proceedings before the Executive Office for Immigration Review. He remains in Respondent's custody.

19. Mr. Buitrago is currently residing in Respondents' custody at Otay Mesa Detention Center in San Diego, California, as of the time of the filing of this petition.

20. Respondent Christopher LaRose ("LaRose") is the Senior Warden at Otay Mesa Detention Center in San Diego, California, where Ms. N.A. is detained. LaRose is responsible for the day-to-day operations and confinement of noncitizens detained at that facility. He acts at the direction of Respondents Divver, Lyons, and Mullin. LaRose is a custodian of Ms. N.A. and is named in his official capacity.

21. Respondent Gregory Archambault is the Director of the San Diego Field Office of ICE's Enforcement and Removal Operations division. As such, Gregory Archambault is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

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

23. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

24. Respondent Todd Blanche is the 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.

25. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

26. Petitioner has no administrative remedies to exhaust.

27. After Respondents' arrest of Mr. Buitrago, he then received a NTA which was filed before the Otay Mesa Immigration Court to initiate his INA section 240 immigration proceedings while he remains detained at Otay Mesa Detention Center.

28. Mr. Buitrago is alleged to be an alien present in the United States without admission or parole. As such, Mr. Buitrago continued unlawful detention in Respondents' custody cannot be challenged by way of bond proceedings before an Immigration Judge as he is improperly deemed to be detained under 8 USC 1225.

29. Therefore, a writ of habeas corpus is the sole avenue to vindicate Mr. Buitruago constitutional, statutory, and regulatory rights.

LEGAL FRAMEWORK

30. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings conducted pursuant to 8 U.S.C. § 1229a.

31. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in § 1229a removal proceedings before an IJ. Individuals covered in § 1226(a) detention are generally entitled to a

bond hearing at the outset of their detention, see 8 CER. §§ 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).

32. Second, the INA provides for mandatory detention of noncitizens subject to an expedited removal order under 8 U.S.C. § 1225(b)(1) and for other noncitizen applicants for admission to the U.S. who are deemed not clearly entitled to be admitted. See 8 U.S.C. §1225(b)(2).

33. 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).

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

35. 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 was most recently amended in early 2025 by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

36. Following the enactment of the ITRIRA, EOIR drafted new regulations applicable to proceedings before immigration judges explaining that, in general, people who entered the country without inspection ~ also referred to as being "present without admission" — were not considered detained under § 1225 and that they 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).

37. Thus, in the decades that followed, most people who entered without admission or parole and were placed in standard § 1229a removal proceedings received bond hearings

before IJs, 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 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)).

38. This practice both pre- and post-enactment of IRIRA is consistent with the fact that noncitizens present within the United States — as opposed to noncitizens present at a border seeking admission — have constitutional rights. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." Zadvydas v. Davis, 533 U.S. 678, 693 (2001).

39. On July 8, 2025, ICE, "in coordination with" the Department of Justice, announced a new policy that rejected this well-established understanding of the statutory framework and reversed decades of practice.

40. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,'" claims that all noncitizens who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended.

41. On September 5, 2025, the BIA adopted this same position in a published decision, Matter of Yajure-Hurtado, 29 |. & N. Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are considered applicants for admission who are seeking admission and are ineligible for IJ bond hearings.

42. Since the Respondent's 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.

43. Court after court has adopted the same reading of the INA's detention authorities and rejected ICE's new policy and EOIR's new interpretation, including many California. See Beltran v. Noem, 3:25-cv-02650-LL-DEB (S.D. Cal. Nov. 4, 2025); Alvarez Chavez v. Kaiser, 2025 WL 2909526 (N.D. Cal. Oct. 9, 2025); J.S.H.M. v. Wofford, 2025 WL 2938808 (E.D. Cal. Oct. 16, 2025); Coc Tut v. Noem, No. 5:25-cv-2701-DOC-AGR (C.D. Cal. Oct. 16 2025); Menjivar Sanchez v. Wofford, 2025 WL 2959274 (C.D. Cal. Oct. 17, 2025); Esquivel-Ipina v. Larose, 2025 WL 2998361 (S.D. Cal, Oct.24, 2025); Castellanos Lopez v. Warden Otay Mesa Det. Ctr., 2025 WL 3005346 (S.D. Cal. Oct. 27, 2025); JA. EM. v, Wofford, 2025 WL 3013377 (E.D. Cal. Oct. 27, 2025); SACP. v. Wofford, 2025 WL 30133328 (ED. Cal. Oct. 27, 2025); Suy Tol v. Noem, No. 5:25-cv-2806-JF W-AS (C.D. Cal. Oct. 29, 2025); Portillo v. Noem, No. 5:25-cv-2892-JF W- PCVx (C.D. Oct. 31, 2025); Lopez Pop v. Noem, Case No. 5:25-cv-2589-SSS-SSC (C.D. Cal, Oct. 3, 2025); Santiago Flores v. Noem, Case No. 5:25-cv-2490-AB-AJR (C.D. Cal. Sept. 29, 2025); Arreola Armenta v. Noem, 5:25-cv-2416-JFW-SP (C.D. Cal. Sept. 16, 2025); Zaragoza Mosqueda v. Noem, No. 5:25-CV-02304-CAS-BFM, 2025 WL 2591530 (C.D. Cal. Sept. 8. 2025); Vasquez Garcia v. Noem, No. 25-cy-021 80-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); Benitez v. Noem, 5:25-cv-2190-RGK-AS (C.D. Cal. Aug. 26, 2025); Ceja Gonzalez v. Noem, 5:25-cv-2054-OD W-BFM. (C.D. Cal. Aug. 13, 2025); Arrazola-Gonzalez v. Noem, No. 5:25-cv-01 789-ODW-DFM, 2025 WL 2379285 (CD. Cal. Aug. 15, 2025); and Maldonado Bautista v. Santacruz, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025). But see, Sixtos Chavez v. Noem, No. 3:25-cv-2325-CAB-SBC (S.D. Cal. Sept. 24, 2025)

(denying TRO and accepting government's interpretation of § 1225(b)(2)). And outside of California, see also Gomes v. Hyde, No. 1:25-CV-11571-JEK, 2025 WL1869299 (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 (S.D.N.Y. Aug. 13, 2025); Romero v. Hyde, No. 25-1 1631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); Samb v. Joyce, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); Ramirez Clavijo v. Kaiser, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug, 21, 2025); Leal-Hernandez v. Noem, No. 1:25-cv-02428-IRR, 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 (D. Minn. Aug. 27, 2025) Lopez-Campos v. Raycraft, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); Pizarro Reyes v. Raycraft, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); Sampiao v. Hyde, No. 1:25-CV-11981-JEK, 2025 WL 2607924 @. Mass. Sept. 9, 2025); see also, 2g., 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-031 61-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). These courts have 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.

44. 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]." Rodriguez Vazquez. See also Maldonado Bautista, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025) Order Graning Temporary Restraining Order, Dkt. 14 at 9 ("[T]he Court finds that the potential for Petitioners' continued detention without an initial bond hearing would cause immediate and irreparable injury, as this violates statutory rights afforded under §1226(a)."); Ceja Gonzalez, No. 5:25-cv-02054-ODW-BEM (C.D. Cal. August 13, 2025), Order Granding Ex-Parte Application for TRO and OSC, Dkt. 12 at 7 (§ 1226 applies to aliens Present in the United States.)

45. 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 persons makes clear that, by default, such persons 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., PA. v. Allstate Ins. Co., 559 U.S. 393, 400 (2010).

46. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without inspection and who face charges in removal proceedings of being inadmissible to the United States.

47. 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 USC. §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).

48. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to persons like Petitioner, who has already entered the United States at the time he was apprehended.

FACTS

49. Petitioner Sergio Javier Buitrago Sarmiento is a Colombian asylum seeker detained at Otay Mesa Detention Center in San Diego, California. He was detained in the United States upon entering the country around May 2026 and charged as an alien present without admission or parole. He was not charged as an arriving alien. He indicated he had a fear of returning to Colombia. He passed a credible fear interview. He is now in removal proceedings in Otay Mesa, CA.

CLAIM FOR RELIEF
FIRST CLAIM FOR RELIEF
PETITIONER'S DETENTION IS IN VIOLATION OF 8 USC § 1226(a)

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

51. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Petitioner who is present in the United States and has been placed under § 1229a removal proceedings and charged with inadmissibility pursuant to 8 U.S.C. §1182(a)(6)(A)(i). As relevant here, § 1225(b)(2) does not apply to those who previously entered the country and have been present in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens may only be detained pursuant to § 1226(a), unless subject to § 1226(c) or § 1231.

52. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention without a bond hearing and violates § 1226(a).

SECOND CLAIM FOR RELIEF

Petitioner's Detention is in Violation of DHS and EOIR Bond Regulations

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

54. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearing before IJs under 18 U.S.C, § 1226 and its implementing regulations.

55. Pursuant to *Matter* of *Yajure Hurtado,* EOIR has a policy and practice of applying §1225 (b) (2) to individuals like Petitioner and, pursuant to the July 8, 2025 "Interim guidance regarding detention authority for applicants for admission" DHS Policy and Practice of applying section 1225, (b) (2) to individuals like petitioner.

56. The application of §1225(b)(2) to Petitioner unlawfully mandates his continued detention and violations 8 C.F.R §§ 236.1, 1236.1, and 1003.19.

THIRD CLAIM FOR RELIEF

Petitioner's Detention Violates the Administrative Procedures Act, 8 USC §706(2)

57. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

58. Under the APA, a court shall "hold unlawful and set aside agency action…" that is "…(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity…" 5 U.S.C. § 706(2)(A)-(B).

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

60. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." Dep't of Com. v. New York, 588 U.S. 752, 773 (2019) (citation omitted)

61. The INA provides that Respondents may, as they did in 2024 in Petitioner's case, release an individual from apprehension or custody based on an individualized determination of their danger and flight risk. See 8 U.S.C. § 1226(a); Zadvydas, 533 U.S. at 690; Matter of Guerra, 24 I&N Dec. 37 (BIA 2006). After such a release decision is made, a revocation of the custody determination may be made only when warranted by an individual's specific facts and circumstances. 8 U.S.C. § 1226(b); 8 C.F.R. § 1236.1(c)(9).

62. In Y-Z-H-L v Bostock, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025) the Court explained the process of discretionary release from custody in immigration cases and

noted that before revoking the release, the non-citizen must be given written notice of the impending revocation, which must include a cogent description of the reasons. Under the APA, non-citizens are entitled to determinations related to their release revocations that are not arbitrary, capricious or an abuse of discretion. See id. at *10.

63. By Respondents' detention of Petitioner pursuant to §1225(b)(2) is arbitrary and capricious; violates the INA and the Fifth Amendment, is not authorized by the statute cited by Respondent's and therefore violates 5 USC § 706(2).

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

c. Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;

d. Declare that refusal to allow Petitioner a meaningful bond and custody redetermination hearing violates the INA, APA, and Due Process;

e. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;

f. Issue an Order prohibiting the Respondents from transferring Petitioner from this district without the Court's approval;

g. Issue an Order requiring Respondents to provide a bond and custody redetermination hearing within 7 days to meaningfully consider his eligibility for release from DHS custody in which DHS must show by a preponderance of the evidence that Petitioner's continued detention is justified;

h. 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

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

DATED this 26 of June, 2026.

/s/ Stephanie M Alcala

Attorney for Petitioner