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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EMILIO GARCIA AYALA
[redacted]

Petitioner,

vs.

WARDEN, in their official capacity as Warden, Imperial Regional Detention Facility; GREGORY ARCHAMBEAULT, in his official capacity as Field Office Director of the San Diego Field Office, Enforcement and Removal Operations, U.S. Immigration & Customs Enforcement; DAVID VENTURELLA, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; MARKWAYNE MULLIN, in his official capacity as U.S. Secretary of Homeland Security; and TODD BLANCHE, in his official capacity as Acting Attorney General of the United States,

Respondents

Case No.: '26CV3907 RFL MSB

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

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Verified Petition for Writ of Habeas Corpus

INTRODUCTION

1. Petitioner Emilio Garcia Ayala ("Petitioner" or "Mr. Garcia") is unlawfully detained in the custody of Respondents at the Imperial Regional Detention Facility in Calexico, California.

2. This is not the first time Respondents have detained Mr. Garcia. In 2010, the Department of Homeland Security ("DHS") detained Mr. Garcia and placed him in removal proceedings, and on October 14, 2010, DHS made an individualized custody determination and released him on a $5,000 immigration bond. *See* Exhibit A – *Notice of Release and Bond Documentation.* Release on bond is a form of release available only to noncitizens detained under 8 U.S.C. § 1226(a). For the more than fifteen years that followed, Mr. Garcia complied with the conditions of his release, and DHS never sought to revoke his bond.

3. In 2011, Mr. Garcia applied for non-LPR Cancellation of Removal based on his relationship to his LPR mother and father, and after birth, his U.S. citizen child.

4. On January 30, 2014, the Immigration Judge (IJ) ordered that the proceedings in his case be administratively closed. *See* Exhibit B- *Joint Motion to Administratively Close Proceedings.*

5. On May 17, 2026, U.S. Customs and Border Protection ("CBP") stopped Mr. Garcia at a checkpoint near Brawley, California while he was returning to his home in San Diego. Mr. Garcia showed officers his valid California driver's license and his valid Employment Authorization Document ("EAD"). Respondents placed Petitioner in immigration detention and began removal proceedings against him. This is despite the fact that Mr. Garcia has

resided in the United States for almost thirty years and that his immigration case has been administratively closed since 2014. *See* Exhibit C – *NTA for Emilio Garcia Ayala*

6. Mr. Garcia faces civil detention without any meaningful opportunity for an individualized determination of whether his continued confinement is necessary or lawful. The only two permissible bases for immigration detention prior to entry of an executable removal order are danger or flight risk. Respondents have not conducted any neutral, individualized assessment of Mr. Garcia's danger to the community, risk of flight, or suitability for less restrictive alternatives to detention.

7. Petitioner has had only one interaction with the criminal justice system: a 2010 misdemeanor conviction for driving under the influence, for which he paid a fine and received a suspended sentence with five years of probation.

8. Mr. Garcia's detention is not based on any individualized finding that confinement is necessary to serve a legitimate governmental purpose.

9. This continued detention without any individualized custody determination violates the Fifth Amendment to the U.S. Constitution.

10. Accordingly, Petitioner brings this action seeking a writ of habeas corpus requiring that he be immediately released. In the alternative, Petitioner requests that the Court order Respondents to provide a bond hearing before an impartial adjudicator within seven days where: (1) to continue detention, the government must establish by clear and convincing evidence that Mr. Garcia presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Mr. Garcia's release would present; and (2) if the government cannot meet its burden, the immigration judge orders Mr.

Garcia's release on appropriate conditions of supervision, taking into account Mr. Garcia's ability to pay bond.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus authority); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (the All Writs Act); and Article I, Section 9, clause 2 of the U.S. Constitution (the Suspension Clause).

12. This Court has additional remedial authority under 28 U.S.C. §§ 2201-02 (the Declaratory Judgment Act), to grant injunctive and declaratory relief.

13. Venue properly lies with this Court under 28 U.S.C. §§ 1391(b) and (e)(1) because Petitioner is detained within the Southern District of California, his immediate physical custodian is located within this District, and a substantial part of the events giving rise to this petition occurred and continue to occur within this District. Venue is also proper under 28 U.S.C. § 2241(d) because Mr. Garcia is detained at a facility within this District. Venue is also proper under 28 U.S.C. § 2241(d) because Mr. Garcia is detained at a facility within this District.

REQUIREMENTS OF 28 U.S.C. § 2243

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

15. 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). "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

16. Petitioner, Emilio Garcia Ayala is a 49-year-old citizen of Mexico. Mr. Garcia has resided in the United States since 1997. He is currently detained at the Imperial Regional Detention Facility in Calexico, California.

17. Respondent, Warden of Imperial Regional Detention Facility, is sued in their official capacity as warden. Respondent is the immediate legal custodian of Mr. Garcia.

18. Respondent Gregory Archambeault is sued in his official capacity as Field Office Director, San Diego Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement ("ICE"), which oversees ICE's operations in San Diego. Respondent Archambeault is a legal custodian of Mr. Garcia.

19. Respondent David Venturella is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Venturella is a legal custodian of Mr. Garcia.

20. Respondent Markwayne Mullin is sued in his official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security ("DHS"), the agency tasked with enforcing immigration laws, Secretary Mullin is Mr. Garcia's ultimate legal custodian.

21. Respondent Todd Blanche is sued in his official capacity as Acting Attorney General of the United States. As Acting Attorney General, Respondent Blanche oversees the immigration court system, including the immigration judges who conduct removal proceedings and bond hearings as his designees, and is

responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(g). He is legally responsible for administering Mr. Garcia's removal and bond proceedings, and as such, he is a legal custodian of Mr. Garcia.

STATEMENT OF FACTS

22. Mr. Garcia is a resident of San Diego, California and a citizen of Mexico.

23. Mr. Garcia first entered the United States without inspection in May of 1997 at the age of twenty. He has lived in the United States for more than twenty-nine years, and has been continuously physically present in the United States since June 15, 2004.

24. On September 21, 2010, DHS detained Mr. Garcia and placed him in removal proceedings. On October 14, 2010, DHS made an individualized custody determination and released him from custody on a $5,000 immigration bond pending a final decision in his case.

25. Mr. Garcia fully complied with the conditions of his release. He appeared for his immigration court proceedings as directed. In the more than fifteen years between his release on bond and his re-arrest in May 2026, his bond was never declared breached, and DHS never sought to revoke it or to re-detain him.

26. In 2011, Mr. Garcia applied for non-LPR Cancellation of Removal based on his relationship to his then-LPR mother and father, and after his child was born, to his U.S. citizen child. On January 30, 2014, the Immigration Judge (IJ) ordered that the proceedings in his case be administratively closed.

27. In July 2012, Mr. Garcia and his partner had a U.S. citizen baby. In January 2014, he married his wife who was then a U.S. lawful permanent resident,

and he became stepfather to her five U.S. citizen children. On October 18, 2017, his wife became a U.S. citizen through naturalization.

28. For nearly three decades, Mr. Garcia has been in the United States, working, running a business, paying taxes, and contributing to his community in California. He is the sole financial support for his disabled wife and his fourteen-year-old U.S. citizen son, who has leukemia, a cardiac condition, and developmental delays. Mr. Garcia is also the financial support for his 81-year-old U.S. citizen father.

29. On May 17, 2026, U.S. Customs and Border Protection ("CBP") stopped Mr. Garcia at a checkpoint near Brawley, California while he was returning to his home in San Diego, California. He showed the officers his valid driver's license and EAD. Nonetheless, he was taken into ICE custody.

30. Respondents commenced removal proceedings against him and placed Mr. Garcia in removal proceedings before the San Diego Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Mr. Garcia with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who is present in the United States without having been admitted or paroled by U.S. immigration officials, and under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as not being in possession of a valid entry document or travel document.

31. Mr. Garcia has been detained continuously at Imperial Regional Detention Facility since May 18, 2026.

32. At no point has Mr. Garcia had any individualized finding that his detention is necessary to serve a legitimate governmental purpose.

33. Petitioner has a strong claim for non-LPR Cancellation of Removal based on the extreme hardship his removal would cause his disabled U.S. citizen wife and gravely ill U.S. citizen son.

EXHAUSTION OF REMEDIES

34. No statutory requirement of administrative exhaustion applies to Petitioner's habeas corpus petition challenging the lawfulness and constitutionality of his present civil immigration detention. A noncitizen in federal custody may seek immediate relief under 28 U.S.C. § 2241 where detention allegedly exceeds statutory authority or violates the Constitution. *Jennings v. Rodriguez*, 583 U.S. 281, 292-95 (2018).

35. Although courts may in limited circumstances impose a prudential exhaustion requirement, exhaustion is not required where administrative remedies are unavailable, inadequate, or futile, or where the agency lacks authority to grant the relief sought. *McCarthy v. Madigan*, 503 U.S. 140, 144-45 (1992).

36. Petitioner does not seek review of removal proceedings, evidentiary rulings, or any final order of removal. He challenges only the statutory and constitutional authority for his present detention. Immigration Judges and the Board of Immigration Appeals lack jurisdiction to adjudicate constitutional challenges to immigration detention statutes or to order release where DHS asserts that detention is governed by INA § 235 or otherwise denies bond eligibility. In such circumstances, administrative exhaustion would be futile.

STATUTORY FRAMEWORK

I. FORMS OF DETENTION

37. Petitioner's current detention is governed by Immigration and Nationality Act ("INA") § 236(a), 8 U.S.C. § 1226(a), which authorizes only discretionary custody and does not require mandatory detention. As set forth below, that statutory violation, together with the constitutional defects in his re-detention, entitles Petitioner to immediate release or, at a minimum, to the individualized custody determination § 236(a) requires.

38. Federal courts may review the legality of executive detention through habeas corpus, *INS v. St. Cyr*, 533 U.S. 289, 301 (2001), and may order release where detention lacks statutory authorization. *Nadarajah v. Gonzales*, 443 F.3d 1069, 1086 (9th Cir. 2006).

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

40. 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). Discretionary detention under § 1226(a) is the "default." *Jennings v. Rodriguez*, 583 U.S. at 303.

41. Second, the INA provides for mandatory detention of noncitizens who are subject to expedited removal under 8 U.S.C. § 1225(b)(1), in addition to other recent arrivals who are deemed to be "seeking admission" to the United States under 8 U.S.C. § 1225(b)(2). That mandatory detention scheme described in 8 U.S.C. § 1225 applies "at the Nation's borders and ports of entry." *Jennings* 583 U.S. at 287.

42. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in reinstatement or withholding-only proceedings. 8 U.S.C. § 1231(a)–(b).

43. The detention provisions at 8 U.S.C. §§ 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(c) was most recently amended in 2025 by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

44. Following the enactment of the IIRIRA in 1996, the U.S. Department of Justice's Executive Office for Immigration Review ("EOIR") drafted regulations explaining that, in general, individuals who entered the United States without inspection were not considered detained pursuant to § 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).

45. In the decades that followed the enactment of the IIRIRA, most noncitizens who entered the United States without inspection and who were thereafter detained and placed in standard removal proceedings under 8 U.S.C. § 1229a were considered eligible to seek release on bond and received bond hearings before an IJ unless their criminal history rendered them statutorily ineligible under 8 U.S.C. § 1226(c). This practice was consistent with many decades of prior practice, in which noncitizens who entered the United States, even without inspection, were entitled to a custody re-determination hearing before an IJ. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that 8 U.S.C. § 1226(a) simply "restates" the detention authority previously found at 8 U.S.C. § 1252(a)); *Martinez v. Hyde*, 792 F. Supp. 3d 211, 218 n.9 (D. Mass. 2025) (citing the United States Solicitor General's representation to the Supreme Court in 2022 that "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended").

46. Additionally, detainees have independent constitutional, statutory, and regulatory due process rights regarding the legality of their detention, even when detained pursuant to § 1225(b).

47. In July 2025, however, DHS contravened this longstanding legal framework by beginning to assert that all individuals who entered the country without inspection should be considered to be "seeking admission" and therefore subject to the mandatory-detention provision of 8 U.S.C. § 1225(b)(2)(A). *See* U.S. Immigration and Customs Enforcement Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025), https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission. 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.

48. On September 5, 2025, in a sharp departure from decades' worth of agency policy and practice, the BIA issued a precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The Board held that all noncitizens who entered the United States without admission or parole are subject to mandatory detention under § 1225(b)(2)(A) and thus ineligible for bond hearings.

49. Courts across the country have rejected *Matter of Yajure Hurtado*, refusing to apply the mandatory detention described in § 1225(b)(2) more broadly. *See, e.g.*, *Barco Mercado v. Francis*, No. 25-cv-6582 (LAK), 2025 WL 3295903, at *13–14 (S.D.N.Y. Nov. 26, 2025) (tallying more than 350 cases reaching the same conclusion, and only 12 going the other way); *Guerrero Orellana v. Moniz*, No. 25-cv-12664, 2025 WL 3687757 (D. Mass. Dec. 19, 2025) (granting summary judgment and extending declaratory relief to Massachusetts-based class of noncitizens wrongly subject to mandatory detention under the government's recent

interpretation of § 1225(b)(2)(A)); *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 19, 2025) (similar, extending declaratory relief to nationwide class).

50. The Ninth Circuit has held that individuals detained under § 1226(a) are entitled to individualized bond hearings where the government bears the burden to show, by clear and convincing evidence, that continued detention is justified by flight risk or danger. *Rodriguez v. Robbins,* 804 F.3d 1060, 1078 (9th Cir. 2015), rev'd sub nom. *Jennings v. Rodriguez,* 583 U.S. 281 (2018). When detention under § 1226(a) becomes prolonged, it must remain reasonably related to its purposes of ensuring appearance and protecting the community. See *Demore v. Kim,* 538 U.S. 510, 531 (2003); *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001). Continued detention without a final order of removal, absent these justifications, is arbitrary, excessive, and violates the Due Process Clause.

II. DETAINED NONCITIZENS ARE ENTITLED TO DUE PROCESS PROTECTIONS

51. The Fifth Amendment of the U.S. Constitution affords due process protections to detained noncitizens. *See Demore* 538 U.S. at 523. These due process protections constrain the government's detention authority. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" which due process protects. *Zadvydas*, 533 U.S. at 690.

52. 8 U.S.C. § 1225(b)(1) and (b)(2) "authorizes the Government to detain certain [noncitizens] seeking admission into the country." *Jennings*, 583 U.S. at 289. The INA provides for mandatory detention for such individuals—i.e.,

they are not entitled to a bond hearing before an immigration judge to determine whether they pose a danger or risk of flight.

53. Under 8 U.S.C. § 1226(a), the INA allows for the detention of noncitizens "already in the country pending outcome of removal proceedings." *Jennings*, 583 U.S. at 289. In contrast to § 1225, individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention and in the event of changed circumstances.

54. Regardless of the statutory detention authority, the Supreme Court has held that the Fifth Amendment's guarantee of due process applies to all persons physically within the United States, "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

55. To comport with due process, detention must "bear [a] reasonable relation to the purpose for which the individual [was] committed." *Id.* (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Due process thus requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (internal quotations omitted).

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

CAUSES OF ACTION

FIRST CLAIM

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a)

57. Petitioner realleges and incorporates by reference the paragraphs above.

58. 8 U.S.C. § 1226(a) authorizes the Attorney General to arrest and detain a noncitizen "pending a decision on whether the alien is to be removed," but expressly permits release on bond or conditional parole. This provision governs the detention of individuals, like Petitioner, who have not been ordered removed and whose proceedings remain pending. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court distinguished the discretionary detention authority of § 1226(a) from the mandatory provisions of § 1226(c), holding that § 1226(a) allows for release on bond or conditional parole and does not itself impose mandatory custody.

59. Section 1226 provides the default detention authority for individuals detained pending a removal decision, while § 1225 has a limited temporal scope restricted to the inspection and expedited removal of arriving noncitizens. *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3289861, at *16–17 (C.D. Cal. Nov. 20, 2025). The statutory text draws a meaningful distinction: detention under § 1226 is discretionary, detention under § 1225 is mandatory, and the two provisions are harmonious because they apply to different circumstances. *Id.* (citing *Fifty-Six Hope Rd. Music, Ltd. v. A.V.E.L.A., Inc.*, 778 F.3d 1059, 1081 (9th Cir. 2015)). The discretionary bond framework of § 1226(a) therefore applies to noncitizens "present in the United States without being admitted or paroled" under 8 U.S.C. § 1182(a)(6)(A) who are not subject to § 1226(c). *Id.* (citing *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *17 (W.D. Wash. Sept. 30, 2025)).

60. DHS's own implementing regulations confirm this distinction. The regulation implementing § 1225(b)(2) applies only to "any arriving alien who

appears to the inspecting officer to be inadmissible." 8 C.F.R. § 235.3 (emphasis added). An "arriving alien" is in turn defined as an applicant for admission "coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2. That definition does not describe Petitioner.

61. DHS charged Petitioner under INA § 212(a)(6)(A)(i) but did not apprehend him at the border, subject him to inspection, or place him in expedited removal proceedings at the time of his re-arrest. Instead, Respondents rely solely on the manner-of-entry allegation in the Notice to Appear to treat Petitioner as subject to border-based mandatory detention, notwithstanding his interior arrest and placement in ordinary removal proceedings.

62. Section 1225(b) does not govern Petitioner's re-detention. He was not an "arriving" noncitizen at the time of his re-arrest, so § 1225(b)(1)(A)(i) does not apply, and he has been physically present in the United States for more than two decades—far longer than the two-year period specified in § 1225(b)(1)(A)(iii)(II)—, so § 1225(b)(1)(A)(iii) does not apply. Consistent with this, his Notice to Appear expressly charges him as "an alien present in the United States without being admitted or paroled," not as "an arriving alien." [See Exhibit B: Notice to Appear for Petitioner.]

63. DHS's own treatment of Mr. Garcia confirms that § 1226(a) governs his detention. When DHS detained Mr. Garcia in 2010 on the basis of the same 2004 entry without inspection that it invokes today, it did not purport to hold him as an applicant for admission subject to mandatory detention under § 1225(b). Instead, it made an individualized custody determination and released him on a $5,000 bond. *See* Exhibit C. Release on bond is available only to noncitizens detained under § 1226(a); the sole mechanism for release from § 1225(b) detention is parole. *Compare* 8 U.S.C. § 1226(a)(2)(A) (authorizing release on "bond of at

least $1,500"), *with* 8 U.S.C. § 1182(d)(5)(A) (parole). By setting and accepting a bond, DHS necessarily determined that Mr. Garcia's detention was governed by § 1226(a), a determination it never revoked in the more than fifteen years that followed.

64. Respondents cannot now disavow that determination. Their present position, that Mr. Garcia has at all times since his 2004 entry been an applicant for admission subject to mandatory detention under § 1225(b)(2)(A), is irreconcilable with DHS's 2010 decision to release him on bond, and is precisely the post hoc effort to "switch tracks" that courts have rejected. *Salcedo Aceros*, 2025 WL 2637503, at *8. Mr. Garcia's posture is materially identical to that of the petitioners in *Salcedo Aceros*, *Sampiao*, and *Lopez Benitez*: he was detained, released on bond into the interior, complied with the conditions of his release for more than fifteen years, and was then re-detained without any change in circumstances. Section 1226(a), not § 1225(b), has governed his custody throughout.

65. Courts have recognized that DHS's current effort to apply § 1225(b) to individuals arrested in the interior departs from the agency's prior understanding of the statutory scheme. In *Bethancourt Soto v. Soto*, No. 1:25-cv-16200, Doc. 10 (D.N.J. 2025), the court noted Respondents' concession that immigration authorities "did not always interpret § 1225(b) that way," and that until recently DHS "read § 1225(b) to apply only to those who have arrived in the United States," detaining noncitizens present without admission under the discretionary framework of § 1226(a). See, e.g., Salgado v. Mattos, No. 2:25-cv-01872-RJB-EJY, 2025 WL 3205356, at *20 (D. Nev. Nov. 17, 2025) ("By subjecting noncitizens like Petitioners to mandatory detention, despite their significant due process rights as individuals present in the U.S., with no consideration of their

deep financial, community, and familial ties in the country, the government has proffered an interpretation of a federal statute that engenders constitutional issues" (citation modified)).

66. Courts in multiple jurisdictions have reached the same conclusion in materially similar postures involving release into the interior followed by re-detention, holding that § 1226 and, not § 1225(b), governs. *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503, at *8 (N.D. Cal. Sept. 12, 2025) (rejecting the government's attempt to "switch tracks" post hoc to justify mandatory detention); *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, 2025 WL 2607924, at *8 (D. Mass. Sept. 9, 2025); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588, at *9 (S.D.N.Y. Aug. 13, 2025). "The federal courts have uniformly held that § 1225(b) does not apply to noncitizens," like Petitioner, "who are present within the United States with the government's permission and have been residing in the interior of the United States for several years." *Alvarez v. Rivas*, No. CV 25-02943 PXS GMS (CDB), 2025 WL 2898389, at *22 (D. Ariz. Oct. 7, 2025) (collecting cases).

67. The issue has reached the courts of appeals, and the Second, Sixth, Tenth, and Eleventh Circuits have all rejected the government's argument that these noncitizens may be held under § 1225. *Cunha v. Freden*, No. 25-3141-pr, 2026 WL 1146044 (2d Cir. Apr. 28, 2026); *Lopez Campos v. Raycraft*, Nos. 25-1965/1969/1978/1982 (6th Cir. May 11, 2026); *Quiroz v. Mullin*, 2026 U.S. App. LEXIS 16688 (10th Cir. June 30, 2026); *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Mia.*, No. 25-14065 (11th Cir. May 6, 2026). *But see Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 518 (5th Cir. 2026); *Avila v. Bondi*, 170 F. 4th 1128 (8th Cir. 2026) (holding that all noncitizens present without admission are subject to mandatory detention under § 1225(b)(2)(A) during removal proceedings).

68. Respondents' contrary position traces to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), under which they classify all noncitizens who entered without inspection as subject to mandatory detention under § 1225(b), denying bond eligibility to those properly detained under § 1226(a). That blanket interpretation is inconsistent with the statute and longstanding practice.

69. *Maldonado Bautista* is directly on point and resolves the question for similarly situated detainees. The court first enjoined DHS by temporary restraining order from detaining such individuals without an individualized § 1226(a) bond hearing, finding DHS's reliance on § 1225(b) for interior arrests "unconvincing and inconsistent with the statutory framework." *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873, TRO Order (C.D. Cal. July 28, 2025). It then granted partial summary judgment, holding the statutory language unambiguous and the detention scheme coherent, and declared Respondents' interpretation contrary to law. 2025 WL 3289861, at *16–17 (citing *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 240 (1989)). On December 18, 2025, the court entered a final order vacating DHS's interim guidance adopting the contrary interpretation. The court extended "the same declaratory relief granted to Petitioners" to "the Bond Eligible Class as a whole"—defined as all noncitizens in the United States without lawful status who (1) entered without inspection, (2) were not apprehended upon arrival, and (3) are not subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time DHS makes an initial custody determination.

70. Mr. Garcia is in the same posture as the petitioners in *Maldonado Bautista*: he was arrested in the interior, charged as present without admission rather than as an arriving alien, previously released on a § 1226(a) bond with which he fully complied, and has been afforded no bond hearing in his current detention.

71. Because Mr. Garcia is detained under § 1226(a), he is statutorily entitled to seek release following an individualized custody determination, and Respondents have not shown that he poses a flight risk or danger to the community. He has resided in the United States since 1997 and has been present continuously since 2004. He has a disabled U.S.-citizen spouse and a U.S.-citizen child with leukemia, for whom he is the sole financial support and the only able-bodied adult in the household. He has no history of violent convictions; his only conviction is a non-violent misdemeanor for driving under the influence, Cal. Veh. Code § 23152, which is neither a crime involving moral turpitude nor an aggravated felony under 8 U.S.C. § 1101(a)(43), and which does not render him a danger to the community or subject him to mandatory detention under § 1226(c). Respondents' refusal to provide a bond hearing contravenes § 1226(a)'s discretionary framework and exceeds the detention authority Congress conferred.

72. Accordingly, the Court should declare that Mr. Garcia's detention is governed by 8 U.S.C. § 1226(a) and that Respondents lack statutory authority to detain him without a bond hearing, and should order his release pursuant to 28 U.S.C. § 2241 or, in the alternative, a prompt bond hearing before an Immigration Judge at which the government bears the burden of proof.

SECOND CLAIM

Violation of Procedural Due Process

73. Mr. Garcia realleges and incorporates by reference the paragraphs above.

74. In this petition, Mr. Garcia invokes "the most elemental of liberty interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

75. This liberty interest applies to "all 'persons' within the United States,

including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. 678, 693 (2001); *see also Jennings* 583 U.S. at 312–315 (2018) (noting that "[d]ue process is flexible . . . [and] calls for such procedural protections as the particular situation demands").

76. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (applying *Mathews* to a due process challenge to immigration detention, and noting that "*Mathews* remains a flexible test that can and must account for the heightened governmental interest in the immigration detention context"); *López v. Wofford*, No. 1:25-cv-01226-KES-SKO (HC), 2025 WL 2959319, at *6 *(E.D. Cal. Oct. 17, 2025) (collecting cases extending* Mathews "to the context of immigration detention").

77. Courts consider 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." *Mathews*, 424 U.S. at 335.

78. As to the first *Mathews* factor—the private interest—the Supreme Court has held that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690; *see also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.").

79. This private interest grows stronger the longer a noncitizen has lived in the United States and built ties to their community. *See, e.g.*, *Cruz v. Lyons*, No. 5:25-cv-02879-MCS-MBK, 2025 WL 4051129, at **3 (C.D. Cal. Nov. 6, 2025) (finding the petitioner had a protectable liberty interest in remaining on supervised immigration release); C.A.R.V. v. Wofford, No. 1:25-cv-01395-JLT-SKO, 2025 WL 3059549, at* *10 (E.D. Cal. Nov. 1, 2025) (finding the petitioner had a constitutionally protected liberty interest in remaining out of ICE custody based on the "approximately four years on parole" preceding his re-detention).

80. The first *Mathews* factor favors Mr. Garcia. He has lived in the United States for almost thirty years. During that time, he and his wife have raised a U.S.-citizen child, he was a loyal employee and a hard-working small-business owner who has paid his taxes. His only criminal history is a single DUI conviction in December 2010; he has no other arrests or convictions. In 2010, DHS itself determined that Mr. Garcia could safely be released on a $5,000 bond. In 2011, he applied for non-LPR Cancellation of Removal and in 2014 his case was administratively closed by an Immigration Judge with the non-opposition of the Department of Homeland Security. Mr. Garcia's interest in remaining free from custody is therefore squarely protected by the Due Process Clause.

81. As to the second *Mathews* factor—the risk of erroneous deprivation—where the immigration courts lack jurisdiction to review a petitioner's custody determination, there is a high risk of continued deprivation of liberty. Civil immigration detention is permissible only to prevent flight or reduce the risk of danger to the community. *Zadvydas*, 533 U.S. at 690-91.

82. The second *Mathews* factor likewise favors Mr. Garcia, who is detained without any individualized bond hearing and thus has no opportunity to contest the reasonableness of his detention. The government did not consider Mr.

Garcia a flight risk or a danger to the community when it administratively closed his removal proceedings—had it concluded otherwise, it would not have done so. There is nothing Mr. Garcia has done in the twelve years since that decision that would suggest he is a flight risk or a danger to the community.

83. Mr. Garcia was detained without any pre-deprivation hearing or process to determine whether his detention was justified, and Respondents have offered no particularized justification for continuing to detain him. The risk of erroneous deprivation is therefore extremely high: he has received no bond hearing before a neutral arbiter and is subject to indefinite, unreviewable civil detention.

84. As to the third *Mathews* factor (the government's interest), "the Government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lessor bond or alternative conditions." *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017). Moreover, "any fiscal or administrative burden on the additional procedural safeguard of a hearing before neutral adjudicator imposes on the Government is at most minimal'[.]" *Sun v. Santa Cruz*, Case No. 5:25-cv-02198-JLS-JC, 2025 WL 2730235, at *6 (C.D. Cal. Aug. 26, 2025) (citation omitted). *See Mourey v. Bowen*, Case No. 5:25-cv-03262-WLH (DTB), 2026 WL 467567, at *4 (C.D. Cal. Jan. 31, 2026) ("Pursuant to the holding in *Mathews*, Petitioner should have been afforded a pre-detention hearing."), report and recommendation adopted, 2026 WL 464788 (C.D. Cal. Feb. 17, 2026).

85. The third *Mathews* factor also favors Mr. Garcia. The government has no legitimate interest in detaining an individual who poses no danger to the community and no risk of flight, and the burden of providing substitute or additional process is de minimis, as immigration judges have conducted bond

hearings in these exact circumstances for decades.

86. Given the significant liberty interest at stake, the high risk of erroneous deprivation, and the minimal burden that additional procedural safeguards would impose on the government, Respondents' detention of Mr. Garcia without a bond hearing violates his right to procedural due process under the Fifth Amendment.

THIRD CLAIM

Violation of Substantive Due Process

87. Mr. Garcia realleges and incorporates by reference the paragraphs above. Substantive due process "forbids the government to infringe certain 'fundamental' liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993).

88. "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. at 690.

89. The only constitutional purposes for immigration detention are "ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community." *Id.* (internal quotation marks and citation omitted). Detaining a noncitizen to effectuate any other goal is without statutory basis and thus unconstitutional. *See Jackson v. Indiana*, 406 U.S. 715, 737 (1972); *see also Foucha*, 504 U.S. at 79 ("Because 'liberty is the norm, and detention prior to trial or without trial is the carefully limited exception,' the government may imprison people as a preventive measure only within strict limits." (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987))).

90. Where the government has "asserted no individualized justification—let alone a special or compelling justification—to continue to deprive [noncitizens] of their physical liberty," the substantive due process rights of those noncitizens are violated. *Jacobo Ramirez v. Noem*, --- F.Supp.3d ----, 2025 WL 3270137, at *11 (D. Nev. Nov. 24, 2025) (finding petitioners who entered without inspection, some previously released on recognizance, likely to prevail on substantive due process claim).

91. Mr. Garcia's detention serves no lawful purpose because he is neither a danger nor a flight risk. Mr. Garcia has lived in the United States for almost thirty years and has no serious criminal convictions. His only prior encounter with law enforcement consists of one misdemeanor conviction for driving under the influence of alcohol. He is a long-term member of his community, a husband of twelve years, stepfather to five U.S. citizen children and the biological father to a gravely ill U.S. citizen child, the financial and emotional support for his family and a valued small-owner.

92. Mr. Garcia applied for non-LPR Cancellation of Removal and in 2014 the IJ administratively closed his case. Mr. Garcia has lived peacefully in the United States since then. for the next twelve years

93. Because the government is not detaining Mr. Garcia to serve legitimate interests in protecting against danger or flight risk, his detention violates substantive due process under the Fifth Amendment, and this Court should order his immediate release.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Issue an order prohibiting Respondents from transferring Petitioner outside of this judicial district during the pendency of these proceedings;

c. Use its authority under 28 U.S.C. § 2243 to order the Respondents to file a return within three days, unless they can show good cause for additional time;

d. Declare that Petitioner's continued detention is unlawful under the Due Process Clause of the Fifth Amendment;

e. Grant a writ of habeas corpus directing Respondents to immediately release Petitioner from their custody, or, in the alternative, provide Petitioner with a bond hearing within seven days at which the government bears the burden of proving, by clear and convincing evidence, that continued detention is necessary to serve a legitimate governmental purpose and that no less restrictive conditions would suffice;

f. Order the immediate return of all of Petitioner's private property, including but not limited to any identification documents;

g. Order that Respondents may not re-detain Petitioner without first providing a pre-deprivation hearing before an impartial adjudicator in which Respondents bear the burden to prove by clear and convincing evidence that Petitioner's re-detention is necessary because he has demonstrated changed circumstances such that Petitioner presents a danger to the community or a flight risk; and

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

Dated: 7th day of July 2026

Respectfully submitted,
/s/ Lisa Gathard
COUNSEL FOR PETITIONER

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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in this Petition are true and correct to the best of my knowledge.

Dated: July 7, 2026

/s/ Lisa Gathard

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