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UNITED STATES DISTRICT COURT FOR EASTERN DISTRICT OF CALIFORNIA

MATIAS VELASCO-VALDEZ, Petitioner vs. Warden of the Central Valley Annex Detention Center; **SERGIO ALBARRAN,** Field Office Director of Enforcement and Removal Operations, San Francisco Field Office; **TODD M. LYONS,** Acting Director of the United States Immigration and Customs Enforcement; **MARKWAYNE MULLIN,** Secretary of the United States Department of Homeland Security; **TODD BLANCHE,** United States Acting Attorney General, *in their official capacities,* Respondents	**CASE NO. 1:26-at-2735** **PETITION FOR WRIT OF HABEAS CORPUS; DECLARATORY JUDGMENT AND APA RELIEF** **ALIEN NUMBER:** [redacted]

I. INTRODUCTION

1. Petitioner Matias Velasco-Valdez ("Mr. Velasco-Valdez") or ("Petitioner") is in the physical custody of Respondents at the Central Valley Annex Detention Facility. He hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to compel his immediate release from the immigration jail where he has been held by the U.S. Department of Homeland Security (DHS) since being unlawfully detained on July 7, 2026, without first being provided a due process hearing to determine whether his incarceration is justified.

2. Petitioner Matias Velasco-Valdez is in the physical custody of Respondents at the Central Valley Annex Detention Facility in McFarland, California.

3. Petitioner must be released from custody unless and until DHS proves to a neutral adjudicator, by clear and convincing evidence, that Petitioner is a flight risk or a danger to the community. DHS will not be able to do so. Due process requires the government to provide noncitizens with notice and a hearing prior to re-detention, and that re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment.

4. He entered the United States on March 22, 2014, without inspection. He has no prior criminal records. He has no prior deportation orders. He was detained on July 7, 2026, by the Enforcement and Removal Operations ("ERO" or "ICE") on his way to work in San Francisco, California and placed in removal proceedings under INA § 212(a)(6)(A)(i) and § 212(a)(7)(A)(i)(I).

5. On September 5, 2025, the Board of Immigration Appeals ("BIA or Board") 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.

6. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) and does not apply to individuals like Petitioner who previously entered and are now residing in the United States. 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.

7. 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.

8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 and the Suspension Clause of the Constitution because this action is a habeas corpus petition and under 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act, 8 U.S.C. § 1101, et seq., Administrative Procedure Act, 5 U.S.C. §§ 702-706, 28 U.S.C. § 1361, 2201-02 (Declaratory Judgment).

II. JURISDICTION AND VENUE

9. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

10. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651, and Fifth Amendment of the United States Constitution.

11. Venue is proper in the District of Eastern California because Petitioner is currently

detained at the California City Correctional Facility in California City, California, under color of the authority of the United States, in violation of the Constitution, laws or treaties thereof. 28 U.S.C. §§ 1391, 2241.

12. 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 Respondent's custody. 28 U.S.C. § 1391(e).

III. REQUIREMENTS OF 28 U.S.C. § 2243

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

14. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

IV. PARTIES

15. Petitioner Matias Velasco-Valdez was detained on July 7, 2026, and remains in immigration custody at the Central Valley Annex Detention Center in McFarland, California.

16. Respondent Warden of the Central Valley Annex Detention Center is employed as the warden where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

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

18. Respondent Todd M. Lyons is the Acting Director of Immigration and Customs Enforcement. He is named in his official capacity.

19. Respondent Markwayne Mullin is the Secretary of Homeland Security and is Petitioner's ultimate legal custodian. He is sued in her official capacity.

20. Respondent Todd Blanche is sued in his official capacity as the Acting Attorney General of the Department of Justice. He is one of Petitioner's legal custodians.

V. LEGAL FRAMEWORK

Right to a Hearing Prior to Re-detention

21. In Petitioner's particular circumstances, the Due Process Clause of the Constitution makes it unlawful for Respondents to re-arrest him without first providing a pre-deprivation hearing such that detention would now be warranted.

22. The Due Process Clause of the Fifth Amendment makes it unlawful for Respondents to detain Petitioner without first providing a hearing before a neutral decision maker to determine whether detention is justified by a risk of flight or danger to the community

23. Civil immigration detention must be justified by a permissible purpose, and must be reasonably related to that purpose. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The two permissible regulatory goals are "ensuring the appearance of [noncitizens] at future immigration proceedings" and "preventing danger to the community." *Id.*; *see also Matter of Patel*, 17 I&N Dec. 597, 666 (BIA 1976) ("[A noncitizen] generally is not and should not be detained or

required to post bond except on a finding that he is a threat to the national security, or that he is a poor bail risk.") (internal citations omitted).

24. ICE's power to arrest a noncitizen who is at liberty is also constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process"). "'It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.'" *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "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); *see also id.* at 718 (Kennedy, J., dissenting) ("Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention.").

25. Federal district courts in California have repeatedly recognized that the demands of due process and the limitations on DHS's authority to revoke a noncitizen's bond or parole both require a pre-deprivation hearing for a noncitizen on bond, like Petitioner, before ICE re-detains him. *See, e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021).

Petitioner's Protected Liberty Interest in His Conditional Release

26. Petitioner's liberty from immigration custody and his weighty interest in avoiding incarceration is protected by the Due Process Clause. *See Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment…lies at the heart of the liberty" that the Due Process Clause

protects); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972) (holding that a parolee has a protected liberty interest in his conditional release); *Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973).

27. In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. "[T]he liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.* Therefore, "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." *Id.*

28. This basic principle—that individuals have a liberty interest in their conditional release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions since *Morrissey*. *See, e.g., Young*, 520 U.S. at 152. Petitioner was in fact released from custody and placed in removal proceedings. *See also, Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

29. Procedural due process constrains governmental decision that deprive individuals of property or liberty interests, as defined by the Due Process Clause of the Fifth Amendment. *See Matthews v. Eldridge*, 424 U.S. 319,332 (1976) *see also Perry v. Sindermann*, 408 U.S. 593, 601-603(1972) (reliance on informal policies and practices may establish a legitimate claim of

entitlement to a constitutionally-protected interest). Infringing upon a protected interest triggers a right to a hearing before that right is deprived. *See Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972).

30. Civil detention with no foreseeable end infringes upon a protected liberty interest and thus violates his Constitutional rights. *See Zadvydas v. Davis*, 533 U.S. 678, 679, 121 S. Ct.2491,2493. 150 L. Ed. 2d 653 (2001) ("Freedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause. Government detention violates the Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards or a special justification outweighs the individual's liberty interest. The instant proceedings are civil and assumed to be nonpunitive, and the Government proffers no sufficiently strong justification for indefinite civil detention under this statute.").

31. In fact, an individual maintains a protected liberty interest in his freedom even where he obtained liberty through a mistake of law or fact. *See Hurd*, 864 F.3d at 683; *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations support the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to society, so it "would be inconsistent with fundamental principles of liberty and justice" to return him to prison) (internal quotation marks and citation omitted).

32. Here, Petitioner's 12 years of continued presences and residence in the US is in relevant ways similar to the liberty interest in parole protected in *Morrissey*. Just as in *Morrissey*, Petitioner's release "enables him to do a wide range of things open to persons'" who have never

been in custody or convicted of any crime, including to live at home, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

33. Petitioner's 12 years at liberty provides him a "a liberty interest that entitles him to constitutional due process before he is incarcerated." *Hurd*, 864 F.3d at 683; *see also Gonzalez-Fuentes*, 607 F.3d at 887 (holding that inmates released to electronic monitoring program had liberty interest protected by the Due Process Clause because the program "allowed the appellees to live with their loved ones, form relationships with neighbors, lay down roots in their community, and reside in a dwelling of their own choosing (albeit subject to certain limitations) rather than in a cell designated by the government."); *see also Jorge M.F.*, 534 F. Supp. 3d at 1054 (holding that released noncitizen made a substantial showing that he had liberty interest requiring pre-deprivation hearing before re-arrest, even after original bond order was reversed on appeal); *Duong*, 2025 U.S. Dist. LEXIS 185024, at *13-14 (noncitizen released on *Zepeda-Rivas* bail order had strong liberty interest even after expiration of settlement agreement); *Carballo v. Andrews*, No. 1:25-cv-00978-KES-EPG (HC), 2025 U.S. Dist. LEXIS 158839, at *4 (E.D. Cal., Aug. 15, 2025) (same).

Petitioner's Strong Interest in His Liberty Required a Hearing Before He Was Incarcerated By ICE

34. If a petitioner identifies a protected liberty interest, the Court must then determine what process is due. "Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). To determine the process due in this context, courts use the flexible balancing test set forth

in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See, e.g., Ortega*, 415 F. Supp. 3d at 970; *Jorge M. F.*, 534 F. Supp. 3d at 1055.

35. Under the *Mathews* test, the Court balances three factors: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

36. Importantly, the Supreme Court "usually has held that the Constitution requires some kind of a hearing before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). *Zinermon*, 494 U.S. at 128.

37. Here, the *Mathews* factors all favor Petitioner and establish that the government was required to provide Petitioner notice and a hearing prior to any incarceration.

38. First, Petitioner's private interest in his liberty is substantial. *See 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."). The Supreme Court has recognized that individuals released from serving a criminal sentence have a "valuable" liberty interest—even if that freedom is lawfully revocable. *Morrissey*, 408 U.S. at 482; *Young*, 520 U.S. at 152. the interest for an individual awaiting civil immigration proceedings is even weightier. *See, e.g., Ortega*, 415 F. Supp. 3d at 969 ("[G]iven the civil context" of immigration detention, a noncitizen's interest in release on bond is "arguably greater than the interest of parolees in

Morrissey."). Here, Petitioner's interest is even more pronounced than the average noncitizen given that he has been living in the United States ever since he initially entered the country.

39. Second, the risk of erroneous deprivation of liberty is high if ICE can unilaterally detain Petitioner without a hearing before a neutral adjudicator that would determine whether detention serves a permissible purpose, i.e. preventing danger or flight risk. *See Zadvydas*, 533 U.S. at 690. These developments show that detention is likely not warranted.

40. DHS's choice to detain Petitioner without a hearing has deprived him of his liberty and separated him from his family and community without any opportunity for Petitioner to contest this unilateral action. *See, e.g., Alvarenga Matute v. Wofford*, No. 1:25-cv-01206-KES-SKO, 2025 WL 2817795 (E.D. Cal. Oct. 3, 2025) (granting TRO for petitioner detained at [her] scheduled check-in without notice or hearing, and where compliance with release terms is in dispute, and ordering immediate release and enjoining Respondents from re-detention without a pre-deprivation hearing before a neutral adjudicator where Respondents bear the burden to show by clear and convincing evidence that petitioner is a flight risk or danger to the community); *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 WL 2718631 (E.D. Cal. Sept. 23, 2025) (same).

41. By contrast, the value of a deprivation hearing before a neutral decision-maker is high. "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). Indeed, the Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011). A hearing before a neutral decisionmaker is much more likely than

ICE's unilateral decision to produce accurate determinations regarding factual disputes, and to determine whether Petitioner actually currently poses a flight risk or danger such that detention is justified. *See, e.g, Doe*, 2025 U.S. Dist. LEXIS 37929, at *15 ("At a hearing, a neutral decisionmaker can consider all of the facts and evidence before him to determine whether Petitioner in fact presents a risk of flight or dangerousness."). Requiring such a hearing be held before Petitioner is detained serves to protect his liberty interest, facilitate his right to counsel and to gather evidence, and ensure that ICE's decision to incarcerate Petitioner's release does not evade review. *See Zinermon*, 494 U.S. at 127; Hurd, 864 F.3d at 683.

42. Third, the government's interest in detaining Petitioner without a hearing is low. The government cannot plausibly assert it has any basis for detaining Petitioner now, when he has lived in the community without incident for more than 12 years. In any event, providing Petitioner with a hearing before this Court (or another neutral decisionmaker) to determine whether there is evidence that Petitioner currently poses any risk of flight or danger to the community imposes a de minimis, if any, burden on the government. Such a hearing is far less costly and burdensome for the government than keeping Petitioner detained at what the Ninth Circuit described as a "staggering" cost to the public of $158 each day per detainee in 2017, "amounting to a total daily cost of $6.5 million" (the current cost now is likely significantly higher). *Hernandez*, 872 F.3d at 996.

43. Because the government failed to give Petitioner the notice and hearing he was due under the *Mathews* factors prior to re-detaining him, the Court should order him released until the government provides him with a constitutionally-compliant hearing.

44. At a pre-deprivation hearing, due process requires that the government justify re-

detention of Petitioner by clear and convincing evidence that he poses a flight risk or danger. *See Singh*, 638 F.3d at 1204 ("[D]ue process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake . . . are both particularly important and more substantial than mere loss of money.") (internal quotation marks omitted); *Ixchop Perez v. McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (noting the "consensus view" among District Courts concluding that, "where . . . the government seeks to detain [a noncitizen] pending removal proceedings, it bears the burden of proving that such detention is justified); *Jorge M.F.*, 534 F. Supp. 3d at 1057 (where noncitizen was due a pre-deprivation hearing before being returned to custody, ordering that the government bear the burden at the hearing by clear and convincing evidence); *Doe*, 2025 U.S. Dist. LEXIS 37929, at *21 (same).

Detention Bears No Reasonable Relationship to any Legitimate Purpose As Petitioner's Removal is not Reasonably Foreseeable

45. Here, Petitioner has extensive ties to the community, gainful employment, and he also has asylum claims. He has not missed any ICE check-ins. He was arrested by ICE on his to work in San Francisco, California on July 7, 2026.

46. To comport with due process, detention must bear a reasonable relationship to its two regulatory purposes-to ensure the appearance of noncitizens at future hearings and to prevent danger to the community pending the completion of removal. *Zadvydas v. Davis*, 533 U.S. at 690-691 (2001); *Diop v. ICE*, 656 F.3d 221, 233-234 (3d Cir. 2011); *Gordon v. Shanahan*, No.15-CIV-261, 2015 WL 1176706 at*10 (S.D.N.Y. Mar. 13, 2015). Such a justification for detention is required to be particularly strong once detention is presumptively unconstitutional.

47. The detention of Petitioner is arbitrary on its face. As ICE did not produce an arrest warrant and arrested and jailed Petitioner despite not exercising a calculation about whether he was a danger to the community or whether he was a flight risk. Without any explanation or new

basis why he is subject to detention-especially in light of the fact that he has a pending asylum application, his continued detention is arbitrary and violates due process.

Petitioner's Re-detention is Governed by 8 U.S.C. § 1226(a)

48. Under § 1226(a), an individual may be released if he does not present a danger to persons or property and is not a flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

49. Once a determination to release an individual from custody is made, the release order may be revisited when the facts or circumstances warrant revocation or reconsideration. 8 U.S.C. § 1226(b). For an individual who was once in custody, the Attorney General may take that individual back into custody by revoking the individual's release when the facts and circumstances warrant it.

50. Revocation and return to custody are authorized only based on the individualized facts and circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation decisions are limited in nature and may only be made by certain authorized officials. 8 C.F.R. § 1236.1(c)(9).

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

52. 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).

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

54. 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).

55. 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 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).

56. Thus, in the decades that followed, most people 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)).

57. 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.

58. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). *See*

Ex. 3. 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.

59. On September 5, 2025, the Board adopted this same position in a published decision, *Matter of Yajure Hurtado*. 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.

60. 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.

61. Even before ICE or the Board introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. 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).

62. 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., 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 (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); *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-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 (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); *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); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. 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).

63. 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.

64. 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]."

65. 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.

66. 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 admission or parole.

67. 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).

VI. FACTS

68. Petitioner has resided in the United States since 2014.

69. DHS placed Petitioner in removal proceedings before the Immigration Court pursuant

to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection and 8 U.S.C. § 1182(a)(7)(A)(i)(1).

70. Petitioner's is not scheduled for any upcoming Immigration Court hearing.

71. Petitioner fears returning to Mexico because he has suffered past persecution on account of his political opinion, and membership in a particular social group. He has extensive ties to the community.

72. On July 7, 2026, Petitioner was arrested by ICE ERO officers on his way to work in San Francisco, California. He had not missed any ICE check-ins prior to that.

73. Without relief from this Court, he faces the prospect of months, or even years, in immigration custody, separated from his family, home, employment, friends, and community.

VII. CLAIMS FOR RELIEF

COUNT I

Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution Procedural Due Process

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

75. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." Fifth Amendment of the U.S. Constitution.

76. Petitioner has a vested liberty interest in his release from immigration custody. Due Process does not permit the government to strip him of that liberty without a hearing before a neutral adjudicator. *See Morrissey*, 408 U.S. at 487-488.

COUNT II

Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution Substantive Due Process

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

78. The government may not deprive a person of life, liberty, or property without due process of law. Fifth Amendment of the U.S. Constitution. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). *Id.*

79. Petitioner has a fundamental interest in liberty and being free from official restraint. Civil detention that is unrelated to a valid regulatory purpose or excessive in relation to that purpose is punitive, in violation of substantive due process. *See Jones*, 393 F.3d at 934.

80. The government's arrest of Petitioner is untethered from any valid basis for civil immigration detention, is excessive in relation to any risk that does exist, and is therefore punitive in violation of substantive due process. Petitioner's continued detention is unlawful and violates due process.

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

82. Petitioner has a fundamental interest in liberty and being free from official restraint. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

COUNT III

Arbitrary and Capricious Agency Action (APA, 5 U.S.C. § 706)

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

84. Respondents DHS and ICE acted arbitrarily, capriciously, and contrary to law

when they detained Petitioner and failed to consider the totality of his immigration history, his pending asylum application.

85. By detaining Petitioner, without to considering the totality of his immigration history, Respondents acted in a manner that was arbitrary, capricious, and an abuse of discretion, in violation of 5 U.S.C. § 706(2)(A).

86. Respondents' conduct further violates administrative due process and the Fifth Amendment, as they failed to provide Petitioner with notice, a meaningful opportunity to respond, or any fair consideration of his pending application.

87. The government's inconsistent and self-contradictory treatment, without considering is immigration history and pending applications constitutes a fundamental violation of due process and administrative fairness that warrants judicial correction under the APA and the Constitution.

COUNT IV
Violation of the INA

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

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

90. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued

detention and violates the INA.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court to:

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside of the District of Eastern California while this habeas petition is pending;

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

d. Declare Respondents' actions in detaining Petitioner on July 7, 2026, and continuing to detain him contrary to law;

e. Issue a Writ of Habeas Corpus and order Respondents to immediately release Petitioner from their custody;

f. Order Respondents to provide Petitioner with a hearing before a neutral decisionmaker;

g. Enjoin Respondents from causing Petitioner any additional harm during the pendency of this litigation, such as by transferring him farther away from his legal Counsel or placing him into solitary confinement;

h. Declare that Petitioner's detention without an individualized determination before a neutral decisionmaker violates the Due Process Clause of the Fifth Amendment;

i. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner with no additional conditions of release that were not imposed prior to him detention in 2026;

j. 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

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

Respectfully submitted,

Date: July 9, 2026

By: /s/ Arash Yasrebi
Arash Yasrebi
Attorney for Petitioner