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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

Ezequiel Paulino Marcelino,

Petitioner,

v.

Christopher J. LaRose, in official capacity as Senior Warden of Otay Mesa Detention Center;
Gregory J. Archambeault, in official capacity as San Diego Field Office Director Enforcement and Removal Operations;
Markwayne Mullin, in official capacity as Secretary of Homeland Security, in official capacity;
Todd Blanche, in official capacity as Acting U. S. Attorney General;
David J. Venturella, in his official capacity as Acting Director of Immigration and Customs Enforcement;
U. S. Department of Homeland Security;
U. S. Immigration and Customs Enforcement;
and U. S. Department of Justice

Respondents.

Case No. '26CV4098 RBM SBC

PETITION FOR WRIT OF HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Ezequiel PAULINO MARCELINO (Alien No. [redacted] (hereinafter, "Mr. Paulino" or "Petitioner") is in the physical custody of Respondents at the Otay Mesa Detention Center.

2. Mr. Paulino faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) determined that he is subject to mandatory detention and because the Department of Homeland Security arrested him in violation of its own regulations.

3. Petitioner entered the United States without inspection, *see* 8 U. S. C. § 1182(a)(6)(A)(i), which, Respondents claim, makes him ineligible for bond.

4. Respondents' actions violate the Immigration and Nationality Act, the Due Process Clause of the Fifth Amendment, and Respondents' internal regulations.

JURISDICTION

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

6. Furthermore, "a federal court always has jurisdiction to determine its own jurisdiction," including its own subject-matter jurisdiction. *Brownback v. King*, 592 U.S. 209, 218-19 (2021) (quoting *United States v. Ruiz*, 536 U.S. 622, 628 (2002)).

7. 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 Immigration and Nationality Act (INA), 8 U.S.C. § 1252(e)(2).

VENUE

8. Venue is proper because Petitioner is in Respondents' custody in San Diego County, California, and because a substantial part of the events giving rise to Petitioner's claim occurred in the Southern District of California. 28 U.S.C. § 1391(e).

CUSTODY

9. Pursuant to 28 U. S. C. § 2241(c), only persons "in custody" may apply for a writ of habeas corpus. Custody may be physical or constructive custody, where the person is under a restraint on liberty not shared by the public generally. *See Jones v. Cunningham*, 371 U. S. 236, 240, 83 S. Ct. 373, 9 L. Ed. 2D 285 (1963) ("[B]esides physical imprisonment, there are other restraints on a man's liberty, restraints not shared by the public generally, which have been thought sufficient in the English-speaking world to support the issuance of habeas corpus.").

10. Here, Petitioner is in Respondents' physical custody, detained at the Otay Mesa Detention Center, San Diego County, California.

PARTIES

THE PETITIONER

11. The Petitioner is present in San Diego County, California, at the time of filing this petition.

THE RESPONDENTS

12. Respondent Christopher J. LaRose is Senior Warden of the Otay Mesa Detention Center; as such, he is responsible for the supervision and management of the Otay Mesa Detention Center. He is sued in his official capacity.

13. Respondent Gregory J. Archambeault is the Field Office Director for the San Diego Field Office, Enforcement and Removal Operations. The San Diego Field Office is responsible for local custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens. Gregory J. Archambeault is sued in his official capacity.

14. The San Diego Field Office's responsibility area includes San Diego County, California. Consequently, respondent Gregory J. Archambeault is the immediate legal custodian of petitioner.

15. Respondent Markwayne Mullin is the Secretary of Homeland Security of Is responsible for the actions of the Department of Homeland Security, its subagencies, and its officers and personnel. The Markwayne Mullin is sued in his official capacity.

16. Respondent Todd Blanche is the Acting Attorney General of the United States. He bears responsibility for the conduct and operations of the Department of Justice and all of its officers and personnel, including the Executive Office for Immigration Review. Respondent Todd Blanche is sued in his official capacity.

17. Respondent David J. Venturella is the Acting Director of Immigration

Customs Enforcement (ICE), and as such is responsible for the means by which the immigration laws of the United States are enforced. David J. Venturella is sued in his official capacity.

18. Respondent U. S. Department of Homeland Security is an agency of the United States with responsibility for the enforcement of the nation's immigration laws. It is under the direction of Respondent Markwayne Mullin.

19. Respondent U. S. Immigration and Customs Enforcement is an agency of the U. S. Department of Homeland Security and is under the direction of Respondent David J. Venturella.

20. Respondent U. S. Department of Justice is an agency of the United States, and is under the direction of respondent Todd Blanche.

21. Respondent Department of Justice maintains an adjudicatory body for immigration cases, the Executive Office for Immigration Review (EOIR). Part of EOIR includes the Office of the Immigration Judge, generally known as the Immigration Court.

LEGAL BACKGROUND

ACCARDI DOCTRINE AND REGULATORY REQUIREMENTS FOR AN ARREST

22. In *Accardi v. Shaughnessy*, 347 U. S. 260 (1954), the U. S. Supreme Court ruled that agencies must abide by their own regulations.

23. Under the *Accardi* doctrine, failure to abide by internal regulations renders agency actions unlawful. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974).

24. Here, Respondents failed to follow immigration-specific arrest and processing regulations. Warrantless arrests must comply with 8 C.F.R. § 287.8(c). For any arrest, immigration officers must have reason to believe that an individual committed an offense against the United States or was present in the United States illegally, 8 C.F.R. § 287.8(c)(2)(i). For warrantless arrests, officers must have reason to believe that an individual is "likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8(c)(2)(ii).

25. These regulatory requirements are mandatory, imposing substantive limitations on ICE's authority to conduct warrantless arrests. They are designed to prevent arbitrary deprivations of liberty. They are consistent with international treaty obligations.

26. Here, Respondents arrested Mr. Paulino without a warrant, having no reason to believe that he was likely to escape before a warrant could be obtained, violating the Department of Homeland Security's internal regulations.

IMMIGRATION ARBITRARY ARRESTS VIOLATE THE *CHARMING BETSEY* CANON AND 9TH CIRCUIT CASELAW

27. In *Murray v. The Charming Betsey*, 6 U.S. 64 (1804), the U. S. Supreme Court held that federal law should be interpreted in harmony with international law.

28. The Ninth Circuit Court of Appeals has applied the *Charming Betsy* canon in the immigration detention context. *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095 (9th Cir. 2001) relied in part on the *International Covenant on Civil and*

Political Rights (ICCPR), 16 December 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (1967), to find against the indefinite detention of aliens in the immigration context.

29. *Kim Ho Ma*, 257 F.3d at 1114, explained:

> We recently recognized that "a clear international prohibition" exists against prolonged and arbitrary detention. *Martinez v. City of Los Angeles*, 141 F.3d 1373, 1384 (9th Cir. 1998). Furthermore, Article 9 of the International Covenant on Civil and Political Rights (ICCPR), which the United States has ratified, *see* 138 Cong. Rec. S4781-84 (Apr. 2, 1992), provides that " [n]o one shall be subjected to arbitrary arrest and detention." *See* International Covenant on Civil and Political Rights, *opened for signature*, Dec. 19, 1966, 999 U.N.T.S. 171, 21 U.N. GAOR Supp. (No. 16) at 54, entered into force Mar. 23, 1976, at Art. 9(1); *see also Trans World Airlines, Inc. v. Franklin Mint Corp.*, 466 U.S. 243, 252 (1984) (holding that ambiguous Congressional action should not be construed to abrogate a treaty).

[Footnotes omitted.]

30. Like article 9 of the ICCPR, the Department of Homeland Security's internal regulations, 8 C. F. R. § 287.8(C)(2)(I) and (II), are meant to prevent arbitrary detention, like article 9 of the ICCPR. Per the *Charming Betsey* Canon and *Kim Ho Ma*, DHS' internal regulations should be interpreted in conformity with U. S. international treaty obligations.

31. In addition to article 9 of the ICCPR, article 2(3)(a) of the ICCPR, establishes,"To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity." Similarly, article 9(4) of the ICCPR establishes, "Anyone who is deprived of his liberty by

arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." If no court can order Petitioner's release after an arrest that violated DHS' internal regulations, Petitioner has no effective remedy, contravening the *Charming Betsy* canon and violating Ninth Circuit caselaw, such as *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095 (9th Cir. 2001) and *Martinez v. City of Los Angeles*, 141 F.3d 1373, 1384 (9th Cir. 1998).

BURDEN OF PROOF REQUIRED BY DUE PROCESS

32. Noncitizens physically present in the United States—including those who entered without inspection—are "persons" within the meaning of the Fifth Amendment and entitled to full procedural due process protections. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982).

33. In *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020), the Supreme Court ruled, "For these reasons, an alien in respondent's position has only those rights regarding admission that Congress has provided by statute." However, Petitioner is not challenging anything regarding his admission—he is challenging his detention.

34. In a post-*Thuraissigiam* decision, the Ninth Circuit Court of Appeals clarified that aliens without lawful immigration status have a right to Due Process under the Fifth Amendment of U. S. Constitution: "DHS must also 'notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to

which they will be deported'; otherwise, DHS violates their constitutional right to due process." *Ibarra-Perez v. USA*, No. 24-631 & D.C. No. 2:22-cv-01100- DWL-CDB (9th Cir. Aug. 27, 2025) (*quoting Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999)).

35. In another post-*Thuraissigiam* decision, the Ninth Circuit Court of Appeals also held that the Due Process Clause of the Fifth Amendment applies to aliens in detention: "We held that due process requires immigration courts to make contemporaneous records of bond hearings, most significantly, that the government prove dangerousness or risk of flight by clear and convincing evidence." *Martinez v. Clark*, 124 F.4th 775, 795-796 (9th Cir. 2024) (internal citations omitted). Thus, the Due Process Clause of the Fifth Amendment protects Mr. Paulino

36. Similarly, courts have found a right to a bond hearing, pursuant to the Due Process Clause of the Fifth Amendment, even where *Buenrostro-Mendez v. Bondi,* Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026) foreclosed statutory arguments. *See e. g., Hassen v. Noem*, 3:26-cv-00048-DB, fn. 1 (W.D. Tex. Feb. 9, 2026) *& Clemente Ceballos v. Garite*, 3:26-cv-00312-DB, fn. 2 (W.D. Tex. Feb 10, 2026) ("Buenrostro-Mendez does not change this case's outcome on procedural due process grounds.").

37. The Fifth Amendment Due Process clause requires that the government justify Mr. Paulino's detention, at a minimum, by clear and convincing evidence, before an impartial tribunal.

38. Here, there is no disinterested tribunal. Immigration Courts have become a part of the Executive Branch's mass-removal and mass-detention apparatus.

39. Petitioner's removal defense is likely to continue for many additional months or years. Absent a disinterested, impartial tribunal, Petitioner faces a substantial risk of prolonged or indefinite detention under penal-like conditions without the government having to prove that it serves its legitimate interests.

40. The constitutional infirmity here is not merely the length of detention, but the complete absence of a meaningful custody process. Petitioner is detained pursuant to a regime in which DHS is not required to justify continued detention with evidence.

41. Fundamental fairness requires, at a minimum, a meaningful opportunity to be heard before a neutral adjudicator when the government restrains physical liberty for a prolonged period, *Zadvydas*, 533 U.S. at 690; *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

42. Because Respondents' policies offer no alternative constitutionally adequate custody process, habeas corpus is the only effective mechanism by which Petitioner may contest the legality of his confinement. Continued detention under these circumstances offends the core protections of the Due Process Clause.

43. Petitioner respectfully requests that this Court order his immediate

release from ICE custody; or in the alternative, order Respondents to provide a prompt, constitutionally adequate individualized custody hearing before a neutral decisionmaker with authority to grant release, at which the government bears the burden of justifying continued detention by clear and convincing evidence.

44. Three factors determine whether due process is satisfied: (1) "the private interested 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 [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U. S. 319, 335 (1976).

45. **Immigration detention implicates a fundamental liberty Interest affected by official action.** *See Zadvydas v. Davis*, 533 U. S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.").

46. Freedom from physical restraint "is 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). The government's interest in waging a war is insufficient to outweigh a person's interest in being free from physical detention:

> Moreover, as critical as the Government's interest may be in detaining those who actually pose an immediate threat to the national security of the United States during ongoing international conflict, history and common sense teach us that an unchecked system of detention carries the potential to become a means for oppression and abuse of others who do not present that sort of threat.

Hamdi, 542 U. S. at 530.

47. Here, the government's interest is not as weighty as that associated with an international conflict. Therefore, Mr. Rivera's fundamental liberty interest prevails.

48. **The risk of erroneous depravation and the value of additional procedural safeguards weigh in favor of the government bearing the burden of proof to justify an alien's detention.**

49. Pursuant to Due Process, Mr. Paulino's liberty interest requires that the Government justify Mr. Paulino's detention. Persons labeled as enemy-combatants are afforded more due process than aliens in Mr. Paulino's situation.

50. Applying the *Matthews v. Eldridge*, the U. S. Supreme Court found that the Government has the initial burden to demonstrate that persons labeled as enemy-combatants meet the criteria, with the burden then shifting to the person so labeled. *Hamdi*, 542 U. S. at 534. The Supreme Court explained, "Thus, once the Government puts forth credible evidence that the habeas petitioner meets the enemy-combatant criteria, the onus could shift to the petitioner to rebut that evidence with more persuasive evidence that he falls outside the criteria." *Hamdi*, 542 U. S. at 534; *see also Hamdan v. Rumsfeld*,

548 U. S. 557, 603 ("At a minimum, the Government must make a substantial showing that the crime for which it seeks to try a defendant by military commission is acknowledged to be an offense against the law of war. That burden is far from satisfied here."). Thus, even persons alleged to be enemy-combatants have an opportunity to be heard where the government bears the burden.

51. Here, Mr. Paulino is not an enemy-combatant. He is a long-term resident of the United States with three U. S. citizen children, a pending application for Deferred Action for Childhood Arrivals, and eligible for Non-Legal Permanent Resident Cancellation of Removal under 8 U. S. Code § 1229b(b). Despite being on much better footing than an alleged enemy-combatant, Mr. Paulino has no opportunity to be heard, bearing the burden or not, in violation of the Due Process Clause of the Fifth Amendment.

52. **The government's interest is minimal, if at all, against the burden of proof by clear and convincing evidence.**

53. In the Ninth Circuit, the government must prove, by cleer and convincing evidence, that an alien is dangerous to the community or a flight risk to continue to hold him:"We held that due process requires immigration courts to make contemporaneous records of bond hearings, most significantly, that the government prove dangerousness or risk of flight by clear and convincing evidence." *Martinez v. Clark*, 124 F.4th 775, 795-796 (9th Cir. 2024) (internal citations omitted).

54.Similarly, in civil cases where personal liberty is at risk, the Supreme Court has reaffirmed the clear and convincing standard. *See, e. g., Addington v. Texas*, 441 U.S. 418 (1979) (upholding the clear and convincing standard for civil commitment for mental health patients); *United States v. Salerno*, 481 U.S. 739, 751 (finding that the Due Process Clause allows for pretrial detention if "the Government proves by clear and convincing evidence that an arrestee presents an identified and articulable threat to an individual or the community"); *Foucha v. Louisiana*, 504 U. S. 71, 86 (1992) ("Furthermore, in civil commitment proceedings the State must establish the grounds of insanity and dangerousness permitting confinement by clear and convincing evidence.") (internal citations omitted); *United States v. Comstock*, 560 U.S. 126, 130–31 2 (2010) (upholding the constitutionality of a statute, with the clear and convincing evidence standard, allowing the continued detention of mentally ill, sexually dangerous prisoners).

55. The U. S. Supreme Court has held that the reasoning of the cases cited also applies in the immigration context:

> Nowhere did we suggest that the 'constitutionally protected liberty interest' in avoiding physical confinement, even for aliens already ordered removed, was conceptually different from the liberty interest of citizens considered in Jackson, Salerno, Foucha, and Hendricks. On the contrary, we cited those cases and expressly adopted their reasoning, even as applied to aliens whose right to remain in the United States had already been declared forfeited.

Demore v. Kim, 538 U.S. 510, 553 (2003) (Souter, J., concurring in part and disssenting in part).

56. Thus, Respondents must prove by clear and convincing evidence that Mr. Paulino's detention serves a legitimate government interest. Failure to do so constitutes a violation of the Due Process Clause of the Fifth Amentment.

STATUTORY REQUIREMENTS FOR BOND

57. Pursuant to 8 U. S. C. § 1225(b)(2)(A), aliens who are apprehended at or near the border, shortly after crossing, are subject to mandatory detention:

> Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

[Emphasis added.].

58. However, aliens already present in the United States—not apprehended upon crossing or shortly thereafter—are eligible for bond hearings under 8 U. S. C. § 1226(a).

59. The Department of Homeland Security's policies and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), contravene the statutory framework regarding the detention of aliens. Aliens, such as Mr. Paulino, who was not apprehended upon entering the U. S. and who has resided in the United States for decades are subject to 8 U. S. C. § 1226(a), allowing bond hearings.

60. 8 U. S. C. § 1225(a)(1) defines an applicant for admission:

> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

Respondents, therefore, assert that 8 U. S. C. § 1225(a)(1) and 8 U. S. C. § 1225(b) require detention for aliens who have entered without inspection.

61. If 8 U. S. C. § 1226(a) categorically excluded all aliens who entered without inspection from bond eligibility, the language in 8 U. S. C. § 1226(c)(1)(E) would be superfluous. 8 U. S. C. § 1226(c)(1)(E) provides for mandatory detention for aliens who are present without admission or parole *and* who have committed certain crimes. It follows that aliens without admission or parole are generally eligible for bond under 8 U. S. C. § 1226(a). *See Corley v. United States*, 556 U.S. 303, 314 (2009) (holding that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant").

62. The interpretation of 8 U. S. C. § 1226(a) as the default bond provision, regardless of manner of entry, is consistent with *Nielsen v. Preap*, 586 U. S. 392 (2019): "Although the Ninth Circuit viewed subsections [8 U. S. C. § 1226(a)] and [8 U. S. C. § 1226(c)] as establishing separate sources of arrest and release authority, in fact subsection [8 U. S. C. § 1226(c)] is simply a limit on the authority conferred by subsection [8 U. S. C. § 1226(a)]." If 8 U. S. C. § 1226(c)(c)(1)(E) limits the authority of 8 U. S. C. § 1226(a) to grant bond to aliens who entered without inspection and committed certain crimes, 8 U. S. C. § 1226(a) generally provides authority to grant bond for persons who entered without inspection in other circumstances, for example, if they do not have any

disqualifying crimes. If 8 U. S. C. § 1226(a) did not govern bond eligibility for aliens present without inspection, 8 U. S. C. § 1226(c) would not have mentioned them.

63. 8 C. F. R. § 236.1(c)(2) further reinforces these points: "Subject to paragraph (c)(6)(i) of this section, but notwithstanding any other provision within this section, an alien subject to the [Transition Period Custody Rules] who is not lawfully admitted is not eligible to be considered for release from custody." The regulation implies that an alien who was not lawfully admitted, but who is not subject to the Transition Period Custody Rules, is eligible to be considered for release from custody. *See United States v. Wells Fargo Bank*, 485 U.S. 351, 357 (1988) (holding that the expression of one is the exclusion of another).

64. Consistent with bond eligibility for aliens who entered without inspection, *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006), lists manner of entry as a discretionary factor. *Matter of Guerra* would not have listed "manner of entry" as a discretionary, not determining, factor if aliens without inspection were ineligible for bond. Categorically excluding aliens from bond for having entered without inspection is arbitrary and capricious.

65. Bond eligibility for aliens who entered without inspection is further supported by *Jennings v. Rodriguez*, 583 U.S. 281 (2018). *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018) held that 8 U. S. C. § 1226(a) applies to aliens already present in the United States, as opposed to aliens seeking admission (subject to 8 U. S. C. § 1225(b)).

66. The U. S. Supreme Court ruled:

> In sum, U. S. immigration law authorizes the Government to detain certain aliens *seeking admission* into the country under §§1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§1226(a) and (c).

Jennings v. Rodriguez, 138 S.Ct. 830, 838 (2018) (emphasis added). The Supreme Court distinguished *aliens seeking admission* from *aliens already present in the country*. Aliens already present in the U. S. are eligible for bond.

67. Interpreting 8 U. S. C. § 1226(a), the Supreme Court avoided language that would have implied that only aliens admitted (or with inspection) qualify for bond. Instead, the Supreme Court referred to "aliens already present in the United States," which includes aliens present without inspection. *Jennings v. Rodriguez*, 138 S.Ct. 830, 846 (2018). "As noted, §1226 applies to aliens already present in the United States." *Id.*

68. On November 30, 2016, during oral argument for *Jennings v. Rodriguez*, the Government represented that 8 U. S. C. § 1226(a) allows aliens who entered without inspection to qualify for bond. Justice Sonia Sotomayor asked the Government whether an alien who has resided within 50 miles of the border for 20 years would be subject to 8 U. S. C. § 1225(b). Transcript of Oral Argument at 8, *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018) (No. 15–1204). The Government replied that such an alien would be subject to 8 U. S. C. § 1226(a), eligible for bond. *Id.*

69. The relevant portion reads:

JUSTICE SOTOMAYOR: So what happens to –I

JUSTICE SOTOMAYOR: So what happens to --I don't know how many of these would exist, but an alien who has resided within 14 miles of the border, not 14 – how many miles?

GENERAL GERSHENGORN: Within a hundred miles of the border and 14

JUSTICE SOTOMAYOR: Hundred miles from the border, that's possible, who has been there for 20 years, they would still be held under 1225?

GENERAL GERSHENGORN: So I'm sorry, Your Honor. They would be held under 1226(a). So this is on - - on - - they –if they hadn't committed other crimes, and - -and so, therefore, were not subject to the mandatory detention under 1226(c).

JUSTICE SOTOMAYOR: I'm assuming no criminal alien.

GENERAL GERSHENGORN: Okay.

JUSTICE SOTOMAYOR: I'm talking about an alien who has come into the United States illegally without being admitted who takes up residence 50 miles from the border.

GENERAL GERSHENGORN: The answer is they are held under 1226(a) and that they get a bond hearing under - -and this is at page 156a of the appendix.

Transcript of Oral Argument at 8, *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018) (No. 15–1204).

70. Furthermore, bond eligibility, under 8 U. S. C. § 1226(a), for persons who entered without inspection is consistent with the legislative history. The legislative history of 8 U. S. C. § 1226(a) demonstrates that congress intended for aliens already present in the United States be eligible for bond (except for certain criminal aliens subject to 8 U. S. C. § 1226(c)), even if they entered without inspection. Congress enacted the 8 U. S. C. § 1226(a) through the Illegal

Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. 104–208, 110 Stat. 3009.

71. Before IIRIRA, the predecessor to 8 U. S. C. § 1226(a) regulated detention for aliens in the United States. *See* 8 U.S.C. § 1252(a)(1) (1994) ("Pending a determination of deportability . . . any [alien] . . . may, upon warrant of the Attorney General, be arrested and taken into custody."). The predecessor section also established bond eligibility for aliens who entered without inspection. *See* 8 U.S.C. § 1252(a)(1) (1994) ("[A]ny such [alien] taken into custody may, in the discretion of the Attorney General . . . be continued in custody . . . [or] be released under bond[.]").

72. Congress explained, "New section 236(a) [8 U. S. C. § 1226(a)] restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.). In short, aliens who were already present in the United States, but who entered without inspection, were eligible for bond. Because congress declared this part unchanged, aliens who entered without inspection remain bond eligible.

73. The Laken Riley Act, Pub. L. 119-1, 139 Stat. 3009 (2025), added new grounds for mandatory detention under 8 U. S. C. § 1226(c). However, it made no effort to change 8 U. S. C. § 1226(a), leaving its original scope untouched. The

Act confirmed decades of practice, allowing aliens already present in the United States, even if having entered without inspection, to qualify for bond.

74. The long-standing practice is reflected in the federal guidance associated with the original regulations implementing 8 U. S. C. § 1226(a). 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) established, "Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). If Congress wanted to limit this long-standing practice, it would have done so, amending 8 U. S. C. § 1226(a). The Laken Riley Act would have been the perfect opportunity to make the change, but congress chose not to, leaving bond eligibility requirements unchanged—even for aliens present without inspection. Therefore, entry without inspection does not categorically bar aliens from bond eligibility under 8 U. S. C. § 1226(a).

75. These interpretations of the relevant statutory framework are consistent with the *Betsey Canon* and international law.

STATEMENT OF FACTS

RESPONDENTS' CONDUCT

76. On January 20, 2025, the President of the United States issued "Protecting the American People Against Invasion," an executive order, directing the Department of Homeland Security to "take all appropriate action to enable"

ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures, such as mass detention.

77. In late May of 2025, Kristi Noem, former Secretary of Homeland Security, and White House Deputy Chief of Staff Stephen Miller coordinated with Immigration and Customs Enforcement, setting an arrest quota of 3,000 per day and threatening job consequences for officials not meeting the quota.[1]

78. On May 28, 2025, Deputy Chief of Staff Miller confirmed that "[u]nder President Trump's leadership, we are looking to set a goal of a minimum of 3,000 arrests for ICE every day, and President Trump is going to keep pushing to get that number up higher each and every single day."[2]

79. In an email, senior officials instructed ICE agents to "turn the creativity knob up to 11" and aggressively "push the envelope" in arrests, including pursuing "collaterals." One email advised, "If it involves handcuffs on wrists, it's probably worth pursuing."[3]

80. On July 8, 2025, ICE, "in coordination with" the Department of

[1] Julia Ainsley, et al., A sweeping new ICE operation shows how Trump's focus on immigration is resphaping federal law enforcement, NBC News (June 4, 2025), https://www.nbcnews.com/politics/justice-department/ice-operation-trump-focus-immigration-reshape-federal-law-enforcement-rcna193494 (last visited January 12, 2026)
[2] Hannity, Sean, "Stephen Miller says the admin wants to create the strongest immigration system in US History," FOX NEWS (May 28, 2025), https://www.foxnews.com/video/6373591405112 (last visited January 13, 2026)
[3] Olivares, José, "US immigration officers ordered to arrest more people even without warrants," The Guardian (June 4, 2025) https://www.theguardian.com/us-news/2025/jun/04/immigration-officials-increased-detentions-collateral-arrests (last visited January 13, 2026)

Justice, issued the "Interim Guidance Regarding Detention Authority for Applicants for Admission," claiming that aliens who entered the United States without inspection are subject to mandatory detention under 8 U. S. C. § 1225(b)(2)(A)—regardless of when or where they were apprehended.

81. Under the new policy, it does not matter whether aliens have resided in the U. S. for decades, nor whether they were apprehended far from the border; if they entered without inspection, they are subject to mandatory detention, according to Respondents.

82. Similarly, in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals ruled that aliens who entered without inspection are subject to mandatory detention under 8 U. S. C. § 1225(b)(2)(A).

83. The Department of Homeland Security's policies and *Matter of Yajure Hurtado* contravene the Due Proccess Clause of the Fifth Amendment.

84. In addition, Respondents have a pattern and practice of carrying out warrantless arrests without following their own regulations, in violation of the *Accardi* doctrine.

PETITIONER'S CIRCUMSTANCES

85. Petitioner is a citizen of Mexico. In 2006, Petitioner entered the United States as a minor. Petitioner was not apprehended upon arrival. Petitioner has not left the United States since then.

86. Petitioner is detained at Otay Mesa Detention Center, San Diego, California.

87. Prior to Petitioner's detention, he was residing in New Port Richey, Florida, with his wife and U. S. citizen children.

88. On June 26, 2026, the Pinellas County Sheriff (Florida) arrested Petitioner for allegedly driving without a license, taking him to the Pinellas County Jail (Florida).

89. On or about July 7, 2026, or July 8, 2026, the Pinellas County Jail refused to release Petitioner, despite having paid the bond, instead turning him over to Immigration Customs Enforcement (ICE).

90. ICE detained Petitioner without a warrant.

91. Petitioner was not evading law enforcement, posed no danger to any person or to the community, and presented no risk of flight. There was no factual basis to conclude that Petitioner was "likely to escape before a warrant could be obtained," as required by 8 C.F.R. § 287.8(c)(2)(ii).

92. On or about July 8, 2026, ICE transported Petitioner to a facility in Tampa, Florida.

93. On the same day, ICE transferred Petitioner to Krome Detention Center
in Miami, Florida, arriving at around midnight.

94. Respondents held Petitioner at Krome Detention Center until Saturday, July 11, 2026.

95.On July 11, 2026, officials at Krome Detention Center advised Petitioner that he was being transferred. Department of Homeland Security (DHS) officials held Petitioner in the waiting area until 3 am, July 12, 2026.

96. DHS officials transferred Petitioner to an airport in Miami, Florida, at 3 am, in chains.

97. DHS officials forced Petitioner to sit in an airplane for hours in the middle of the night, only to be told that the airplane was not going to fly out, forcing him onto a bus for hours.

98. DHS officials took Petitioner to a second airplane, only to be told that the airplane would also not be taking off.

99. At 11pm, on July 12, 2026, DHS officials took Petitioner to the waiting area at the Krome Detention Center, forcing him to spend the night there, instead of a proper dormitory.

100. The following morning, July 13, 2026, DHS officials flew Petitioner to San Diego, California, first making a 40 minute in Arizona.

101. Petitioner arrived in San Diego, California, at around 4pm on July 13, 2026.

102. Respondents have held and continue to hold Petitioner in their physical custody at Otay Mesa Detention Center, San Diego, California, since July 13, 2026.

103. Petitioner has pending application for Deferred Action for Childhood Arrivals.

104. Petitioner is eligible for Non-LPR Cancellation of Removal under 8 U. S. Code § 1229b(b) before the Immigration Court.

105. Petitioner has a Master Calendar Hearing scheduled for July 21 2026, at 8:00 AM, before the immigration court in Miami, Florida.

CLAIMS FOR RELIEF

COUNT I

I. Violation of the *Accardi* Doctrine with Respect to 8 C. F. R. § 287.8(C)(2)(I) and (II)

106. Petitioner repeats and incorporates by reference each allegation from the preceding paragraphs.

107. Under the *Accardi* doctrine, federal agencies must follow their binding regulations. Failure to abide by internal binding regulations renders agency action unlawful. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974); *see also Ramon-Sepulveda v. INS*, 743 F.2d 1307, 1310 (9th Cir.1984) ("It is a well-known maxim that agencies must comply with their own regulations). This principle applies with full force in immigration proceedings and is enforceable through habeas corpus where regulatory violations result in unlawful detention.

108. The United States has failed to follow immigration-specific arrest and processing regulations. Warrantless arrests must comply with 8 C.F.R. § 287.8(c). For any arrest, immigration officers must have reason to believe that an individual committed an offense against the United States or was present in

the United States illegally. 8 C.F.R. § 287.8(c)(2)(i). And, for a warrantless arrest, officers must also have reason to believe that an individual is "likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8(c)(2)(ii).

109. These regulatory requirements are mandatory, not discretionary. They impose substantive limitations on ICE's authority to conduct warrantless arrests in the interior of the United States and are designed to protect against arbitrary deprivations of liberty.

110. When Petitioner was taken into ICE custody in July of 2026, and at all times thereafter, Petitioner has complied with all immigration requirements, including appearing for his immigration proceedings and remaining available to immigration authorities.

111. Petitioner was taken into ICE custody without a properly issued warrant. Petitioner was not evading law enforcement, posed no danger to any person or to the community, and presented no risk of flight. Petitioner has no record of failing to appear to Court dates. There was no factual basis to conclude that Petitioner was "likely to escape before a warrant could be obtained," as required by 8 C.F.R. § 287.8(c)(2)(ii).

112. ICE officers, therefore, failed to comply with a mandatory regulatory Prerequisite to a lawful warrantless arrest. This violation of DHS's own binding regulations renders Petitioner's arrest unlawful under the *Accardi* doctrine.

113. The consequences of this regulatory violation are not limited to the moment of arrest. Petitioner's ongoing detention flows directly from—and is

predicated upon—the unlawful warrantless arrest conducted in violation of 8 C.F.R. § 287.8(c). Continued detention based on an arrest that contravenes binding regulations is itself unlawful.

114. Federal courts have repeatedly recognized that habeas corpus is an Appropriate vehicle to remedy detention that results from an agency's failure to follow its own regulations, particularly where those regulations are designed to protect individual liberty. See *Accardi*, 347 U.S. at 267–68; *INS v. St. Cyr*, 533 U.S. 289, 301-305 (2001).

115. Habeas relief is therefore warranted. Petitioner respectfully requests that this Court grant the writ and order his immediate release from ICE custody or provide appropriate relief to remedy the unlawful detention resulting from DHS's regulatory violations where the government must justify the detention by clear and convincing evidence. *See Boumediene v. Bush*, 553 U.S. 723, 728-729 ("[T]he habeas court must have the power to order the conditional release of an individual unlawfully detained.").

116. Petitioner's release would be consistent with the *Charming Betsey* canon, international law, and *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095 (9th Cir. 2001) holding that federal law should be interpreted harmoniously with international law prohibiting aliens' arbitrary and indefinite detention, requiring an opportunity to contest one's detention.

COUNT II

II. Constitutional Violation of the Right to Due Process

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

118. The Due Process Clause requires, at a minimum, that the government bear the burden of proof, by a clear and convincing standard, for an impartial tribunal to evaluate whether Petitioner is a flight risk or a danger to the community violates his due process rights.

119. The Due Process Clause requires, at a minimum, (1) an opportunity to be heard, (2) before an impartial tribunal, and (3) for the government to bear the burden of proof, by a clear-and-convincing evidence standard. *Martinez v. Clark*, 124 F.4th 775, 795-796 (9th Cir. 2024).

120. Here, Petitioner has no opportunity to be heard under Respondents' policies. Respondents must provide a constitutionally adequate hearing where Petitioner has the opportunity to be heard by an impartial tribunal and the government must prove, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community to continue to hold him.

COUNT III

III. Violations of the Immigration and Nationality Act (INA)

121. The mandatory detention provision of 8 U. S. C. § 1225(b)(2) does not apply to all aliens who entered the United States without inspection. Specifically,

the mandatory detention provision of 8 U. S. C. § 1225(b)(2) does not apply to aliens who have resided in the United States for decades and were not apprehended upon entry at the border.

122. Aliens who have resided in the United States for decades and were not apprehended upon entry at the border are eligible for bonds under 8 U. S. C. § 1226(a), unless they are subject to 8 U. S. C. § 1226(c), 8 U. S. C. § 1225(b)(1), or 8 U. S. C. § 1231.

123. Applying 8 U. S. C. § 1225(b)(2) to Petitioner contravenes the INA, unlawfully mandating his continued detention.

124. Respondents should allow Petitioner to request bond.

PRAYER FOR RELIEF

1. Wherefore petitioner prays for the following relief from this court:

a) Assume jurisdiction in this matter;

b) Issue an immediate order barring the respondents from transferring Petitioner out of the Southern District of California while this habeas corpus petition is pending;

c) Issue an order to show cause why this petition should not be granted within three (3) days;

d) Declare that Petitioner's arrest by ICE violated the *Accardi* doctrine, failing to comply with binding immigration arrest regulations;

e) Declare petitioner's continued detention without bond violates applicable regulations, the APA, the INA, and Fifth

Amendments to the Constitution of the United States;

e) Issue a writ of habeas corpus, ordering respondents to release petitioner from custody, or, in the alternative, hold its own bond hearing before this Court; and

f) Grant any further relief as the court may deem just and proper.

2. Alternatively, if the Court orders Respondents to promptly provide the Petitioner with a bond hearing before an immigration judge, the Petitioner respectfully requests the following additional safeguards:

a. That the Respondents shall bear the burden of establishing by clear and convincing evidence that the Petitioner poses a danger or flight risk;

b. That the Government shall not take into account or argue against bond based on any *ultra vires* factors outside the regulations;

c. That any bond set shall take into account the Petitioner's ability to pay and to the greatest extent possible utilize alternatives to detention;

d. That any order denying bond based on flight risk or danger shall detail with specificity the evidentiary/factual basis for such finding, and disclose the substance of any communications of any kind (direct or indirect, verbal, written, or in any other form) received after December 1, 2025, by the Immigration Judge issuing the order,

regarding bond determinations for noncitizens after a writ habeas corpus has been issued;

e. That the Court shall retain jurisdiction to review the bond decision to ensure compliance with the Court's order and due process;

f. That Respondents shall be prohibited from invoking the automatic stay provisions under 8 C.F.R. § 1003.19(i)(2) as that regulation violates the procedural due process rights of noncitizens granted bond; and

g. Grant any further relief as the court may deem just and proper.

DATED this 15th day of July 2026.

/s/Roger Ponce, Esq.
Roger Ponce, Esq.
Attorney for Petitioner Ezequiel PAULINO MARCELINO
E-mail: info@rogerponcelaw.com

PLAINTIFF-PETITIONER VERIFICATION

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, on information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

By: */s/Roger Ponce, Esq.*
Roger Ponce, Esq.
Attorney for Petitioner Ezequiel PAULINO MARCELINO
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