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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

William Micael Morales Ortiz,

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. '26CV4127 GPC MMP

PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

1. Petitioner William Micael MORALES ORTIZ (Alien No. [redacted] (hereinafter, "Mr. Morales" or "Petitioner") is in the physical custody of Respondents at the Otay Mesa Detention Center.

2. Petitioner challenges (1) the legal bases for the Department of Homeland Security's warrantless arrest; (2) the lack of impartial tribunals for immigration bond hearings; and (3) the burden of proof for immigration bond hearings.

JURISDICTION

3. 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).

4. 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)).

5. 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).

1. 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).

2. 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)).

3. 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).

4. This court has jurisdiction to address Mr. Morales's claim that his warrantless arrest violated the Department of Homeland Security's internal regulation, contravening *Accardi v. Shaughnessy*, 347 U. S. 260 (1954). Mr. Morales is challenging the legal bases (or lack thereof) of the Department of Homeland Security's initial arrest, not the Department's decision or action to commence proceedings, adjudicate cases, or execute removal orders as precluded by 8 U.S.C. § 1252(g). *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (holding that "[t]he provision [8 U.S.C. § 1252(g)] applies only to three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders'"). Here, the Department had not commenced removal proceedings against Petitioner when it carried out its warrantless arrest. Therefore, this court has jurisdiction to review Mr. Morales's claim that the Department violated the *Accardi* doctrine.

5. Regarding Mr. Morales's claims about correct burden and standards of proof required by the Due Process Clause, this Court has jurisdiction because these are questions of law—Mr. Morales is not challenging the underlying discretionary decision whether to grant bond. *See Martinez v. Clark*, 144 S. Ct. 1339 (2024) (vacating Ninth Circuit decision that found no jurisdiction to review a dangerousness finding at a bond hearing, remanding case to the Ninth Circuit in light of *Wilkinson v. Garland*, 601 U.S. 209 (2024)); *Martinez v. Clark*, 124 F.4th 775 (9th Cir. 2024) (finding that 8 U. S. C. § 1226(e) does not limit habeas jurisdiction over constititional claims or questions of law") (internal quotations omitted); *INS v. St. Cyr*, 533 U. S. 289 (2001) ("and that scheme, as discussed below, did allow for review on habeas of questions of law concerning an alien's eligibility for discretionary relief.").

EXHAUSTION OF ADMINISTRATIVE REMEDIES

6. There is no statutory exhaustion of administrative remedies requirement where a noncitizen challenges the lawfulness of his detention. *Cf.* 8 U.S.C. § 1252(d)(1) (requiring exhaustion of administrative remedies only where requesting review of a final order of removal).

7. "[W]here Congress has not clearly required exhaustion, sound judicial discretion governs." *Jones v. Zenk*, 495 F. Supp. 2d 1289, 1297 (N.D. Ga. 2007) (citing *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992)). As a matter of discretion, exhaustion of administrative remedies should be waived "(1) where prejudice to the prisoner's subsequent court action 'may result, for example, from

an unreasonable or indefinite timeframe for administrative action'; (2) where the administrative agency may not have the authority 'to grant effective relief'; or (3) 'where the administrative body is shown to be biased or has otherwise predetermined the issue before it.'" *Jones*, 495 F. Supp. 2d at 1297 (citing *McCarthy*, 503 U.S. at 146-48). *See also Woodford v. Ngo*, 548 U.S. 81, 103 (2006) (Breyer, J. concurring) (noting "well-established exceptions to exhaustion" that include constitutional claims, futility, hardship to the petitioner, and where administrative remedies are inadequate or unavailable) (citations omitted)).

8. In making its discretionary decision, the Court should consider the urgency of the need for immediate review. "Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent." *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).

9. Petitioner's constitutional challenge to indefinite detention is exempt from administrative exhaustion requirements. "[D]ue process claims generally are exempt from this procedural rule because the BIA does not have jurisdiction to adjudicate constitutional issues" (internal citations omitted.). *Vargas v. U.S. Dep't of Immigration & Naturalization*, 831 F.2d 906, 908 (9th Cir. 1987); *see Woodford v. Ngo*, 548 U.S. 81, 103 (Breyer, J. concurring) (constitutional claims are exempt from administrative exhaustion).

10. Here, the Board of Immigration Appeals does not have authority to review Mr. Morales's constitutional claims. In any case, the Board of Immigration Appeals has already decided the core of Morales's claims on other grounds. The Board of Immigration Appeals determined that burden of proof is on the alien during bond hearings. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). Therefore, it is futile to raise these claims before the Board. Mr. Morales is further claiming that neither the Immigration Courts nor the Board of Immigration Appeals is impartial. It is futile to ask the Board of Immigration Appeals to rule on its own impartiality (or lack thereof). It is also futile to ask the Board of Immigration Appeals to rule on whether it is abiding by its own regulations, asking it to pass judgment on itself. Therefore, appealing to the Board is futile.

VENUE

11. 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

12. 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.").

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

PARTIES

THE PETITIONER

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

THE RESPONDENTS

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

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

24. 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

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

26. 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).

27. 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).

28. 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.

29. Here, Respondents arrested Mr. Morales 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

30. 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.

31. 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.

32. *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.]

33. 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. Per the *Charming Betsey* Canon and *Kim Ho Ma*, DHS'

internal regulations should be interpreted in conformity with U. S. international treaty obligations.

34. 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 regarding 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). Immigration Courts only have jurisdiction to review bond petitions under 8 U. S. C. § 1226(a), but lack jurisdiction order release for an unlawful arrest.

BURDEN OF PROOF REQUIRED BY DUE PROCESS

35. 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).

36. 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.

37. 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)).

38. 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. Morales.

39. The Fifth Amendment Due Process clause requires that the government justify Mr. Morales's detention, at a minimum, by clear and convincing evidence, before an impartial tribunal. *Martinez v. Clark*, 124 F.4th 775, 795-796 (9th Cir. 2024).

40. 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).

41. **Immigration detention implicates a fundamental liberty Interest affected by official action.** "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).

42. 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.

43. Here, the government's interest is not as weighty as that associated with an international conflict. Mr. Morales is in the continental United States, deprived of his substantive right to liberty, without due process. Enemy combatants are afforded more rights than Mr. Morales has received. Therefore, Mr. Morales's fundamental liberty interest prevails.

44. **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.**

45. Pursuant to Due Process, Mr. Morales's liberty interest requires that the Government justify Mr. Morales's detention.

46. 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.

47. Here, Mr. Morales is a long-term resident of the United States with two U.

S. citizen children and eligibility for Non-Legal Permanent Resident Cancellation of Removal under 8 U. S. Code § 1229b(b). Therefore, the risk of erroneous deprivation is high, especially without the proper safeguards required by the Due Process Clause, as was the case here.

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

49. In the Ninth Circuit, the government must prove, by clear 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).

50. 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).

51. 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).

52. Thus, Respondents must prove by clear and convincing evidence that Mr. Morales's detention serves a legitimate government interest. Failure to do so constitutes a violation of the Due Process Clause of the Fifth Amentment and is inconsistent with the *Betsey Canon* and international law.

LACK OF IMPARTIAL TRIBUNALS

53. "[T]he habeas court must have the power to order the conditional release of an individual unlawfully detained." *Boumediene v. Bush*, 553 U.S. 723, 728-729; *see also INS v. St. Cyr*, 533 U.S. 289, 306 n.28 (2001) (quoting *Gegiow v. Uhl*, 239 U. S. 3, 9 (1915), with approval) ("And when the record shows that a commissioner of immigration is exceeding his power, the alien may demand his release upon *habeas corpus*. The conclusiveness of the decisions of immigration officers under § 25 is conclusiveness upon matters of fact. This was implied in *Nishimura Ekiu v. United States*, 142 U. S. 651, relied on by the Government."). Here, the Court should exercise this authority, because immigration courts are subject to institutional capture by the Executive's mass-deportation, mass-detention policies.

54. For example, in *Jackler and Jaroch Consolidation v. Dep't of*

Justice, 2026 MSPB 3, 1, Docket No. CF-0752-26-0069-I-1, the U. S. Merit Systems Protection Board, the federal agency in charge of adjudicated labor disputes of federal employees, ruled that immigration judges do not have tenure, providing further evidence of the institutional capture of U. S. immigration courts. The Board expressly found that immigration judges exercise "significant...policymaking authorities on behalf of the United States." In other words, they are instruments of the governments' policy goals, not neutral adjudicators.

55. In addition, a recent New York Times article[1] supports these claims. Approvals for relief before U. S. immigration courts have dropped drastically since the Trump Administration began.[2]

56. A current immigration judge described the pressure to deny bond as "overt."[3] The same judge explained that immigration judges are required to let a supervisor know every time a bond is granted,[4] indicating exigency to deny bonds. In a more recent instance, the Executive Branch fired two judges who blocked the removal of two pro-Palestinian students. [5]

57. Similarly, at least one U. S. District Court has found that

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[1] Nicholas Nehamas et al., *How Trump Purged Immigration Judges to Speed Up Deportations*, N.Y. TIMES, April 9, 2026

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] Dani Anguiano, *Judges fired after blocking deportation of pro-Palestinian students*, THE GUARDIAN, April 13, 2026, https://www.theguardian.com/us-news/2026/apr/13/immigration-judges-fired-trump-administration (last visited, April 14, 2026).

immigration courts are not impartial. *See Sing v. Valdez*, Civil Action No. 26-cv-1109-WJM, 10-11 (D. Col. Apr. 1, 2026) ("To the contrary, the mounting evidence that bond determination hearings conducted in Immigration Court under § 1226(a) have preordained outcomes has become impossible to ignore.").

58. Thus, Immigration Courts are institutionally incapable of resolving Mr. Morales's claims fairly and impartially. Therefore, the only appropriate remedy is Mr. Morales's immediate release.

STATEMENT OF FACTS

RESPONDENTS' CONDUCT

59. 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.

60. 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.[6]

61. On May 28, 2025, Deputy Chief of Staff Miller confirmed that

[6] 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)

"[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."[7]

62. 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."[8]

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

64. 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. *See Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025).

65. In cases where Respondents allow aliens to have a bond hearing,

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[7] 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)

[8] 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)

they have a policy of placing the burden of proof entirely on the alien, pursuant to *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

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

67. The Department of Homeland Security and Immigration Customs Enforcement have a Memorandum of Agreement and Immigration, pursuant to INA § 287(g), with the Pinellas County Sheriff's Office, allowing it to perform immigration enforcement functions.

PETITIONER'S CIRCUMSTANCES

68. Petitioner is a citizen of Mexico.

69. Petitioner entered the U. S. without inspection in 2013.

70. Before Petitioner's detention, he was residing in Wimauma, Florida, with his legal permanent resident partner and two U. S. citizen children (a 9 year-old and a months-old).

71. Petitioner was a passenger in a vehicle at or near St. Petersburg, Florida, when the Pinellas County Sheriff's Office stopped the vehicle.

72. Pinellas County Sheriff's Office questioned Petitioner, but Petitioner exercised his right to silence and asked for an attorney.

73. Acting under the auspices of the Department of Homeland Security and Immigration Customs Enforcement, Pinellas County Sheriff's Office detained Petitioner, alleging immigration vilations and transferring him to Pinellas County

Jail the same day.

74. The Pinellas County Sheriff's Office had no arrest warrant of any kind to detain Petitioner.

75. When Pinellas County Sheriff's Office detained Petitioner, no removal proceedings had been instituted against Petitioner.

76. When Pinellas County Sheriff's Office detained Petitioner, no Notice to Appear for Immigration Court had been issued against Petitioner.

77. Despite having committed no crime, the Pinellas County Sheriff's Office held Petitioner with the general population of the Pinellas County Jail.

78. On or about May 30, 2026, the Pinellas County Sheriff's Office turned Petitioner over to Immigration Customs Enforcement (ICE).

79. ICE took Petitioner to a holding center in Tampa, Florida.

80. ICE held Petitioner in Tampa, Florida, until approximately June 1, 2026.

81. ICE then transferred Petitioner to a detention center at or near Jacknsonville, Florida.

82. ICE held Petitioner at the detention center at or near Jacknsoville, Florida, for approximately a month.

83. On July 2, 2026, Petitioner had a bond hearing before the Immigration Court in Orlando, Florida.

84. The Orlando Immigration Court placed the burden to demonstrate negatives, no flight risk and no danger to the community, entirely on Petitioner.

85. The Orlando Immigration Court did not (and could not) address the legality of Petitioner's arrest.

86. ICE transferred Petitioner to Otay Mesa Detention Center, in San Diego, California, on or about July 7, 2026.

87. Petitioner has been at Otay Mesa Detention Center since that time.

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)

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

89. 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.

90. 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).

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

92. When Petitioner was taken into DHS' custody in May 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.

93. The Pinellas County Sheriff's Office, acting under the direction of the Department of Homeland Security, arrested Petitioner, taking him into custody without a warrant.

94. Petitioner was not evading law enforcement, posed no danger to any person or to the community, and presented no risk of flight. Petitioner was the passenger in a vehicle when the Pinellas County Sheriff's Office, acting under the Respondents' direction, arrested and detained Petitioner without a warrant.

95. Petitioner is a long-term resident of the United States with U. S. citizen

children and a legal permanent resident partner. 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).

96. Respondents, therefore, failed to comply with a mandatory regulatory prerequisite for a lawful warrantless arrest. This violation of DHS's own binding regulations renders Petitioner's arrest unlawful under the *Accardi* doctrine.

97. 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.

98. 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).

99. 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.").

100. 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.

COUNT II

II. Constitutional Violation of the Right to Due Process

1. 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.").

2. 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).

3. Here, Petitioner's due process claim is two fold: (1) the incorrect burden and standard of proof and (2) the absence of an impartial tribunal.

4. Petitioner does not challenge the immigration judge's discretionary decision whether to grant bond. Petitioner challenges the processes and generalized policies underlying that decision. Petitioner challenges the lack of

due process, violating the Fifth Amendment.

5. First, the immigration judge placed the burden of proof on Petitioner to show negatives, that he is neither a flight risk nor a danger to the community, violating the Due Process Clause of the Fifth Amendment.

6. Second, the immigration courts are structurally incapable of being impartial tribunals. Immigration courts are part of the Executive Branch's mass removal agenda. For immigration judges, applying impartiality means risking their jobs. Therefore, immigration courts do not satisfy the minimum requirements of due process.

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 violated the *Accardi* doctrine, failing to comply with binding immigration arrest regulations;

e) Declare that Petitioner's bond hearing was not constitutionally adequate, in violation of the Due Process Clause of the Fifth Amendment;

f) Declare petitioner's continued detention without a constitutionally adequate bond hearing violates the Fifth Amendment of the Constitution of the United States;

g) 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

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

2. Alternatively, if the Court orders a new bond hearing before an immigration judge, the Petitioner respectfully requests the following 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 any bond set shall take into account the Petitioner's ability to pay and to the greatest extent possible utilize alternatives to detention;

c. That any order denying bond based on flight risk or danger shall detail with specificity the evidentiary/factual basis for such finding, disclosing 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;

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

e. 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

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

DATED this 17th day of July 2026.

/s/Roger Ponce, Esq.
Roger Ponce, Esq.
Attorney for Petitioner William Micael MORALES ARTIZ
E-mail: info@rogerponcelaw.com

PLAINTIFF-PETITIONER VERIFICATION

Under penalty of perjury, 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 MORALES MARCELINO
E-mail: info@rogerponcelaw.com