Clayton Cook-Mowery
Washington State Attorney ID # 41110
Quiroga Law Office, PLLC
505 N. Argonne Road, Suite B109
Spokane Valley, WA 99212
Tel: (509) 927-3840
Clay@quirogalawoffice.com
Attorney for Petitioner

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

LUIS EVENCIO MENDOZA PACHECO,[1] **A#** [redacted] ***Petitioner,*** **v.** **BRUCE SCOTT,** Warden of Northwest ICE Processing Center, in his official capacity as well as his successors and assigns; **DAVID J. VENTURELLA,** Acting Director, U.S. Immigration and Customs Enforcement, in his official capacity as well as successors and assigns; **MARKWAYNE MULLIN,** Secretary for the U.S. Department of Homeland, in his official capacity as well as his successors and assigns; and **TODD BLANCHE,** Acting Attorney General, United States Department of Justice, in his official capacity as well as his successors and assigns; ***Respondents.***	**CIVIL ACTION NO.** **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. SECTION 2241 AND COMPLAINT FOR DECLATORY AND INJUNCTIVE RELIEF** **IMMIGRATION HABEAS CASE**

[1] The proper spelling of Luis Mendoza Pacheco's name is without a hyphen. The government's filings at the immigration court contain a hyphen, but Petitioner will use the proper spelling herein.

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. SECTION 2241 AND COMPLAINT FOR DECLATORY AND INJUNCTIVE RELIEF

Petitioner Luis Evencio Mendoza Pacheco, by and through his undersigned counsel, respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. section 2241, challenging the legality of his detention at the Northwest Immigration and Customs Enforcement Processing Center ("NWIPC") pursuant to Respondents' erroneous application of the Immigration and Nationality Act ("INA").

INTRODUCTION

1. Mr. Mendoza Pacheco is a forty-six-year-old (46) native and citizen of Venezuela who, [redacted] fled his home country in October 2021, and entered the United States without inspection on or about November 8, 2021. *See* Ex. A, First Notice to Appear ("NTA") dated March 8, 2022; Ex. B, Second NTA dated June 11, 2026; *see also* Ex. C, Form I-213, Record of Deportable/Inadmissible Noncitizen (noting Mr. Mendoza Pacheco's entry as on or around November 6, 2021).

2. While Mr. Mendoza Pacheco was briefly detained after arriving in the United States, he was quickly released on his own recognizance pursuant to Section 1226. *See* Ex. D, Order of Release on Own Recognizance.

3. Mr. Mendoza Pacheco was initially in removal proceedings, where he timely sought protection via the filing of a Form I-589, Application for Asylum and Withholding of Removal, as well as an application for Temporary Protected Status. *See* Ex. E Motion for Custody Redetermination, at 27-28, 38-40. In light of these applications, the presiding immigration judge terminated Mr. Mendoza Pacheco's removal proceedings without prejudice, *see id.* at 42-43, and

Quiroga Law Office, PLLC
505 N. Argonne Road, Suite B-109
Spokane, WA 99212
(509)-927-3840

Mr. Mendoza Pacheco refiled his Form I-589 with United States Citizenship and Immigration Services, *id.* at 45.

4. In the years since, Mr. Mendoza Pacheco has established a community where his coworkers, family, and friends praise his strong work ethic, willingness to show up for those around him, and reliability. *Id.* at 56-62, 64. Despite his pending applications for relief, a peaceful existence here in the United States, and not having any criminal record, U.S. Immigration and Customs Enforcement ("ICE") abruptly arrested and detained Mr. Mendoza Pacheco on his way home from work on May 20, 2026. Ex. B, C; *see also* Ex. E at 27.

5. Following ICE's sudden arrest of Mr. Mendoza Pacheco, the government erroneously concluded that pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), ("*Matter of Hurtado*" or "*Hurtado*"), Mr. Mendoza Pacheco is subject to mandatory detention. *See* Ord. of the Immig. Judge, Ex. E. Respondents have now kept Mr. Mendoza Pacheco detained at the NWIPC for over two (2) months, during which the government separated Mr. Mendoza Pacheco from his family and community, and refused to afford Mr. Mendoza Pacheco the substantive relief he justly deserves. His ongoing detention runs afoul of the INA and violates the Due Process Clause of the Fifth Amendment.

6. Mr. Mendoza Pacheco respectfully requests that this Court issue a writ of habeas corpus ordering Mr. Mendoza Pacheco's release from ICE custody, along with an order from this Court mandating ICE provide Mr. Mendoza Pacheco notice and opportunity to be heard should ICE seek to re-detain Mr. Mendoza Pacheco in the future. Alternatively, at a minimum, Mr. Mendoza Pacheco respectfully requests that this Court order the Tacoma Immigration Court to recognize its jurisdiction over Mr. Mendoza Pacheco's bond request and provide Mr. Mendoza Pacheco with a

Quiroga Law Office, PLLC
505 N. Argonne Road, Suite B-109
Spokane, WA 99212
(509)-927-3840

bond hearing before a neutral adjudicator where the government bears the burden of justifying Mr. Mendoza Pacheco's detention with clear and convincing evidence.

JURISDICTION

I. THIS COURT POSSESSES JURISDICTION PURSUANT TO BOTH 28 U.S.C. SECTION 2241 AND THE SUSPENSION CLAUSE OF THE US CONSTITUTION

7. This Court has jurisdiction over Mr. Mendoza Pacheco's claims pursuant to 28 U.S.C. section 2241, which provides that "[w]rits of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions" to individuals "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). "The writ of habeas corpus historically provides a remedy to non-citizens challenging executive detention." *Trinidad y Garcia v. Thomas*, 683 F.3d 952, 956 (9th Cir. 2012) (citing *INS v. St. Cyr*, 533 U.S. 289, 301-03 (2001)). The Suspension Clause of the US Constitution also preserves this Court's jurisdiction over Mr. Mendoza Pacheco's petition. *Boumediene v. Bush*, 553 U.S. 723, 743–45 (2008) (the Suspension Clause "ensures that, except during periods of formal suspension, the Judiciary will have a time-tested device, the writ, to maintain the delicate balance of government that is itself the surest safeguard of liberty") (quotation and citation omitted).

8. Mr. Mendoza Pacheco, who is in the custody of federal immigration authorities, challenges both the lawfulness of the government's subjecting him to mandatory detention under 8 U.S.C. section 1225 and the Tacoma Immigration Court's refusal to recognize its jurisdiction over Mr. Mendoza Pacheco's bond request on the grounds that such actions violate the Constitution, judicial precedent, and federal statutes. Mr. Mendoza Pacheco's claims, therefore, fall squarely within the scope of habeas corpus review under 28 U.S.C. section 2241, as recognized by controlling Ninth

Quiroga Law Office, PLLC
505 N. Argonne Road, Suite B-109
Spokane, WA 99212
(509)-927-3840

Circuit and Supreme Court authority. Accordingly, this Court has jurisdiction over Mr. Mendoza Pacheco's habeas petition pursuant to 28 U.S.C. section 2241 and the Constitution.

II. NEITHER STATUTORY EXHAUSTION NOR PRUDENTIAL EXHAUSTION IS REQUIRED

9. Neither the habeas statute, 28 U.S.C. § 2241, nor the relevant statutory provisions of the INA require petitioners to exhaust administrative remedies before filing petitions for habeas corpus. *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 36 (2006). As to prudential exhaustion, courts may waive the requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *SEC v. G.C. George Sec., Inc.*, 637 F.2d 685, 688 n.4 (9th Cir. 1981); *see also Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (restating the waiver principle).

A. Requiring prudential exhaustion would be futile

10. Here, prudential exhaustion would be futile. On September 5, 2025, the Board of Immigration Appeals ("BIA" or "Board") issued a precedential decision adopting a new interpretation of the government's detention authority under the INA. *See Matter of Hurtado*, 29 I&N Dec. 216, 218-20. Under *Matter of Hurtado*, immigration judges allege that they no longer have authority to hear bond requests or grant bond to noncitizens who, like Mr. Mendoza Pacheco, are present in the U.S. after entering without inspection. *Id.*

11. Across the country, many district courts, including this Court, have considered—and rejected—the government's newfound statutory interpretation. *See Rodriguez v. Bostock*, 802 F.

Quiroga Law Office, PLLC
505 N. Argonne Road, Suite B-109
Spokane, WA 99212
(509)-927-3840

Supp. 3d 1297, 1336 (W.D. Wash. 2025) ("The Court is persuaded that the detention of Bond Denial Class members under section 1225(b)(2)'s mandatory detention provision violates the INA."); *see also Barco Mercado v. Francis*, 811 F. Supp. 3d 487, 494 (S.D.N.Y. Nov. 26, 2025) (collecting "350 . . . cases decided by over 160 different judges sitting in about fifty different courts spread across the United States," to support the finding that Section 1225(b)(2)(A) to noncitizens residing in the United States is unlawful). Indeed, the Central District Court for the District of California certified a nationwide class, afforded the class declaratory relief, and held that the government's practice of detaining class members without a bond hearing is unlawful. *See Bautista v. Santacruz*, No. 25-CV-01873, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025); *Bautista v. Santacruz*, No. 25-CV-01873, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). [2]

12. Mr. Mendoza Pacheco is a noncitizen who falls squarely within the class of noncitizens addressed in *Hurtado*. He first entered without inspection into the United States nearly five (5) years ago. Exs. A, First NTA, and B, Second NTA. While Mr. Mendoza Pacheco was briefly detained after crossing the border, he was ultimately released on his own recognizance. *See* Ex. D (releasing Mr. Mendoza Pacheco pursuant to Section 1226). It was not until May 20, 2026 that ICE then detained Mr. Mendoza Pacheco. Exs. B, C and E at 27. At a hearing on June 24, 2026, undersigned counsel's firm informed the presiding immigration judge that they intended to file a bond request on behalf of Mr. Mendoza Pacheco. *See* Ex. G, Decl. of Atty. Matthew Rabinovetch. In response, the presiding immigration judge asserted that unless there is a habeas order the

[2] The same court also vacated *Matter of Hurtado* as violating the APA, and although the Ninth Circuit Court of Appeals has since stayed the district court's subsequent, February 18th, 2026, vacatur of *Hurtado*, the District Court's December 18th, 2025, order remains in full effect. *See Bautista et al. v. DHS*, Case No. 26-1044 (9th Cir. Mar. 6, 2026).

Quiroga Law Office, PLLC
505 N. Argonne Road, Suite B-109
Spokane, WA 99212
(509)-927-3840

immigration judge would not grant him a bond because considering the pleadings, the immigration judge deemed him not eligible under *Matter of Yajure Hurtado*. Ex. G.

13. The immigration judge's apparent predetermination notwithstanding, counsel did file a bond request, and at a custody determination hearing roughly two weeks later, the immigration judge concluded that because of *Hurtado*, he lacked jurisdiction to hear Mr. Mendoza Pacheco's request. Ex. F. The immigration judge also declined Respondent's request for alternative findings. *Id.*

14. As such, any administrative appeal of this jurisdictional denial would be futile based on both the BIA's *Hurtado* holding and a January 13, 2026, email from Chief Immigration Judge, Teresea L. Riley, informing all immigration judges that despite the certified nationwide class and nationwide challenges, "[i]mmigration judges are instructed to follow the BIA's decision in *Mater of Hurtado* as binding precedent."[3]

15. Considering "the agency's position on the question at issue appears already set, and it is very likely what the result of recourse to administrative remedies would be, such recourse would be futile and is not required. *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 747 (9th Cir. 1991) (internal quotation marks omitted). *See also Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021). This Court therefore retains jurisdiction over Mr. Mendoza Pacheco's challenge to his unlawful detention and constitutionally deficient custody determination under 28 U.S.C. section 2241.

[3] *See Practice Alert: EOIR Issues Nationwide Guidance on Maldonado Bautista*, Am. Immig. Lawyers Assoc., (Jan. 16, 2026), *available at* https://www.aila.org/library/practice-alert-district-court-vacates-Yajure-Hurtado (last visited July 20, 2026).

Quiroga Law Office, PLLC
505 N. Argonne Road, Suite B-109
Spokane, WA 99212
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B. Requiring prudential exhaustion would cause irreparable injury

16. *Matter of Hurtado* aside, the constraints of the Due Process Clause are imperative in Mr. Mendoza Pacheco's case, as "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Furthermore, when the "alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure, § 2948.1 (2d ed. 2004); *see also Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (applying the Federal Practice and Procedure standard).

17. To the extent additional irreparable injury is necessary, the Ninth Circuit has acknowledged the "irreparable harms imposed on anyone subject to immigration detention." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). "For example, the American Bar Association describes evidence of subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Id.* Those harms are present here. Mr. Mendoza Pacheco provides financial and emotional support to his family, including those with whom he lives with and pays rent on behalf of. Ex. E at 54 (noting that Mr. Mendoza Pacheco resides with his family).

18. Mr. Mendoza Pacheco's harms are further compounded by the constitutional violations already identified. Where, as here, a petitioner has demonstrated ongoing due process violations resulting in continued unlawful detention, courts routinely recognize that irreparable injury is inherent. *See Melendres*, 695 F.3d 1002 (quoting *Elrod*, 427 U.S. 373); *Warsoldier*, 418 F.3d at

1001–02. In these circumstances, requiring further exhaustion would only prolong the very injury the Constitution forbids. Accordingly, this Court should waive any prudential exhaustion requirement.

VENUE

19. Venue is proper in this District pursuant to 28 U.S.C. section 1391(e)(1), because Mr. Mendoza Pacheco is currently behind held at the NWIPC. Moreover, both Mr. Mendoza Pacheco's current injuries and Respondent's unlawful actions have occurred in this District.

PARTIES

20. Petitioner, Mr. Mendoza Pacheco, is a native and citizen of Venezuela who, after seeking protection in the United States and continuously residing therein since November 2021, was apprehended and placed into ICE custody on May 20, 2026. Exs. A, B, C, D and E at 27. He has been detained under the direct control of the Respondents and is currently detained at the NWIPC in Tacoma, Washington.

21. Respondent Bruce Scott is the Warden of the NWIPC, located in Tacoma, Washington. As facility leader, he is responsible for the custody, control, and care of detainees held at the NWIPC where Mr. Mendoza Pacheco is detained. He is sued in his official capacity.

22. Respondent David J. Venturella is the Acting Director of U.S. Immigration and Customs Enforcement. In this capacity, he is responsible for ICE's policies and operations, including oversight of Mr. Mendoza Pacheco's detention. He is sued in his official capacity.

23. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security ("DHS"). In this role, he is responsible for the enforcement of the INA, as well as the oversight of ICE operations. He has legal custody of Mr. Mendoza Pacheco and is sued in his

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505 N. Argonne Road, Suite B-109
Spokane, WA 99212
(509)-927-3840

official capacity.

24. Respondent Todd Blanche is the Acting Attorney General of the U.S. Department of Justice. In his capacity, he oversees the Executive Office for Immigration Review—the Agency that administers the INA and issued *Matter of Hurtado*. He is sued in his official capacity.

FACTUAL AND PROCEDURAL HISTORY

25. Mr. Mendoza Pacheco is a native and citizen of Venezuela who entered the United States without inspection on or around November 8, 2021. *See* Ex. A, First NTA; *see also* Ex. B, Second NTA. Shortly after arrival, Mr. Mendoza Pacheco was detained but was released on his own recognizance the next day under Section 1226, *see* Ex. D. Approximately four months later, he was placed in removal proceedings with an NTA, *see* Ex. A. Mr. Mendoza Pacheco timely filed his Form I-589, Application for Asylum and Withholding of Removal, *see* Ex. E at 38-40, and later moved to dismiss his removal proceedings pursuant to 8 CFR § 1239.2 (cancellation of notice to appear). Ex. E. at 42-43. The government did not oppose Mr. Mendoza Pacheco's motion, and on August 6, 2024, the presiding immigration judge granted Mr. Mendoza Pacheco's motion to dismiss his removal proceedings. *Id.*

26. Following dismissal of the removal proceedings, Mr. Mendoza Pacheco re-filed his Form I-589 with the United States Citizenship and Immigration Services, as well as an application for Temporary Protected Status. Ex. E. at 27, 45.

27. Since residing in the United States, Mr. Mendoza Pacheco has been continuously employed with [redacted] where he has stands out as "an outstanding employee and has always been punctual." Ex. E. at 67. So much so that his employer is prepared to re-employ Mr. Mendoza Pacheco if released from immigration custody. *Id.*

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28. Mr. Mendoza Pacheco has also become known as "a very hard-working person" who is "generous" and "the type of person who is always willing to help whenever someone needs support, guidance, or encouragement." Ex. E. at 56-62, 64.

29. But on May 20, 2026, ICE apprehended Mr. Mendoza Pacheco, and subsequently re-initiated removal proceedings against Mr. Mendoza Pacheco by filing a new NTA. *See* Ex. B, Second NTA (dated June 11, 2026). Within the NTA, DHS did not allege that Mr. Mendoza Pacheco is "an arriving alien" but rather, that he is a noncitizen "present in the United States who has not been admitted or paroled." *Id.* DHS further charged Mr. Mendoza Pacheco as removable pursuant to 8 U.S.C. section 1182(a)(6)(A)(i) in that Mr. Mendoza Pacheco is *present* in the United States without having been admitted or paroled. *Id.* In the months since, Mr. Mendoza Pacheco has been held in detention at the NWIPC, despite being eligible and deserving of bond.

30. On June 24, 2026, Mr. Mendoza Pacheco appeared for a Master Calendar Hearing where he once again re-filed his Form I-589, Application or Asylum and Withholding of Removal, with the Tacoma, Washington Immigration Court. Ex. E at 34-36. His application remains pending at this time.

31. At the June 24, 2026 hearing, undersigned counsel's firm informed the presiding immigration judge that they intended to seek a custody redetermination hearing. Ex. G. Yet the presiding immigration judge informed undersigned counsel's firm that without a habeas order, he would deny bond under *Matter of Yajure Hurtado*. *Id.*

32. Mr. Mendoza Pacheco, through counsel, proceeded to file a Motion for Custody Redetermination Hearing with the Tacoma, Washington, Immigration Court. *See* Ex. E. In support of his motion, Mr. Mendoza Pacheco asserted that pursuant to 8 U.S.C. section 1226(a), Mr.

Mendoza Pacheco is eligible for custody redetermination. Ex. E at 2-6. Further, he asserted that he satisfies the requirements to be released from custody because (1) he does not pose a danger to society or national security, (2) he is not a flight risk, and (3) he warrants favorable discretion. *Id.* Mr. Mendoza Pacheco submitted eight letters of support from his friends, neighbors, landlord, and employer, and a letter of support and financial sponsorship from his U.S. citizen friend, who committed to responsibilities for Petitioner's appearance to all appointments, and offered to pay his bond upon his release. Ex. E at 47-52, 54-62, 64, and 67.

33. On July 9, 2026, the Tacoma, Washington, Immigration Court held a custody redetermination hearing for Mr. Mendoza Pacheco where undersigned counsel's firm represented Mr. Mendoza Pacheco. At the conclusion of the hearing, the Immigration Judge issued an oral decision denying Mr. Mendoza Pacheco bond for lack of jurisdiction. *See* Ex. F, Immigration Judge's Custody Determination. Despite filing over thirty-three pages of evidence in support of his eligibility for release from custody, the immigration declined to make an alternative finding concerning flight risk and dangerousness. *Id.* Undersigned counsel's firm requested the Immigration Judge record the custody proceedings. The immigration judge, however, explicitly declined to do so.

34. Following the Immigration Judge's legally flawed decision, Mr. Mendoza Pacheco remains in ICE custody at NWIPC in violation of his Due Process and the nation's immigration laws. Absent immediate intervention by this Court, Mr. Mendoza Pacheco will be subject to continued, unlawful detention in violation of the nation's immigration laws and constitutional due process.

RELEVANT LEGAL AUTHORITY

35. To succeed on a habeas petition, the movant must "prov[e] by a preponderance of the

Quiroga Law Office, PLLC
505 N. Argonne Road, Suite B-109
Spokane, WA 99212
(509)-927-3840

evidence that he is entitled to habeas relief." *Davis v. Woodford*, 384 F.3d 628, 638 (9th Cir. 2004) (citation omitted); 28 U.S.C. § 2241(c). For the reasons discussed herein, Mr. Mendoza Pacheco has proven by a preponderance of the evidence that Respondent's practice of subjecting him to mandatory detention is unlawful and in violation of the due process clause. As such, Mr. Mendoza Pacheco warrants immediate relief.

I. THE INA DRAWS A CRITICAL DISTINCTION BETWEEN MANDATORY VERSUS PERMISSIBLE DETENTION UNDER THE 8 U.S.C. SECTIONS 1225 AND 1226

36. When it comes to custody determinations under the INA, there are two statutory provisions that authorize the detention of noncitizens prior to receiving a final removal order. The first is 8 U.S.C. section 1225, which explicitly applies to "arriving [noncitizen]s." 8 U.S.C. § 1225(a)-(b). The second statutory provision—which is at issue here—is 8 U.S.C. section 1226.

37. Section 1225 proscribes mandatory detention of noncitizens seeking admission into the United States. *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Specifically, when an "examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

38. Relevant here, "a noncitizen that falls under Section 1225(b) is typically detained without the possibility of release throughout their removal proceedings." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1244 (W.D. Wash. 2025).

39. By contrast, "Section 1226(a) . . . establishes a discretionary detention framework." *Lepe v. Andrews*, 801 F. Supp. 3d 1104, 1111 (E.D. Cal. 2025) (quotation and citation omitted). The statute "authorizes the Government to detain certain [noncitizens] already in the country pending

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505 N. Argonne Road, Suite B-109
Spokane, WA 99212
(509)-927-3840

the outcome of removal proceedings." *Jennings*, 583 U.S. at 289 (emphasis added). "On a warrant issued by the Attorney General, [a noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). During this time, the Attorney General is authorized to take two forms of action. First, they "may continue to detain the arrested [noncitizen]." Or, second, they "may release the [noncitizen] on [] bond . . . or conditional parole." 8 U.S.C. § 1226(a). Put differently, the INA permits detention of noncitizens like Mr. Mendoza Pacheco but does not mandate it.

A. The BIA's decision in *Matter of Hurtado* is incompatible with the INA's carefully crafted distinction between mandatory and permissible detention

40. Despite Congress' carefully crafted distinction between mandatory and permissible detention, the Board attempted to single-handedly rewrite the INA in September 2025 by alleging that noncitizens "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer." *Matter of Hurtado*, 29 I&N Dec. at 228.

41. Under the Board's recent interpretation of the INA, regardless of whether a noncitizen is classified under 8 U.S.C. section 1225 or 1226, they are subject to mandatory detention. *Matter of Hurtado*, 29 I&N Dec. at 219, 228. Thus, according to the Board, a noncitizen "who establishes that he or she has been present in the United States for over 2 years," or nearly five (5) years in Mr. Mendoza Pacheco's case, "shall be detained." *Id.* at 219.

B. This Court already rejected *Matter of Hurtado*'s interpretation as incompatible with the INA

42. Following *Matter of Hurtado*, immigration courts across the country began determining that they lacked jurisdiction to consider custody redetermination requests for noncitizens who are

Quiroga Law Office, PLLC
505 N. Argonne Road, Suite B-109
Spokane, WA 99212
(509)-927-3840

classified as inadmissible under section 1226 because they entered the United States without inspection and were arrested within the boundaries of the United States. These flawed determinations have since led to a multitude of litigation in federal district courts across the country, including in this Court. *See Rodriguez*, 802 F. Supp. 3d at 1297. In *Rodriguez v. Bostock*, this Court recognized the "serious questions, that [noncitizens are being] unlawfully detained under Section 1225(b)'s mandatory detention authority and instead should be governed under Section 1226(a)'s discretionary detention scheme." *Rodriguez*, 779 F. Supp. 3d at 1255.

43. While the Court further found "that noncitizens like [Mr. Mendoza Pacheco] are subject to Section 1226(a) discretionary detention, not Section 1225(b)(2) mandatory detention," many "Tacoma IJs still consider noncitizens who entered without inspection but were apprehended while living in the United States subject to Section 1225(b)." *Rodriguez*, 779 F. Supp. 3d at 1245. Such procedural posture is highlighted in the instant case where the presiding immigration judge explicitly warned undersigned counsel's firm that he would not consider a bond request unless there was a habeas order attached. Ex. G. Thus, "[i]nstead of following th[is] Court's declaratory judgment, which [the IJ's] have characterized as an 'advisory opinion,' the IJs have cited *In re Yajure Hurtado* as binding precedent." *Rodriguez Vazquez v. Hermosillo*, 816 F. Supp. 3d 1234, 1240 (W.D. Wash. 2026). In effect, the Tacoma IJs are violating the INA, as they are "denying these individuals any possibility of release on bond." *Rodriguez*, 779 F. Supp. 3d at 1245.

44. This Court is not alone in its conclusion. Nearly "[e]very district court to address this question has concluded that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice." *Rodriguez*, 802 F. Supp. 3d at 1303-04; *id.* at 1304 n.3 (collecting cases). *See also Maldonado Vazquez v. Feeley*,

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505 N. Argonne Road, Suite B-109
Spokane, WA 99212
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805 F. Supp. 3d 1112, 1142 (D. Nev. 2025) (finding the statutory text and "canons of statutory interpretation, including the legislative history, regulations, and long history of consistent agency practice, as well as the doctrine of constitutional avoidance" lead to the conclusion that the government's new reading of § 1225(b)(2)(A) is likely unlawful); *id.* at 1136 n.7 (collecting cases).[4]

45. Considering Mr. Mendoza Pacheco falls within the class certified in *Rodriguez v. Bostock*, this Court's conclusion that subjecting the bond class to mandatory detention is unlawful should apply to Mr. Mendoza Pacheco with equal force. *Id.* Thus, the next question is what due process Mr. Mendoza Pacheco deserves.

II. DUE PROCESS REQUIREMENTS FOR IMMIGRATION DETENTION

46. "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. 690 (2001). Such freedom and protection apply with equal force to noncitizens like Mr. Mendoza Pacheco, as "[i]t is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993).

47. Thus, where the government subjects a noncitizen to unlawful mandatory detention while the noncitizen pursues a defense to removal and/or claim to relief, due process requires an

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[4] Since this Court issued its decision in *Rodriguez v. Bostock*, some circuit courts of appeal have reached a decision different than this Court. *See, e.g.*, *Avila v. Bondi*, 170 F.4th 1128, 1138 (8th Cir. Mar. 25, 2026), *and Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 508 (5th Cir. 2026). The Ninth Circuit Court of Appeals agreed to take up argument on the legality and application of *Hurtado* and therefore, have not yet decided on the issue. *See Bautista, et al. v. DHS*, Case No. 26-1044 (9th Cir. Mar. 6, 2026).

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individualized hearing before a neutral decisionmaker to determine whether the detention is in fact related to its purpose. *Demore v. Kim*, 538 U.S. 510, 532 (2003) (Kennedy, J., concurring) (stating that an "individualized determination as to [a noncitizen's] risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); *cf. Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the "initial commitment" requires additional safeguards). When considering flight risk or dangerousness, an immigration judge may consider the following factors:

> (1) whether the [noncitizen] has a fixed address in the United States;
> (2) the [noncitizen's] length of residence in the United States;
> (3) the [noncitizen's] family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future;
> (4) the [noncitizen's] employment history;
> (5) the [noncitizen's] record of appearance in court;
> (6) the [noncitizen's] criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses;
> (7) the [noncitizen's] history of immigration violations;
> (8) any attempts by the [noncitizen] to flee prosecution or otherwise escape from authorities; and
> (9) the [noncitizen's] manner of entry to the United States.

In re Guerra, 24 I&N Dec. 37, 40 (BIA 2006).

48. While an immigration judge retains broad discretion in determining bond eligibility, federal courts "can 'assess whether an [immigration judge] correctly applied the statutory standard to a given set of facts.'" *Martinez v. Clark*, 124 F.4th 775, 783 (9th Cir. 2024) (quoting *Wilkinson v. Garland*, 601 U.S. 209, 221 (2024)). The "[C]ourt may review" the immigration judge's decision "for an abuse of discretion." *Vasquez Lopez v. Hernandez*, --F. Supp. 3d--, No. C26-0775, 2026 WL 984151, at *2 (W.D. Wash. Apr. 13, 2026).

49. In the instant matter, the presiding immigration judge refused to entertain the merits of Mr.

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Mendoza Pacheco's bond request absent a habeas order for Mr. Mendoza Pacheco—an individual who has been pursuing both an affirmative (and now defensive) asylum application, as well as Temporary Protected Status. Exs. E, F, and G. Considering the procedural posture behind Mr. Mendoza Pacheco's detention and custody determination, it is evident that due process mandates additional safeguards at this junction.

CLAIMS FOR RELIEF

Count I
Substantive Due Process Violation Under the Fifth Amendment

50. Mr. Mendoza Pacheco re-alleges and incorporates by reference the paragraphs above.

51. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law," unless such detention is reasonably related to its purpose. *Demore*, 538 U.S. at 523. *Zadvydas*, 533 U.S. at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.").

52. But the Executive Office for Immigration Review discarded the Fifth Amendment's command to protect an individual's liberty interest when it deprived all immigration judges of the jurisdiction to simply adjudicate bond requests for noncitizens who, like Mr. Mendoza Pacheco, are present in the United States without admission. Unlawful, continued detention also exacerbates "the economic burdens imposed on detainees and their families." *Hernandez*, 872 F.3d at 995.

53. Petitioner's ongoing, mandatory detention also cuts against the entire purpose of the Fifth Amendment's Due Process Clause, as evidenced by the immigration judge's refusal to consider Petitioner's custody request without any regard to the substance of his claim. The purpose of the

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Due Process Clause is to prevent the "government from depriving any person of 'life, liberty, and property, without due process of law.'" *Ledesma Gonzalez v. Bostock*, 808 F. Supp. 3d 1189, 1201 (W.D. Wash. 2025) (quoting U.S. Const. amend. V). As such, Respondents' actions constitute a clear and ongoing violation of Mr. Mendoza Pacheco's substantive due process rights. *Zadvydas*, 533 U.S. at 690.

Count II
Procedural Due Process Violation Under the Fifth Amendment

54. Mr. Mendoza Pacheco re-alleges and incorporates by reference the paragraphs above.

55. Analyzing a procedural due process claim involves "two steps." *United States v. Juvenile Male*, 670 F.3d 999, 1013 (9th Cir. 2012). "[T]he first asks whether there exists a liberty or property interest which has been interfered with by the State; the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient." *Juvenile Male*, 670 F.3d at 1013. This Court has recognized that "an individual's private interest in freedom from prolonged detention is unquestionably substantial." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022) (addressing detention under section 1226(a) (quotations and citation omitted). Thus, the next question is "whether the procedures attendant upon that deprivation were constitutionally sufficient." *Juvenile Male*, 670 F.3d at 1013.

56. The second step requires this Court to balance the *Mathews v. Eldridge* 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 probable 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 requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

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57. The first factor, the private interest at issue, favors Mr. Mendoza Pacheco. *Mathews,* 424 U.S. at 333-35. "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 [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. 690; *see also Hamdi ex rel. Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (holding that a noncitizen has a strong private interest in "the most elemental of liberty interests—the interest in being free from physical detention by [the] government."). Courts have been careful not to "minimize the importance and fundamental nature of the individual's right to liberty." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (quotations omitted). Particularly because "commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Jones v. United States*, 463 U.S. 354, 361 (1983).

58. Mr. Mendoza Pacheco, who lived within the bounds of the United States for close to five (5) years has now been detained for over two (2) months. *See* Ex. E at 27-28. During this time, Mr. Mendoza Pacheco has been separated from his only family here in the United States and has been deprived of his ability to obtain a fair custody determination hearing. Exs. D, E. Mr. Mendoza Pacheco has been improperly subject to mandatory detention under Section 1225(b), and the bond proceeding he received fell far short of the process he deserves under Section 1226(a). Thus, Mr. Mendoza Pacheco, who finds himself mandatorily confined without justification, demonstrates that the first *Mathews* factor weighs heavily in Mr. Mendoza Pacheco's favor. *Mathews*, 424 U.S. at 333.

59. The second *Mathews* factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Mr. Mendoza Pacheco. *Mathews,* 424 U.S. at 333-35. Here, numerous district courts around the country, including this Court, have found the government's

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approach to strip the immigration judge's jurisdiction over custody redeterminations both incorrect and unlawful. *See Rodriguez*, 802 F.3d at 1336 (granting summary judgment to the Bond Denial Class on their claims that their detention under 8 U.S.C. § 1225(b)(2) is unlawful").

60. Further, a nationwide class has also been certified for noncitizens without lawful status, akin to Mr. Mendoza Pacheco who are:

> detained at the Northwest ICE Processing Center who (1) have entered or will enter the United States without inspection, (2) are not apprehended upon arrival, (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the noncitizen is scheduled for or requests a bond hearing.

Rodriguez, 802 F. Supp. 3d at 1336.

61. If this Court was to permit Respondents to keep Mr. Mendoza Pacheco in detention with no reasonably foreseeable release on bond, Mr. Mendoza Pacheco would undeniably suffer a continued deprivation of his liberty and rights under the Fifth Amendment of the U.S. Constitution. Mr. Mendoza Pacheco's community, employer, friends, and even landlord have all submitted letters that attest to his character and reliability. Ex. E at 54, 56-62, 64 and 67. Mr. Mendoza Pacheco also provided a verified, rented residence (one in which his landlord attests to Mr. Mendoza Pacheco being a reliable tenant) where he will reside with family upon release. *Id.* at 54. These concrete safeguards, including a fixed address, neighborly support, and demonstrated community ties, underscore the significant need of additional procedural protections. Requiring Respondents to either release Mr. Mendoza Pacheco from detention under supervision (as allowed under 8 U.S.C. § 1226), or mandate a bond hearing where the government bears the burden of proof, would reduce the probability of continued needless detention of Mr. Mendoza Pacheco, who has lived in the United States for nearly five (5) years, has no criminal history, *see* Ex. E at 47-52,

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and has continuously sought protection via this nation's immigration laws, *see* Ex. E at 34-26, 38-40, and 45.

62. Turning to the third *Mathews* factor—the government's interest—also favors Mr. Mendoza Pacheco. *Mathews,* 424 U.S. at 333-35. When the government ignores law that ensures a noncitizen has administrative pathways to challenge a constitutionally deficient custody judgement, and where the voluminous record evidence provided to the immigration court supports a finding that Mr. Mendoza Pacheco is neither a flight risk, nor a danger to the community (but the flight risk and dangerousness determinations are never actually reached absent this Court's involvement), it is more likely to waste limited financial and administrative resources on unnecessary detention and the litigation of subsequent habeas petitions for individuals who are neither flight risks nor dangerous.

63. Moreover, because the government must also spend resources defending against a habeas corpus petition to compel Respondents to comply with the law, (not to mention judicial resources used to adjudicate the issues), requiring Respondents to instead provide Mr. Mendoza Pacheco with either a new, constitutionally adequate custody redetermination hearing where the government bears the burden of proof by clear and convincing evidence, or simply ordering that Respondents release Mr. Mendoza Pacheco on bond, reduces fiscal and administrative burdens on the government. *Rodriguez Diaz*, 53 F.4th at 1196 (reviewing a habeas petition based on 1226(a) detention and requiring the government "to bear the burden of proving by clear and convincing evidence that the [noncitizen] poses a flight risk or a danger to the community").

64. For these reasons, the immigration judge's denial of Mr. Mendoza Pacheco's release from custody based on a flawed determination of lack of jurisdiction has solidified Mr. Mendoza

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Pacheco's continued, unlawful detention. Such unlawful detention without proper procedures is, without dispute, a violation of Mr. Mendoza Pacheco's due process under the Fifth Amendment to the U.S. Constitution.

Count III
Declaratory Relief under 28 U.S.C. § 2201

65. Mr. Mendoza Pacheco re-alleges and incorporates by reference the paragraphs above.

66. An actual controversy exists regarding the BIA's holding in *Matter of Hurtado* and the Chief Immigration Judge's subsequent instruction, stripping all immigration judges of jurisdiction over Petitioner's custody redetermination hearing in violation of the INA.

67. As a Bond Denial Class member, ICE is subjecting Mr. Mendoza Pacheco to mandatory detention at NWIPC "under 8 U.S.C. § 1225(b)(1), (2)" *see Matter of Yajure Hurtado*, 29 I&N Dec. at 224, and the immigration court's new practice of denying bond redetermination hearings to Bond Denial Class members on the basis of § 1225(b)(1), (2) violates the INA. *Rodriguez*, 802 F. Supp. 3d at 1336. Mr. Mendoza Pacheco is therefore entitled to a declaration that the Tacoma Immigration Court (or any governing immigration court if Petitioner is transferred to another facility) maintains jurisdiction over Mr. Mendoza Pacheco's custody proceedings *and* maintains authority to release Mr. Mendoza Pacheco on bond.

68. Alternatively, Mr. Mendoza Pacheco is entitled to a declaration that the Tacoma Immigration Court is required to afford Mr. Mendoza Pacheco a custody redetermination hearing in accordance with *Zadvydas*, 533 U.S. at 690, and *Rodriguez v. Robbins*, 715 F.3d at 1127, 1134, (9th Cir. 2013) due to his unlawful detention during the pendency of his undefined removal proceedings.

Count IV
Injunctive Relief

69. Mr. Mendoza Pacheco re-alleges and incorporates by reference the paragraphs above.

70. Absent immediate intervention by this Court, Mr. Mendoza Pacheco faces imminent and irreparable harm in the form of unlawful and continued detention, in violation of his due process and this country's immigration laws. The harm Mr. Mendoza Pacheco faces is not speculative: it is concrete and irreparable, as the Tacoma Immigration Court has already carried out the Chief Immigration Judge's instructions to follow the BIA's holding in *Matter of Hurtado*, explicitly declined jurisdiction over Mr. Mendoza Pacheco's custody redetermination requests, and has thus continued to subject him to mandatory detention with no release in the reasonably foreseeable future. *See* Ex. E. These harms compel the conclusion that Mr. Mendoza Pacheco is facing imminent and irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Mr. Mendoza Pacheco respectfully requests that this Court enter judgment in his favor and grant the following relief:

1. Assume jurisdiction over this matter;

2. HABEAS CORPUS. Issue a writ of habeas corpus under 28 U.S.C. § 2241 directing Respondents immediately to release Mr. Mendoza Pacheco from ICE custody or, at a minimum, order Mr. Mendoza Pacheco to receive a hearing where the government bears the burden of justifying Mr. Mendoza Pacheco's detention by clear and convincing evidence.

3. DECLARATORY JUDGMENT. Pursuant to 28 U.S.C. § 2201, declare that:

4. Petitioner respectfully requests that the Court issue a declaration that:

a. Mr. Mendoza Pacheco, a noncitizen who entered without inspection and remained for nearly five (5) years, is detained pursuant to 8 U.S.C. § 1226(a), and any custody determination hearing is held pursuant to this statute;

b. Because Mr. Mendoza Pacheco has been unlawfully subject to mandatory detention under 8 U.S.C. § 1225, he is entitled to immediate release.

5. In the alternative, Petitioner respectfully requests that the Court issue a declaration that:

a. The Executive Office for Immigration Review's policy of subjecting Mr. Mendoza Pacheco to 8 U.S.C. § 1225 detention procedures and refusing to recognize jurisdiction over Petitioner's custody redetermination is unlawful;

b. The Tacoma Immigration Court is vested with jurisdiction over Petitioner's custody redetermination and has authority to release Petitioner on bond; and

c. Mr. Mendoza Pacheco is entitled to a new custody redetermination hearing where he can challenge the immigration judge's constitutionally deficient judgment and where the government bears the burden of proof by "clear and convincing evidence." *Rodriguez Diaz*, 53 F.4th at 1196 (9th Cir. 2022).

6. INJUNCTIVE RELIEF. Pursuant to the Court's equitable powers, Fed. R. Civ. P. 65, and the All Writs Act, 28 U.S.C. § 1651, enter:

a. Preliminary injunction immediately prohibiting Respondents, their agents, employees, and all persons acting in concert with them from continuing to detain Petitioner pending his underlying removal proceedings and any relevant appeals and adjudication of immigration petitions;

b. A permanent injunction barring Respondents from attempting to subject Petitioner

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(509)-927-3840

to 8 U.S.C. § 1225's mandatory detention provision;

c. A permanent injunction barring Respondents from refusing to recognize jurisdiction over Petitioner's custody redetermination and bond request;

d. A permanent injunction barring Respondents from refusing to afford Petitioner a custody redetermination hearing before a neutral adjudicator in light of his unlawful detention;

e. A permanent injunction barring Respondents from re-detaining Petitioner and revoking his release absent a pre-deprivation hearing where Mr. Mendoza Pacheco has notice and opportunity to be heard;

f. An order retaining jurisdiction to monitor and enforce compliance with the foregoing injunctions.

7. FEES AND COSTS. Award Mr. Mendoza Pacheco his reasonable attorneys' fees and litigation expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority.

8. SUCH OTHER RELIEF. Because "[f]ederal courts have a fair amount of flexibility in fashioning specific habeas relief," grant such further legal or equitable relief as the Court deems just and proper. *Burnett v. Lampert*, 432 F.3d 996, 999 (9th Cir. 2005).

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Quiroga Law Office, PLLC
505 N. Argonne Road, Suite B-109
Spokane, WA 99212
(509)-927-3840

Respectfully submitted on this 24th day of July 2026.

/s/ Clayton Cook-Mowery
Clayton Cook-Mowery
Washington State Attorney ID # 41110
Quiroga Law Office, PLLC
505 N Argonne Road, Suite B109
Spokane, WA 99212
Tel: (509) 927-3840
Clay@quirogalawoffice.com

Attorney for Petitioner