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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Sebastian Isaac Marcano Hernandez.

Petitioner,

v.

Donald J. Trump, *in his official capacity as President of the United States.* **Christopher J. LaRose,** *in his official capacity as Warden of Otay Mesa Detention Center*; **David Venturella,** *in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement*; **Gregory Archambault,** *in his official capacity as Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations San Francisco Field Office*; **Markwayne Mullin,** *in his official capacity as Secretary of Homeland Security*; **Todd Blanche,** *in his official capacity as Acting Attorney General of the United States*; and **Pete R. Flores**, *in his official capacity as Acting Commissioner of U.S. Customs and Border Protection;*

Respondents.

Case No. '26CV4355 JLS SBC

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Sebastian Isaac Marcano Hernandez ("Mr. Marcano" or "Petitioner") brings this petition for a writ of habeas corpus because he is being unlawfully detained by Respondents as a result of the Department of Homeland Security ("DHS") and the Executive Office for Immigration Review's ("EOIR") erroneous conclusion that they are lawfully entitled to detain and continue detaining Petitioner without any constitutionally adequate proceedings before depriving him of his liberty, without any opportunity to challenge his detention, and in the absence of any procedural safeguards.

2. Mr. Marcano lawfully arrived in the United States through the Humanitarian Parole for Cubans, Haitians, Nicaraguans, and Venezuelan ("CHNV") program on April 13, 2024. More than two years later, in June 2026, U.S. Immigration and Customs Enforcement ("ICE") apprehended and detained Mr. Marcano while he was working as a food delivery driver and making a delivery at a condominium. Mr. Marcano was initially transferred to Broward Transitional Center (''BTC''), later to a detention center in Texas, before arriving at Otay Messa Detention Center in San Diego, California.

3. Mr. Marcano's CHNV parole was terminated on June 12, 2025, when DHS began terminating, en masse rather than through individualized determinations, the parole of individuals admitted under the CHNV program. Since parole itself constitutes a form of conditional custody, subjecting the recipient to conditions imposed by DHS that restrict his liberty, DHS's termination of Mr. Marcano's humanitarian parole simultaneously ended the conditions of custody under which he had been released into the United States.

4. From the termination of his parole until his subsequent apprehension by ICE, Mr. Marcano lived freely in the interior of the United States, no longer subject to the conditions of custody previously imposed upon him through parole and enjoying a substantial liberty interest in his continued freedom from government custody.

5. During his time in the United States, Mr. Marcano fully complied with all conditions of his parole. He timely filed his Form I-589, Application for Asylum and for Withholding of Removal, with USCIS, lawfully obtained an Employment Authorization Document valid through 2030, and maintained a clean criminal record. His detention therefore served no purpose other than to fill ICE's arbitrary arrest quotas.

6. After his arrest occurred, Mr. Marcano was served with a Notice to Appear ("NTA") on June 28, 2026, charging him with a violation of 8 U.S.C. § 1182(a)(6) and initiating removal proceedings against him. These proceedings remain pending.

7. Mr. Marcano's detention without notice and an opportunity to be heard violates his statutory rights under the Immigration and Nationality Act ("INA") and his substantive and procedural due process rights under the Fifth Amendment. For these violations, Mr. Marcano requests that he be released and placed back on the terms of parole with which he was consistently complying.

JURISDICTION & VENUE

8. This action arises under the Constitution of the United States and the INA, 8 U.S.C. § 1101 *et seq.*

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

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

11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Southern District of California, the judicial district in which Petitioner is currently detained.

12. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of California.

13. Venue is proper in the Southern District of California, pursuant to 28 U.S.C. §§ 1391 and 2241(d), because Petitioner is being detained on information and belief in this District.

14. Administrative exhaustion is unnecessary, as it would be futile. See *Aguilar v. Lewis*, 50 F.Supp.2d 539, 542 (E.D. Va. 1999). The Government has not afforded, and will not afford, Mr. Marcano a bond hearing because the Government asserts, contrary to a temporarily stayed class-wide judgment and decades of established statutory interpretation, that he is ineligible for bond under 8 U.S.C. § 1225(b).

15. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

PARTIES

16. Petitioner Sebastian Marcano Hernandez is a native and citizen of Venezuela who has been in ICE custody since June 2026. He is currently detained at the Otay Mesa Detention Center ("Otay Mesa").

17. Respondent Donald J. Trump is named in his official capacity as the President of the United States. In this capacity, he is responsible for the policies and actions of the executive branch, including the Department of Homeland Security.

18. Respondent Christopher J. LaRose is the Warden of the Otay Mesa Detention Center. Mr. Larose is responsible for overseeing the administration and management of Otay Mesa. Though Mr. Larose does not have the legal authority to release Mr. Marcano, without ICE's permission, he is the immediate custodian of Petitioner. He is sued in his official capacity.

19. Respondent David Venturella is named in his official capacity as the acting director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the

Southern District of California, is legally responsible for pursuing efforts to remove Petitioner, and as such is a custodian of Petitioner.

20. Respondent Markwayne Mullin is the Secretary of Homeland Security. He supervises ICE, an agency within DHS which is responsible for the administration and enforcement of immigration laws and has supervisory responsibility for and authority over the detention and removal of noncitizens throughout the United States. Secretary Mullin is the ultimate legal custodian of Petitioner. He is sued in his official capacity.

21. Respondent Todd Blanche is the Acting Attorney General of the United States. As the Attorney General, he oversees EOIR, including all IJs and the Board of Immigration Appeals ("BIA"), and has authority over immigration detention. He is sued in his official capacity.

22. Respondent Pete R. Flores is named in his official capacity as the acting commissioner of Customs and Border Protection ("CBP"). In this capacity, Respondent Flores leads CBP employees who are responsible for the administration of immigration laws and the execution of detention and removal determinations within its area of authority.

23. Respondent Gregory Archambault is named in his official capacity as the Field Office Director, Immigration and Customs Enforcement, Enforcement and Removal San Francisco Filed Office. As Field Office Director, Respondent Archambault oversees ICE's enforcement and removal operations in the San Francisco. Petitioner is currently detained within this area of responsibility and, as such, Respondent Archambault is a legal custodian of Petitioner. He is sued in his official capacity.

STATEMENT OF FACTS

24. Mr. Marcano was born in Venezuela, where, [redacted]

25. He has resided in the United States since April 2024. That month, after receiving authorization to travel to the United States, Mr. Marcano arrived at Miami International Airport, where he was inspected and paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A).

26. Mr. Marcano faithfully complied with all conditions of release. He obtained employment authorization documents ("EAD") on August 18, 2025, based on his pending application for asylum, and was gainfully employed and paying taxes.

27. Respondents issued Mr. Marcano a Notice to Appear ("NTA") on June 28, 2026. The NTA specifies that Mr. Marcano is "an alien present in the United States who has not been admitted or paroled." It also charges him as removable under 8 U.S.C. § 1182(a)(7)(A)(i)(I)(as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act). *Id.*

28. Despite years of compliance with immigration requirements and the conditions of his lawful parole, Mr. Marcano was arrested in June 2026. ICE provided neither notice nor any explanation justifying his detention. His arrest and subsequent detention therefore occurred without any legitimate or material change in circumstances that could rationally justify the deprivation of his liberty.

LEGAL FRAMEWORK

29. Under the system that Congress created, two statutes govern the detention of noncitizens without a final order of removal—namely §§ 1225 and 1226. The former, commonly referred to as "expedited removal proceedings," provides for mandatory detention of noncitizens apprehended at the border, while the latter provides a framework for discretionary release and for mandatory detention upon conviction of certain exclusionary crimes. These authorities have existed largely in the same form since Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") nearly 30 years ago.

30. 8 U.S.C. § 1226(a) sets forth the "default rule" for "[noncitizens] already present in the United States" by "permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018). It states that "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). Noncitizens arrested upon a warrant and in ongoing removal proceedings are eligible to seek release on bond before an IJ. *Id.* § 1226(a)(2).

31. A separate provision, 8 U.S.C. § 1225(b) governs the detention of noncitizens who seek admission to the United States at the border at §§1225(b)(1) and 1225(b)(2). Section 1225(b)(1) applies to noncitizens in "expedited removal" proceedings, while § 1225(b)(2) explains that, notwithstanding several limited statutory exceptions, "in the case of a[] [noncitizen] who is an applicant for admission, if the 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 [removal] proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2). "In other words, noncitizens subject to [Section] 1225(b)(2) are not eligible for expedited removal but are subject to mandatory detention while their full removal proceedings are pending. . . . in contrast to the default detention regime under § 1226(a), which allows for discretionary release and review of detention through a bond hearing." *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *3 (N.D. Cal. Sept. 12, 2025); *see also Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018). Consequently, IJs do not have jurisdiction to grant bond for such "applicant[s] for admission," though DHS retains the discretion to release such noncitizens on a specific type of parole "for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A).

32. Summing up the relationship between these two statutory provisions, Section 1225 "authorizes the Government to detain certain [noncitizens] seeking admission into the country,'' whereas

[S]ection 1226 "authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings (quotations omitted)''. *J.A.C.P. v. Wofford*, No. 1:25-CV-01354-KES-SKO (HC), 2025 WL 3013328, at *5 (E.D. Cal. Oct. 27, 2025) (citing *Jennings*, 583 U.S. at 289). Reflecting that understanding, "[f]or decades, whenever [ICE] detained a noncitizen within the interior part of the United States who did not have a pending order of removal, [it] detained them under [8 U.S.C. § 1226]." *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *1 (D. Colo. Oct. 17, 2025) (cleaned up). Consequently, "[u]ntil mid-2025, DHS applied § 1226(a) and its discretionary release and review of detention to the vast majority of noncitizens allegedly in this country without valid documentation," providing them with the opportunity to seek bond before an IJ. *Aguirre Villa, v. Normand*, No. 5:25-CV-89, 2025 WL 3095969, at *5 (S.D. Ga. Nov. 4, 2025) (internal quotation marks omitted).

33. On July 8, 2025, DHS radically upended this longstanding interpretation and practice when it issued a notice to all ICE employees that "DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities." *See* AILA Doc. No. 25071607, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission at 1, American Immigration Lawyers Association (July 8, 2025), https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission. In the memo, DHS announced that it considered "applicants for admission" to now encompass any noncitizen "present in the United States who has not been admitted or who arrives in the United States," in conjunction with its novel stance "that [Section 1225] of the Immigration and Nationality Act (INA), rather than [Section 1226], is the applicable immigration detention authority for all applicants for admission." *Id.* As a result, DHS concluded that these noncitizens "are also ineligible for a custody redetermination hearing ('bond hearing') before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS." *Id.*

34. On September 5, 2025, the government further doubled down on this position when the BIA issued a precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). In that decision, the BIA concluded that the "plain text" of the INA mandates that noncitizens who are "present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Id.* at 220. The BIA conceded that even though "section 236(c) of the INA, 8 U.S.C.A. § 1226(c), mandates detention of a subset of the category of [noncitizens] that are also subject to mandatory detention under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A)"—effectively rendering Section 1225(b)(2) superfluous and redundant under this novel interpretation—this concern is irrelevant because "redundancies are common in statutory drafting." *Id.* at 222.

35. The BIA's decision in *Matter of Yajure Hurtado*, which IJs across the nation believe they are required to follow as binding precedent, effectively mandates 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," even if they "[r]emain[] in the United States for a lengthy period of time following entry without inspection." *Id.* at 228. "This sweeping new policy subjects millions of undocumented residents to prolonged detention without the opportunity for release on bond, in contravention of decades of agency practice and robust due process protections hitherto afforded to such residents to enable them to challenge the government's basis for detaining them." *Rodriguez Cabrera, v. Mattos*, No. 2:25-CV-01551-RFB-EJY, 2025 WL 3072687, at *3 (D. Nev. Nov. 3, 2025).

36. Multiple jurists in this circuit ruled that noncitizens were in fact detained under § 1226(a) and should be released immediately. *See, e.g.*, *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, No. 25-CV-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185 (E.D. Cal.

Sept. 5, 2025); *Aguilera v. Albarran*, No. 1:25-CV-01619 JLT SAB, 2025 WL 3485016 (E.D. Cal. Dec. 4, 2025); *Garcia v. Chestnut*, No. 1:25-CV-01907-JLT-CDB, 2025 WL 3771348 (E.D. Cal. Dec. 31, 2025); *Carlos v. Chestnut*, No. 1:26-CV-00007-JLT-SKO (HC), 2026 WL 145889 (E.D. Cal. Jan. 20, 2026); *Rosado v. Figueroa*, No. 25-CV-02157-PHX-DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. 25-CV-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Echevarria v. Bondi*, No. CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Silva v. Figueroa*, No. CV-25-4015-PHX-JJT (MTM), 2025 WL 4076899 (D. Ariz. Nov. 18, 2025); *Millan-Osuna v. Cantu*, No. CV-25-4019-PHX-MTL (JFM), 2025 WL 3294945 (D. Ariz. Nov. 26, 2025); *Sanabria v. Rosa*, No. CV-25-4439-PHX--JJT (ASB), 2025 WL 3561632 (D. Ariz. Dec. 11, 2025); *Sanchez-Sanchez v. Luis Rosa*, 2:25-cv-4586-SHD--DMF, ECF No. 7 (D. Ariz. Dec. 19, 2025); *Diaz Cruz v. Noem*, No. CV-26-324-PHX-KML (CDB), 2026 WL 237770 (D. Ariz. Jan. 29, 2026); *Paladino Jarquin v. Trump*, No. 2:26-cv-186-RM--MTM, ECF No. 8 (D. Ariz. Feb. 2, 2026); *Tamarit-Ferrer v. Rivas*, No. CV-25-4886-PHX-DWL (MTM), 2026 WL 295687 (D. Ariz. Feb. 4, 2026); *Colman-Randas v. Cantu*, No. CV-25-3594-PHX-MTL (ASB), 2026 WL 617344 (D. Ariz. Mar. 5, 2026); *Avakian v. Cantu*, No. CV-26-104-PHX-SHD, 2026 WL 746351 (D. Ariz. Mar. 17, 2026); *Singh v. Party*, No. CV-26-483-PHX-JCH (CDB), 2026 WL 809849 (D. Ariz. Mar. 24, 2026).

37. The vast majority of courts around the country have also rejected the government's new interpretation of the INA. *See, e.g.*, *Lopez Benitez v. Francis*, 795 F.Supp.3d 475 (S.D.N.Y. Aug. 13, 2025); *Vasquez Carcamo v. Noem*, No. 2:25-CV-00922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025); *Aguirre Villa*, 2025 WL 3091833; *Menjivar Sanchez v. Wofford*, No. 1:25-CV-01187-SKO (HC), 2025 WL 3089712 (E.D. Cal. Nov. 5, 2025); *Salgado Mendoza v. Noem*, No. 1:25-CV-1252, 2025 WL 3077589 (W.D. Mich. Nov. 4, 2025); *Hernandez Alonso v. Tindall*, No. 3:25-CV-652-DJH, 2025 WL 3083920 (W.D. Ky. Nov. 4, 2025); *Rojano Gonzalez v. Sterling*, No. 1:25-CV-6080-MHC, 2025 WL 3145764 (N.D. Ga. Nov. 3, 2025); *J.A.M. v. Streeval*, No. 4:25-CV-342 (CDL), 2025 WL 3050094 (M.D.

Ga. Nov. 1, 2025); *Godinez-Lopez v. Ladwig*, No. 2:25-CV-02962-SHL-ATC, 2025 WL 3047889 (W.D. Tenn. Oct. 31, 2025), *Singh v. Bondi*, No. 1:25-CV-02101-SEB-TAB, 2025 WL 3029524 (S.D. Ind. Oct. 30, 2025); *Ramirez Valverde v. Olson*, No. 25-CV-1502, 2025 WL 3022700 (E.D. Wis. Oct. 29, 2025); *Aguilar Guerra v. Joyce*, 2:25-CV-534-SDN, 2025 WL 2986316 (D. Maine Oct. 23, 2025); *Contreras Maldonado v. Cabezas*, No. 25-CV-13004, 2025 WL 2985256 (D. N.J. Oct. 23, 2025); *Caballero v. Baltazar*, No. 25-CV-03120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Ochoa Ochoa v. Noem*, No. 25-CV-10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Merino v. Ripa*, No. 25-23845-CIV, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025); *G.S. v. Bostock*, No. 2:25-CV-01255-JNW-TLF, 2025 WL 3014274 (W.D. Wash. Oct. 8, 2025), report and recommendation adopted sub nom. *G.S. v. Bostock*, No. 2:25-CV-01255-JNW-TLF, 2025 WL 3014035 (W.D. Wash. Oct. 28, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Kostak v. Trump*, No. 3:25-CV-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Maldonado v. Olson*, No. 25-CV-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); J.S.H.M. v. Wofford, No. 1:25-CV-01309-JLT-SKO (HC) (E.D. Cal. Oct. 16, 2025); Ortiz Donis v. Chestnut, No. 1:25- CV-01228-JLT-SAB (HC), 2025 WL 32879514 (E.D. Cal. Oct. 9, 2025); M.R.R. v. Chestnut, No. 1:25-CV-01517-JLT (HC), 2025 WL 3265446 (E.D. Cal. Nov. 24, 2025); *Trejo-Bautista v. President of the United States*, No. 1:26-cv-20376-KMW, ECF No. 13 at *8 n.3 (S.D. Fla. Mar. 4, 2026) ("The Court has ceased attempting to catalog every district court decision addressing this issue but is aware of approximately 3,500 decisions nationwide reaching the same conclusion.").

38. Petitioner's detention as an applicant for admission subject to mandatory detention violates the plain language of the INA. Section 1225(b)(2)(A) does not apply to individuals, like Petitioner, who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), which allows for the discretionary release on conditional parole or bond.

39. If he has arrived, he can no longer be arriving. Although 8 U.S.C. § 1182(d)(5)(a) states that a paroled individual, such as Mr. Marcano, has not been admitted to the United States, this language does not provide that he is arriving in the United States. *Rodriguez- Acurio v. Almodovar*, 2025 WL 3314420, at *19-20 (E.D.N.Y. Nov. 28, 2025); Coal. For Hum. *Immigrant Rts. V. Noem*, 2025 WL 2192986, at *27 (D.D.C. Aug. 1, 2025); *Qasemi v. Francis*, 2 2025 WL 3654098, at *16 (S.D.N.Y. Dec. 17, 2025). Indeed, Mr. Marcano already arrived, was paroled, entered, and has now been present in the United States for over two years. These facts are incontrovertible and remain true despite his lack of formal admission.

40. The Supreme Court has frequently explained, as "persons" in the United States, noncitizens who have entered the country have due process rights, including from unjustified deprivations of liberty, even if they entered unlawfully. *See Mathews*, 426 U.S. at 77 (due process protects every noncitizen in the United States, "[e]ven one whose presence in this country is unlawful, involuntary, or transitory"); *Zadvydas*, 533 U.S. at 693 (explaining that once a noncitizen has "effected an entry into the United States," constitutional due process attaches); A.A.R.P. v. Trump, 605 U.S. 91, 94 (2025) (reiterating the right to due process for noncitizens present in the United States, in a case that included noncitizens who had entered without inspection). These constitutional protections exist independent of statutory rights. For example, in the course of invalidating a statute in *Wong Wing*, the Court held that "all persons within the territory of the United States are entitled to the protection guaranteed by [the fifth and sixth amendments], and that even [noncitizens] shall not be . . . deprived of

life, liberty, or property without due process of law." 163 U.S. at 238. And in *Yamataya v. Fisher*, the Court explained that the custody and deportation of a person found to have entered unlawfully four days prior must comport with "'due process of law' as understood at the time of the adoption of the Constitution." 189 U.S. 86, 100–01 (1903) (executive officers may not "arbitrarily . . . cause [a noncitizen] who has entered the country . . . to be taken into custody" without "giving him all opportunity to be heard").

41. The Supreme Court itself has also found that "[a] protected liberty interest may arise from a conditional release from physical restraint" and that such an "interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute." *Young v. Harper*, 520 U.S. 143, 147-49 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same for probation); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same for parole). Where a noncitizen is inspected at a port of entry and allowed to enter, they retain a protected liberty interest and are accordingly entitled to the procedural protection of a pre-deprivation hearing prior to being detained.

42. Courts throughout the country, including courts within the Ninth Circuit, have held that due process requires a noncitizen to receive notice and an opportunity to be heard before being deprived of liberty, whether that deprivation is temporary or prolonged. *Jaimes Rivera v. Divver*, No. 26-CV-2578 JAO (SBC), ECF No. 7, at 6 (S.D. Cal. May 5, 2026) (finding that the revocation of petitioner's parole without notice, reasoning, or an opportunity to be heard violated the Due Process Clause and rendered his detention unlawful); see *Depablos Carrillo v. Casey*, No. 26-cv-02580-BAS-AHG, ECF No. 5, at 2–3 (S.D. Cal. May 5, 2026) ("Because DHS released Petitioner upon finding he was not a flight risk or a danger to the community in May 2023, and because there is no evidence those circumstances have changed, Petitioner is entitled to remain released on the same conditions as he was initially released."); *Colman-Randas*, No. CV-25-3594-PHX-MTL (ASB), 2026 WL 617344, at *1; *Singh*, No. CV-26-483-PHX-JCH (CDB), 2026 WL 809849, at *3; *Telenchana v. Hermosillo*, 2:26-cv-363-GJL, 2026 WL

696806, at *9 (W.D. Wash. Mar. 12, 2026) (concluding that re-detention of petitioners who had been released on their own recognizance violated due process under the *Mathews* framework because petitioners had "established liberty interests."); *J.C.E.P. v. Minga Wofford*, No. 1:25-CV-1559-EFB (HC), 2025 WL 3268273, at *6 (E.D. Cal. Nov. 24, 2025) (collecting cases); *Ramirez Clavijo v. Kaiser*, 25-CV-6248-BLF, 2025 WL 2419263, at *6 (N.D. Cal. Aug. 21, 2025) ("Petitioner thus has shown a likelihood of success on the merits of her claim that she is entitled to a pre-deprivation hearing before a neutral decisionmaker prior to any re-arrest or detention under the Due Process Clause."); *Singh v. Andrews*, 1:25-CV-801-KES-SKO (HC), 2025 WL 1918679, at *8 (E.D. Cal. July 11, 2025) ("On balance, the *Mathews* factors show that petitioner is entitled to process, and that process should have been provided before petitioner was detained."); *Noori v. LaRose*, No. 25-CV-1824-GPC-MSB, 2025 WL 2800149, at *11 (S.D. Cal. Oct. 1, 2025) ("Petitioner was entitled to due process, including written notice, the reasons for the termination, and an opportunity to contest the determination, prior to termination of his parole."); *Ertugrul v. Mullin*, 3:26-cv-03442 (S.D. Cal. 2026) ("The Court finds Petitioner's revocation of his release and detention violates his due process rights.").

43. The Government's failure to provide such a hearing violates due process and can only be remedied through a return to the same custody, under the same conditions, that existed prior to detention. Immediate release is therefore the only appropriate remedy to refute the deprivation of due process suffered by Mr. Marcano in the instant matter. *See E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025) ("Although the Government notes that Petitioner may request a bond hearing while detained, such a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty."); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) ("if Petitioner is detained, he will already have suffered the injury he is now seeking to avoid"); *Paredes v. Casey,* 3:26-cv-03462 (N.D. Cal. 2026) (finding that § 1226 governed the detention of a noncitizen who had resided in the United States on parole for approximately

two years before being re-detained, and that immediate release, rather than a post-deprivation bond hearing, was the appropriate remedy because such a hearing could not prevent the erroneous deprivation of liberty). *See Sarr v. Casey*, 2026 WL 1419635 ("The Court finds that all three factors support a finding that Respondents' revocation of Petitioner's parole without reasoning or an opportunity to be heard deprived Petitioner of his due process rights.").

44. Here, Mr. Marcano invokes the most fundamental of liberty interests, the right to be free from physical restraint, which cannot be taken away lightly or arbitrarily, flowing from the Due Process Clause itself. *Kerry*, 576 U.S. at 91. As Justice Scalia recognized in Doe, in cases like this, no statute can limit the procedures required by the Constitution. See Doe, 538 U.S. at 8–9 (Scalia, J., concurring). Otherwise, Congress could simply legislate away the Due Process Clause's procedural guarantees. See *Counselman v. Hitchcock*, 142 U.S. 547, 565 (1892) ("Legislation cannot detract from the privilege afforded by the constitution.").

45. Even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, he has a protected liberty interest in remaining out of custody." *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025). *See also Doe v. Becerra*, No. 2:25- CV-00647-DJC-DMC, 2025 WL 691664, at *4 (E.D. Cal. Mar. 3, 2025); *Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023); *Ortiz Donis v. Chestnut*, No. 1:25-CV-01228-JLT-SAB, 2025 WL 2879514, at *11 (E.D. Cal. Oct. 9, 2025). After Mr. Marcano was paroled into the country based on certain conditions, it "creates an 'implicit promise' that the individual's liberty will be revoked only if they fail to abide by the conditions of their release." *Calderon v. Kaiser*, No. 25-cv-06695-AMO, 2025 WL 2430609, at *2 (N.D. Cal. Aug. 22, 2025) (quoting Morrissey v. Brewer, 408 U.S. 471, 482 (1972)). See *Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d 1130, 1136 (W.D. Wash. 2025) ("When Petitioner was previously released from immigration custody on parole, he "took with him a liberty interest which is entitled to the full protections of due process.""); *see also Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025)

("The Supreme Court has repeatedly recognized that individuals who have been released from custody, even where such release is conditional, have a liberty interest in their continued liberty"). See *Hidalgo Gonzalez v. LaRose*, No. 3:2026cv03561, (S.D. Cal. 2026) ("While Respondents note that Petitioner's parole has been terminated, Petitioner's liberty interest "did not expire along with Petitioner's parole agreement.""); *Antonio v. LaRose*, No. 26-CV-2387-LL-MMP, 2026 WL 1215037, at *1–3 (S.D. Cal. May 4, 2026) (same). ("Therefore, because Respondents detained Petitioner by revoking his release without notice or a pre-deprivation hearing in violation of the Due Process Clause, his detention is unlawful."); *Sanchez v. LaRose*, No. 25-CV-2396-JES-MMP, 2025 WL 2770629, at *4 (S.D. Cal. Sept. 26, 2025).

46. Mr. Marcano was lawfully paroled into the United States. This Court has granted numerous petitions for writs of habeas corpus involving individuals who, like Mr. Marcano, were paroled into the United States and later detained by ICE under its revised interpretation of the detention statutes. *See Perez v. LaRose*, 2025 WL 3171742; *Velasquez- Chinga v. Noem*, Case No.: 3:26-cv-00105-RBM-KSC, 2026 WL 311507 (S.D. Cal. Feb. 5, 2026); *Morao Quero v. LaRose*, Case No.: 3:26-cv-03478-RBM-AHG (S.D. 2026). ("When the government grants an alien parole into the country, it creates a liberty interest intimately tied to freedom from imprisonment. Here, Petitioner was deprived of her liberty interest in her prior parole status when Respondents revoked that parole and placed her in detention."), *see Arciniegas Carrillo v. Casey*, No. 26-CV-2719 JLS (BJW) (S.D. Cal. May 19, 2026) ("Petitioner was released on parole upon entering the United States. Petitioner is not a newly arrived noncitizen seeking admission at the border, as Petitioner has been in the United States since 2024."); *see Philostene v. LaRose*, No. 26-cv-1206-BJC-VET, ECF No. 6, at 4 (S.D. Cal. Apr. 30, 2026) ("The Court finds Petitioner was not an applicant for admission under § 1225 when she was taken into custody on July 8, 2025. Because Petitioner was arrested within the interior of the United States, she was subject to § 1226. There is nothing

demonstrating Petitioner was engaged in any conduct that can be interpreted as "seeking admission" at the time of her arrest in July 2025.")

47. If, as the Government is now arguing, every applicant for admission is already subject to mandatory detention under § 1225(b)(2)(A), "there would have been no need for the new section 1226(c)(1)(E), which mandates detention for every noncitizen who is present in the United States without being admitted or paroled and who has been charged with, arrested for, or admits to committing certain crimes." *Lepe v. Andrews*, 801 F. Supp. 3d 1104, 1115 (E.D. Ca. Sept. 23, 2025). That is to say, the Government's interpretation of § 1225 would render § 1226(c)(1)(E) superfluous. Id.; *see also* Gomes v. Hyde, 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025); *Lopez Benitez*, 2025 U.S. Dist. LEXIS 157214, 2025 WL 2371588, at *7; *Romero v. Hyde*, 2025 U.S. Dist. LEXIS 160622, 2025 WL 2403827, at *11 (D. Mass. Aug. 19, 2025); *Echevarria v. Bondi*, 2025 U.S. Dist. LEXIS 196174, 2025 WL 2821282, at *30 n.8 (D. Ariz. Oct. 3, 2025); *Maldonado v. Olson*, 2025 U.S. Dist. LEXIS 158321, 2025 WL 2374411, at *12 (D. Minn. Aug. 15, 2025) ("The Court will not find that Congress passed the Laken Riley Act to 'perform the same work' that was already covered by § 1225(b)(2).").

48. Mr. Marcano requests immediate release from custody, together with the return of all his personal property, to remedy the statutory and due process violations arising from his detention without a pre-deprivation hearing or any subsequent opportunity for a bond hearing. Alternatively, Mr. Marcano requests that this Court order his immediate release pending a bond hearing before the Immigration Court pursuant to the discretionary detention framework of 8 U.S.C. § 1226(a)—a hearing that, under the Government's new interpretation of the law, is presently unavailable to him based on its position that he is an applicant for admission subject to mandatory detention. Should this Court order a bond hearing, Mr. Marcano further requests appropriate procedural safeguards, including that the Government bear the

burden of establishing, by clear and convincing evidence, that his continued detention is justified based on danger to the community or risk of flight.

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

49. Petitioner incorporates the preceding paragraphs as if fully set forth herein.

50. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States. By its very terms, it applies only to those noncitizens who are apprehended while they are applying for admission near the border or at a port of entry. For those like Mr. Marcano, detention must be pursuant to § 1226(a), unless they are subject to § 1226(b)(1), § 1226(c), or § 1231. At the time of his apprehension, Mr. Marcano was not taking any steps to enter or seek admission to the United States; rather, he was already present in the interior of the country, a fact the Government itself recognized in his Notice to Appear.

51. Mr. Marcano cannot be subject to mandatory detention under § 1225(b)(1), including because he does not meet the criteria for Expedited Removal. *See Make the Road New York v. Noem*, No. 25-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025). Indeed, the government has expressly backed away from their attempt to put Mr. Marcano into Expedited Removal, by moving to remand his proceedings back to the IJ.

52. Mr. Marcano cannot be subject to mandatory detention under § 1225(b)(2), including because, as a person already present in the United States, he is not currently "seeking admission" to the United States. *See, e.g., Echevarria*, No. CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282.

53. Mr. Marcano is not lawfully subject to mandatory detention under § 1226(c), including because he has not been convicted of any crime that triggers such detention. *See Demore v. Kim*, 538 U.S. 510, 513-14, 531 (2003) (allowing mandatory detention under § 1226(c) for brief detention of persons convicted of certain crimes and who concede removability").

54. Since Mr. Marcano is not "seeking admission," and nor does he have disqualifying criminal arrests or convictions subjecting him to § 1226(c), he cannot be subject to mandatory detention. Accordingly, the application of § 1225(b)(2) to Mr. Marcano unlawfully mandates his continued detention and violates the INA by depriving him of his rights under § 1226(a).

55. To the extent that Respondents assert that *Matter of Yajure Hurtado* nevertheless requires Mr. Marcano's mandatory detention, the BIA's interpretation in that case is ultra vires and in conflict with the careful balance of factors clearly established in the INA with regard to bond eligibility and is not subject to deference by this Court. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). Moreover, the policy and legal theory behind *Matter of Yajure Hurtado* have now been vacated with the BIA's decision itself also being vacated as contrary to law, notwithstanding the temporary stay thereof recently issued by the Ninth Circuit. *Maldonado Bautista*, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284, at *7 (C.D. Cal. Feb. 18, 2026).

56. Because the Government arbitrarily and capriciously denied Mr. Marcano the bond eligibility and custody procedures required by § 1226(a), including eligibility for release, their action should be held unlawful and set aside pursuant to 5 U.S.C. § 706(2), and this Court should order such further relief as necessary to remedy his unlawful detention.

COUNT II
Violation of Substantive Due Process

57. Petitioner incorporates the preceding paragraphs as if fully set forth herein.

58. The Due Process Clause's guarantee to substantive due process prohibits the government from infringing upon certain "fundamental" liberty interests, "unless the infringement is narrowly tailored to support a compelling government interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993). It applies to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

59. The Government's interest in detaining a noncitizen during removal proceedings is limited to ensuring appearance and protecting the community. *See Demore v. Kim*, 538 U.S. 510, 531 (2003). Indefinite detention without an individualized determination is punitive and arbitrary, violating substantive due process. *Zadvydas*, 533 U.S. at 690. Here, Mr. Maracano's detention is not based on any individualized finding of flight risk or dangerousness. It is based solely on an erroneous legal classification (as an "applicant for admission"). This blanket detention is not "narrowly tailored to support a compelling government interest," *Flores*, 507 U.S. at 302, and is therefore substantively unreasonable and unconstitutional.

60. To that end, immediate release, with all personal property, would be an appropriate remedy for Respondents' constitutional violations in this case, including the lack of pre-deprivation notice or individualized review prior to Mr. Marcano's arrest in a manner that cannot be remedied by a post-deprivation hearing. *See Colman-Randas*, No. CV-25-3594-PHX-MTL (ASB), 2026 WL 617344, at *1 (ordering immediate release after re-detaining petitioner, who had been previously released on recognizance, without provision of a pre-deprivation hearing); *Sing*, No. CV-26-483-PHX-JCH (CDB), 2026 WL 809849, at *3 (same); *Pinchi v. Noem*, 792 F.Supp.3d 1025, 1036 (N.D. Cal. July 24, 2025) (ordering immediate release after courthouse arrest and granting preliminary injunction against re-detention, finding "re-detention without a pre-detention hearing before a neutral decisionmaker is likely unconstitutional" (internal quotations omitted)); *Muev v. O'Neill*, No. 2:25-cv-07172-JMG, at 1 n.1 (E.D. Pa. Jan. 13, 2026) (granting immediate release after finding mandatory detention without the opportunity for a bail hearing unlawful); *Alfaro Herrera v. Baltazar*, No. 1:25-CV-04014, 2026 WL 91470, at *13 (D. Colo. Jan. 13, 2026) (given that petitioner had been previously released to the community and holding a bond hearing would prolong his unlawful detention, "[r]espondents' violations of Petitioner's rights are best remedied by ordering Petitioner's immediate release from immigration detention."); *Roshniashvili v. Allen*, No. 2:26-CV-93, 2026 WL 446657, at *8 (S.D.W. Va. Feb. 17, 2026) (finding the proper remedy

for unlawful detention to be immediate release, noting that "there is little chance the Government would actually hold a bond hearing, and there is no chance any hearing that occurred would comport with due process.") (citing *Briceno Solano v. Mason*, No. 2:26-CV-45, 2026 WL 311624, at *20 (S.D.W. Va. Feb. 4, 2026)); *Qasemi v. Francis*, No. 1:25-CV-10029, 2025 WL 3654098 at *14, (S.D.N.Y. Dec. 17, 2025) (a bond hearing would not be an adequate remedy for the due process violations in petitioner's sudden arrest and detention); *Crespo Tacuri v. Genalo*, No. 1:25-CV-06896, 2026 WL 35569, at *7 (E.D.N.Y. Jan. 6, 2026) (ordering release, finding that post-deprivation review cannot remedy the due process violation of detaining petitioner with no process or individualized assessment); *Moctezuma Macias v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that Government's repeated use of unlawful detention policies across the country caused petitioners to "sit in jail waiting for a judicial decision," ordering immediate release instead of causing additional delay with a bond hearing). The Government's failure to provide Mr. Marcano with either notice or a pre-detention hearing cannot now be adequately remedied through provision of a post-detention hearing. This fact renders immediate release the only means by which the deprivation of due process suffered by Mr. Marcano might now be remedied.

61. The Government violated Mr. Marcano's right to substantive due process by continuing his prolonged detention without any individualized review thereof. His rights continue to be violated every day that he remains detained in this manner.

COUNT III
Violation of Procedural Due Process

62. Petitioner incorporates the preceding paragraphs as if fully set forth herein.

63. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

64. This fundamental principle of our free society is enshrined in the Fifth Amendment's Due Process Clause, which specifically forbids the Government to "deprive[] any person ... of liberty ... without due process of law. U.S. Const. Amend. V.

65. "[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." *Id.* at 693;

66. "Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690. The Supreme Court has "repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

67. The Due Process Clause of the Fifth Amendment forbids the Government from depriving any person of liberty without due process of law. U.S. Const. Amend. V. Here, independent of their failure to follow the relevant regulations for revoking Petitioner's ROR, Respondents have violated his due process rights by failing to conduct an individualized determination of flight risk or danger prior to his re-detention.

68. Respondents' policy, as implemented through *Matter of Yajure Hurtado* and the January 13, 2026, EOIR guidance, and in defiance of the *Maldonado Bautista* judgment prior to its temporary stay, categorically denies Mr. Marcano a bond hearing, as required by law. Respondents' outright refusal to provide any process whatsoever to determine the necessity of Mr. Marcano's detention is a per se violation of procedural due process. *See, e.g., Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 232 (3d Cir. 2011) ("At its core, procedural due process guarantees an opportunity to be heard at a meaningful time and in a

meaningful manner."); *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) ("the Constitution requires some kind of a hearing before the State deprives a person of liberty of property"). By instructing IJs that they lack jurisdiction to consider bond for individuals like Mr. Marcano, Respondents have deprived him of the most basic procedural safeguard—a hearing. This is the antithesis of due process.

69. Under the framework of *Mathews v. Eldridge*, 424 U.S. 319 (1976), categorically denying Mr. Marcano an individualized review of his custody based on the *Matter of Yajure Hurtado* decision violates procedural due process for several reasons, including but not limited to:

i. Mr. Marcano's private interest in freedom from imprisonment weighs heavily. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) ("the most significant liberty interest there is-the interest in being free from imprisonment); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause"); *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process."). Every additional day of detention inflicts significant and irreparable harm on his health, well-being, and ability to assist in his own defense. His ongoing removal proceedings before the Immigration Court is proceedings on an expedited basis while he is detained, makes the deprivation of liberty and the obstruction of his legal preparation especially acute and unjustifiable. Mr. Marcano was detained without any pre-detention determination as to whether he posed a flight risk or any risk of dangerousness, and sans any material change in circumstances triggering his sudden arrest and detention; rather, "it appears [Mr. Marcano] was detained simply because" he was readily identified by Respondents as a noncitizen in the process of petitioning for asylum as a legal means to remain in the United States. *Hyppolite v. Noem*, No. 25-cv-4304, 2025 WL 2829511, at *34-35 (E.D.N.Y. Oct. 6, 2025). The private interests weigh

heavily in Petitioners' favor: The private interests weigh heavily in Mr. Marcano's favor: he has strong family ties in the United States, including his mother, stepfather, and three younger siblings. Moreover, Mr. Marcano has maintained stable employment with Tricolor Factory Corp. since July 26, 2024, holds valid employment authorization through 2030, and has a pending application for immigration relief that provides him a strong incentive to remain in the United States and comply with all immigration proceedings.

ii. The risk of erroneous deprivation of liberty is extremely high, as Respondents' new interpretation of immigration detention provisions categorically deprives individuals such as Mr. Marcano of the opportunity to seek individualized review of their custody, as required by the INA. Mr. Marcano is precisely the type of individual for whom discretionary release under § 1226(a) was designed: non-dangerous individuals who are not flight risks because of their community ties. "[T]he government cannot switch tracks and subject Petitioner[] to mandatory detention under section 1225(b)(2) when the government has instead placed Petitioner[] in removal proceedings under section 1229a and release [him] on [his] own recognizance under section 1226(a)." *Colman-Randas*, No. CV-25-03594-PHX-MTL (ASB), 2026 WL 617344, at *2 (citing *Valencia Zapata v. Kaiser*, 801 F.Supp.3d 919, 936 (N.D. Cal. 2025), *appeal filed*, No. 25-7472 (9th Cir. Nov. 26, 2025)).

iii. The Government's interest in re-detaining Mr. Marcano without a hearing is low. *See Id.* (citing *Ortega v. Bonnar*, 415 F.Supp.3d 963, 970 (N.D. Cal. 2019). Detention hearings in immigration court are commonplace and impose only a "minimal cost." *Doe v. Becerra*, 787 F.Supp.3d 1083, 1094 (E.D. Cal. Mar. 3, 2025). The Government's interest is further diminished by its own determination on April 14, 2024, that Mr.

Marcano warranted parole into the United States, reflecting immigration officials' determination that he posed neither a danger to the community nor a flight risk. Sans any change in material circumstances that would otherwise warrant revocation of his conditions of release, Mr. Marcano's detention bears no rational relation to any legitimate governmental interests. Notably, the Government's interest is that of the people's, and the people have an interest in not erroneously wasting their tax dollars on continued detention without individualized review thereof. Furthermore, while the Government has an interest in the efficient administration of immigration laws, nothing prevents them from so administering the law whilst simultaneously affording individuals, like Mr. Marcano, with their core due process right of notice and an opportunity to be heard relative prior to revocation of their core liberty interest. *Id.*

70. The Government violated Mr. Marcano's right to procedural due process by denying him notice or opportunity to be heard prior to revoking his parole. His rights continue to be violated every day that he remains detained in this manner.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Order, under the All Writs Act, 28 U.S.C. § 1651, that Petitioner shall not be transferred outside of this jurisdiction while this habeas petition is pending;

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

d. Declare that Petitioner's detention is unlawful, that he is not an applicant for admission "seeking admission" subject to 8 U.S.C. § 1225(b);

e. Declare that Respondents' actions, as set forth herein, violate the INA and Petitioner's substantive and procedural due process rights;

f. Issue a Writ of Habeas Corpus requiring that Respondents immediately release Petitioner, with all personal property, subject to any appropriate conditions, or in the alternative to exercise its inherent authority to hold its own bail hearing on the question of custody, or in the alternative to provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days, where the Government bears the burden of proof to a clear and convincing standard of evidence;

g. Order Respondents to produce all records relating to decisions on Petitioner's arrest and detention held by Respondents, including but not limited to DHS Form I-286, Notice of Custody Determination, and all other records bearing upon the "true cause of Petitioner's detention";

h. Issue appropriate injunctive relief; and

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

Respectfully submitted this 28th day of July 2026.

/s/ Vanessa Molina
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VERIFICATION

I, Sylvia Duluc-Silva, Esq, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that to the best of my knowledge and belief, the foregoing facts are true and correct based upon information available to me at this time.

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