UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

N.S.P., Petitioner,	)	
	)	CASE NO.:
vs.	)	7:26-cv-218
DAVID PAULK, *Warden, Irwin County Detention Center* KRISTEN SULLIVAN, *Field Office Director for ICE Atlanta Field Office*, and DAVID VENTURELLA, *in his official capacity as Acting Director of Immigration and Customs Enforcement*; and MARKWAYNE MULLIN, *Secretary of Homeland Security; and* TODD BLANCHE, *U.S. Attorney General.*	)	
Respondents.	)	

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. This habeas petition challenges the ongoing civil immigration detention of Petitioner N.S.P., A# 246-XXX-835, who is detained by U.S. Immigration and Customs Enforcement (ICE). Petitioner was apprehended while appearing for a scheduled ICE check-in in Atlanta, Georgia, more than three years after his entry. **Petitioner previously was released by DHS on an Order of Release on Recognizance dated March 5, 2023, and was enrolled in an Alternatives to Detention / ISAP program that same day.** See Exs. 5, 6.

2. Petitioner entered the United States near San Luis, Arizona, on or about March 5, 2023,

was served with a Notice to Appear dated March 5, 2023, and was charged as present in the United States without admission or parole under INA § 212(a)(6)(A)(i). See Ex. 4.

3. Petitioner is not an arriving alien, and ICE did not arrest him at a border, port of entry, or inspection point on July 28, 2026. Petitioner has complied with ICE reporting requirements, including a prior ICE report date on July 23, 2025 and the July 28, 2026 check-in in Atlanta at which he was detained.

4. Petitioner's removal proceedings remain pending, and he has a master calendar hearing scheduled for October 19, 2026 at 9:00 a.m. before Immigration Judge Matthew C. Beese at the Chicago Immigration Court.

5. Petitioner seeks asylum, withholding of removal, and protection under the Convention Against Torture, and counsel has declared that Petitioner filed a timely application for those forms of protection on March 4, 2024.

6. Petitioner has no criminal history, is the sole breadwinner for his household, and lives with his wife and six-month-old United States citizen child.

7. Respondents are treating Petitioner as subject to mandatory no-bond detention under 8 U.S.C. § 1225(b)(2)(A). That theory is unlawful because Petitioner was not seeking admission at the time ICE detained him in the interior at a scheduled check-in.

8. Binding Eleventh Circuit precedent forecloses Respondents' detention theory. In *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Mia.*, 175 F.4th 1258 (11th Cir. 2026), the Eleventh Circuit held that § 1225(b)(2)(A) does not impose mandatory no-bond detention on interior noncitizens who previously entered without inspection but were

not seeking admission when later arrested. see also *Quiroz v. Mullin*, No. 26-6019 (10th Cir. June 30, 2026). Section 1226, not § 1225(b)(2)(A), governs Petitioner's custody unless Respondents establish that a specific mandatory detention provision applies.

9. Petitioner is currently detained at Irwin County Detention Center in Ocilla, Georgia, within the Middle District of Georgia. Petitioner was initially detained after appearing for his scheduled ICE check in in Atlanta, Georgia, and was subsequently transferred to Irwin County Detention Center. *See* Exhibit 1 (ICE Locator).

10. The Eleventh Circuit held that § 1225(b)(2)(A) is limited to applicants for admission who are "seeking admission," and that neither petitioner there was seeking lawful entry when arrested after a traffic stop.

11. The Eleventh Circuit further explained that § 1226 generally governs the arrest and detention of noncitizens present in the country pending removal proceedings, while § 1225 governs arriving noncitizens seeking entry at the border or port of entry.

12. Petitioner is materially situated like the petitioners in *Hernandez Alvarez*: he entered without inspection years ago, was later encountered in the interior and is being denied bond based solely on DHS's erroneous application of § 1225(b)(2)(A)

13. Independently, Petitioner challenges ICE's warrantless interior seizure and re-detention. Section 1226(a) authorizes arrest and detention "[o]n a warrant issued by the Attorney General," and § 1226(b) permits revocation and rearrest under the original warrant only where bond or parole was authorized under § 1226(a). 8 U.S.C. § 1226. On information and belief, ICE assumed custody without a warrant and without an individualized basis to conclude that immediate warrantless arrest was

necessary. This claim provides an independent basis for relief or, at minimum, for an order requiring Respondents to justify the arrest and custody basis. In *Castañon-Nava v. U.S. Department of Homeland Security*, 175 F.4th 828(7th Cir. 2026), the Seventh Circuit recognized that release may be appropriate where an immigration arrest violates § 1357(a)(2), but emphasized the need for an individualized determination that the arrest was unlawful. Here, upon information and belief, Petitioner appeared as required for a scheduled ICE check-in, and ICE had no individualized basis to conclude that he was likely to escape before a warrant could be obtained.

14. Petitioner seeks a writ of habeas corpus as well as declaratory, and injunctive relief, ordering Respondents to cease detaining him under § 1225(b)(2)(A), to treat his custody under § 1226, and to provide immediate release or, at minimum, a prompt bond hearing before an immigration judge under § 1226 and its implementing regulations. A detailed statement of facts and procedural history follows, supporting Petitioner's claims for relief.

II. JURISDICTION

A. This Court Has Jurisdiction Under 28 U.S.C. § 2241 and § 1331

15. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in custody and challenges the legal authority for his civil immigration detention.

16. This Court also has federal question jurisdiction under 28 U.S.C. § 1331 because Petitioner raises claims arising under the Constitution and laws of the United States.

17. In *Hernandez Alvarez*, the Eleventh Circuit reviewed § 2241 habeas petitions

challenging detention under § 1225(b)(2)(A) and affirmed habeas relief where the district court concluded that § 1226 governed the petitioners' detention.

18. Petitioner challenges only the legal basis and procedures for his detention; he does not ask this Court to decide removability, terminate removal proceedings, or review any final order of removal.

19. Section 1252(f)(1) does not bar individualized relief for Petitioner. The Eleventh Circuit in *Hernandez Alvarez* affirmed habeas relief for two individual petitioners challenging their detention under § 1225(b)(2)(A).

20. To preserve this Court's habeas jurisdiction, Petitioner requests an order prohibiting Respondents from transferring him outside the Middle District of Georgia or changing his immediate custodian while this case is pending.

21. Petitioner previously filed a related habeas petition in the United States District Court for the Northern District of Georgia after ICE detained him at his scheduled Atlanta check-in. That action remains pending as of the filing of this Petition. Petitioner discloses the Northern District action to avoid any concern regarding duplicative litigation or inconsistent rulings. Petitioner does not seek duplicative merits adjudication in two courts and will promptly notify both courts and seek dismissal, stay, transfer, or other appropriate relief in one action once the proper and most efficient forum for adjudicating his custody challenge is determined. Petitioner respectfully requests expedited consideration here because he is now physically confined in this District and Respondent Paulk is his immediate physical custodian.

III. VENUE

22. Venue is proper in the United States District Court for the Middle District of Georgia because Petitioner is detained at Irwin County Detention Center in Ocilla, Georgia, and his immediate physical custodian, Respondent David Paulk, is located in this District. Habeas petitions generally are filed in the district court with jurisdiction over the filer's place of custody, also known as the district of confinement, pursuant to 28 U.S.C. § 2241. Furthermore, the Respondents are officers of United States agencies, the Petitioner is detained within this District, and there is no real property involved in this action.

IV. PARTIES

23. Petitioner, N.S.P., A# 246-XXX-835, is a noncitizen who entered the United States on or about March 5, 2023. On or about July 28, 2026, Petitioner was arrested by ICE while appearing for a scheduled check-in at the ICE office in Atlanta, Georgia, and he is now detained at Irwin County Detention Center in Ocilla, Georgia. Petitioner has no criminal history, poses no danger to the community, and presents no meaningful risk of flight.

24. Respondent David Paulk is the Warden of Irwin County Detention Center, where Petitioner is currently detained, and he is Petitioner's current physical custodian. He is sued in his official capacity.

25. Respondent Kristen Sullivan is the ICE Atlanta Field Office Director. Respondent Sullivan is responsible for ICE custody decisions, detention classification, re-detention

decisions, and implementation of ICE custody authority within the Atlanta Field Office area, including Petitioner's arrest and custody classification. She is sued in her official capacity for purposes of Petitioner's claims for declaratory and injunctive relief and to ensure effective implementation of any release or custody order entered by this Court.

26. Respondent David Venturella is the Acting Director of Immigration and Customs Enforcement (ICE). As such, Respondent Venturella is responsible for the oversight of ICE operations and the head of the federal agency responsible for all immigration enforcement in the United States. Respondent Venturella is being sued in his official capacity.

27. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security (DHS). As Secretary of DHS, Secretary Mullin is the cabinet-level official responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Secretary Mullin is being sued in his official capacity.

28. Respondent Todd Blanche is the Attorney General of the United States and is sued in his official capacity since U.S. government agencies are Respondents in this complaint. Furthermore, the Immigration Judges who decide removal cases and applications for bond and relief from removal do so as his designees at the Executive Office for Immigration Review (EOIR).

29. Petitioner names certain federal officials in their official capacities solely to preserve alternative, non-habeas avenues for prospective relief—such as as-applied declaratory and injunctive orders under 28 U.S.C. § 1331, the APA's waiver of

sovereign immunity, 5 U.S.C. § 702, the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, and the All Writs Act, 28 U.S.C. § 1651—necessary to enjoin enforcement of DHS regulations and their interpretation as applied to Petitioner, ensure compliance with DHS/EOIR custody regulations, prevent transfer or removal of Petitioner, and effectuate any release the Court orders at the agency level where policy and implementation authority reside. See, e.g., *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949); *Dugan v. Rank*, 372 U.S. 609 (1963).

30. Petitioner acknowledges, consistent with *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that the proper respondent to the habeas claim is the immediate custodian, and does not rely on the federal officials as "habeas respondents." Rather, Petitioner names these federal officials in their official capacities solely to ensure that the Court can issue effective relief on non-habeas claims, such as declaratory and injunctive relief, and to direct agency action to those with actual authority to implement it. Should the Court find these officials improper as respondents to the habeas count, Petitioner respectfully requests that any dismissal be limited to that claim and without prejudice to their continued status as respondents for the non-habeas claims. Maintaining these officials as parties is necessary to ensure that, if relief is granted, the responsible agency officials cannot simply re-arrest Petitioner or otherwise frustrate the Court's order by invoking their erroneous interpretation of the INA. This approach is consistent with *Padilla* and ensures that the Court's orders are both effective and enforceable.

V. STATEMENT OF FACTS AND PROCEDURAL HISTORY

31. Petitioner, N.S.P., is a noncitizen who entered the United States on or about March 5, 2023, near San Luis, Arizona, and was encountered by CBP/ICE at the time of entry. Petitioner was released by DHS on an Order of Release on Recognizance (OREC) after Respondents found he was not a flight risk or a danger. Petitioner has a copy of his OREC and retains copies of his ICE check-in records reflecting his compliance. Petitioner has continuously resided in the United States since that time and currently has removal proceedings pending before the Immigration Court, with his next master calendar hearing scheduled for October 19, 2026, at 9:00 a.m. before Immigration Judge Matthew C. Beese at the Chicago Immigration Court. A Notice to Appear was issued dated March 5, 2023, and filed with the Immigration Court on April 12, 2023. Petitioner has complied with all obligations related to his pending immigration proceedings since his release, including all scheduled ICE check-ins.

32. Petitioner resides in Saint Charles, Illinois (Kane County) with his wife and their six-month-old son, a United States citizen. Petitioner's wife does not currently have work authorization and has recently filed her own application for asylum. Petitioner is the sole financial provider for the household, and his wife is currently in the post-partum period following the birth of their son.

33. Petitioner is seeking asylum, withholding of removal, and protection under the Convention Against Torture (CAT) in his pending removal proceedings. Petitioner has no prior immigration proceedings, no criminal history, no prior arrests, and no

convictions. He has no history of violence or any conduct suggesting that he poses a danger to the community.

34. On or about July 28, 2026 Petitioner appeared, as required, for a scheduled ICE check-in at the ICE office located at 180 Ted Turner Drive, Atlanta, Georgia 30303. Despite Petitioner's full compliance with the terms of his release and his upcoming master calendar hearing on October 19, 2026, an ICE officer informed Petitioner that he would be taken into custody. The officer stated that even though Petitioner had a hearing scheduled before Immigration Judge Matthew C. Beese, he would nonetheless be detained in order to expedite his removal hearings.

35. At no point during this check-in, nor at any point since his release on ORR in 2023, did Petitioner violate any condition of his release, fail to appear for a hearing, or fail to appear for a scheduled check-in. Petitioner was taken into custody solely because he appeared, as required, for a routine and previously scheduled immigration check-in.

36. Petitioner was initially held following his arrest at the Atlanta ICE office and was then transferred to Irwin County Detention Center in Ocilla, Georgia, where he is currently detained. See Exhibit 1.

37. ICE did not encounter Petitioner at the border, at a port of entry, or while he was attempting to seek admission into the United States at the time of this arrest. Rather, Petitioner was encountered and taken into custody in the interior of the United States more than three years after his entry, after having already been released into removal proceedings by immigration authorities, and while in full compliance with the terms

of that release.

38. DHS is detaining Petitioner as though he were subject to mandatory detention under 8 U.S.C. § 1225(b), despite the fact that Petitioner had previously been processed and released by immigration authorities and was residing in the interior of the United States with pending removal proceedings, and in ongoing compliance with his check-in obligations, at the time of his arrest. Petitioner is not an arriving alien presently seeking admission into the United States, nor was he taking any step to obtain admission when he was seized by ICE.

39. Respondents have identified no changed circumstance justifying revocation of Petitioner's prior release status. Petitioner did not miss an immigration hearing, miss an ICE check-in, violate any identified condition of release, commit any crime, or present any new danger or flight-risk facts. To the contrary, Petitioner appeared as directed for the very ICE check-in at which he was detained. See Exs. 2, 3, 5, 6. The only reason counsel was given was that ICE wanted to detain Petitioner "in order to expedite his hearings," and the ICE officer confirmed that there was no criminal-history reason or other negative reason for detention. See Ex. 2. DHS cannot convert Petitioner's compliance with supervision into the occasion for unexplained incarceration. If Respondents contend that Petitioner's prior release was revoked, they must identify the authorized official who revoked release, the written basis for revocation, the custody determination issued, and any new facts allegedly justifying detention.

VI. EXHAUSTION OF REMEDIES

40. No statutory exhaustion requirement applies to habeas cases. Exhaustion is not required, or should be excused, because Petitioner presents a pure legal question controlled by binding Eleventh Circuit precedent: whether § 1225(b)(2)(A) authorizes his no-bond detention. In *Hernandez Alvarez*, the Eleventh Circuit resolved that issue on habeas review and affirmed relief for interior EWI petitioners detained under DHS's § 1225(b)(2)(A) theory.

41. Any administrative bond request would be inadequate if DHS or EOIR treats Petitioner as categorically ineligible for bond under § 1225(b)(2)(A). To the extent Petitioner seeks procedural protections at any court-ordered § 1226(a) bond hearing, exhaustion should also be excused because that issue presents a constitutional due process question not within the BIA's authority to finally resolve.

42. To the extent Petitioner seeks constitutionally adequate procedures at a court-ordered § 1226(a) bond hearing, exhaustion should be excused because that issue concerns the legality of the detention process rather than a discretionary custody determination.

VII. RESPONDENTS UNLAWFULLY RE-DETAINED PETITIONER WITHOUT A VALID REVOCATION OR CUSTODY DETERMINATION

43. Petitioner's detention is not the result of an initial custody determination but a re-detention following a prior release, executed without the custody process required by federal regulations and due process. Petitioner was previously released by immigration authorities on an Order of Release on Recognizance and has remained in

pending removal proceedings. Respondents' current detention therefore required a lawful basis for revocation, a valid custody determination, and notice sufficient to permit review. Respondents' failure to provide those safeguards warrants release or, at minimum, an order requiring Respondents to justify the arrest, revocation, and current custody classification.

A. The Revocation Violated Mandatory Regulations and Was Executed Without Lawful Authority

44. The revocation of a prior release is not standardless. Under 8 C.F.R. § 236.1(c)(9), when a noncitizen has been arrested, taken into custody, and released, that release may be revoked only in the discretion of specified officials: the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge. DHS regulations also require notice to EOIR of any change in custody location, release from custody, or subsequent taking into ICE custody, and they authorize issuance of a Form I-286 Notice of Custody Determination while removal proceedings remain pending. Accordingly, Respondents should be required to produce the written revocation authority, the identity and title of the official who authorized re-detention, any delegation relied upon, any Form I-286, and any written notification to the Immigration Court reflecting Petitioner's subsequent taking into ICE custody or change in custody location.

45. When he was apprehended upon entry, Petitioner was released on an Order of Release on Recognizance (OREC), which documents a custody determination made

under 8 U.S.C. § 1226(a) and its implementing regulation, 8 C.F.R. § 236.1. 8 U.S.C. § 1226(a) authorizes arrest and detention pending a removal decision and permits release on bond or conditional parole except where § 1226(c) applies.

46. Both federal courts and the Board of Immigration Appeals have repeatedly recognized that an OREC constitutes a release under § 1226(a) pending removal proceedings. See, e.g., *Ortega Cervantes v. Gonzales*, 501 F.3d 1111, 1115–16 (9th Cir. 2007); *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023).

47. Furthermore, the regulatory framework for changing a noncitizen's custody status requires a custody process capable of review. Under 8 C.F.R. § 236.1(d)(1), after an initial custody determination by the district director, the respondent may request review by an immigration judge at any time before the removal order becomes final, except as otherwise provided. The regulations also contemplate formal notice of a custody determination: under 8 C.F.R. § 236.1(g)(1), an immigration official may issue a Form I-286, Notice of Custody Determination, at the time of issuance of the Notice to Appear or later while removal proceedings remain pending. These are not mere formalities but substantive safeguards to ensure any deprivation of liberty is based on individualized information and subject to fair adjudication.

48. Here, none of these required procedures were followed. Petitioner was summarily arrested without being provided a new written custody determination, written revocation decision, statement of reasons, notice of custody rights, or identification of the official who ordered the revocation. Respondents should therefore be required to

produce any Form I-286, Form I-200, revocation memorandum, custody determination, notice of custody rights, and document identifying the official who authorized Petitioner's renewed detention. Failure to comply with these procedures renders the revocation invalid. See, e.g., *Santamaria Orellana v. Baker*, No. 1:25-cv-02841 (D. Md. Oct. 7, 2025); *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765, at 10 (E.D.N.Y. Sept. 29, 2025).

49. The absence of a written revocation decision is particularly significant because Petitioner's OREC contains a cancellation section, but the materials available to Petitioner do not reflect any completed cancellation based on failure to comply or custody for removal. See Ex. 5. If DHS contends that it cancelled or revoked the OREC, it should be required to produce the completed cancellation, the revocation memorandum, and the underlying facts supporting that decision.

50. The absence of those documents is independently significant because § 1226 supplies the general framework for detention of interior noncitizens pending removal proceedings unless a specific mandatory-detention provision applies. In *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, 175 F.4th 1258 (11th Cir. 2026), the Eleventh Circuit held that § 1226, not § 1225(b)(2)(A), governs detention of interior noncitizens who were not seeking lawful entry when arrested. Petitioner is materially situated within that rule because he was arrested in the interior during a scheduled ICE check-in and was not seeking lawful entry at a border, port of entry, or inspection point when ICE assumed custody. Respondents therefore cannot avoid the custody procedures applicable under § 1226 by reclassifying Petitioner as subject to

mandatory no-bond detention under § 1225(b)(2)(A).

B. The Revocation Violated Petitioner's Fifth Amendment Right to Due Process

51. Because Petitioner had been released on an OREC, he acquired a protected liberty interest in his continued freedom. The summary revocation of that liberty without notice, an individualized custody determination, or a meaningful opportunity for review violates the Fifth Amendment's Due Process Clause. The governing standard for procedural due process is the three-part balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), which weighs the private interest, the risk of erroneous deprivation, and the government's interest.

52. First, Petitioner's private liberty interest is paramount. He has lived in the United States on supervised release, complied with his release obligations, and built substantial family and community ties. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The abrupt and unexplained deprivation of this liberty constitutes a profound intrusion.

53. Second, the risk of erroneous deprivation from the procedures used—which were no procedures at all—is exceptionally high. Detaining a compliant individual without advance notice, an individualized assessment, or an opportunity to be heard creates a near-certainty of error. The procedural safeguards required by regulation and affirmed by federal courts—notice, a hearing, and a decision by an authorized official—are the "substitute procedural safeguards" that would eliminate this risk.

Their complete absence here makes the due process violation manifest. See, e.g., *J.U. v. Maldonado*, 2025 WL 2772765, at 10 (holding that "ongoing detention of Petitioner with no process at all... violates his due process rights"); *Pinchi v. Noem*, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at 5 (N.D. Cal. July 24, 2025); *Kelly v. Almodovar*, No. 25 Civ. 6448 (AT), 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025). The procedural safeguards required by regulation—notice, a custody determination, and review before an immigration judge—are the safeguards necessary to reduce that risk. 8 C.F.R. § 236.1(d)(1), (g)(1).

54. Third, the government's interest does not justify re-detention without process. While the government has an interest in detaining noncitizens who pose a flight risk or danger, Respondents previously released Petitioner on supervision and have not identified any new individualized basis showing that he is a danger or flight risk. The administrative burden of providing written notice, a custody determination, and a prompt opportunity for review is minimal compared to the severe harm of physical detention. Respondents' failure to provide these procedural protections before re-detaining Petitioner renders his continued detention unlawful and supports immediate release or, at minimum, prompt custody review under § 1226(a).

C. Respondents Should Not Be Permitted To Re-Characterize Petitioner's Detention Status To Avoid § 1226 Custody Procedures

55. By releasing Petitioner on an OREC, DHS previously treated Petitioner as eligible for discretionary release under the custody framework now codified at 8 U.S.C. § 1226 and implemented by 8 C.F.R. § 236.1. Section 1226(a) permits release on bond or

conditional parole except where § 1226(c) applies. Section 236.1(c)(9) governs revocation of release after arrest, custody, and release.

56. Respondents should not be permitted to re-characterize Petitioner's detention status to avoid those custody procedures. If DHS contends that Petitioner's prior release was revoked, it must identify the lawful authority for that revocation, the official who authorized it, and the documents supporting the new custody determination. If DHS instead contends that Petitioner is now subject to mandatory detention under § 1225(b)(2)(A), that position is foreclosed by *Hernandez Alvarez*, which held that § 1226 governs interior noncitizens who were not seeking lawful entry when arrested.

57. Petitioner relied on DHS's prior release determination, complied with the terms of his release, and remained in pending removal proceedings. To allow Respondents to disregard that prior custody posture without written notice, a valid revocation, or a new custody determination would undermine the regulatory process governing release and re-detention.

58. Accordingly, Respondents must be required to establish a lawful statutory and regulatory basis for Petitioner's re-detention. If they cannot produce a valid warrant, custody determination, revocation decision, notice of custody rights, and documentation identifying the authorized official responsible for the re-detention, Petitioner is entitled to release or, at minimum, immediate custody process under § 1226(a).

59. If Respondents contend that Petitioner's prior release was revoked, they must identify the lawful authority for that revocation and the official who authorized it. Under 8

C.F.R. § 236.1(c)(9), release after arrest and custody may be revoked only in the discretion of specified officials, including the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge.

VIII. ICE'S WARRANTLESS INTERIOR ARREST AND REDETENTION PROVIDE AN INDEPENDENT BASIS FOR RELEASE

60 Petitioner's detention is unlawful from its very inception because his arrest by ICE at a scheduled check-in violated the clear and restrictive statutory framework established by Congress. The Immigration and Nationality Act (INA) provides only two potential authorities for a civil immigration arrest in the interior of the United States. The primary authority, 8 U.S.C. § 1226(a), explicitly requires that an arrest be conducted **"[o]n a warrant** issued by the Attorney General". The statute provides a narrow exception to this rule in 8 U.S.C. § 1357(a)(2), which permits a warrantless arrest only where an officer has reason to believe the individual is unlawfully present and is "likely to escape before a warrant can be obtained." Respondents satisfied neither of these statutory requirements, as further detailed above, rendering the seizure of Petitioner a legal nullity from the outset.

61. The warrantless seizure of Petitioner was statutorily invalid because Respondents could not possibly meet the exigency requirement of 8 U.S.C. § 1357(a)(2). The "likely to escape" determination is a mandatory prerequisite, not mere surplusage. See *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 878 (S.D. Ohio 2016). Here,

Petitioner appeared as required for a scheduled ICE check-in and had complied with prior ICE reporting obligations. Since the exception for a warrantless arrest is inapplicable, Respondents' only remaining authority was 8 U.S.C. § 1226(a), which required a warrant that Respondents did not possess. Having failed under both statutory provisions, the arrest was void ab initio.

62. In *Castañon-Nava v. U.S. Department of Homeland Security*, 175 F.4th 828 (7th Cir. 2026), the Seventh Circuit described § 1357(a)(2) as governing warrantless immigration arrests and requiring probable cause that the subject is likely to escape before a warrant can be obtained.

63. Petitioner appeared for a scheduled ICE check-in as directed, so there was no individualized basis to conclude that he was likely to escape before a warrant could be obtained. The absence of any warrant and the absence of exigency independently render Petitioner's seizure unlawful.

64. *Castañon-Nava* recognized release as an available remedy for class members whose warrantless arrests violated § 1357(a)(2), but it required an individualized determination that the person was actually arrested contrary to the governing legal standard.

65. Because Respondents have not established a lawful basis for the arrest, re-detention, and current custody classification, Petitioner is entitled to release. At minimum, Respondents should be ordered to show cause and produce any Form I-200 warrant, Form I-286 custody determination, revocation memorandum, notice of custody rights, and written decision identifying the official who authorized Petitioner's renewed

detention. If Respondents cannot establish a lawful basis for the arrest and continued custody, release is warranted; alternatively, Petitioner must receive immediate custody process under § 1226(a). *See Rosado v. Figueroa*, No. CV-25-02157-PHX DLR, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025). Law and justice require restoring the liberty that was unlawfully taken.

66. Petitioner's detention is thus unlawful under any statutory theory Respondents could possibly advance. Petitioner's detention was initiated under 8 U.S.C. § 1225, a statute district Courts around the country have repeatedly found inapplicable to interior apprehensions in dozens of cases involving similarly situated petitioners. Yet, even if Respondents had attempted to detain him under the correct statute for interior apprehensions, 8 U.S.C. § 1226(a), the arrest would still be void because they failed to obtain the prerequisite warrant that the statute unequivocally requires. These are not mere procedural missteps; an arrest conducted without any statutory authority is an unreasonable seizure that violates the Fourth Amendment. Because the initial seizure and subsequent detention are unlawful *ab initio* under either statutory scheme, the only appropriate and constitutionally sufficient remedy is the one that restores the liberty that was illegally taken: immediate and unconditional release. A bond hearing under § 1226(a) is an inadequate remedy because it presupposes a lawful arrest under that statute—a condition that does not exist here.

IX. LEGAL FRAMEWORK AND ARGUMENT

A. Binding Eleventh Circuit precedent establishes that § 1225(b)(2)(A) does not govern Petitioner's detention

67. In *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, 175 F.4th 1258 (11th Cir. 2026), the Eleventh Circuit rejected DHS's new interpretation of § 1225(b)(2)(A).

68. The Eleventh Circuit held that § 1225(b)(2)(A) limits no-bond detention to applicants for admission who are "seeking admission."

69. The Eleventh Circuit held that interior noncitizens who entered without inspection years earlier and were later arrested after traffic stops were not "seeking admission" when detained.

70. The Eleventh Circuit further held that seeking relief from removal or contesting removal proceedings is not the same as seeking admission under § 1225(b)(2)(A).

71. Petitioner's case falls within *Hernandez Alvarez* because Petitioner was arrested in the interior during a scheduled ICE check-in and was not seeking lawful entry into the United States when seized.

72. Accordingly, DHS cannot lawfully deny Petitioner bond eligibility by classifying him as subject to mandatory detention under § 1225(b)(2)(A).

B. Section 1226 governs Petitioner's custody unless DHS proves a specific mandatory-detention provision applies

73. In *Hernandez Alvarez*, the Eleventh Circuit explained that § 1226 provides the general detention framework for noncitizens present in the United States pending removal proceedings.

74. The Eleventh Circuit also explained that § 1226(a) authorizes DHS either to continue detention or to release the noncitizen on bond or conditional parole, while § 1226(c) limits that discretion only for enumerated categories.

75. The Eleventh Circuit relied on Jennings v. Rodriguez, 583 U.S. 281 (2018), for the distinction between § 1225 detention of noncitizens seeking admission and § 1226 detention of noncitizens already present in the country.

76. The Eleventh Circuit also reasoned that DHS's reading would create serious redundancy with § 1226(c), including Congress's 2025 addition of § 1226(c)(1)(E) through the Laken Riley Act.

77. Petitioner is not alleged to fall within § 1226(c), so he must receive the custody process available under § 1226(a).

C. *Castañon-Nava* confirms the same statutory reading

78. In *Castañon-Nava v. U.S. Department of Homeland Security*, 175 F.4th 828 (7th Cir. 2026), the Seventh Circuit held that § 1225(b)(2)(A) applies to noncitizens seeking lawful entry at the border or ports of entry, not to noncitizens living in the interior.

79. The Seventh Circuit found that the text, statutory context, legislative history, and longstanding Executive practice supported that conclusion.

80. The Seventh Circuit also explained that Congress's 2025 amendment to § 1226(c) would be redundant if all interior EWI noncitizens were already subject to mandatory detention under § 1225(b)(2)(A).

81. Although *Castañon-Nava* is persuasive rather than binding in this Court, its reasoning accords with the now-binding rule of *Hernandez Alvarez*.

X. LEGAL FRAMEWORK FOR THE RELIEF SOUGHT

82. This Court has fundamental authority and a constitutional duty under 28 U.S.C. § 2241 to remedy Petitioner's unlawful detention. The Supreme Court has consistently affirmed that the Great Writ is the primary instrument for challenging the legality of civil immigration detention.

83. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *I.N.S. v. St. Cyr*, 533 U.S. 289, 314 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 285–86 (2018). As "perhaps the most important writ known to the constitutional law," habeas corpus is an equitable tool that empowers this Court not just to review custody, but to "dispose of the matter as law and justice require" under 28 U.S.C. § 2243. *Fay v. Noia*, 372 U.S. 391, 400 (1963); *Schlup v. Delo*, 513 U.S. 298, 319 (1995). That power explicitly includes ordering a petitioner's immediate release. *Boumediene v. Bush*, 553 U.S. 723, 787 (2008). This Court's jurisdiction is secure, as the concept of "custody" is broad, attaching at the time of filing and persisting despite subsequent release due to the significant ongoing restraints on Petitioner's liberty. *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).

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

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

XI. CAUSES OF ACTION AND CLAIMS FOR RELIEF

COUNT ONE
Unlawful Detention Under the INA and 28 U.S.C. § 2241

86. Respondents are detaining Petitioner under § 1225(b)(2)(A) even though he was arrested in the interior years after entry and was not seeking lawful entry when seized.

87. In Hernandez Alvarez, the Eleventh Circuit held that § 1225(b)(2)(A) does not authorize no-bond detention of similarly situated interior EWI petitioners who were not seeking admission when arrested.

88. Respondents' continued classification of Petitioner as subject to § 1225(b)(2)(A) is contrary to binding Eleventh Circuit law.

89. Petitioner's detention must instead proceed, if at all, under § 1226.

90. Petitioner is entitled to habeas relief requiring Respondents to cease detaining him under § 1225(b)(2)(A) and to provide release or a prompt custody hearing under § 1226.

COUNT TWO
Unlawful Warrantless Arrest and Re-Detention in Violation of the INA and Due Process (8 U.S.C. §§ 1226(a), 1357(a)(2))

91. Petitioner's seizure and detention are unlawful ab initio because his arrest violated the clear statutory framework established by Congress and the Fourth Amendment's prohibition on unreasonable seizures. The primary authority for a civil immigration arrest in the interior of the United States requires that it be conducted "[o]n a warrant." 8 U.S.C. § 1226(a). The narrow exception for a warrantless arrest under 8 U.S.C. § 1357(a)(2) demands a showing that the individual is "likely to escape before a warrant can be obtained".

92. *Castañon-Nava* confirms that § 1357(a)(2) governs warrantless immigration arrests and requires an individualized likelihood-of-escape basis. Petitioner appeared as required for a scheduled ICE check-in, and Respondents lacked a valid basis to conclude that he was likely to escape before a warrant could be obtained. Having failed to satisfy the statute's mandatory exigency requirement, Respondents' only lawful path to arrest Petitioner was to obtain a warrant under 8 U.S.C. § 1226(a), which they have failed to do.

93. An arrest conducted without any statutory authority is an unreasonable seizure in violation of the Fourth Amendment. Because the initial seizure was void, the government's custody over Petitioner's person is the direct "fruit of the poisonous tree" and is incurably tainted. A subsequent bond hearing cannot remedy a detention that never had a lawful beginning. Petitioner is entitled to an order requiring

Respondents to show cause why his arrest and continued detention are lawful, to produce any warrant, revocation decision, custody determination, and written notice supporting the arrest and detention, and to release Petitioner unless Respondents establish a lawful statutory basis for custody. The most effective remedy for this fundamental statutory and constitutional violation is immediate and unconditional release.

COUNT THREE
Violation of the Fifth Amendment of the U.S. Constitution
Procedural and Substantive Due Process

94. Petitioner's detention is a profound offense to the Fifth Amendment, violating his rights to both substantive and procedural due process. It is axiomatic that the Due Process Clause applies to all persons within the United States, regardless of immigration status, and that "freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner has a protected liberty interest in freedom from physical detention. Respondents' actions trample upon this fundamental right.

95. Petitioner's liberty interest is strengthened by the fact that DHS affirmatively released him on an Order of Release on Recognizance under INA § 236 and placed him on ATD/ISAP conditions, which he followed until ICE detained him at a scheduled check-in. See Exs. 3, 5, 6. The summary re-detention of a compliant releasee without advance notice, written reasons, or a meaningful opportunity to be heard is not

merely a bond-eligibility problem; it is a completed deprivation of conditional liberty. Courts applying Morrissey and Mathews in the immigration context have recognized that a noncitizen released from custody has a substantial liberty interest in remaining free from detention absent constitutionally adequate process. See *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050 (N.D. Cal. 2021).

96. Respondents have deprived Petitioner of liberty through a categorical no-bond detention regime that binding Eleventh Circuit law does not authorize. Because Petitioner is not subject to § 1225(b)(2)(A), continued detention without an individualized custody determination violates due process. At minimum, due process requires a prompt hearing at which the government must justify continued detention based on individualized evidence of flight risk or danger.

97. **Substantive Due Process:** The detention is substantively unconstitutional because it is arbitrary and serves no legitimate, non-punitive purpose. Civil immigration detention is permissible only to prevent flight or danger to the community. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 846 (2018). As established, Petitioner is neither a flight risk nor a danger. Petitioner's mandatory detention, without any individualized assessment, bears no reasonable relation to any legitimate government purpose and is therefore arbitrary deprivation of liberty, excessive, and unconstitutional.

98. **Procedural Due Process:** Even if a legitimate purpose for detention existed, the procedures used to effectuate it are procedurally deficient. Due process demands a "meaningful opportunity to be heard at a meaningful time and in a meaningful manner" before a neutral decision-maker. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

Landon v. Plasencia, 459 U.S. 21, 32 (1982). The current scheme—whereby Respondents unilaterally subject Petitioner to mandatory detention based on an unlawful policy—entirely lacks these fundamental safeguards and fails the three-part balancing test set forth in *Mathews*:

99. **The Private Interest**: Petitioner's liberty interest is paramount; the risk of erroneous deprivation is extreme considering that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c), is not a flight risk, and does not pose a danger to the community. Being free from physical detention by one's own government "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The right to be free of detention of indefinite duration pending a bail determination, is "without question, a weighty one." *Landon v. Plasencia*. Petitioner is being held in jail in the same conditions as criminal inmates, unable to work and is far from family. At minimum, the government must come forward with concrete, case-specific reasons that outweigh Petitioner's substantial liberty interest in continued release.

100. **The risk of erroneous deprivation** of liberty is extreme. The system lacks any neutral adjudicator, as ICE is acting as both prosecutor and judge, a structural defect that creates a constitutionally intolerable risk of wrongful deprivation. Respondents are effectuating prolonged detention based on their own self-serving interpretation of the law, with no check on their power. This risk is exacerbated by the coordinated actions of both DHS and EOIR, which operate under a unified approach that effectively denies bond to noncitizens in Petitioner's situation, thereby unilaterally depriving them of their liberty.

101. **The Government's Interest**: The government's interest in enforcing its detention policy is minimal, if not entirely illegitimate. There is no valid government interest in enforcing an interpretation of the law that is contrary to the plain text of the INA, that conflicts with its own regulations providing for bond hearings under 8 U.S.C. § 1226(a), and that is based on a policy (*Matter of Yajure Hurtado*) that has been judicially declared untenable. The government has no cognizable interest in violating the law or wasting taxpayer resources on the unnecessary detention of individuals who are neither dangerous nor flight risks.

102. All three *Mathews* factors weigh decisively in Petitioner's favor. The current scheme is fundamentally unfair, unconstitutional, and deprives Petitioner of liberty without the process that is, and has always been, due.

XII. REMEDIES

THE COURT SHOULD ORDER IMMEDIATE RELEASE

103. Respondents are detaining Petitioner under an unlawful custody theory. Section 1226(a) supplies the general detention framework for noncitizens arrested and detained pending a removal decision, and it permits release on bond or conditional parole unless § 1226(c) applies. 8 U.S.C. § 1226(a), (c). In *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, 175 F.4th 1258 (11th Cir. May 6, 2026), the Eleventh Circuit held that § 1226, rather than § 1225(b)(2)(A), governed the detention of interior noncitizens who were not seeking lawful entry when arrested.

104. Federal courts possess broad equitable power under 28 U.S.C. § 2243 to "dispose of the matter as law and justice require," which includes ordering immediate release when the government's custody is illegal. See *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987); *Rosado v. Figueroa*, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025). Here, law and justice demand nothing less than Petitioner's release, as his detention is contrary to the INA, procedurally deficient, and unsupported by an individualized custody determination.

105. Because Petitioner was arrested in the interior and was not seeking lawful entry at a border, port of entry, or inspection point when ICE assumed custody, Respondents may not continue to detain him as categorically ineligible for bond under § 1225(b)(2)(A). If Respondents seek to continue detaining Petitioner, they must proceed under § 1226 and provide the custody process available under that statute and its implementing regulations.

106. Immediate release is warranted because Respondents have not identified a lawful statutory basis for mandatory no-bond detention and have not made an individualized showing that Petitioner is a danger to the community or a flight risk. In the alternative, the Court should order Respondents to provide Petitioner with a prompt bond hearing under § 1226(a), at which DHS bears the burden of justifying continued detention based on individualized evidence.

107. Petitioner's detention is unlawful at its core because the arrest itself was executed in open defiance of the Immigration and Nationality Act's clear commands. Whether viewed as an arrest under 8 U.S.C. § 1225 or 8 U.S.C. § 1226(a), the seizure was illegal.

Respondents claim authority under § 1225, but that statute applies to arriving aliens at the border, not long-term interior residents like Petitioner. The correct statute for an interior apprehension, § 1226(a), unequivocally requires that an arrest be made "**[o]n a warrant**." Respondents had no such warrant.

108. A later bond hearing would not fully cure the completed constitutional injury caused by Respondents' processless re-detention. The injury occurred when ICE converted Petitioner's compliance with supervision into the occasion for physical confinement without advance notice, written reasons, a warrant, or a neutral pre-deprivation hearing. Habeas relief remains available to remedy unlawful custody, including where the government later attempts to justify or regularize detention. See *Martinez v. McAleenan*, 385 F. Supp. 3d 349 (S.D.N.Y. 2019).

109. Petitioner also seeks relief based on the defective arrest and re-detention process. Section 1226(b) authorizes revocation of bond or parole authorized under § 1226(a), rearrest under the original warrant, and detention. 8 U.S.C. § 1226(b). The governing regulation identifies the officials who may revoke release after a noncitizen has been arrested, taken into custody, and released. 8 C.F.R. § 236.1(c)(9). The regulation also provides for immigration judge review after an initial custody determination before the removal order becomes final. 8 C.F.R. § 236.1(d)(1).

110. A bond hearing is a wholly inadequate remedy for such a fundamental violation. The purpose of a bond hearing is to assess the propriety of *continued* detention following a *lawful* arrest. It presupposes that the government's custody was, at some point, legitimate. That is not the case here. To order a bond hearing would be to

retroactively sanitize an illegal seizure and give the government a "pass for not securing a warrant." *Javier De Jesus Aguilar v. English*, No. 3:25-CV-898 DRL-SJF, 2025 WL 3280219 (N.D. Ind., Nov. 25, 2025). As that court correctly reasoned when ordering immediate release under similar facts, "[t]he simple matter is this: the government has not established a lawful basis for detention... and the government must live by the rules that Congress has instituted." *Id.*

111. Any release conditions should be individualized and reasonably related to a demonstrated risk of flight or danger. The Court should not permit Respondents to substitute physical detention with categorical or automatic electronic monitoring absent an individualized determination that such a condition is necessary and appropriately tailored. This relief preserves the Court's ability to remedy unlawful detention while allowing Respondents to request lawful, case-specific conditions if they can support them with evidence.

112. A delayed or procedurally inadequate bond hearing would not fully remedy the ongoing deprivation of liberty. Respondents have not made an individualized showing that Petitioner is a danger or flight risk. If the Court orders a bond hearing instead of immediate release, the order should require a prompt hearing with meaningful procedural safeguards, including an individualized determination based on evidence.

If Court Grants Bond Hearing – Ensure Burdens Are Met

113. Should this Court nonetheless order a bond hearing as an alternative to immediate release, it is critical that the order contain specific procedural safeguards to make that

remedy meaningful. There is a troubling trend of immigration judges denying bond after a habeas grant based on rote assertions of flight risk or danger, often without the government presenting any actual evidence. To counteract this and ensure Petitioner is afforded a constitutionally adequate hearing and to avoid further emergency habeas litigation, this Court should follow the sound reasoning of other Circuit Courts and due process mandates.

114. Section 1226(a) does not assign the burden of proof at a bond hearing; it provides only that, pending a removal decision, the Attorney General may continue detention or release the noncitizen on bond or conditional parole. 8 U.S.C. § 1226(a). Although the regulations place the burden on the noncitizen to demonstrate that release would not pose a danger and that he is likely to appear, 8 C.F.R. § 1236.1(c)(8), that regulatory allocation does not resolve the constitutional question before this Court. After *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412 (2024), the Court owes no deference to an agency's regulatory choice on a question of statutory meaning or constitutional adequacy; rather, the Court must exercise its independent judgment in deciding what process § 1226(a) and the Due Process Clause require. That independent judgment should place the burden on the Government because detention is the Government's requested deprivation of liberty, and because requiring Petitioner to prove that he is not dangerous and not a flight risk forces him to prove a negative. A constitutionally meaningful bond hearing should therefore require DHS to justify continued detention with individualized evidence, rather than require Petitioner to disprove speculative concerns that Respondents have not

established in the first instance.

115. The Eleventh Circuit has not yet addressed this question specifically in relation to noncitizens detained pursuant to § 1226(a), however, the circuits who have addressed it all stated that the government bears the burden to prove that detention is warranted, i.e., that the noncitizen is either a danger to the community or a flight risk. No circuit court to have addressed the issue has placed the burden on the noncitizen to prove that they are not a flight risk or a danger. The Second Circuit in *Velasco Lopez v. Decker*, 978 F.3d 842, 853–56 (2d Cir. 2020), also held that the government must prove a noncitizen is a danger to the community or a flight risk to deny bond under § 1226(a) (**both require clear and convincing evidence**). Furthermore, the First Circuit in *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021), stated that a noncitizen must be released under § 1226(a) if the government cannot meet its burden of proving they are a danger or flight risk (the only difference is the standard: clear and convincing evidence for dangerousness or preponderance of the evidence for flight risk determinations). Similarly, in *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 213–14 (3d Cir. 2020), even for criminal noncitizens who are mandatorily detained under 8 U.S.C. § 1226(c), once their detention becomes unreasonable, the Government bears the burden of proof at the bond hearing, and must justify continued detention by clear and convincing evidence that the noncitizen is a flight risk or a danger to the community. In any event, the government has not claimed that Petitioner is a danger nor a flight risk, let alone proved it. Circuit Courts considering the standard of proof in the immigration bond context have also

adopted the clear and convincing standard. The Eleventh Circuit has not addressed who should carry the burden but *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1341 (M.D. Ga. 2020) squarely puts it on the government. [1]

116. *D.Y.E.H. v. Warden, Irwin Detention Center*, No. 7:25-cv-201, 2026 WL 1230386 (M.D. Ga. Apr. 6, 2026), *B.A.M.A. v. Warden, Irwin County Detention Center*, No. 7:26-cv-95-WLS-ALS, 2026 WL 1362520 (M.D. Ga. May 13, 2026), *I.A.A.M. v. Warden, Irwin County Detention Center*, No. 7:26-CV-068 (WLS-ALS), 2026 WL 1362519 (M.D. Ga. May 13, 2026), and *W.C. v. Warden, Irwin County Detention Center*, No. 7:26-CV-157 (LAG), 2026 WL 1688526 (M.D. Ga. June 4, 2026) are particularly persuasive here because it arose within this Circuit and addressed the exact practical problem presented by this Petition: a court-ordered bond hearing is not an adequate remedy if the immigration judge may simply place the burden on the detained noncitizen and require him to disprove danger or flight risk while he remains in custody. In all these cases, the court held that § 1226(e) does not bar habeas review of a constitutional challenge to the procedures used at a § 1226(a) bond hearing, because such a claim challenges the legality of the process rather than the immigration judge's

[1] There is contrary out-of-circuit authority declining to place the burden on the Government in § 1226(a) bond proceedings. For example, *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), reflects a contrary approach in the Ninth Circuit, while recognizing that other circuits have reached different conclusions under *Mathews*. Likewise, *Miranda v. Garland*, 34 F.4th 338 (4th Cir. 2022), upheld placing the burden on the noncitizen under § 1226(a). Those decisions are not binding here and are less persuasive in this case because Respondents have not shown lawful statutory authority for detention in the first instance. The better rule here is the one supported by *Lopez-Campos*'s recognition of the substantial liberty interest at stake, the high risk of erroneous detention, and the Government's lack of any legitimate interest in detaining a person it cannot show is dangerous or a flight risk.

discretionary custody determination. The court also excused exhaustion because the burden-allocation issue was a constitutional due process question and because the BIA lacks authority to decide constitutional challenges.

117. The *Mathews* factors support the same result here In the aforementioned cases from this Court, the Court held that the private interest favored the petitioner because freedom from detention is a fundamental liberty interest and § 1226(a) detention is civil rather than criminal. The court held that the risk of erroneous deprivation was substantial where the burden remained on the detained noncitizen, who faces practical barriers to gathering evidence, communicating with witnesses, and building a complete record while incarcerated. The court further held that the government has no legitimate interest in unnecessary detention of a noncitizen who is not shown to be dangerous or a flight risk, and that placing the burden on the government does not impose an undue administrative burden.

118. The Court should follow the burden of proof outlined in this case and the three circuit courts who have decided the issue and determine that the **government must prove, by clear and convincing evidence, that Petitioner is either a flight risk or a danger to the community**. The reason for that is the Congress's assumption was that for non-criminal noncitizens who are detained pursuant to § 1226(a) the default is release, not detention (in contrast to § 1226(c) that deals with mandatory detention for criminal aliens). **Therefore, to prevent a perfunctory and meaningless hearing that would only prolong Petitioner's unlawful detention, any order for a bond hearing must explicitly direct that the government bears the burden of establishing by**

clear and convincing evidence that Petitioner's detention is necessary.

XIII. CONCLUSION AND PRAYER FOR RELIEF

119. The continued detention of Petitioner violates due process rights. But for intervention by this Court, Petitioner has no means of release from ICE custody. Petitioner faces ongoing and irreparable harm as a result of unlawful detention, including deprivation of liberty, loss of employment, and separation from family. These injuries cannot be remedied by monetary damages and will continue absent immediate judicial intervention. The balance of equities and the public interest strongly favor expedited consideration and equitable relief, including immediate release or a prompt bond hearing. Without such relief, Petitioner will continue to suffer irreparable harm, and the constitutional and statutory violations at issue will persist.

120. Given the egregious constitutional and statutory violations underlying Petitioner's arrest and continued detention, immediate release is warranted, or in the alternative, a prompt § 1226(a) bond hearing with constitutionally adequate procedures is required. Federal courts possess broad authority under 28 U.S.C. § 2243 to "dispose of the matter as law and justice require," which includes ordering immediate release when detention is found to be unlawful. See *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987).

WHEREFORE, Petitioner prays that this Court grant the following relief. Petitioner respectfully requests expedited consideration of this Petition due to the ongoing deprivation of liberty and irreparable harm:

(1) **Grant the Petition and order Respondents to release Petitioner, or restore Petitioner to his prior OREC/ATD release status, because § 1225(b)(2)(A) does not authorize his mandatory no-bond detention and Respondents have not lawfully revoked his prior release status;**

(2) **In the alternative,** order Respondents to provide Petitioner with a bond hearing before an Immigration Judge under 8 U.S.C. § 1226(a) within forty-eight (48) hours, at which DHS shall bear the burden of proving by clear and convincing evidence that Petitioner is either a danger to the community or a flight risk; the Immigration Judge shall make an individualized determination based on the evidence presented; and the Immigration Judge shall consider non-bond alternatives to detention and, if setting bond, Petitioner's financial circumstances and ability to pay;

(3) Independently, order Respondents to show cause and produce all documents authorizing Petitioner's arrest, re-detention, revocation of release, and current custody classification, including any warrant, Form I-200, Form I-286, revocation memorandum, custody determination, notice of custody rights, document reflecting alleged changed circumstances supporting re-detention, document identifying the official who authorized revocation or re-detention, any delegation of authority relied upon, any

completed cancellation of the Form I-220A/OREC, and any written notification to the Immigration Court of Petitioner's subsequent taking into ICE custody or change in custody location under 8 C.F.R. § 236.1(f);

(4) **Issue an Order to Show Cause** directing Respondents to file a return within three (3) days, pursuant to 28 U.S.C. § 2243, justifying in fact and law why the writ should not be granted;

(5) Pending final resolution of this Petition, issue a temporary order pursuant to 28 U.S.C. §§ 1651(a) and 2241 prohibiting Respondents from transferring Petitioner outside the Middle District of Georgia, changing Petitioner's immediate custodian, or removing Petitioner from the United States, absent prior leave of this Court, so as to preserve this Court's habeas jurisdiction and ability to grant effective relief;

(6) **Award** Petitioner reasonable attorney's fees and costs including under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and any other applicable fee-shifting statute; and

(7) **Grant** such other and further relief as this Court deems just, proper or equitable under the circumstances.

Respectfully Submitted,

This 31st Day of July, 2026.

/s/ Karen Weinstock
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EXHIBIT LIST

Petitioner attaches the following exhibits in support of this Verified Petition:

1. **Exhibit 1:** ICE Online Detainee Locator screenshot / printout.
2. **Exhibit 2:** Declaration of Simran Chatha.
3. **Exhibit 3:** July 28, 2026 ICE Reporting Notice / Appointment Receipt.
4. **Exhibit 4:** Notice to Appear dated March 5, 2023.
5. **Exhibit 5:** Order of Release on Recognizance / Form I 220A.
6. **Exhibit 6:** ISAP / ATD Enrollment Documents.
7. **Exhibit 7:** ICE Delegation Order 7030.2

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with Petitioner's immigration attorney and have reviewed various documents for Petitioner. On the basis of those discussions, I hereby verify that I have reviewed the foregoing Petition and that the facts and statements made in this Petition and Complaint are true and correct to the best of my knowledge or belief pursuant to 28 USC § 2242.

This 31st Day of July, 2026.

/s/ Karen Weinstock
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