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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Elias Garcia Figueroa,

Petitioner,

v.

Markwayne MULLIN, Secretary, U.S. Department of Homeland Security;

Todd LYONS, Acting Director, U.S. Immigration and Customs Enforcement;

Patrick DIVVER, Field Office Director, San Diego Field Office, U.S. Immigration and Customs Enforcement.

Christopher LAROSE, Senior Warden, Otay Mesa Detention Center;

Sirce OWEN, Acting Director of the Executive Office for Immigration Review (EOIR), U.S. Department of Justice.

Todd BLANCHE, Acting Attorney General, U.S. Department of Justice.

Does 1-2
Respondents.

Case No.: **'26CV4502 CAB MMP**

Agency File No.: [redacted]

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Elias Garcia Figueroa, (Petitioner) is a noncitizen and longtime resident of the United States who has been harmed by Defendants-Respondents' (Defendants) new, draconian policy reinterpreting the immigration detention statutes to preclude Petitioner from eligibility for bond under the Immigration and Nationality Act (INA), 8 U.S.C. § 1226(a), and for bond hearings under 8 C.F.R. §§ 1003.19(a), 1236.1(d). Instead, pursuant to this new policy, Defendants now consider Petitioner as subject to mandatory detention under INA section 235(b)(1)(B)(iii)(IV) without the opportunity for release on bond during the pendency of his lengthy removal proceedings.

2. Petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging his ongoing immigration detention without the availability of a custody hearing. Respondents unlawfully classify Petitioner as subject to mandatory detention under INA § 235(b), despite the fact that Petitioner has lived continuously in the United States since 2008.

3. Petitioner has lived in the United States continuously since 2008. Petitioner was detained on July 16, 2026. He was transferred to the Otay Mesa Detention Facility in San Diego, California, where he remains detained. Current Immigration Judges are forbidden to accept jurisdiction over Petitioner's custody hearing, as they erroneously consider Petitioner and those similarly situated to him as being subject to mandatory detention under INA § 235(b)(1)(B)(iii)(IV). Immigration Judges are instructed to rely on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and reference the Ninth Circuit's stay in *Maldanado Bautista v. DHS*, No. 26-1044 (9th Cir. Mar. 6, 2026). Therefore any Motion for Custody Redetermination to the Immigration Court would be futile.

4. Petitioner is not an arriving alien and is not presently subject to expedited removal proceedings under INA § 235. Because Petitioner continuously resided in the country for years, and never received an expedited removal order, his detention is governed by INA § 236(a), which entitles him to an individualized custody determination.

5. Petitioner is charged with, inter alia, having entered the United States without inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i). Petitioner entered without inspection and has lived continuously in the United States since 2008. Thus, he is not subject to mandatory detention as he has been physically present in the US well past the two year minimum. Thus, he is detained pursuant to INA 236(a) - not mandatory under INA 236(c). This Court should order his immediate release. Alternatively, Petitioner is entitled to an immediate bond hearing before an Immigration Judge.

6. DHS is refusing to accept jurisdiction over custody hearings consistent with its new DHS policy issued on July 8, 2025, instructing all ICE employees to consider anyone alleged to be inadmissible under § 1182(a)(6)(A)(i) —i.e., those who entered the United States without inspection—to be subject to mandatory detention under INA section 235(b)(1)(B)(iii)(IV) and therefore eligible for release only on parole. Any request to the Immigration Court would be futile. DHS and the Immigration Judges recite the precedent decision in *Matter of Yajure Hurtado* as remaining good law, and that the Court is bound by the Central District Court declaratory order.

7. The Immigration Court considers Petitioner an "applicant for admission" who is "seeking admission" and subject to mandatory detention under INA section 235(b)(1)(B)(iii)(IV). The Immigration Court justifies their refusal to accept jurisdiction on the basis that the Maldonado Bautista orders were stayed by the 9th Circuit on March 6, 2025.

8. Petitioner's detention on this basis violates the plain language of the INA and its implementing regulations.

9. Subparagraph 1225(b)(2)(A) applies to individuals who are apprehended on arrival in the United States. It states that an "applicant for admission" who is "seeking admission" shall be detained for a removal proceeding. *Id.* It does not apply to individuals like Petitioner, who was arrested and detained by ICE after having entered and begun residing in the United States. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people like Petitioner, are charged as inadmissible for having entered the United States without inspection.

10. Defendants' new legal interpretation is plainly contrary to the statutory framework and its implementing regulations. Indeed, for decades, Defendants have applied § 1226(a) to people like Petitioner. Defendants' new policies are thus not only contrary to law, but arbitrary and capricious in violation of the Administrative Procedure Act (APA). They were also adopted without complying with the APA's procedural requirements.

11. On January 13, 2026, Executive Office of Immigration Review Chief Immigration Judge Teresa L. Riley wrote an email directing all Immigration Judges that "Maldonado Bautista is not a nationwide injunction and does not purport to vacate, stay, or enjoin *Yajure Hurtado.* Therefore, *Yajure Hurtado* remains binding precedent on agency adjudicators. For clarification, declaratory judgments differ from injunctions in that the former clarifies parties' legal rights without ordering specific action, while the latter is a court order compelling to do or stop doing a specific act. A declaratory judgment is not an equitable remedy, and does not, by itself, have the effect of compelling specific action by a party." *See* Exhibit A: EOIR Chief Immigration Judge Email.

12. On February 18, 2026, the Central District of California issued an Order to Enforce Judgement in the matter of *Maldonado Bautista et al. v. Ernesto Santacruz Jr et al.,* 5:25-cv-01873-SSS-BFM (Dkt No. 107) (Feb. 18, 2026). The Court chastised the Department of Homeland Security and the Executive Office for Immigration Review for failing to adhere to its prior orders certifying the class and instructing to provide bond hearings for persons like Petitioner. As a result of the rejection and ignorance of the federal court orders, the Central District Court issued further relief explicitly vacating *Matter of Yajure Hurtado* under the Administrative Procedure Act. The 9th Circuit Court of Appeals stayed the order on March 6, 2026.

13. Petitioner is not an arriving alien and is not presently subject to expedited removal proceedings under INA § 235. Because Petitioner continuously resided in the country for years, and never received an expedited removal order, his detention is governed by INA § 236(a), which entitles him to an individualized custody determination.

14. Petitioner is not a danger to the community nor a flight risk based on the core factors to be used by Immigration Courts. *See Matter of Guerra, 24 I&N Dec. 37 (BIA 2006).* Petitioner has zero criminal history.

15. Petitioner now challenges his continued detention as illegal and unconstitutional and requests his immediate release.

JURISDICTION

16. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Otay Mesa Detention Center in San Diego, California.

17. This Court has 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).

18. 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.

VENUE

19. 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, the judicial district in which Petitioner currently is detained.

20. 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 Southern District of California.

REQUIREMENTS OF 28 U.S.C. § 2241, 2243

21. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to the Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file return "within three days unless good cause additional time, not exceeding twenty days, is allowed." *Id.* Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention.

22. 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) (citation omitted).

23. Petitioner is "in custody" for the purpose of 28 U.S.C. § 2241 because he was arrested by Respondents and remains in their legal and physical custody at Otay Mesa Detention center in Otay Mesa, California. He is under Respondents' and their agents' direct control.

PARTIES

24. Petitioner Elias Garcia Figueroa is a citizen of Mexico who has been in immigration detention since July 16, 2026. Petitioner was detained in San Diego, CA. ICE did not set bond, and any Petitioner request for review of his custody by an IJ would be futile because he is deemed an "applicant for admission." Petitioner has resided continuously in the United States since 2008.

25. Respondent, Patrick Divver, is the Director of the San Diego Field Office of ICE's Enforcement and Removal Operations division. As such, Patrick Divver is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

26. Respondent, Todd Lyons, is the Acting Director of US Immigration and customs enforcement. As such, Todd Lyons is responsible for Petitioner's detention and is named in his official capacity.

27. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and

Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

28. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

29. Respondent Todd Blanche is the Acting Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

30. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

31. Respondent Christopher LAROSE is employed by CoreCivic as Warden of the Otay Mesa Detention Facility where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

FACTUAL BACKGROUND

32. Petitioner has been detained since July 16, 2026.

33. Petitioner is detained pursuant to 8 USC §1225(b)(2)(A).

34. Petitioner has been in the United States since 2008. He has never left the United States since.

35. Petitioner has resided in the United States continuously for well beyond 2 years and thus is not subject to Mandatory Detention.

36. Petitioner has a US citizen sponsor willing to post his bond and ensure he appears for all immigration hearings and check-ins.

37. Petitioner has two US Citizen minor children and a US Citizen nephew who is willing to be his sponsor. Petitioner is a person of good moral character. *See* Exhibit B: Sponsor and Support Letters.

LEGAL FRAMEWORK

38. A petitioner must exhaust administrative remedies by appealing to the BIA before seeking judicial remedies and include bond determinations. *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). "[A] court may waive the prudential exhaustion requirement if 'administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.'" *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). "The party moving the court to waive prudential exhaustion requirements bears the burden of demonstrating that at least one of these Laing factors applies." *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019).

39. Here, Petitioner is challenging both the lawfulness of his initial detention, and the ongoing detention. Respondents' position is that Petitioner is not eligible for a custody redetermination hearing pursuant to Section 236(a) of the Immigration and Nationality Act and therefore will deny any request for a bond hearing for Petitioner. Therefore any request for such hearing at this stage would be futile and require the instant petition for relief.

40. Petitioner is challenging the unlawfulness of Respondents' initial decision to detain him, independent of any decision made by any Immigration Judge in removal proceedings.

41. Therefore, a writ of habeas corpus is the sole avenue to vindicate Petitioner's constitutional, statutory, and regulatory rights and restore his liberty.

42. Courts have recognized the significance of the habeas statute in protecting individuals from unlawful detention, which affords "a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963); see also *Yong v. INS*, 208. F.3d 1116, 1120 (9th Cir. 2000) (noting that habeas statute requires expeditious determination of petitions).

43. The Court must grant the petition for writ of habeas corpus or issue an order to show cause to Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. "'It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.'" *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting Reno v. Flores, 507 U.S. 292, 306 (1993)).

44. Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas, v. Davis*, 533 U.S. 678, 690 (2001) (internal quotation marks omitted).

45. In the immigration context, the Supreme Court has recognized two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

46. The test for procedural due process claims, the Mathews test balances: (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the value of additional or substitute safeguards; and (3) the government interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); see also *Sho v. Current or Acting Field Off. Dir.*,

No. 1:21CV-01812 TLN AC, 2023 WL 4014649, at *3 (E.D. Cal. June 15, 2023), report and recommendation adopted, No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June 21, 2023) (using Mathews factors to assess a habeas petitioner's due process claims and collecting cases doing the same). Here, each factor weighs in Petitioner's favor, and Petitioner's release is justified due to his interest in avoiding prolonged or unjustified detention. Petitioner poses no danger to the community, nor is a flight risk.

47. All three *Mathews* factors support a finding that the government's revocation of Petitioner's parole without notification, reasoning, or an opportunity to be heard denied Petitioner of his due process rights. First, Petitioner has a significant liberty interest in remaining out of custody. See *Pinchi*, 792 F. Supp. 3d at 1032 ("Thus, even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody." (citations omitted)). Freedom from detention is a fundamental part of due process protection. *See Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017) ("[F]reedom from imprisonment is at the 'core of the liberty protected by the Due Process Clause.'" (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992))).

48. Second, the risk of an erroneous deprivation of such interest is high as Petitioner has been residing in the United States continuously since 2008 and supports two US citizen minor children. He poses no danger to the community and is not a flight risk. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."). The risk of erroneous deprivation of Petitioner's liberty is high because neither the government nor Petitioner has had an opportunity to determine whether there is any valid basis for his detention. *Pinchi*, 792 F. Supp. 3d at 1035 (citation omitted).

It follows that the probable value of additional procedural safeguards, such as notice and a pre-deprivation hearing, is also high.

49. Third, the government's interest in detaining Petitioner without notice, reasoning, and a hearing is low. *See Pinchi*, 792 F. Supp. 3d at 1036 ("[T]he government has articulated no legitimate interest that would support arresting [petitioner] without a pre-detention hearing."); *Alvarenga Matute v. Wofford*, 807 F. Supp. 3d 1120, 1130 (E.D. Cal. 2025); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) ("If the government wishes to re-arrest [petitioner] at any point, it has the power to take steps toward doing so; but its interest in doing so without a hearing is low."). There is also no indication that providing a pre-deprivation hearing would be fiscally or administratively burdensome on the government. *See Pinchi*, 792 F. Supp. 3d at 1036 ("In immigration court, custody hearings are routine and impose a minimal cost." (quoting *Singh v. Andrews*, 803 F. Supp. 3d 1035, 1048 (E.D. Cal. 2025)))

50. Respondents have failed to demonstrate that Petitioner is a flight risk or danger to his community warranting his detention after being released on his own recognizance.

51. The Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) are unlawfully ordering that individuals such as Petitioner be denied the opportunity to be released on bond. Immigration Judges are refusing to assert proper jurisdiction and stubbornly are following the outdated DHS position. The Immigration Court continues its improper jurisdictional deflection via *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 (BIA 2025).

52. Petitioner, Elias Garcia Figueroa, while he does not have lawful status in the United States, he was unlawfully detained and is being held at the Otay Mesa Detention Center. He was apprehended by immigration authorities on July 16, 2026.

a. entered the United States without inspection in 2008 and was not apprehended upon arrival, cf. *id.*; and

b. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

53. After apprehending Petitioner on July 16, 2026 the DHS placed him in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection. Petitioner is subject to Section 236(a) of the Immigration and Nationality Act, and is not subject to mandatory detention pursuant to Section 236(c) or Section 235 of the Act.

54. Therefore, because Respondents detained Petitioner without notice or a pre-deprivation hearing in violation of the Due Process Clause, his detention is unlawful. See, e.g., *Sanchez v. LaRose*, No. 25-CV-2396-JES-MMP, 2025 WL 2770629, at *4 (S.D. Cal. Sep. 26, 2025) (finding the petitioner's parole was revoked without notice and a hearing and without a showing of a change of circumstances, thus violating her due process rights and rendering her detention unlawful). The proper remedy for the unlawful detention is Petitioner's immediate release. *See Noori v. LaRose*, 807 F. Supp. 3d 1146, 1156 (S.D. Cal. 2025) (finding DHS violated the petitioner's due process rights by revoking his parole without notice or a hearing and ordering his immediate release); *Sanchez*, 2025 WL 2770629, at *5 (same); Ortega, 415 F. Supp. 3d at 970 (ordering immediate release after the petitioner was detained while out on bond without notice or pre-deprivation hearing). The Court should expeditiously grant this petition and order Petitioner released.

55. Alternatively, the Court should order Respondents to provide a custody redetermination hearing under 8 U.S.C. § 1226(a) within seven days.

CAUSES OF ACTION

1. Violation of Fifth Amendment Right to Due Process – Substantive and Procedural Due Process, U.S. Const. Amend. V.

56. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

57. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

58. Generally, due process protections depend on the situation and must account for (1) the private interest at issue, (2) the risk of erroneous deprivation of that interest through the procedures used, and (3) the Government's interest. *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976). Here, Petitioner was detained and subject to mandatory detention without any opportunity to be heard prior to his detention.

59. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

60. Petitioner has a vital liberty interest in remaining free from DHS custody.

61. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal. July 24, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025) (explaining that a non-citizen that ICE released from custody after initial apprehension "has a substantial private interest in remaining out of custody" which includes an interest in "...obtaining necessary medical care, [and] maintaining her relationships in the community...").

62. Even if the initial decision to release a non-citizen from DHS custody is discretionary, "...after that individual is released from custody, he has a protected liberty interest in remaining out of custody." *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025)).

2. Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with Law and in Excess of Statutory Authority Violation of 8 C.F.R. § 239.2(c)

63. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

64. Under the APA, a court "shall . . . hold unlawful . . . agency action" that is "not in accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D).

65. Once a removal proceeding has been initiated, regulations enumerate the reasons for which proceedings may be dismissed at 8 C.F.R. § 239.2(a). In considering a motion to dismiss, the Immigration Judge must make "an informed adjudication . . . based on an evaluation of the factors underlying the [DHS] motion." *Matter of G-N-C-*, 22 I&N Dec. 281, 284 (BIA 1998).

66. The initiation of expedited removal proceedings is not an enumerated ground upon which a removal proceeding may be dismissed.

67. It is a well-established administrative principle that "agency action taken without lawful authority is at least voidable, if not void ab initio." *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d

1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); see also *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by unauthorized official).

68. Under the APA, an agency must provide "reasoned explanation for its action" and "may not depart from a prior policy sub silentio or simply disregard rules that are still on the books." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). On mere conjecture, Respondents' intent was to eliminate the due process rights available to Petitioner in removal proceedings under section 240 of the INA, deprive him of his liberty interest despite no evidence of material changed circumstances, or for some other purposes not supported by law. *See Pinchi v. Noem,* No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025) ("Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest.").

69. In deciding to detain Petitioner, Respondents further violated the APA by "entirely fail[ing] to consider an important aspect of the problem" – namely, the important procedural rights that Petitioner relied on in § 1229a immigration court proceedings. *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); see *also Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding that rescission of immigration policy without considering "particular reliance interests" is arbitrary and capricious in violation of the APA).

70. The arbitrary and capricious detention of Petitioner was not made in furtherance of an enumerated reason set forth in the regulations and causes Petitioner irreparable harm. For

these reasons, the Court should find that the decision to detain Petitioner is arbitrary, capricious, and unsupported by substantial evidence. *See* 5 U.S.C. § 706(2)(A), (E).

3. Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with Law and in Excess of Statutory Authority, Unlawful Detention

71. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

72. Under the APA, a court shall "hold unlawful and set aside agency action..." that is "...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity..." 5 U.S.C. § 706(2)(A)-(B).

73. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

74. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted).

75. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025), the Court explained the process of discretionary release from custody in immigration cases and noted that before revoking the release, the non-citizen must be given written notice of the impending revocation, which must include a cogent description of the reasons. Under the

APA, non-citizens are entitled to determinations related to their release revocations that are not arbitrary, capricious or an abuse of discretion. *See id.* at *10.

76. By detaining Petitioner without notice or consideration of his individualized facts and circumstances, Respondents have violated the INA, implementing regulations, and the APA.

77. Respondents have made no finding that Petitioner is a danger to the community.

78. Respondents have made no finding that Petitioner is a flight risk.

79. By detaining Petitioner categorically and without notice, Respondents have further abused their discretion.

CLAIM FOR RELIEF

1. Violation of Fifth Amendment Right to Due Process

80. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

81. Here, Petitioner has "passed through our gates" and "may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). Because Petitioner has developed an interest in remaining during his time here, "the procedures used to remove [him] must adequately protect" that interest. *Make the Rd. New York v. Noem*, 805 F. Supp. 3d 139, 159 (D.D.C. 2025).

82. In this case, Petitioner has been present in our country for over 18 continuous years. This substantial amount of time indicates he is afforded the Fifth Amendment's guaranteed due process before removal. *See Yamataya v. Fisher*, 189 U.S. 86, 87 (1903) (finding a noncitizen was entitled to due process before removal despite having spent only four days in the US).

83. There is no basis to find Petitioner is a flight risk or presents a danger to the community, which are core guideposts for parole, and Respondents have not supplied any additional information to the contrary. Denying Petitioner notice and reasoning upon his detainment took away a meaningful opportunity to contest and violated due process. *See Pinchi*, 792 F. Supp. 3d at 1032-35; Y-Z-L-H v. Bostock, 792 F. Supp. 3d 1123, 1146-47 (D. Or. 2025) (D. Or. July 9, 2025).

84. Continued detention violates the Fifth Amendment, and Habeas relief is required to remedy this constitutional violation.

Counts 2 and 3: Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A); Unlawful Detention;

85. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

86. Petitioner was not provided adequate notice. Respondents must provide at minimum some reasoning explaining why the Petitioner would now be considered a flight risk or danger to the community. See *Castellon*, 2025 WL 2373425, at *12; *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032-35 (N.D. Cal. July 24, 2025). Given Respondent has not attempted to justify the detention for Petitioner, this demonstrates they have acted arbitrarily and capriciously in violation of the APA.

87. Habeas relief is required to remedy this Constitutional violation.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus;

c. Declare the Petitioner's detention is unlawful;

d. Declare that Petitioner's detention is governed by INA § 236(a), not INA § 235(b);

e. Order Respondents to immediately release Petitioner;

f. Alternatively order prompt constitutionally compliant bond hearing before a neutral adjudicator within five (5) days;

g. Award Petitioner attorney's fees and costs as permitted by law; and

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

DATED this 5th Day of August, 2026.

/S/ ANNA M HYSELL
Attorney for Petitioner