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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LUIS ANTONIO MELGAR RODRIGUEZ,

Petitioner,

v.

WARDEN OF IMPERIAL REGIONAL DETENTION FACILITY,

MARKWAYNE MULLIN, In his official capacity as Secretary of Homeland Security,

GREGORY JOHN ARCHAMBEAULT, in his official capacity as Field Office Director, San Diego Field Office, U.S. Immigration & Customs Enforcement;

DAVID VENTURELLA, In his official capacity as Acting Director, U.S. Immigration and Customs Enforcement,

TODD BLANCHE, In his official capacity as Attorney General;

Respondents.

Civil Action No. '26CV4775 JLS BJW

Immigration No. [redacted]

VERIFIED EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS AND INCORPORATED MEMORANDUM OF LAW

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PRELIMINARY STATEMENT

1. This matter involves a citizen of Guatemala, Petitioner Mr. Luis Antonio Melgar Rodriguez ("Petitioner," or "Mr. Melgar"), who is being detained in the custody of ICE ERO's San Diego Field Office at the Imperial Regional Detention Facility, in violation of the law. Petitioner entered the United States without inspection on or about February 13, 2021 in Texas. He was detained by Respondents in Herndon, Virginia on or about August 14, 2026. On or about August 16, 2026 he was transferred to the Imperial Regional Detention Facility. No removal proceedings are pending against Petitioner, his arrest was without a warrant, and Respondents did not have any lawful authority to detain him. See *Meza v. Francis*, No. 26-CV-02722 (NCM), 2026 WL 1734903, at *2 (E.D.N.Y. June 16, 2026).
2. DHS and EOIR each have nationwide policies mandating the detention of all persons who entered without admission or parole, regardless of whether that person was apprehended upon arrival. Most recently, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals (BIA) held that all persons who have entered the United States without admission or parole are now subject to mandatory detention under § 1225(b)(2)(A). This legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.
3. Accordingly, Petitioner seeks a writ of habeas corpus. Petitioner requests an order requiring his immediate release, or in the alternative, his immediate release unless Respondents provide a bond hearing under § 1226(a) within seven days.

THE PARTIES

4. Petitioner is detained in the custody of ICE. He is being detained in the custody of the San Diego ICE Field Office at the Imperial Regional Detention Facility, which is located within this judicial district. His custody and governmental actions related to his removal are likewise controlled by the ICE San Diego Field Office.
5. Respondent Warden of the Imperial Regional Detention Facility is the unknown individual who is in charge of the Imperial Regional Detention Facility, and is therefore the individual who has direct physical authority over the Petitioner. His office is located at 1572 Gateway

Road, Calexico, CA 92231.

6. Respondent Gregory John Archambeault is the Field Office Director for the San Diego Field Office of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement. He is the local ICE official who has authority over the Petitioner. *See Vasquez v. Reno*, 233 F.3d 688, 690 (lst Cir. 2000), cert. denied, 122 S. Ct. 43 (2001). Respondent Archambeault's office is at 880 Front Street #2242, San Diego, CA 92101.

7. Petitioner's custody and the governmental actions related to his potential removal from the district are likewise controlled by Respondents David Venturella (who is the Acting Director of U.S. Immigration and Customs Enforcement), Markwayne Mullin (who is the Secretary of Homeland Security), and Todd Blanche (who is the Attorney General and therefore in control of the Executive Office for Immigration Review, which administers the Immigration Courts and the Board of Immigration Appeals).

CUSTODY

8. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs Enforcement ("ICE") at the Imperial Regional Detention Facility. The Deportation Officer responsible for his case is employed by the San Diego Field Office of ICE. The Petitioner is under the direct care, custody and control of Respondents and their agents.

JURISDICTION & VENUE

I. Subject Matter Jurisdiction

9. This action arises under the Constitution of the United States, and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104 - 208, 110 Stat. 1570, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.

10. This Court has jurisdiction under 28 U.S.C, § 2241, Art. I, § 9, el. 2 of the Constitution of the United States (the Suspension Clause) and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to

28 U.S.C. § 2241, 5 U.S.C. § 702, the All Writs Act, 28 U.S.C. § 1651 and the Court's equitable habeas authority.

II. Personal Jurisdiction

11. This Court has personal jurisdiction over Petitioner's immediate custodian (who is physically within the district).[1]

III. VENUE

12. 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 Eastern District of California, the judicial district in which Petitioner is being detained. Petitioner is being detained at the Imperial facility and his detention falls under the jurisdiction of the ICE Field Office of San Diego, California, which encompasses the area where Petitioner is being detained, pursuant to 28 U.S.C. § 1391.

FACTS

13. Petitioner, Luis Antonio Melgar Rodriguez, is a citizen of Honduras who entered the United States without inspection on or about February 13, 2021 in Texas.
14. Upon information and belief, Petitioner has no criminal record.
15. Nevertheless, on or about August 14, 2026, Petitioner was detained in Herndon, Virginia by Respondents when he was returning home from a Doctor's appointment.
16. Petitioner was transferred to the Imperial Regional Detention Facility on or about August 16, 2026.
17. Upon information and belief, and based on current ICE practice, no warrant for the arrest of Petitioner, as required under 8 U.S.C. Section 1226(a), had been properly issued prior to Petitioner's arrest, making his current detention by ICE illegal because upon information and belief ICE did not make any individualized determination that Petitioners presented a risk of

[1] Petitioner asserts this Court has personal jurisdiction over the additional Respondents, however, in the interest of brevity, the Petitioner will brief this if (1) any governmental acts challenged herein are found to relate to those Respondents (instead of the immediate custodian) and (2) the Government seeks to argue against personal jurisdiction.

flight.

18. When ICE detained Petitioner, upon information and belief, they did not arrest him pursuant to a warrant as required by § 1226(a).

19. When ICE detained Petitioner, it was unlawful for them to detain him without a warrant without first making a finding that he was a flight risk.

20. No Notice to Appear (NTA) had been issued at the time of Petitioner's arrest and detention, not are there removal proceedings pending against Petitioner in the immigration court, even as of today, August 20 – six days after Petitioner's unlawful arrest.

21. Upon information and belief, no pre-deprivation hearing was held prior to his detention, nor was any deliberative process or any consideration of Petitioner's individual circumstances made.

22. Petitioner was detained without any opportunity to meaningfully challenge the decision to re-detain him.

23. Upon information and belief, ICE has issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

24. The revocation of Petitioner's release, after his prior appearance at his asylum interview and his referral to the immigration court, violates his liberty interest.

25. Petitioner's continued detention serves no legitimate immigration purpose and violates the fundamental liberty protections guaranteed by the Fifth Amendment.

26. Respondents will assert that they have authority to detain Petitioner under 8 U.S.C. Section 1225(b), which has been found to be legally incorrect. *Da Cunha v. Freden*, No. 25-3141-PR, 2026 WL 1146044, at *2 (2d Cir. Apr. 28, 2026).

27. The mandatory detention of Petitioner without an individualized bond determination violated and continues to violate Petitioner's Fifth Amendment due process rights.

28. Without relief from this Court, Petitioner faces the prospect of numerous months, or even years, in immigration custody, as they seek relief from removal.

29. Accordingly, Petitioner seeks a writ of habeas corpus. Petitioner requests an order requiring his immediate release and restoration of the Order of Release on Recognizance on which he

had been placed, due to the unlawful and arbitrary revocation of such, in direct violation of his liberty interest, in addition to likely warrantless arrest based on likely racial profiling.

LEGAL FRAMEWORK WITH RESPECT TO DETENTION AUTHORITY

30. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

31. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge (IJ). See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

32. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

33. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)–(b).

34. This matter involves the detention authority under 8 U.S.C. § 1226, but the Government contends that Petitioner is held under 8 U.S.C. § 1225(b).

35. The detention provision at 8 U.S.C. § 1225(b) is not applicable in the case of a noncitizen who was detained inside of the United States, but rather, § 1226(a) applies. See, e.g., *Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026), *Lopez-Campos v. Raycraft*, 175 F.4th 713 (6th Cir. 2026); *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, 175 F.4th 1258 (11th Cir. 2026); *Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048 (7th Cir. 2025), *Santillan Quiroz v. Mullin*, No. 26-6019 (10th Cir. 2026) (the five majority circuits that have held that § 1225(b) does not apply); but see *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) (the two minority circuits that held that § 1225(b), as advanced by the government, does apply).

36. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal

Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

37. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without admission or parole were not considered detained under § 1225 and that they were instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

38. Thus, in the decades that followed, most people who entered without admission or parole and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

39. On July 8, 2025, ICE, "in coordination with" the Department of Justice, announced a new policy that rejected this well-established understanding of the statutory framework and reversed decades of practice.

40. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without admission or parole shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

41. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are considered applicants for admission who are seeking admission and are ineligible

for IJ bond hearings.

42. Numerous judges within this circuit and nationwide have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner. In *Maldonado Bautista v. Santacruz*, the Central District of California issued both declaratory and injunctive relief holding that noncitizens who entered without inspection but were not apprehended at the border are detained under § 1226(a), not § 1225(b)(2), and are therefore entitled to bond hearings. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

43. Subsection 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

44. Subsection 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen].

45. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without admission or parole. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). "When Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

46. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

47. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of

people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

48. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner, who has already entered and was residing in the United States at the time he was apprehended.

49. Petitioner was detained years after his initial entry into the United States, and, thus, § 1225(b) does not provide Respondents the authority to detain Petitioner without a bond hearing or other due process.

LEGAL FRAMEWORK WITH RESPECT TO UNLAWFUL WARRANTLESS ARREST, UNLAWFUL REVOCATION OF RELEASE, AND LIBERTY INTEREST

50. "Section 1357(a)(2) provides ICE with limited authority to conduct warrantless arrests." *Curimilma Quille v. Blanche*, No. 26-cv-2818, 2026 WL 1453889, at *5 (E.D.N.Y. May 22, 2026); see also *Yeleshev v. Larocco*, No. 26-cv-2294, 2026 WL 1353806, at *3 (E.D.N.Y. May 14, 2026) ("Except in the limited circumstances permitting warrantless arrests (which often all turn on the existence of exigent circumstances), due process does not tolerate arrest first and charge later schemes[.]"). "Specifically, ICE must obtain a warrant before arresting a noncitizen unless the officer 'has reason to believe that the [noncitizen] is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest.'" *Curimilma Quille*, 2026 WL 1453889, at *5 (quoting 8 U.S.C. § 1357(a)(2)) (emphasis in original); see also 8 C.F.R. § 287.8(c)(2)(ii) ("A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained."). "ICE officers must satisfy both prongs to establish probable cause to effect a warrantless arrest." *B.D.A.A. v. Bostock*, No. 25-cv-2062, 2025 WL 3484912, at *7 (D. Or. Dec. 4, 2025).

51. Petitioner was stopped by Respondents without a warrant, based on racial profiling, and has no criminal record, owns property and a business, is the father of two U.S. citizen children, has resided in the country for over two decades, and is eligible for relief in the form of Cancellation of Removal . "No twist of logic or sophistry can transform him into a potential escapee." *Alfaro v. Mullin*, No. 26-cv-766, 2026 WL 734348, at *5 (E.D.N.Y. Mar. 16, 2026) (finding that a warrantless arrest pursuant to Section 1357 and 8 C.F.R. § 287.8(c)(2)(ii) "was plainly illegal"); *Sisalema Rea*, No. 9:26-cv-012487 (N.D.N.Y. July 2, 2026).

52. The section of law that governs detention of non-citizens in the United States is 8 U.S.C. § 1226(a). Section 1226(a) plainly states: "On a warrant issued by the Attorney General, a [noncitizen] may be arrested and detained . . . ." As such, it follows that absent a warrant a noncitizen may not be arrested and detained under section 1226(a). *See Armas v. Noem*, No. 4:26-CV-00001, slip op. at 3–4 & n.1 (S.D. Tex. Feb. 2, 2026) (noting that § 1226(a) requires issuance of a warrant and that the government had not asserted satisfaction of that requirement; ordering release).

53. Indeed, the INA authorizes warrantless immigration arrests only in narrow circumstances. Under 8 U.S.C. § 1357(a)(2), an immigration officer may arrest a noncitizen without a warrant only if the officer has "reason to believe" the person is violating the immigration laws ***and*** the person "is likely to escape before a warrant can be obtained . . . ." *See* 8 U.S.C. § 1357(a)(2); *see also* 8 C.F.R. § 287.8(c)(2)(i)-(ii) (similar). The statute also permits certain warrantless criminal-law arrests under § 1357(a)(5), but only when the offense occurs in the officer's presence or when the officer has reasonable grounds to believe a felony has been committed and there is a likelihood of escape before a warrant can be obtained. *See* 8 U.S.C. § 1357(a)(5)(A)-(B).

54. Further, the law is clear that, to comport with the Fourth Amendment, the "reason to believe" standard for a civil immigration arrest under the INA is "the equivalent of probable cause." *Au Yi Lau v. U.S. Immigr. & Naturalization Serv.*, 445 F.2d 217, 222-23 (D.C. Cir. 1971); *see also Tejeda-Mata v. Immigr. & Naturalization Serv.*, 626 F.2d 721, 725 (9th Cir. 1980) ("The phrase `has reason to believe' [in § 1357] has been equated with the constitutional requirement

of probable cause."); *United States v. Cantu,* 519 F.2d 494, 496 (7th Cir. 1975) ("The words [in § 1357] of the statute `reason to believe' are properly taken to signify probable cause."). Put simply, immigration enforcement officers may conduct a warrantless civil immigration arrest only if they have probable cause to believe that a person is both in the United States unlawfully *and* an escape risk. *Escobar Molina v. U.S. Dept. of Homeland Security,* 811 F. Supp. 3d 1, 30 (D.D.C. December 2, 2025).

55. Whether a person is likely to escape before an administrative warrant can be obtained requires an individualized determination based on knowledge of facts "particularized with respect to that person." *Barham v. Ramsey,* 434 F.3d 565, 573 (D.C. Cir. 2006) (quoting *Ybarra v. Illinois,* 444 U.S. 85, 91, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979)). The facts informing this assessment may vary. Some courts have found the likelihood of escape to be higher when, for example, the noncitizen presented "conflicting documents," *Yam v. Immigr. & Naturalization Serv.,* 411 F.2d 683, 687 (D.C. Cir. 1969); "had been `picked up before,'" *Aguirre v. Immigr. & Naturalization Serv.,* 553 F.2d 501, 502 (5th Cir. 1977); admitted that he had previously been removed, *United States v. Puebla-Zamora,* 996 F.3d 535, 538 (8th Cir. 2021); or appeared "extremely nervous" as if "looking for an opportunity to run," *United States v. Meza-Campos,* 500 F.2d 33, 34 (9th Cir. 1974). Courts have also made the self-evident finding that the likelihood of escape is lower when the individual has resided in the country for a lengthy period of time and has strong community ties. *See, e.g., La Franca v. Immigr. & Naturalization Serv.,* 413 F.2d 686, 689 (2d Cir. 1969) (noting that being "the owner and operator of a bakery in Jersey City" lowered petitioner's likelihood of escape before a warrant could be obtained); *United States v. Abdi,* No. 04-cr-88 (ALM), 2005 WL 6119695, at *6 (S.D. Ohio Sept. 12, 2005), *rev'd on other grounds,* 463 F.3d 547 (6th Cir. 2006) (no probable cause for escape risk where defendant owned a business, leased property, lived with his then-pregnant wife and two children, and had family in the area); *United States v. Pacheco-Alvarez,* 227 F. Supp. 3d 863, 890 (S.D. Ohio 2016) (same, where defendant had a stable job, lived with his fiancé, and helped pay her rent and raise her two children); *United States v. Khan,* 324 F. Supp. 2d 1177, 1187 (D. Colo. 2004) (same, where defendant worked two jobs,

owned a vehicle, paid rent, and never experienced legal trouble before his immigration arrest).

56. Numerous federal courts have recognized that these warrantless-arrest authorities are strictly limited, particularly in the interior-arrest context. In *Salazar v. Dedos*, No. 1:26-cv-0251 WJ/JHR, 2026 WL 555336, at *5-6 (D.N.M. Feb. 27, 2026), the court rejected DHS's attempt to justify a warrantless interior arrest under § 1357 where none of the statute's narrow prerequisites were met. *See* 2026 WL 555336, at *5-6. Salazar had lived in the United States since infancy, had no criminal history, had never previously been in immigration custody, and was arrested by ICE in the interior without a warrant and without any contemporaneous criminal conduct. *See id.* at *1. The court emphasized that the INA authorizes warrantless immigration arrests only in "limited circumstances," specifically those enumerated in § 1357(a)(2) and § 1357(a)(5), and it found that "[n]one of those circumstances" were present. *See id.* at *5 (citing 8 U.S.C. § 1357(a)(2), (5)(A)-(B)). Because DHS lacked statutory authority to arrest Salazar without a warrant, the court held that the government was required to obtain a prompt judicial probable-cause determination. *See id.* at *6 (citing *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991); *Gerstein v. Pugh*, 420 U.S. 103, 107-08 (1975)). DHS had obtained no such determination, and the record contained no evidence that officers had any basis to believe Salazar was likely to escape before a warrant could be obtained. *Id.* Given these facts, the court concluded that Salazar's continued detention was "unreasonable under the Fourth Amendment" and ordered his immediate release. *Id; see also Last Name Unknown v. Ball*, No. 26-cv-1249-LJV (W.D.N.Y. July 21, 2026); *Sisalema Rea v. Ball*, 2026 WL 1959270, at *2 (N.D.N.Y. July 2, 2026).

57. Further, Section 1226(a) authorizes the government to exercise discretion to arrest and detain a noncitizen pending a decision on whether the noncitizen is to be removed from the United States. 8 U.S.C. § 1226(a) ("On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. . . . [P]ending such decision," the Attorney General may continue to detain, release on bond, or on conditional parole). Thus, as a matter of pure statutory law, ICE must obtain a warrant from the Attorney General before arresting a noncitizen subject to detention,

and they only have the authority to arrest and detain a noncitizen under § 1226(a) if removal proceedings against the noncitizen are "pending." See, e.g., *Yeleshev v. Larocco,* No. 26-CV-2294-SJB, 2026 WL 1353806, at *2 (E.D.N.Y. May 14, 2026); *Loaeza v. Bausch*, No. 26-CV-00945-MAV (W.D.N.Y. July 27, 2026).

58. The Notice to Appear ("NTA"), also known as Form I-862, "is the immigration version of a 'charging instrument'" and "begins the removal process." *Yeleshev*, 2026 WL 1353806, at *2 (E.D.N.Y. May 14, 2026) (quotation omitted). The standard Form I-862 states, "This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings."

59. Without a valid NTA in place, removal proceedings are not pending, and Respondents have no authority to make an arrest or effectuate detention pursuant to § 1226(a). Section 1226(a)'s implementing regulations echo this limitation in Respondents' authority. 8 C.F.R. § 1236.1(b)(1) states in pertinent part, "[a]t the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed, the [noncitizen] may be arrested and taken into custody under the authority of Form 1-200, Warrant of Arrest."); *see, e.g., Gopie v. Lyons,* No. 25-CV-5229, 2025 WL 3167130, at *1 (E.D.N.Y. Nov. 13, 2025) ("[A]t that time or after its issuance, the Government can then effectuate [an] arrest, and, if necessary, detention, until removal proceedings are completed." (citing *Niz Chavez v. Garland,* 593 U.S. 155, 157-58 (2021))

60. The failure of the government to initiate removal proceedings against Petitioner prior to arresting him makes his arrest unlawful, and this Court's inquiry can stop there. See *Meza v. Francis*, No. 26-CV-02722 (NCM), 2026 WL 1734903, at *2 (E.D.N.Y. June 16, 2026) (ordering immediate release because the "government did not dispute that the Form I-200 was issued before any NTA was issued," "there is no leeway; if ICE wants to use a warrant, it must have a valid NTA in place," and "just as a bond hearing before an immigration judge . . . assumes that a valid custody determination was made in the first instance, it also assumes a valid arrest was made in the first instance").

61. In the face of significant federal overreach and unlawful actions by ICE, many federal courts,

including courts within this circuit, are increasingly holding that where the Government did not comply with the plain language of § 1226(a) and no warrant was properly issued, immediate release is justified and warranted. See, e.g., *Perez v. Akshar,* No. 9:26-cv-00120-ECC (N.D.N.Y. Feb. 6, 2026) (Coombe, J.) (ordering immediate release in matter wherein detention was unlawful due to warrantless arrest); *Gaspar v. Akshar*, No. 9:26-cv-00118-BKS (N.D.N.Y. Feb. 5, 2025) (Sannes, C.J.) (ordering immediate release in matter wherein detention was unlawful due to warrantless arrest). *See also Chogllo Chafla v. Scott*, No. 2:25-CV-00437-SDN, 2025 WL 2688541, at *11 (D. Me. Sept. 22, 2025) ("Issuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a)."); *Chiliquinga Yumbillo v. Stamper*, No. 2:25-CV-00479-SDN, 2025 WL 2783642, at *5 (D. Me. Sept. 30, 2025) (reaching same conclusion); *A.E.R.T. v. Wofford,* No. 1:25-cv-01824-KES-SKO (HC) (E.D. Cal. Dec. 16, 2025) (reaching same conclusion).

62. Section 1226(a) provides that immigration officers may, in their discretion, detain noncitizens or may release them on conditional parole (also called an Order of Release on Recognizance, or "OREC"). 8 U.S.C. § 1226(a); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) ("It is apparent that the INS used the phrase `released on recognizance' as another name for `conditional parole' under § 1226(a)"). The corresponding regulation requires that, before granting release, the immigration officer must determine that such "release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8).

63. The Fifth Amendment states that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. The Supreme Court has repeatedly affirmed that "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987); see also *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("We have always been careful not to minimize the importance and fundamental nature of the individual's right to liberty."). Petitioner's interest in not being detained is "the most elemental of liberty interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Consistent with this principle, individuals released on

parole or other forms of conditional release, including immigration bonds, have a liberty interest in their "continued liberty." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). "The procedural component of due process 'imposes constraints on governmental decisions which deprive individuals of 'liberty' . . . within the meaning of the Due Process Clause.'" *D.B. v. Cardall*, 826 F.3d 721, 741 (4th Cir. 2016) (citing *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976)). For this reason, "civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protections." *Addington v. Texas*, 441 U.S. 418, 425 (1979) (emphasis added).

64. Thus, "when the government deprives a person of a protected liberty . . ., it is obliged to provide 'notice and opportunity for hearing appropriate to the nature of the case.'" *Cardall*, 826 F.3d at 741 (citing *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950)); *see generally Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest). The question of what form of "notice and opportunity for hearing" is "appropriate" and thus constitutionally required in a given case requires considering three factors. *Cardall,* at 742 (citing *Turner v. Rogers*, 564 U.S. 431, 444–45 (2011)). Specifically, the Supreme Court has instructed courts to consider the following: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

65. "The three-factor Mathews framework is 'flexible' and highly 'fact-specific.'" *Cardall*, 826 F.3d at 743 (citing *Ciambriello v. Cnty. of Nassau*, 292 F.3d 307, 319 (2nd Cir. 2002)). "The mere availability and utilization of some procedures does not mean they [a]re constitutionally sufficient. That is, the Fifth Amendment guarantees 'due process of law,' not just 'some process of law.'" Id. (citing *Davidson v. City of New Orleans*, 96 U.S. 97, 107 (1877) (Bradley, J., concurring)).

66. Upon finding a person is in custody in violation of the laws of the United States, a district court may grant a writ of habeas corpus and "dispose of the matter as law and justice so require." 28 U.S.C. §§ 2241(a), 2243. The "typical remedy" for "unlawful executive detention" is release from custody. See *Munaf v. Geren*, 553 U.S. 674, 693 (2008); see also *Preiser v. Rodriguez,* 411 U.S. 475, 484 (1973). See, e.g., *Morales Mendez v. Field Office Director,* No. 9:26-cv-337-ECC (Coombe, J.), (N.D.N.Y., March 16, 2026); *Perez v. Akshar, et al*, No. 9:26-cv-120-ECC (Coombe, J.) (N.D.N.Y., March 5, 2026); *See also Crespo Tacuri v. Genalo*, No. 25-cv-6896, 2026 WL 35569, at *7 (E.D.N.Y. Jan. 6, 2026) (concluding that Petitioner had a "cognizable private interest in being freed from unlawful detention") (citing, among others, *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) ("[T]he most elemental of liberty interests [is] the interest in being free from physical detention by one's own government.")); *Fernandez Lopez v. Wofford*, 2025 WL 2959319 , at *4 (E.D. Cal. Oct. 17, 2025).

67. Immediate release is the appropriate remedy where a non-citizen petitioner is detained unlawfully in violation of their due process rights. *See J.A.C.P. v. Wofford*, 1:25-cv-01354, 2025 WL 3013328 at *8 (E.D.Cal. Oct 27, 2025); see also *Chogllo Chafla v. Scott*, No. 2:25-CV-00437-SDN, 2025 WL 2688541, at *11 (D. Me. Sept. 22, 2025) ("Issuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a)."). "Section 1226(a) plainly states: 'On a warrant issued by the Attorney General, a [noncitizen] may be arrested and detained . . . ." Id. (quoting 8 U.S.C. § 1226(a)). "As such, it follows that absent a warrant a noncitizen may not be arrested and detained under section 1226(a)." Id. "To put it simply, [petitioner's] detention[ ] [is] improper because there is no evidence in the record that [he was] arrested pursuant to a warrant." Id. "Since the Government did not comply with the plain language of section 1226(a), [petitioner's] immediate release is justified." *Id.*; *Chiliquinga Yumbillo v. Stamper*, No. 2:25-CV-00479-SDN, 2025 WL 2783642, at *5 (D. Me. Sept. 30, 2025) (reaching same conclusion).

CLAIMS FOR RELIEF

COUNT 1: VIOLATION OF THE INA

68. Petitioner re-alleges and incorporates by reference each and every allegation contained in the

preceding paragraphs as if set forth fully herein, and does so for all additional counts.

69. The detention provision at 8 U.S.C. § 1225(b) is not applicable in the case of a noncitizen who was detained inside of the United States, but rather, § 1226(a) applies. See, e.g., *Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026), *Lopez-Campos v. Raycraft*, 175 F.4th 713 (6th Cir. 2026); *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, 175 F.4th 1258 (11th Cir. 2026); *Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048 (7th Cir. 2025), *Santillan Quiroz v. Mullin*, No. 26-6019 (10th Cir. 2026) (the five majority circuits that have held that § 1225(b) does not apply); but see *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) (the two minority circuits that held that § 1225(b), as advanced by the government, does apply).

70. Petitioner was detained years after his initial entry into the United States, and, thus, § 1225(b) does not provide Respondents the authority to detain Petitioner without a bond hearing or other due process.

71. 8 U.S.C. § 1357(a)(2) requires a specific finding that a noncitizen is an escape risk before a warrantless arrest may be effectuated.

72. No removal proceedings were pending against Petitioner at the time of his arrest and detention and thus, no authority existed for his arrest. S*ee, e.g., Gopie v. Lyons,* No. 25-CV-5229, 2025 WL 3167130, at *1 (E.D.N.Y. Nov. 13, 2025) ("[A]t that time or after its issuance, the Government can then effectuate [an] arrest, and, if necessary, detention, until removal proceedings are completed." (citing *Niz Chavez v. Garland,* 593 U.S. 155, 157-58 (2021))

73. Respondents are in violation of these statutory requirements.

COUNT 2: VIOLATION OF DUE PROCESS

74. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein, and does so for all additional counts.

75. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody,

detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

76. Petitioner has a fundamental interest in liberty and being free from official restraint.

77. Because of Petitioner's profound legal interest in his liberty as a noncitizen, his detention violates his due process rights. *See generally Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest).

78. Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

COUNT 3: Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B)

79. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein, and does so for all additional counts.

80. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B).

81. The APA's reference to "law" in the phrase "not in accordance with law," "means, of course, *any* law, and not merely those laws that the agency itself is charged with administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

82. Respondents failed to follow their own regulations and procedures in re-detaining Petitioner.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Prevent the Petitioner's removal outside of this judicial district until this action is decided;

(3) Issue a temporary stay of Petitioner's removal until this action is decided;

(4) Issue a writ of habeas corpus clarifying that the statutory basis for Petitioner's detention is 8 U.S.C. § 1226(a) and that 8 U.S.C. § 1231 does not apply to Petitioner;

(5) Issue a writ of habeas corpus requiring that Respondents release Petitioner immediately, and that if the government seeks to re-detain petitioner, it must provide no less than seven (7) days' notice to petitioner and must hold a pre-deprivation bond hearing before a neutral arbiter pursuant to section 1226(a) and its implementing regulations, at which petitioner's eligibility for bond must be considered and where the Government shall bear the burden of proving by clear and convincing evidence that Petitioner poses a danger to the community or a flight risk; and

(6) Fashion such additional relief as is necessary and appropriate, including declaratory relief or other interim relief necessary to vindicate Petitioners' rights under U.S. and international law

Dated: August 20, 2026

Respectfully Submitted,

/s/ Kurt R. Saccone

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VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner and submit this verification on Petitioner's behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: August 20, 2026

Respectfully Submitted,

/s/ Kurt R. Saccone

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