UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

Nery ORTIZ ORTIZ,

Petitioner-Plaintiff,

v.

PAM BONDI,
United States Attorney General;

KRISTI LYNN NOEM,
Secretary of the United States
Department of Homeland Security;

TODD M. LYONS,
Director of United States
Immigration and Customs Enforcement;

MIGUEL VERGARA
ICE Harlingen Field Office Director
for Detention and Removal, U.S.
Immigration and Customs Enforcement,

NORVAL VAZQUEZ, Warden, the GEO
Group, Rio Grande Processing Center,

Respondents-Defendants.

Civ. No. 25-132

DHS File Number: [redacted]

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. §2241 AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The Petitioner, Nery Ortiz Ortiz ("Mr. Ortiz), respectfully petitions this Honorable Court for a Writ of Habeas Corpus to remedy Petitioner's unlawful detention and attempted removal from the United States by Respondents.

INTRODUCTION

This is a Petition for a Writ of Habeas Corpus filed on behalf of Mr. Ortiz seeking declaratory and injunctive relief to remedy his unlawful detention by Respondents. Mr. Ortiz is being detained at the discretion of Respondents as a person originally charged as inadmissible upon entry into the United States pursuant to 8 USC § 1182(a)(6)(A)(i). DHS served a Notice to Appear for proceedings under 8 U.S.C. § 1229a. The Department of Homeland Security (DHS) never completed Forms I-867AB or I-860 required for expedited removal. Mr. Ortiz has not received meaningful administrative review of his unlawful detention by Respondents, because he has not yet had the opportunity to prove that he is not a danger and not a flight risk, and thus that he would warrant release on bail. The Laredo immigration judge (IJ) determined, without foundation or legal basis, that Mr. Ortiz is not eligible for a bond redetermination decision. The IJ has taken an unsupported and arbitrary reading of the bond statutes in 8 U.S.C. §§1225 and 1226(a). The law provides that his detention is governed by the discretionary authority granted to the Attorney General under Section 236(a) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1226(a). *Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009). The IJ has improperly determined that a recent Board of Immigration Appeals (BIA) case, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), has altered long-standing interpretations of 8 U.S.C. §§1225 and 1226(a), and in his view is ineligible to seek a bond redetermination by the IJ because the new BIA case indicates that the IJ does not have jurisdiction to do so. In fact, that BIA case clearly by its terms applies to noncitizens who are apprehended at entry and thus subject to expedited removal proceedings under 8 U.S.C. §1225(b)(1)(A), not to noncitizens like Mr.

Ortiz who have entered many years previously without apprehension, and have been living in the United States free from official restraint. Indeed, he ignores that the U.S. Supreme Court has determined that aliens who were not apprehended shortly after entry are not considered to be "arriving."[1]

Under the bond framework in 8 U.S.C. §§ 1225 and 1226(a), the Department of Homeland Security (DHS) "shall detain" noncitizens arriving in the United States at our borders under the former section, subject only to release under its powers of parole, see 8 U.S.C. § 1182(d)(5), while noncitizens who are not arriving "[O]n a warrant issued by the Attorney General" within the United States "may be arrested and detained pending a decision on whether the noncitizen is to be removed from the United States." Under the regular (non-expedited removal) bond statute, the Attorney General (1) may continue to detain the arrested noncitizen; and (2) may release the noncitizen on – "(A) bond of at least $1500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole." 8 U.S.C. §1226(a). By its terms. *Matter of Q. Li, supra*, concerns the former bond statute at 8 U.S.C. §1225, those who are apprehended at entry and subject to expedited removal. The IJ did not hold a bond hearing here, nor entertain petitioner's counsel's arguments. The IJ opined that because DHS argues that Q. Li applies, he would thus find he had no

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[1] "The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law. It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders." *Zadvydas v Davis*, 533 U.S. 678, 693 (2001). Aliens who arrive to the United States seeking entry are generally entitled only to those protections explicitly authorized by Congress, while aliens who have already entered the country are generally entitled due process protections prior to removal. *See Guzman v. Tippy*, 130 F.3d 64, 66 (2d Cir. 1997); *see also Zadvydas*, 533 U.S. at 693. Also in *DHS v. Thuraissigiam,* 591 U.S. 103, 138-40 (2020), the Court held that an alien who "is detained shortly after unlawful entry" is not treated, for due process purposes, as having "effected an entry" into the United States, but is instead treated as "on the threshold," just like "an alien detained after arriving at a port of entry." *Id.* at 1982-83. The corollary is that an alien not in such a position, such as Petitioner here, has "effected an entry."

jurisdiction to grant Petitioner's custody redetermination request. The IJ then read into the bond proceedings record a paragraph from *Matter of Q. Li,* namely:

> We are unpersuaded by the respondent's argument that she is eligible for bond because she was never placed in expedited removal proceedings and was instead placed directly in full removal proceedings. The respondent was initially arrested by DHS without a warrant pursuant to section 287(a)(2) of the INA, 8 U.S.C. § 1357(a)(2) (2018), less than 100 yards north of the southern border as she tried to illegally enter the United States.[5] Section 236(a) "applies to aliens already present in the United States" and "authorizes detention *only* '[o]n a warrant issued' by the Attorney General leading to the alien's arrest." *Jennings*, 583 U.S. at 302-303 (emphasis added) (quoting INA § 236(a), 8 U.S.C. § 1226(a)); *see also Matter of M-S-*, 27 I&N Dec. at 515 ("Section 236, however, permits detention only on an arrest warrant issued by the Secretary."). By contrast, section 235(b) "applies primarily to aliens seeking entry into the United States" and authorizes DHS to "detain an alien without a warrant at the border." *Jennings*, 583 U.S. at 297, 302. As an alien arrested without a warrant while arriving in the United States, the respondent's continued detention is mandated by section 235(b) of the INA, 8 U.S.C. § 1225(b), regardless of whether DHS elected to pursue expedited removal under section 235(b)(1) or place her directly in full removal proceedings pursuant to section 235(b)(2)(A).

Matter of Q. Li, 29 I. & N. Dec. 66, 70 (BIA 2025). He also adds into the record, the footnote in *Q. Li*:

> Once an alien is detained under section 235(b), DHS cannot convert the statutory authority governing her detention from section 235(b) to section 236(a) through the post-hoc issuance of a warrant. The Supreme Court has recognized that it would make "little sense" to read section 235(b) and section 236(a) as authorizing DHS to "detain an alien without a warrant at the border" but then requiring DHS "to issue an arrest warrant in order to continue detaining the alien" once removal proceedings have commenced. *Jennings*, 583 U.S. at 302. The regulation implementing DHS' authority to conduct arrests under section 236(a) authorizes a prospective arrest and contemplates that the subject of the warrant has not yet been arrested and taken into custody at the time the warrant is issued. *See* 8 C.F.R. § 236.1(b)(1) (2025). Indeed, the Supreme Court has recognized that a warrant issued under section 236(a) is one ""leading to the alien's arrest." *Jennings*, 583 U.S. at 302.

Indeed, the IJ made no reference to Mr. Ortiz's arguments that the government's authority to impose mandatory, no-bond detention under INA § 235, 8 U.S.C. § 1225, is a specific and limited power, strictly confined to the context of border enforcement and applicable only to "inadmissible arriving aliens," "aliens arriving in the United States" and "certain other aliens who have not been

admitted or paroled," to wit: those who cannot prove more than two years of continuous presence. INA 235(b)(2)(A) as it refers exceptions under 235(b)(1)—*see* subparagraph (iii)(II)." His counsel argued that Mr. Ortiz was apprehended in the interior of the United States after a demonstrable many years of continuous presence, he is not subject to mandatory detention under 235 of the Act. He is eligible for release on bond pursuant to 236 of the Act. A balancing of all factors further demonstrates he poses no flight risk or danger to the community, thereby warranting his release on a low bond. The IJ did not explain why the paragraph in Q. Li that he read into the record overcame the legal regime that an alien apprehended after so many years of continuous presence is not subject to mandatory detention under section 235 of the INA. Indeed, the IJ made no reference at all to counsel's arguments, written or oral.

The IJ erred when he concluded that because there was no warrant, then 236(a) does not apply because a "warrantless arrest" in the interior of the country. The IJ cited only *Matter of Q. Li* for this alleged vast change in law, one that as noted would ignore basic precepts given by the U.S. Supreme Court, supra n. 1, in *Zadyvdas v Davis* and more recently in *DHS v. Thuraissigiam*. Historically, the immigration courts have approved tens of thousands of cases of "ewi's" (entered without inspection) for release on bonds under 236(a). The IJ nowhere observes that the *Q. Li* case does not deal with those aliens arrested in the interior of the country, only those arriving alien in the United States. Indeed, *Matter of Q. Li* points to the 235(b)(1) statute which provides that:

> "If an immigration officer determines that an alien …who is arriving in the United States or is in the category of other aliens not arriving who have not been admitted or paroled into the United States and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to being determined inadmissible for fraud (212(a)(6)(C) or for having no documents (212(a)(7)], the officer shall order the alien removed [expedited removal] without further hearing or review unless [applies for credible fear/asylum].

INA §235(b)(1)(A)(i). The decision also notes that even where non-expedited removal proceedings

for such applicants for admission are decided upon (known as 240 proceedings), the next provision of INA §235 says that "if alien is seeking admission … [they] shall be detained for a proceeding under section 240." INA §235(b)(2)(A). Thus, even if a person is released from ICE custody after arriving, like Q. Li herself, the BIA says now that they would stay subject to the mandatory detention provision of INA §235(b)(2)(A). Petitioner here does not dispute that.

In fact here, the IJ erred because *Q. Li* is not applicable. His reading is overbroad and not what the BIA holds. *Matter of Q. Li* establishes mandatory detention only after an alien has been validly placed under 8 U.S.C. § 1225(b). The decision creates no authority for applying mandatory detention where: (a) DHS elected alternative processing under 8 U.S.C. § 1226(a); or (b) DHS failed to complete formal requirements necessary to invoke 8 U.S.C. § 1225(b).

Persons who are applicants for admission (defined by Congress in INA §235(a)), which Mr. Ortiz concedes he is [alien present in the U.S. without being admitted or paroled], must be processed by ICE under with 235 or under 236. They are exclusive. But just because a person is defined as "an applicant for admission, one present without being admitted or paroled" *but not arriving*, they may still seek bond under INA §236(a) because, remember, 235(b)(1)(A) concerns the screening of applicants for admission, and those NOT charged under 212(a)(6)(C) (fraud grounds) or 212(a)(7) (no valid entry documents) who "are not admitted or paroled" (as Mr. Ortiz is not) then such screening does NOT apply unless the alien fails to "affirmatively show, to the satisfaction of an immigration officer, that he has been physically present in the U.S. continuously for the 2-year period immediately prior …" *Zadvydas*, 533 U.S. at 693; *Thuraissigiam,* 591 U.S. at 138-40. So with 235(b)(1)(A) screening for such persons present without admission or parole *not being applicable*, then they are not put in expedited removal proceedings, but rather in regular 240 removal proceedings before an immigration judge, as ICE has done here in Mr. Ortiz's case, and are governed by "Apprehension

and Detention of Aliens" as laid out by Congress in INA §236(a), "arrest, detention, and release." The fact that an Attorney General "warrant" may not be findable, does not justify the DHS's and IJ's apparent view here that a lack of warrant automatically means only 235(b)(1) governs. More likely, Congress assumed that DHS picking up people in the interior of the country would *require* a warrant, in view of the Fourth Amendment. The failure of the AG to issue a warrant in circumstances like this, where ICE had a search warrant – not an arrest warrant – and raided the construction site at issue here in Tallahassee, does not mean that ICE can call all persons present here without inspection or parole as "subject to mandatory as arriving aliens under 235(b)(1)."

It is undisputed that review of actual bond decisions is circumscribed by 8 U.S.C. § 1226(e). Indeed, section 1226(e) states the following:

> [t]he Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

Mr. Ortiz, however is challenging here the Government's procedures on a constitutional level. This Honorable Court may review the questions of law here. *Martinez v. Clark*, 36 F.4th 1219, 1224 (9th Cir. 2022) (holding that federal courts have habeas jurisdiction over "questions of law or constitutional questions" but not "an immigration court's determination that a noncitizen is a danger to the community"). Mr. Ortiz also raises here an as-applied challenge to the government's procedures, because he is NOT in fact subject to the class of aliens the government refuses bond to in *Matter of Q. Li* who are subject to mandatory detention: "Due process is a flexible concept that varies with the particular situation." *See Yagman v. Garcetti*, 852 F.3d 859, 863 (9th Cir. 2017) (quoting *Shinault v. Hawks*, 782 F.3d 1053, 1057 (9th Cir. 2015))."

Mr. Ortiz's circumstances place him firmly within the ambit of 8 U.S.C. § 1226. He cannot be considered an "arriving alien." He was not encountered at a port of entry, nor was he apprehended "arriving in" the United States or "shortly after" crossing the border. *Zadvydas*, 533 U.S. at 693; *Thuraissigiam,* 591 U.S. at 138-40. Rather, he is a long-term resident apprehended at a jobsite in Tallahassee, Florida more than twenty-three years after his initial and exclusive entry. See workplace raid on student dormitory building site, https://www.tallahassee.com/story/news/politics/2025/05/02/operation-tidal-wave-arrests-ice-florida-national-guard/83405483007/ (last checked July 3, 2025).

The initiation of removal proceedings here by the Government was under 8 U.S.C. §1229a, INA § 240, rather than the expedited removal process under 8 U.S.C. § 1225, § 235, further confirms that his bond case is per statute governed by 8 U.S.C. § 1226(a). Here, there was no initial § 235(b)(1) process to begin with and cannot logically be deemed to have been initiated or applied. By forgoing expedited removal, DHS effectively conceded that Mr. Ortiz did not fit the "arriving alien" profile. Yet nevertheless, the DHS argued to the IJ that he fell under *Matter of Q. Li,* an "arriving" alien subject to mandatory detention, and the IJ concurred, here both misapplied the law. The IJ compounded the denial of due process by refusing to entertain arguments or countervailing views of the case law.

CUSTODY

1. Mr. Ortiz is being held in the exclusive, physical custody of the United States Immigration and Customs Enforcement (ICE) at the Rio Grande Processing Center, 1001 San Rio Blvd, in Laredo, Texas, in violation of the Constitution and laws of the United States and remains under threat of such unlawful detention and imminent removal.

JURISDICTION

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1361, 2241, 2243, and the Habeas Corpus Suspension Clause of the U.S. Constitution (U.S. Const. art. I, § 9, cl. 2). This action is a civil matter arising under the Constitution and the laws of the United States, challenging

3. Mr. Ortiz's custody is under color of authority of the United States. 28 U.S.C. § 2241(c)(1). Such custody is in violation of the U.S. Constitution, laws, or treaties of the United States. 28 U.S.C § 2241(c)(3). Mr. Ortiz seeks corrective action by officers and employees of the United States in their official capacity and challenges his detention as it violates the Constitution and laws of the United States. 28 U.S.C. §2241(c)(3).

4. No other petition for habeas corpus has been filed in any court to review Petitioner's case.

VENUE

5. Venue lies in the United States District Court for the Southern District of Texas, the judicial district in which Mr. Ortiz is detained. 28 U.S.C. §1391(e).

PARTIES

6. Mr. Ortiz is a citizen and national of Guatemala who has resided continuously in the United States for over ten years. He has been and remains detained under the custody of U.S. Department of Homeland Security (DHS) since May 29, 2025. He is currently detained at the Rio Grande Processing Center, in Laredo, Texas.

7. Respondent Miguel Vergara is the Harlingen Field Office Director for Detention and Removal within ICE, and has held legal custody of Mr. Ortiz since May 29, 2025.

8. Respondent Todd Lyons is the Director for Immigration and Customs Enforcement nationwide, and has held legal custody of Mr. Ortiz since May 29, 2025

9. Respondent Noval Vazquez is Warden of the Rio Grande Processing Center, Laredo, Texas and has physical custody of Mr. Ortiz.

10. Respondent Pamela Jo Bondi is Attorney General of the United States and exercises authority over immigration matters through the Executive Office of Immigration Review (EOIR) whose chief function is to conduct removal proceedings and bond proceedings in immigration courts and adjudicate appeals arising from the proceedings.

11. Respondent Kristi Noem is Secretary of the Department of Homeland Security (DHS) and has delegated her authority to administer the laws of the United States to Immigration and Customs Enforcement (ICE), a component of DHS.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

12. Petitioner is a Guatemalan citizen born in 1986 who entered the United States by crossing the international border near Laredo, Texas over twenty years ago, unlawfully, in summer 2002, when he was 16 years old. He was not apprehended. He began living in Georgia. In July 2012, local police stopped him for a traffic violation. They asked for a license and when he could not produce one, he was arrested for No Driver License. ICE placed a hold at the jail. He was processed and then released on his own recognizance by ICE. He was issued a Notice to Appear for the Atlanta Immigration Court on July 24, 2012, charging him as subject to removal under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as an alien present without admission or parole. On October 2, 2014, Immigration Judge Wayne Houser in Atlanta granted the parties joint request to administratively close his removal proceedings. The proceedings still remain administratively closed.

13. On May 29, 2025, ICE arrested him in Tallahassee, FL in a worksite raid, Operation Tidal Wave. It then placed him under its custody at the Rio Grande Processing Center in Laredo, Texas,

a facility operated by the GEO Group, Inc, where he remains today. It revoked his prior release on recognizance, though it has not alleged any violation of its prior terms of release in 2012, nor has it alleged any new circumstances to justify its decision. Mr. Ortiz does not have a criminal record. ICE under its regulations has the authority to re-arrest a noncitizen and revoke their bond, only where there has been a change in circumstances since the individual's release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).

14. Mr. Ortiz sought a redetermination of his custody with the Laredo Immigration Court, see 8 U.S.C. §1226(a), through prior counsel, but was denied by Immigration Judge Emmanuel Garcia on June 11, 2025 under a finding that the respondent is ineligible for bond pursuant to *Matter of Q Li* as he is an applicant for admission arrested and detained without a warrant and therefore his detention is pursuant to Section 235(b). The IJ did not allow his counsel to present arguments in his favor, or address counsel's concerns that he was not applying the law correctly. The Petitioner reserved appeal at the end of the hearing, and has since timely filed an administrative appeal of the IJ's bond denial to the Board of Immigration Appeals on July 7, 2025, it is pending.

15. Mr. Ortiz has lived in the United States for over twenty years. He has significant family ties in the United States including four U.S. citizen children.

16. Mr. Ortiz has been detained for 45 days and counting.

17. Mr. Ortiz remains detained by ICE. The Immigration Judge denied him a bond hearing because the IJ believed *Matter of Q. Li* placed him in a class of noncitizens ineligible for bond.

18. There is no justification for Respondents to detain and remove Mr. Ortiz. There is no justification for Respondents to prevent an independent examiner to determine whether Mr. Ortiz is properly included within a class of persons who may be detained and removed. Mr. Ortiz is not properly included within the class of persons over whom Respondents have unreviewable discretion

to detain without bond, to remove from the United States, and to adjudicate the benefits and protections afforded him under the Immigration and Nationality Act. Therefore, the actions of Respondents are in violation of the law, are capricious, and are unreasonable.

STATEMENT OF THE LAW

19. INA § 236 provides the framework for apprehending and detaining aliens found within the United States. This is the statute of general applicability for interior enforcement actions. Its text presupposes an arrest that occurs away from the border context, stating that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained."

20. Unlike the mandatory language of § 235, the detention provisions of § 236(a) are explicitly discretionary. The statute provides that the Attorney General "may continue to detain the arrested alien" or "may release the alien on... bond of at least $1,500" (emphasis added). The use of the permissive term "may" is a clear grant of discretionary authority that vests Immigration Judges with jurisdiction to conduct custody redetermination hearings.

21. Section 235 of the INA establishes the legal framework for the inspection and processing of individuals seeking entry into the United States. Its authority is aimed squarely at the border and recent arrivals. Section 235(b)(2)(A) mandates that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien... is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a [removal] proceeding" (emphasis added). The use of the word "shall" denotes a mandatory, nondiscretionary duty. The sole statutory avenue for release from this mandatory detention is a grant of discretionary parole by DHS under INA § 212(d)(5). There is no provision for release on bond by an Immigration Judge for individuals properly detained under § 235.

22. Mr. Ortiz's circumstances place him firmly within the ambit of INA § 236. He cannot be considered an "arriving alien." He was not encountered at a port of entry, nor was he apprehended "arriving in" the United States or "shortly after" crossing the border. Rather, he is a long-term resident apprehended at a jobsite in Tallahassee, Florida many years after his initial and exclusive entry. The initiation of removal proceedings under INA § 240, rather than the expedited removal process under § 235(b)(1), further confirms that his case is one of enforcement governed by § 236(a).

23. In *Matter of Q. Li,* 28 I&N Dec. 66 (BIA 2025), the BIA addressed a factually, and legally, distinguishable scenario, indeed, its holding is tethered to those recent entrants apprehended *at the border*. In *Q. Li* the BIA held that a noncitizen apprehended "while arriving in the United States" is necessarily detained under § 235(b). The respondent in that case was encountered "100 yards north of the border" on the same day she had crossed. The holding of *Q. Li* is therefore inextricably tethered to the temporal and geographic immediacy of the apprehension. It cannot plausibly be interpreted to encompass a period of twenty-three years. To apply the logic of *Q. Li* to Mr. Ortiz would require this Court to find that an apprehension in Florida in 2025 is "shortly after" an entry in Texas in 2001. *Zadyvdas*, 533 U.S. at 690; *DHS v. Thuraissigiam*, 591 U.S. at 138-40. Such a conclusion would defy common sense. Mr. Ortiz's case is the factual antithesis of *Q. Li*. Yet that is what the DHS urged here at the June 11, 2025 bond hearing in Laredo, Texas, and that is what the immigration judge here decided, refusing to accept oral arguments at the bond hearing.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

24. There is no statutory obligation for Mr. Ortiz to exhaust administrative remedies prior to filing this habeas petition since he is not requesting review of a final order of removal. Cf. 8 U.S.C. §1252(d)(1) (requiring exhaustion of administrative remedies prior to challenging removal order in circuit court).

25. Petitioner's initial processing under 8 U.S.C. § 1226(a)—evidenced by release on recognizance and placement in 8 U.S.C. § 1240 proceedings on July 12, 2012, and ICE's own documentary evidence noting such release—renders *Matter of Q. Li* legally inapplicable to his detention.

26. Federal law does not require exhaustion of administrative remedies before seeking habeas relief. Exhaustion is a prudential requirement that does not apply where: (1) administrative remedies would be futile; (2) the agency lacks jurisdiction or competence to grant relief; or (3) pursuing administrative remedies would cause irreparable harm. *McCarthy v. Madigan*, 503 U.S. 140, 146-48 (1992).

27. Exhaustion is futile because the IJ rendered a definitive legal ruling that *Matter of Q. Li* categorically bars bond eligibility for any individual who could potentially be characterized as an "applicant for admission," regardless of whether 8 U.S.C. § 1225(b) was properly invoked.

28. The Board of Immigration Appeals ("BIA" or "Board") lacks competence to grant the relief sought. This case presents a pure question of statutory construction regarding which detention framework applies—an issue appropriate for federal court review under *INS v. St. Cyr*, 533 U.S. 289, 314-15 (2001).

29. Further administrative proceedings cause irreparable harm through prolonged unlawful detention. Each day Petitioner remains detained under the wrong statutory authority constitutes a continuing violation of her liberty interests. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

30. Federal courts routinely exercise habeas jurisdiction over immigration detention challenges without requiring exhaustion where the challenge goes to the legal basis for detention itself rather than the underlying removal proceedings. *Demore v. Kim*, 538 U.S. 510, 517 (2003).

31. Nevertheless, Mr. Ortiz has attempted to exhaust administrative remedies and further efforts would be futile.

32. Mr. Ortiz, through counsel, sought redetermination of his custody pursuant to a request of immigration bond before the Immigration Court, which was denied. He filed an appeal with the BIA on July 7, 2025. Meanwhile, he faces several months in detention at the Rio Grande Processing Center, in Laredo, Texas. ICE agreed in 2014 to request the immigration court to administratively close his case. No new circumstances justify its recalendaring. Indeed, ICE has not as yet attempted to recalendar the proceedings. ICE has not justified in any manner its May 29, 2025 arrest of him.

33. No Article III court has addressed the merits of Mr. Ortiz's claims for release.

CAUSES OF ACTION

COUNT ONE
FIFTH AMENDMENT – DUE PROCESS
CONTINUED AND UNJUSTIFIED DETENTION

34. Petitioner re-alleges and incorporates by reference paragraphs 1-33 above.

35. Mr. Ortiz's continued detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

36. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that "[n]o person shall…be deprived of life, liberty, or property without due process of law."

37. As a noncitizen who shows well over "two years" physical presence in the United States (indeed he has 24 years), Mr. Ortiz is entitled to Due Process Clause protections against deprivation of liberty and property. *See Zadvydas*, 533 U.S. at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."). Any deprivation of this fundamental liberty interest must be accompanied not only by adequate procedural protections, but also by a "sufficiently strong special justifica-

tion" to outweigh the significant deprivation of liberty. *Id.* at 690.

38. Respondents have deprived Mr. Ortiz of his liberty interest protected by the Fifth Amendment by detaining him since May 29, 2025.

39. Mr. Ortiz's detention is improper because he has been deprived of a bond hearing. A hearing is if anything a right to be heard, and here the immigration judge considered it a foregone conclusion that he was ineligible for bond, without considering the law or entertaining his counsel's arguments. Like the accused in criminal cases, habeas is proper. See *Moore v. Dempsey*, 261 U.S. 86 (1923); *Johnson v. Zerbst*, 304 U.S. 458 (1938); Burns v. Wilson, 346 U.S. 137, 154 (1953).

40. Respondents' actions in detaining Mr. Ortiz without any legal justification violate the Fifth Amendment.

COUNT TWO
FIFTH AMENDMENT – DUE PROCESS
DENIAL OF OPPORTUNITY TO CONTEST MIS-INCLUSION IN MANDATORY CATEGORY OF DETENTION

41. Petitioner re-alleges and incorporates by reference paragraphs 1-33 above.

42. Mr. Ortiz has a vested liberty interest in preventing his removal because he is eligible for Cancellation of Removal relief, and is entitled to pursue that relief outside of detention by showing he is neither a danger to the community nor a flight risk. He is separated now from his wife (who has DACA) and four U.S. citizen children, notwithstanding the dictates of 8 U.S.C. §1226(a) that he may seek redetermination of his custody status with an IJ, and prove he is not a flight risk or danger.

43. By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE has the authority to re-arrest a noncitizen and revoke their bond, only where there has been a change in circumstances since the individual's release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9);

Matter of Sugay, 17 I&N Dec. 647, 640 (BIA 1981). The government has further clarified in litigation that any change in circumstances must be "material." *Saravia v. Barr*, 280 F. Supp. 3d1168, 1197 (N.D. Cal. 2017), aff'd sub nom. Saravia for *A.H. v. Sessions*, 905 F.3d 1137 (9th Cir.2018) (emphasis added). That authority, however, is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom.

44. At a minimum, in order to lawfully re-arrest Mr. Ortiz, the government must first establish, by clear and convincing evidence and before a neutral decision maker, that he is a danger to the community or a flight risk, such that his re-incarceration is necessary. ICE's re-arrest of Mr. Ortiz on May 29, 2025, violated these regulations, laws, and due process.

45. For all of the above reasons, Respondents' attempts to detain Petitioner without a meaningful opportunity to be heard violate his Procedural Due Process rights under the Fifth Amendment.

COUNT THREE
ADMINISTRATIVE PROCEDURE ACT

46. Petitioner re-alleges and incorporates by reference paragraphs 1-30 above.

47. Respondents' continued efforts to deny him bond violate the INA, Administrative Procedures Act (APA), and the U.S. Constitution.

48. As set forth in Count Two, federal regulations and case law provide the procedure for a respondent in removal proceedings like him to seek a bond redetermination by an IJ.

49. In being denied the opportunity to return to his family, and pursue Cancellation of Removal in a non-detained court setting where he is free to gather the necessary hardship and good moral character evidence, Mr. Ortiz would be deprived of the right to freedom to lawfully pursue his rights in this civil matter. The Government's "no-review" provisions are a violation of his procedural and substantive due process and without any statutory authority. There is no time-frame or procedure

for requesting DHS to itself review its custody decision, and removal proceedings in this case will proceed during that time while Plaintiff remains in custody.

50. The actions by Respondents would improperly alter the substantive rules concerning mandatory custody status without the required notice-and-comment period and would be in violation of the INA and its regulations. These actions by Respondents violate the APA. Under the APA, this Court may hold unlawful and set aside an agency action which is "contrary to constitutional right, power, privilege or immunity." 5 U.S.C. § 706(2)(B). The regulations at 8 C.F.R. §§ 1003.19(h)(1)(B) and 1003.19(h)(2)(B) providing no review of DHS custody decision for arriving aliens in removal proceedings are in violation of substantive and procedural due process as guaranteed by the Fifth Amendment to the United States Constitution. It is *ultra vires* because it exceeds the authority granted ICE by Congress at 8 U.S.C. § 1226(a). For these reasons, this Honorable Court should order the immigration judge to conduct a Neryph hearing[2] to determine whether or not Plaintiff is properly designated an arriving alien subject to mandatory detention during the pendency of his removal proceedings.

COUNT FOUR
STAY OF REMOVAL CLAIM

51. Petitioner re-alleges and incorporates by reference paragraphs 1-33 above.

52. The denial of a bond hearing, followed by removal of Mr. Ortiz from the United States would cause him irreversible harm and injury because he is mis-classified by the Government as subject to mandatory detention.

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[2] The Board of Immigration Appeals (BIA) decision in *Matter of Neryph* made clear that the Immigration Judge has jurisdiction to determine whether the respondent is properly included in the category preventing re-determination of custody status. *See Matter of Neryph*, 22 I&N Dec. 799 (BIA 1999). The regulations have codified this right to a Neryph hearing challenge at 8 C.F.R. §§ 1003.19(h)(1)(ii) and 8 C.F.R. §§ 1003.19(h)(2)(ii), but these subsections enumerate only three classes of aliens who can request Neryph hearings, specifically and nonsensically omitting two other classes of detained aliens, namely, arriving aliens in exclusion or removal proceedings..

53. The Court should grant the stay of Mr. Ortiz's removal to protect his statutory rights under the INA and the APA. In attempting to assert his rights, the Government has railroaded him and deprived him of freedom and liberty to contest his removal while free on bond, or at the very least, of his ability to prove he is not subject to mandatory detention and that he merits release on bond.

COUNT FIVE
SUSPENSION CLAUSE CLAIM

54. Petitioner re-alleges and incorporates by reference paragraphs 1-33 above.

55. If 8 U.S.C. § 1252 stripped the Court jurisdiction from this matter, it would be unconstitutional as applied because it would deny Mr. Ortiz the opportunity for meaningful review of the unlawfulness of his detention and removal.

56. To invoke the Suspension Clause, a petitioner must satisfy a three-factor test: "(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner's entitlement to the writ." *Boumediene v. Bush*, 553 U.S. 723, 766 (2008). Mr. Ortiz satisfies these three requirements and may invoke the Suspension Clause.

57. First, although Mr. Ortiz is not a U.S. citizen or resident, he has lived here for 23 years, and he qualifies under the INA to seek Cancellation of Removal, because he has no criminal convictions, because he has lived here longer than ten continuous years, because he can show ten years' good moral character, and because he can show his U.S. citizen children will suffer exceptional and extremely unusual hardship if he were removed to Guatemala. Mr. Ortiz has significant family connections in the United States, including his wife, who holds DACA, and their four U.S. citizen children. All of which establishes a substantial legal relationship with the United States.

58. Mr. Ortiz satisfies the second factor because he was apprehended by DHS and remains detained in the United States.

59. Finally, there are no serious, practical obstacles to resolving this present matter. This Court is equipped to deciding whether Mr. Ortiz is entitled to the writ.

60. There is no adequate alternative to a habeas petition. The refusal of the immigration court to grant Mr. Ortiz the right to show he is mis-classified and that he is not subject to mandatory detention, such that he may return to his family and pursue cancellation, without proper notice or due process, deprives him of his constitutional rights. The BIA cannot adequately and expeditiously review these issues.

COUNT SIX:
INJUNCTIVE RELIEF

61. Petitioner re-alleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 33 of this Petition.

62. This Court has the discretion to enter a temporary restraining order and a preliminary injunction. *See Haitian Refugee Center v. Nelson*, 872 F.2d 1555, 1561-1562 (11th Cir. 1989). "To be entitled to a preliminary injunction, the applicants must show (1) a substantial likelihood that they will prevail on the merits, (2) a substantial threat that they will suffer irreparable injury if the injunction is not granted, (3) their substantial injury outweighs the threatened harm to the party whom they seek to enjoin, and (4) granting the preliminary injunction will not disserve the public interest." *Tex. Med. Providers Performing Abortion Servs. v. Lakey,* 667 F.3d 570, 574 (5th Cir. 2012). All four elements must be demonstrated to obtain injunctive relief. *Id.*

63. Respondents' actions have caused Petitioner harm that warrants immediate relief.

RELIEF SOUGHT

WHEREFORE, Petitioner respectfully requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Declare that ICE's May 29, 2025, apprehension and detention of Mr. Ortiz was an unlawful exercise of authority because the ICE officer provided no reason that he presents a danger to the community or is flight risk;

(3) Issue an order directing Respondents to show cause why the writ should not be granted;

(4) Order Respondents to file with the Court a complete copy of the administrative file from the Department of Justice and the Department of Homeland Security;

(5) Enjoin ICE from transferring Mr. Ortiz outside of the Southern District of Texas while this matter is pending;

(6) Grant the writ of habeas corpus ordering Respondents to release Mr. Ortiz on his own recognizance, parole, or reasonable conditions of supervision, or order the Respondents to conduct a bond hearing under which it correctly applies the statutes and no longer misclassifies him as subject to mandatory detention, in the alternative order a hearing under *Matter of Neryph*;

(7) Award the Petitioner reasonable costs and attorneys' fees under the Equal Access to Justice Act, as amended, 28 U.S.C. §2412;

(8) Grant any other relief that this Court deems just and proper.

Respectfully submitted on this 7h day of August, 2025

/s/ Stephen O'Connor

Counsel for Petitioner
Attorney for Respondent