

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Jose Luis Alvarez Martinez

Petitioner,

Kristi Noem, Secretary of Homeland Security; Todd M. Lyons, Acting Director of Immigration and Customs Enforcement; Miguel Vergara San Antonio Field Office Director and acting Harlingen Field Office Director; Norval Vazquez, Warden of Rio Grande Processing Center

Respondents.

Civil Case No. 5:25-cv-01007

PETITIONER'S AMENDED PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. Congress “does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.” *Whitman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001). The government’s recent misconstruction of 8 U.S.C. § 1225 to provide for mandatory detention of *all* noncitizens who enter the country illegally is akin to finding an elephant in a mousehole. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The plainly wrong construction of the statute has caused the Petitioner—and many others like him—to be unlawfully detained without bond. He files this writ of habeas corpus seeking relief from this unlawful detention.

2. For decades immigration judges, immigration lawyers, and attorneys from the Department of Homeland Security (DHS) construed 8 U.S.C. § 1226(a) to allow for bond eligibility for noncitizens who entered the country without inspection. Indeed, just this year Congress revealed its understanding that generally noncitizens who entered the country without inspection are bond

eligible when it passed the Laken Riley Act (LRA). The LRA's amendments provide that noncitizens who entered the country illegally and commit certain enumerated offenses are not eligible for a bond. Congress would not have needed to pass the LRA if noncitizens who entered the country unlawfully were already subject to mandatory detention under 8 U.S.C. § 1225.

3. Notwithstanding, the plain language of §§ 1226 and 1225, on September 5, 2025, the Board of Immigration Appeals (BIA) decided *Yajure Hurtado*, in which it determined that any person who entered the United States without admission is mandatorily detained under 8 U.S.C. § 1225(b)(2)(A). By disregarding the statutes' plain meaning, the Board of Immigration Appeals (BIA) dramatically changed the practice of immigration resulting in the illegal detention of noncitizens across the country. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Aguilar Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27,

2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304-CAS-BFM, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25-cv-00494-JFB-RCC, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 4, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

4. The Petitioner accordingly files this amended petition seeking a writ of habeas corpus ordering his release from custody as ordered by the Immigration Judge (IJ) more than two months ago.

II. PARTIES

5. Petitioner Jose Luis Alvarez Martinez is a noncitizen who is currently detained in immigration detention at the Rio Grande Processing Center in Laredo, Texas. At the initiation of this proceeding, he was being held at the Karnes County Immigration Processing Center in Karnes City, Texas.

6. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and is charged with implementing the immigration laws of the United States. Secretary Noem is being sued in her official capacity.

7. Respondent Todd M. Lyons is the Acting Director of the Immigration and Customs Enforcement (ICE), a sub-agency of Homeland Security. It is under ICE's authority that the Petitioner is being held without bond. Acting Director Lyons is being sued in his official capacity.

8. Respondent Miguel Vergara is the San Antonio ICE Field Office Director and acting Harlingen ICE Field Office Director. It is under Respondent Miguel Vergara's order that the Petitioner is in immigration custody. Respondent Vergara is being sued in his official capacity.

9. Respondent Norval Vazquez is the Warden and/or immediate custodian at the Rio Grande Processing Center in Laredo, Texas. Respondent Norval Vazquez is being sued in his official capacity.

III. JURISDICTION

10. This Court has subject matter jurisdiction over Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The Court also has jurisdiction pursuant to 28 U.S.C. § 1331 (Federal Question Jurisdiction) inasmuch as the case is a civil action arising under the laws of the United States.

11. Although only the Court of Appeals has jurisdiction to review removal orders directly through a petition for review, *see* 8 U.S.C. §§ 1252(a)(1), (a)(5), (b), District Courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 292-96 (2018); *Demore v. Hyung Joon Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

12. While the Petitioner was transferred by Respondents out of the Western District of Texas during the pendency of these proceedings, to a detention center in Laredo, Texas, venue is nonetheless still proper in this district because the Petitioner was originally detained within this

district, and a substantial amount of the events giving rise to this claim occurred within this district.
8 U.S.C. § 1391(e)(1).

IV. LEGAL FRAMEWORK REGARDING IMMIGRATION DETENTION

13. The Immigration and Nationality Act (INA) prescribes three basic forms of detention for noncitizens in removal proceedings.

14. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an 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).

15. Second, 8 U.S.C. § 1225(b) requires mandatory detention of individuals seeking admission at the border. Subsection (b)(1) applies to those subject to expedited removal, and subsection (b)(2) applies to other recent arrivals.

16. 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).

17. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

18. Section 1225(b)(2) governs applicants for admission at the border or ports of entry. Section 1225(b)(2)(A) states:

In the case of [a noncitizen] who is an applicant for admission, if the examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained for a proceeding under section 1229a of this title.

Thus, for section 1225(b)(2)(A) to apply, “several conditions must be met—in particular, an ‘examining immigration officer’ must determine that the individual is: (1) an ‘applicant for

admission’; (2) ‘seeking admission’; and (3) ‘not clearly and beyond a doubt entitled to be admitted.’” *Diaz Martinez v. Hyde*, No. 25-11613-BEM, at *6-7.

19. As the Supreme Court has explained, the detention authority under 1225(b)(2)(A) 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*, 583 U.S. at 287. A person detained under § 1225(b)(2) may be released only if paroled “for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A).

20. Section 1226(a), by contrast, “authorizes the Government to detain certain [noncitizens] already in the country pending outcome of removal proceedings.” *Jennings*, 583 U.S. at 289. It establishes the discretionary framework for noncitizens arrested and detained “[o]n warrant issued by the Attorney General.” For such individuals, the Attorney General (1) “may continue to detain the arrested [noncitizen],” (2) “may release the [noncitizen] on . . . bond of at least \$1,500,” or (3) “may release the [noncitizen] on . . . conditional parole.” 8 U.S.C. §§ 1226(a)(1)-(2). DHS makes an initial custody determination on whether to allow the noncitizen to be released pending the posting of a bond. 8 C.F.R. § 1236. However, such determinations “may be reviewed by an Immigration Judge pursuant to 8 C.F.R. § 1236.” § 1003.19(a).

21. An IJ may grant bond unless the government shows danger by clear and convincing evidence or flight risk by a preponderance of the evidence. *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021). Once a bond has been granted by the IJ, DHS is only authorized to revoke a bond upon a finding of materially changed circumstances meriting the noncitizen’s return to custody. See, e.g., *Matter of Sugay*, 17 I. & N. 637, 640 (BIA 1981) (finding a change in circumstances, in part, when it was determined that the noncitizen was “wanted for murder in the Philippines . . .”).

22. Both §§ 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.

23. Following the enactment of the IIRIRA, Executive Office for Immigration Review (EOIR) drafted new regulations explaining that, in general, people who entered the country without inspection 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).

24. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings. 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. Rept. No. 104-469, Part 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

25. Section 1226(c), the sole exception to this framework, requires mandatory detention for specified categories of noncitizens. Section 1226(c), until recently, required the detention of noncitizens who are inadmissible or deportable because they have committed or been sentenced for certain criminal offenses, or because they are affiliated with terrorist groups or activities. *See* §§ 1226(c)(1)(A)-(D). In January 2025, Congress enacted the Laken Riley Act (LRA), which expanded this list by adding § 1226(c)(1)(E), which requires detention of individuals who (1) are inadmissible under §§ 1182(a)(6)(A), (C), or (7), and (2) who have been charged with, arrested for, or convicted of certain crimes, including burglary, theft, shoplifting, or crimes resulting in death or serious bodily injury. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

26. On July 8, 2025, ICE, “in coordination with” Department of Justice (DOJ), announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

27. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, greatly affecting those who have resided in the United States for months, years, and even decades.

28. On September 5, 2025, the BIA—reversing decades of practice—adopted this same position in *Yajure Hurtado*, 29 I. & N. Dec. at 216. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings. *Id.*

29. Even before ICE or the BIA introduced these nationwide policies, immigration judges (IJ) in the Tacoma, Washington immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. *See, e.g., Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1244 (W.D. Wash. 2025). There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Id.* at 1256.

30. Congress’ recent enactment of the LRA confirms that the legislative body did not understand that noncitizens who are found within the interior of the United States are subject to mandatory detention under 8 U.S.C. § 1225. Indeed, the LRA explicitly provides for mandatory detention for *certain* noncitizens who committed offenses within the United States. The LRA’s

curtailment of bond eligibility reflects Congress' understanding that the general rule is that noncitizens who entered the country illegally are generally bond eligible. *Yajure Hurtado* effectively provides that LRA was an unnecessary, needless bill.

31. 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.

32. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

I. FACTS

33. The Petitioner, a citizen of Mexico, entered the United States approximately 30 years ago when he was about 15 years old. He is married to a U.S. citizen and has four U.S. citizen children, including one minor child, age 15.

34. The Petitioner has a conviction from over 15 years ago for possession of a firearm. At a probation check-in in 2011, he was apprehended by ICE officials and placed into removal proceedings by the issuance of a Notice to Appear (NTA). The NTA charged him as being present in the United States without admission or parole under 8 U.S.C. § 1182(a)(6)(A)(i). *See* Exh. A (NTA and Initial Custody Determination). The initial custody determination paperwork states that the Petitioner's detention is pursuant to 8 U.S.C. § 1226(a). *Id.* Following ICE's determination denying bond, the Petitioner requested a custody redetermination from the IJ in 2011 and was granted a bond in the amount of \$7,500 with no specific conditions added.

35. In 2017, he was apprehended a second time by ICE after having been stopped for driving without a license. He again requested bond from an IJ and was granted a bond in the amount of \$15,000, again with no specific conditions; ICE again waived appeal. He attended all removal

hearings as required, and his case has been administratively closed before the immigration court since May 2023. *See* Exh. B (IJ's order closing case).

36. On May 10, 2023, the Petitioner filed a petition to be classified as a special immigrant under the Violence Against Women Act (VAWA). *See* Exh. C. The petition is pending before United States and Immigration Service (USCIS); however, USCIS issued a prima-facie determination, which is valid until October 15, 2025. *Id.* This determination demonstrates prima facie eligibility for the benefit sought.

37. Although the IJ had administratively closed the Petitioner's case to await the adjudication of his VAWA petition, the DHS re-detained the Petitioner on May 21, 2025, and placed him in custody at the Karnes County Immigration Processing Center without a bond. In violation of BIA precedent, ICE did not provide or even argue a material change in circumstances justifying the Petitioner's re-detention. *Sugay*, 17 I. & N. Dec. at 640.

38. On the same date, rather than filing a motion to recalendar the original proceedings, the Respondents filed a second NTA with the same charge of removability, attempting to start a parallel proceeding. On July 16, 2025, this second set of proceedings was dismissed on DHS's motion.

39. On July 17, 2025, the Respondents filed a motion to recalendar the original proceedings, arguing only the Petitioner's re-detention as a justification for recalendaring. The immigration judge denied this motion on July 26, 2025. *See* Exh. D.

40. On July 9, 2025, the Petitioner, through counsel, filed an application for re-determination of his custody status with the IJ.

41. On July 15, 2025, the IJ held a hearing on the custody matter. At that hearing, the ICE attorney argued that the Petitioner was subject to mandatory detention under 8 U.S.C. § 1225(b) because he entered the U.S. without inspection nearly 30 years ago, despite the fact that he has

been released twice on bond in the past without ICE making this argument, and, at that time, 8 U.S.C. § 1225(b) had never been held to apply to non-citizens within the U.S. In the alternative, the ICE attorney argued that the Petitioner constituted a “danger to the community” based on his arrest for possession of a firearm from nearly 15 years ago. The IJ disagreed with ICE and entered an order granting the Petitioner’s request for release on bond. The IJ entered an order for the Petitioner to be released upon the posting of a \$3,000 bond. *See* Exh. E.

42. In her bond memorandum explaining her reasons for granting bond, the IJ rejected the DHS’s argument that the Petitioner was subject to “mandatory detention” because it was at that time “at odds with BIA precedent.” *Id.* The IJ, “after careful consideration of the evidence[,]” found that the Petitioner’s 2010 conviction for unlawful possession of a firearm and a 2017 arrest for driving without a license did not make the Petitioner a danger to the community. Finally, the IJ found that since the Petitioner “has a clear pathway to relief from removal, that he has strong familial ties to the United States, and that he has a demonstrated record of appearing in court and submitting to the authority of DHS,” he “is a relatively low flight risk.” *Id.*

43. Unhappy with the IJ’s decision, the DHS reserved appeal to the BIA and filed an automatic stay of the IJ’s decision pursuant to 8 C.F.R. § 1003.19(i)(2). *See* Exh. F. On July 28, 2025, the DHS perfected its appeal to the Board by filing a notice of appeal. The parties submitted briefs in August 2025.

44. On August 27, 2025, Respondents *again* filed a new Notice to Appear with the immigration court, but on September 2, 2025, they requested petitioner to join in a motion to dismiss this third round of proceedings, which was granted on September 3, 2025.

45. On September 4, 2025, Respondents filed a second Motion to Recalendar Petitioner’s removal proceedings, which was denied on September 16, 2025. *See* Exh. G.

46. On September 5, 2025, the Board issued its precedential decision in *Yajure-Hurtado*, but the Respondents' appeal of the custody determination in Petitioner's individual case remains pending.

47. On September 8, 2025, this Court granted the Petitioner's motion but stayed the vacation of the automatic stay until September 22, 2025, at 10:00 AM (CST). The Court's order was stayed, in part, to allow the Respondents to seek a discretionary stay.

48. On September 19, 2025, Respondents filed an emergency motion for discretionary stay under 8 C.F.R. § 1003.19(i)(1) before the Board of Immigration Appeals (BIA). Petitioner filed an opposition on the same date.

49. That same afternoon, the Respondents withdrew their automatic stay under 8 C.F.R. § 1003.19(i)(2) (Form EOIR-43).

50. While this Court ordered the dissolution of the automatic stay effective at 10:00 AM on September 22, 2025, Respondents did not accept the Petitioner's monetary bond at 10:30 AM on September 22, 2025, despite no automatic or discretionary stay being in place at that time.

51. The BIA granted the discretionary stay at 1:18 PM on September 22, 2025. While no reasoning was given in the BIA's order, it is likely that the decision to grant the stay was based in large part on the BIA's decision in *Yajure-Hurtado*.

52. The Respondents' bond appeal remains pending as of the time of this filing. Based on practice, experience, and belief, the BIA takes approximately 6 months to decide a bond appeal.

53. The Petitioner and his family are suffering as a result of his prolonged, unconstitutional detention.

II. EXHAUSTION OF ADMINISTRATIVE REMEDIES

54. The Petitioner has exhausted his administrative remedies to the extent required by law. While the Respondents' appeal of his custody determination remains pending, it would be futile to require the Petitioner to await a resolution given that the BIA has already announced its decision on the issue of bond jurisdiction in *Yajure Hurtado*.

III. CLAIMS FOR RELIEF

Count I. Statutory Claim

55. The Petitioner has a clear right to a custody hearing by an IJ under statute.

56. The Respondents are detaining the Petitioner in direct violation of 8 U.S.C. § 1226(a)(2), which authorizes the IJ to grant release on bond.

57. The statute cannot be clearer and requires the Petitioner's release from custody as ordered by the immigration judge. While the BIA reached the opposite conclusion in *Yajure Hurtado*, its interpretation is no longer entitled to *Chevron* deference pursuant to the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 369 (2024) (overruling *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)).

58. Moreover, in *Monteon-Camargo v. Barr*, the Fifth Circuit found that where the BIA announces a "new rule of general applicability" which "drastically change[s] the landscape," retroactive application would "contravene basic presumptions about our legislative system" and should in that case be disfavored unless the government can demonstrate that the advantages of retroactive application outweigh these grave disadvantages. 918 F.3d 423, 430-431 (2019).

59. Applying *Yajure Hurtado* to individuals like Petitioner, who entered the United States without inspection years before the BIA's decision, would be impermissibly retroactive. The BIA's decision contradicts decades of statutory practice and administrative precedent, under which such individuals were detained under § 1226(a) and entitled to a bond hearing. Retroactively applying

Yajure Hurtado would strip these long-established rights and impose a new disability by rendering them ineligible for bond, contrary to settled expectations. See *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994).

60. Finally, in violation of BIA precedent, ICE has not provided a material change in circumstances justifying the Petitioner's re-detention. *Sugay*, 17 I&N Dec. at 640. *Yajure Hurtado* is not a valid change in circumstances as the decision contravenes the plain text of § 1226(a) and decades of bond practice and precedent.

Count II. Fifth Amendment Due Process

61. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. Amend. V. The Petitioner has a weighty liberty interest as his freedom "from government . . . detention . . . lies at the heart of the liberty that [the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690.

62. Petitioner's detention violates the Fifth Amendment's protections for at least two related reasons. First, because Petitioner is not subject to an order of removal from the United States or even active removal proceedings at this time, the Due Process Clause requires that any deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest. *Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." (emphasis in original)). Respondents cannot show a compelling state interest to continue to detain the Petitioner when they have twice declined to appeal his prior release on bond, and where he does not have an order of removal and is not active in removal proceedings.

63. Second, immigration detention must always “bear[] a reasonable relation to the purpose for which the individual was committed.” *Demore*, 538 U.S. at 527 (citing *Zadvydas*, 533 U.S. at 690). The Supreme Court explained in *Zadvydas* that when a noncitizen’s removal is not reasonably foreseeable, detention serves no legitimate government purpose, and thus the noncitizen must be released. 533 U.S. at 700-01.

64. Far from a final order of removal, the Petitioner is in custody even though his removal proceeding is administratively closed. There is no pending hearing where an IJ will enter an order of removal against him.

65. The Respondents have been repeatedly unsuccessful in their attempts to resume the Petitioner’s removal proceedings either by recalendarizing or attempting to start new proceedings even though his removal from the United States is not reasonably foreseeable at this time. *Id.* at 699 (“Once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute . . .”).

66. The IJs denied the motions to recalendar because the Petitioner has a prima facie determination on his pending VAWA I-360 with USCIS and DHS has not demonstrated a change in circumstances warranting recalendarizing. The VAWA benefits that are likely forthcoming to the Petitioner make him not amenable to an ongoing removal proceeding. Indeed, it is likely that he will receive relief from removal making his deportation even less foreseeable.

67. Since the government has not demonstrated any reason to re-detain the Petitioner after his previous release on bond ordered by the immigration court and, because the government has not succeeded in its multiple attempts to resume removal proceedings against the Petitioner, there is no compelling state interest to continue to detain Petitioner and his detention is not reasonably related to its purpose.

68. Finally, Respondents violated the Petitioner's due process rights by failing to accept bond on September 22, 2025 at 10:00 AM. At that time, there was no automatic or discretionary stay in place, and ICE was required to accept bond and release him.

COUNT III: Violation of the Bond Regulations

69. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

70. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are *present without having been admitted or paroled* (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

71. Nonetheless, pursuant to *Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner.

72. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

73. Government agencies are required to follow their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *United States v. Heffner*, 420 F.2d 809, 811 (4th Cir. 1969) ("An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will

strike it down.”). A violation of the *Accardi* doctrine may itself constitute a violation of the Fifth Amendment Due Process Clause and justify release from detention. *See, e.g., United States v. Teers*, 591 F. Appx. 824, 840 (11th Cir. 2014); *Sering Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 160 (W.D.N.Y. 2025) (citing *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)).

IV. PRAYER FOR RELIEF

For the foregoing reasons, the Petitioner requests that the Respondents be cited to appear and that, upon due consideration, the Court enter an order:

- a. Granting a writ of habeas corpus finding that the Petitioner’s detention is in violation of the due process clause;
- b. Providing declaratory relief that the Petitioner’s detention is unlawful;
- c. Ordering the Petitioner’s release from custody;
- d. Awarding Petitioner reasonable attorney’s fees, expenses and costs; and
- e. Granting Petitioner such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Lance Curtright
Lance Curtright
Texas Bar No. 24032109
Lance@dmcausa.com

/s/ Kathrine Russell
Kathrine Russell
Texas Bar No. 24070538
Kat.Russell@dmcausa.com

/s/ Alejandra Martinez
Alejandra Martinez
Texas Bar No. 24096346
Alejandra.Martinez@dmcausa.com

De Mott, Curtright, Armendariz, LLP
8023 Vantage Drive, Ste. 800
San Antonio, Texas 78230
(210)590-1844 (telephone)
(210)212-2116 (facsimile)

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that on today's date, Septmeber 26, 2025, I electronically filed the above Amended Petition for Writ of Habeas Corpus by using the Court's CM/ECF system which will automatically send a notice of electronic filing to Defendants' counsel.

/s/ Alejandra Martinez
Alejandra Martinez