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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

SALVADOR ALVAREZ CHAVEZ

PETITIONER,

vs.

POLLY KAISER, ACTING FIELD OFFICE  
DIRECTOR OF THE SAN FRANCISCO IMMIGRATION  
AND CUSTOMS ENFORCEMENT OFFICE; TODD  
LYONS, ACTING DIRECTOR OF UNITED STATES  
IMMIGRATION AND CUSTOMS ENFORCEMENT;  
KRISTI NOEM, SECRETARY OF THE UNITED  
STATES DEPARTMENT OF HOMELAND SECURITY,  
PAMELA BONDI, ATTORNEY GENERAL OF THE  
UNITED STATES, ACTING IN THEIR OFFICIAL  
CAPACITIES,

RESPONDENTS.

CASE No.: 3:25-cv-06984-LB

**FIRST AMENDED PETITION FOR  
WRIT OF HABEAS CORPUS**

**INTRODUCTION**

1           1.       Petitioner Salvador Alvarez Chavez is a Mexican national who has been in the  
2 United States continuously since February 1997. On September 16, 2024, he filed an Application  
3 to Register Permanent Residence or Adjust Status with U.S. Citizenship and Immigration  
4 Services (USCIS). Petitioner is eligible for permanent residence (green card) status as the  
5 step-father of a U.S. citizen who is at least 21 years of age.  
6

7           2.       On October 8, 2024, Petitioner attended a required biometrics appointment  
8 scheduled by USCIS to have his fingerprints taken for his pending green card application. On  
9 January 14, 2025, USCIS received Petitioner's response to their Request for Evidence,  
10 supplementing his application with additional evidence as requested by USCIS. As of today's  
11 date, Petitioner's Application to Register Permanent Residence or Adjust Status is pending and  
12 in good standing with USCIS.  
13

14           3.       On August 18, 2025, Petitioner departed his home in Rohnert Park, California  
15 around 6:30 am. Headed for work, he noticed a black car following him. Shortly after departing  
16 his home, the black car flashed lights at Petitioner signifying he was required to stop.  
17 Complying, he pulled into the nearest gas station. Unknown Officers approached Petitioner's  
18 vehicle. He held his identification up to the driver's side window so that it could be seen through  
19 the glass. The Officers opened Petitioner's door and forcibly removed him. The Officers never  
20 presented Petitioner with an arrest warrant nor cited probable cause for his arrest. Petitioner was  
21 arrested and taken into custody to the San Francisco ICE Office, located at 630 Sansome, in San  
22 Francisco.  
23

24           4.       On August 18, 2025, Petitioner was served with a Notice to Appear, Immigration  
25 Court documents, which were then filed with the Immigration Court on August 20, 2025. On  
26 August 18, 19 & 20, 2025, Petitioner's Immigration Counsel attempted to communicate with  
27 ICE about Petitioner's arrest to no avail.  
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1           5.       On August 21, 2025, Petitioner's Immigration Counsel travelled in person to the  
2 San Francisco ICE Office, where she was informed that Petitioner had been transferred from San  
3 Francisco that morning. ICE was unable to provide Petitioner's Counsel with Petitioner's  
4 location.

5           6.       Petitioner was transferred to the El Paso Service Processing Center, an  
6 Immigration detention center in El Paso, Texas. Petitioner's Immigration Counsel moved for a  
7 custody redetermination (bond) hearing based on Petitioner's eligibility to be released on  
8 discretionary immigration bond.

9           7.       On September 3, 2025, Immigration Judge (IJ) Dean S. Tuckman ordered  
10 Petitioner's release on \$8000 bond, after finding that he is being detained under the authority of 8  
11 U.S.C. § 1226 (Immigration and Nationality Act § 236), rather than 8 U.S.C. § 1225 (I.N.A.  
12 §235). The IJ concluded that Petitioner was neither a danger to the community nor a flight risk  
13 See IJ Order, attached as Exhibit A.

14           8.       On September 4, 2025, the Department of Homeland Security ("DHS") filed  
15 Form EOIR-43, Notice of ICE Intent to Appeal Custody Redetermination, invoking an automatic  
16 stay of the IJ decision under 8 C.F.R. §1003.19(i)(2). See Form EOIR-43, attached as Exhibit B.

17           9.       On September 5, 2025, the Board of Immigration Appeals ("BIA") issued its  
18 decision in *Matter of Yajure Hurtado*, holding that 8 U.S.C. § 1225 applies to all noncitizens who  
19 are in the United States without admission - even if they have resided here for years – thereby  
20 subjecting these individuals, such as Petitioner, to mandatory detention for the duration of their  
21 removal proceedings. 29 I&N Dec. 216, 220 (BIA 2025). In other words, the BIA adopted  
22 DHS's arguments regarding the correct interpretation of the two statutes.

23           10.       Petitioner submits that the new interpretations of sections 1225 and 1226 are  
24 erroneous. Further, the new interpretations, combined with the automatic stay of 8 C.F.R.  
25 §1003.19(i)(2), violate his right to due process.  
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11. Petitioner's detention is causing him and his family tremendous, ongoing harm. He is suffering immediate and irreparable harm and should be released immediately while DHS' appeal is pending. He has been torn away from his family and his community. Accordingly, to vindicate Petitioner's constitutional rights, this Court should grant the instant petition for a writ of habeas corpus.

12. The Constitution protects Petitioner - and every other person present in the United States - from arbitrary deprivations of his liberty, and guarantees him due process of law. The government's power over immigration is broad, but as the Supreme Court has declared, it "is subject to important constitutional limitations." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

#### **JURISDICTION AND VENUE**

13. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 22-01-02 (Declaratory Judgment Act), 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause), the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§701-706 (Administrative Procedure Act).

14. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. §1391(b)(2) and (e)(1) because Petitioner was physically arrested and detained within this district.

15. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. §2241 et seq., the Declaratory Judgment Act, 28 U.S.C. §2201 et seq., and the All Writs Act, 28 U.S.C. §1651.

#### **PARTIES**

16. Petitioner is a 52-year-old man from Mexico. He has a pending application for Permanent Residency in the United States. He is presently in civil immigration detention at 8915 Montana Avenue, Suite 100, El Paso, TX 79925. Prior to his immigration arrest, he was a resident of Sonoma County, California since 1997. He is in the custody of and under the direct control of Respondents and their agents.

17. Respondent Polly Kaiser is the Acting Field Office Director of the San Francisco ICE Field Office. In this capacity, she is responsible for the administration of immigration laws and the execution of immigration enforcement and detention policy within ICE's San Francisco Area of Responsibility, including the detention of Petitioner. Respondent Kaiser maintains an office and regularly conducts business in this district. Respondent Kaiser is sued in her official capacity.

18. Respondent Todd M. Lyons is the Acting Director of ICE. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in this District; and is legally responsible for pursuing any effort to detain and remove the Petitioner. Respondent Lyons is sued in his official capacity.

19. Respondent Kristi Noem is the Secretary of Homeland Security and has ultimate authority over DHS. In that capacity and through her agents, Respondent Noem has broad authority over and responsibility for the operation and enforcement of the immigration laws; routinely transacts business in this District; and is legally responsible for pursuing any effort to detain and remove the Petitioner. Respondent Noem is sued in her official capacity.

20. Respondent Pamela Bondi is the Attorney General of the United States and the most senior official at the Department of Justice. In that capacity and through her agents, she is responsible for overseeing the implementation and enforcement of the federal immigration laws. The Attorney General delegates this responsibility to the Executive Office for Immigration

1 Review, which administers the immigration courts and the BIA. Respondent Bondi is sued in her  
2 official capacity.

### 3 EXHAUSTION

4 21. Petitioner amends this habeas proceeding while the government's appeal is  
5 pending before the BIA. The doctrine of exhaustion of administrative remedies should not apply  
6 for the following reasons.

7 22. In habeas proceedings, exhaustion is a prudential, rather than jurisdictional,  
8 doctrine. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Prudential exhaustion may be  
9 required when agency expertise makes agency consideration necessary to generate a proper  
10 record and reach a proper decision; when relaxation of the requirement would encourage the  
11 deliberate bypass of the administrative scheme; and when administrative review is likely to allow  
12 the agency to correct its own mistakes and to preclude the need for judicial review. *Id.*

13 23. Here, Petitioner's challenge to his detention is based on legal questions that can  
14 be resolved through statutory and constitutional interpretation. Likewise, DHS's presumed  
15 arguments before the BIA center on statutory interpretation. Because only legal issues are  
16 involved, agency expertise and an additional record are not needed to reach a proper decision.  
17 *See id.* at 989 (holding that no administrative appellate record was needed to resolve the purely  
18 legal questions presented by a challenge to government policy); see also *Loper Bright Enters. v.*  
19 *Raimondo*, 603 U.S. 369, 385, 394 (2024) (holding that courts should apply independent  
20 judgment in determining the meaning of statutes). In addition, relaxing the exhaustion  
21 requirement will not encourage future bypass of the administrative scheme because once these  
22 legal questions are decided they should not arise again. *See Hernandez*, 872 F.3d at 989. And  
23 finally, administrative review will not allow the BIA to correct its own mistakes because its  
24 position on the issue is already set. *See id.* ("[W]here the agency's position on the question at  
25 issue appears already set, and it is very likely what the result of recourse to administrative  
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1 remedies would be, such recourse would be futile and is not required.” (internal quotation marks  
2 omitted)).

3 24. Even if the factors above weighed in favor of exhaustion, this court should waive  
4 the requirement because Petitioner’s administrative remedies are inadequate and not efficacious,  
5 pursuit of those remedies would be futile, and irreparable injury will occur. *See id.* at 988 (stating  
6 that exhaustion should be waived if these results will occur).

7 25. The appellate proceedings before the BIA will not be adequate or efficacious to  
8 vindicate Petitioner’s interest in being released on bond. In fact, the government’s appeal is  
9 delaying his release on bond. And any arguments he makes to the BIA will be futile because the  
10 BIA has already held that all applicants for admission are subject to mandatory detention.

11 26. Most importantly, Petitioner will suffer irreparable injury if he has to wait for the  
12 administrative appeal process to play out. A district court recently cited evidence “showing an  
13 average processing time of 204 days for bond appeals in 2024” and that “200 bond appeal cases  
14 took a year or longer to resolve.” *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1253 (W.D. Wash.  
15 2025) (internal quotation marks omitted). Many detainees’ claims are mooted during the time it  
16 takes for the BIA to resolve an appeal. *Id.* “[D]istrict courts in this circuit have routinely waived  
17 prudential exhaustion requirements for noncitizens like [Petitioner] facing prolonged detention  
18 while awaiting administrative appeals.” *Id.* at 1253-54.

19 27. The Ninth Circuit has recognized “the irreparable harms imposed on anyone  
20 subject to immigration detention.” *Hernandez*, 872 F.3d at 995 (citing “subpar medical and  
21 psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their  
22 families as a result of detention, and the collateral harm to children of detainees whose parents  
23 are detained”). “Irreparable harm may be established where a petitioner will be incarcerated or  
24 detained pending the exhaustion of administrative remedies.” *Gomes v. Hyde*, 2025 WL  
25 1869299, at \*4 (D. Mass. July 7, 2025).

28. Other courts have recently waived the exhaustion requirement in the situation presented here, i.e., where an IJ granted release on bond, but the government obtained an automatic stay pending appeal. *See Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, slip op. at 11-13 (D. Mass. Sept. 9, 2025) (Exhibit C); *Leal-Hernandez v. Noem*, Civ. No. 1:25-cv-02428-JRR, slip op. at 18-21 (D. Md. Aug. 24, 2025) (Exhibit D).

29. For all these reasons, Petitioner should not be required to exhaust administrative remedies.

### **LEGAL BACKGROUND**

#### ***A. The Constitution Protects Noncitizens Like Petitioner from Arbitrary Detention.***

30. The Constitution establishes due process rights for “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at 693). These due process rights are both substantive and procedural.

31. *First*, “[t]he touchstone of due process is protection of the individual against arbitrary action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the exercise of power without any reasonable justification in the service of a legitimate government objective,” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

32. These protections extend to noncitizens facing detention, as “[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). Accordingly, “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

33. Substantive due process thus requires that all forms of civil detention—including immigration detention—bear a “reasonable relation” to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible

1 non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at  
2 immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–  
3 92; see also *Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003).

4 34. Second, the procedural component of the Due Process Clause prohibits the  
5 government from imposing even permissible physical restraints without adequate procedural  
6 safeguards.

7 **FACTUAL ALLEGATIONS**

8 ***COUNT ONE: Petitioner's Detention is a Violation of the Fifth Amendment***

9 35. The Petitioner is entitled to and granted discretionary bond to be released from  
10 immigration detention.

11 36. Since being detained, Petitioner has been placed in imminent danger of permanent  
12 and irreversible injury because of his prolonged detention.

13 37. The Department's decision to appeal Petitioner's bond was not based on any  
14 individual analysis that Petitioner is a danger to the community or a flight risk but based on  
15 instructions from DHS to appeal every bond grant overall.

16 38. For these reasons, Petitioner's ongoing detention after being granted bond violates  
17 the Due Process clause of the Fifth Amendment.

18 ***COUNT TWO: Violation of 8 USC §1226(a) [INA §236(a)]***

19 39. By invoking and implementing the automatic stay of 8 CFR §1003.19, DHS  
20 extends the confinement of Petitioner in dangerous conditions without good cause in subversion  
21 of the due process initially provided by the IJ bond hearing and decision. There has been no  
22 showing of danger to the community or risk of flight, as required by 8 USC §1226(a), to warrant  
23 this dangerous, continued confinement. While DHS may have a right to appeal the judgment of  
24 the Immigration Judge, the confinement pending appeal works an unconstitutionally grave risk  
25 of injury to Petitioner over several months which has never been justified.  
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**CLAIMS FOR RELIEF**

**COUNT ONE**

**Violation of Fifth Amendment Right to Procedural Due Process**

40. The allegations in the above paragraphs are realleged and incorporated herein.

41. The Due Process Clause of the Fifth Amendment prohibits the government from detaining immigrants without due process of law. *Hernandez*, 872 F.3d at 990. “In the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government’s asserted justification for physical confinement outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* (internal quotation marks and citation omitted).

42. In this case, the IJ ordered Petitioner released on \$8000 bond. Nevertheless, Petitioner is still detained because of the automatic stay provided by 8 C.F.R. §1003.19(i)(2). His detention under these circumstances deprives Petitioner of procedural due process.

43. The three-factor test of *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976), governs procedural due process claims. See *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206-07 (9th Cir. 2022) (assuming without deciding that *Matthews* applies to a challenge to immigration detention and noting that other circuits have applied *Matthews* to such challenges); *Ramirez Clavijo v. Kaiser*, 2025 WL 2419263, at \*5 (N.D. Cal. Aug. 21, 2025) (noting that district courts in this circuit “regularly apply *Matthews* to due process challenges in [the] immigration context”). The *Matthews* three-factor test balances the private interest at stake, the risk of erroneous deprivation, and the governmental interest. 424 U.S. at 335.

44. Petitioner faces a potentially long period of detention because of the stay. When the government filed its notice of appeal, that stay was extended for ninety days, pending the BIA’s decision. See 8 C.F.R. §1003.6(c)(4). The government can seek additional stays as well. See 8 C.F.R. §1003.6(c)(5), (d).

1 45. The risk of erroneous deprivation is obvious here, because Petitioner has already  
2 demonstrated his entitlement to release on bond to the satisfaction of the IJ, and is only being  
3 deprived of his liberty because of the stay. The government has not shown that Petitioner is a  
4 flight risk or a danger to the community. The IJ ordered Petitioner to be released on \$8000 bond.  
5 The IJ's order thus establishes that Petitioner is not a serious flight risk or a danger to the  
6 community. Therefore, subjecting Petitioner to detention erroneously deprives him of his liberty.  
7 See *Ramirez Clavijo*, 2025 WL 2419263, at \*6; see also *Lopez Benitez*, 2025 WL 2371588, at  
8 \*12 (holding that the absence of evidence that petitioner was a flight risk or danger to the  
9 community established a high risk of erroneous deprivation of his liberty interest).

10 46. Turning to the third factor, the government generally has a strong interest in the  
11 enforcement of immigration law. *Rodriguez Diaz*, 53 F.4th at 1209. However, Petitioner has lived  
12 in the United States for almost thirty years, has a job and family ties here, and no significant  
13 criminal record. The government has no particular need to detain him. See *Hernandez*, 872 F.3d  
14 at 994 (“[T]he government has no legitimate interest in detaining individuals who have been  
15 determined not to be a danger to the community and whose appearance at future proceedings can  
16 be reasonably ensured by a lesser bond or alternative conditions.”); *Lopez Benitez*, 2025 WL  
17 2371588, at \*12 (holding that the government clearly failed to show a significant interest in the  
18 petitioner's detention where there was no evidence that petitioner was a flight risk or danger to  
19 the community). Although there is an administrative cost to conducting bond hearings, that cost  
20 has already been incurred in this case, and the administrative cost of conducting hearings should  
21 be balanced against the likely greater amount of money that the government would spend in  
22 detaining Petitioner and others similarly situated.

23 47. On balance, the three *Matthews* factors show that Petitioner was entitled to a bond  
24 hearing and that their detention pursuant to the automatic stay violates their right to procedural  
25 due process. See *Sampiao*, slip op. at 19-26 (finding a denial of procedural due process in the  
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27  
28

circumstances presented here) (Exhibit C); *Leal-Hernandez*, slip op. at 23-25 (same) (Exhibit D);  
1 *Mayo Anicasio v. Kramer*, No. 4:25CV3158, slip op. at 5-8 (D. Neb. Aug. 14, 2025 (same)  
2 (Exhibit E).  
3

4 48. Detention violates due process unless it is ordered in a criminal proceeding with  
5 adequate procedural protections, or there is a special justification in narrow and nonpunitive  
6 circumstances. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). There is no special justification for  
7 Petitioner's continued detention. *See Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1076-77 (N.D. Cal.  
8 2004) (holding that an earlier version of the automatic stay provision violated substantive due  
9 process); *Ashley v. Ridge*, 288 F. Supp. 2d 662, 668-69 (D.N.J. 2003) (same); see also  
10 *Leal-Hernandez*, slip op. at 21-22 (holding that the current version of the automatic stay  
11 provision violated substantive due process in the circumstances here) (Exhibit D); *Mayo*  
12 *Anicasio*, slip op. at 8-9 (same) (Exhibit E).  
13

14 49. The Due Process Clause of the Fifth Amendment protects all "person[s]" from  
15 deprivation of liberty "without due process of law." U.S. Const. amend. V. "Freedom from  
16 imprisonment—from government custody, detention, or other forms of physical restraint—lies at  
17 the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.  
18

19 50. Immigration detention is constitutionally permissible only when it furthers the  
20 government's legitimate goals of ensuring the noncitizen's appearance during removal  
21 proceedings and preventing danger to the community. *See id.*

22 51. Petitioner is not a flight risk or danger to the community, as determined by a  
23 neutral IJ on September 3, 2025. Respondents' continued detention of Petitioner is therefore  
24 unjustified and unlawful. Accordingly, Petitioner is being detained in violation of the Due  
25 Process Clause of the Fifth Amendment.  
26

27 52. Moreover, Petitioner's detention is punitive as it bears no "reasonable relation" to  
28 any legitimate government purpose. *Id.* (finding immigration detention is civil and thus

ostensibly “nonpunitive in purpose and effect”). Here, the purpose of Petitioner’s detention appears to be “not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons”—namely, to meet newly-imposed DHS directives.

## COUNT TWO

### Violation of 8 U.S.C. § 1226(a)

53. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

54. Although the IJ held that this case is governed by 8 U.S.C. § 1226 and ordered Petitioner released on bond, the BIA subsequently held that 8 U.S.C. § 1225 applies to all noncitizens who are in the United States without admission, even if they have resided here for years. According to the BIA, these individuals are now subject to mandatory detention for the duration of their removal proceedings. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025).

55. Petitioner submits that Yajure Hurtado was wrongly decided and that this Court should not defer to the BIA’s interpretation of the applicable statutes. Instead, this court should consider the statutes together and conclude that section 1226 governs this case, just as the IJ did here and as other district courts have concluded under similar circumstances.<sup>1</sup>

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<sup>1</sup> To interpret the statutes at issue here, the BIA and district courts both cite *Jennings v. Rodriguez*, 583 U.S. 281 (2018), yet the BIA and the courts reach opposite results. See, e.g., *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1258 (W.D. Wash. 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588, at \*3 (S.D.N.Y. Aug. 13, 2025); *Matter of Yajure Hurtado*, 29 I&N Dec. 216. In *Jennings*, the issue was whether sections 1225 and 1226 impose an implicit six-month time limit on detention. See 583 U.S. at 291-92. Thus, as one district judge has noted, *Jennings* did not consider whether section 1225 applies to all noncitizens who are in the country without admission. See *Rodriguez*, 779 F. Supp. 3d at 1258. Petitioner submits that the quotations from *Jennings* in *Yajure Hurtado* were taken out of context and should be read in light of the Supreme Court’s focus on whether the statutes imposed a time limit on detention. See, e.g., *Matter of Yajure Hurtado*, 29 I&N Dec. at 218, 225. If this Court determines that *Jennings* is relevant to the issues in this case, Petitioner notes that *Jennings* contains abundant language to support his position. See *Jennings*, 583 U.S. at 289 (“In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).”); *id.* at 303 (“[Section] 1226 applies to aliens already present in the United States.”).

1  
2  
3 56. Courts must exercise independent judgment in determining the meaning of  
4 statutes. *Loper Bright*, 603 U.S. at 385, 394. This court should not adopt the BIA's interpretation  
5 of the statutes at issue here because it conflicts with the statutory language, with courts'  
6 interpretation of that language, and with longstanding administrative practice.

7 57. Section 1225 states that "in the case of an alien who is an applicant for admission,  
8 if the examining immigration officer determines that an alien seeking admission is not clearly  
9 and beyond a doubt entitled to be admitted, the alien shall be detained." 8 U.S.C. §  
10 1225(b)(2)(A) (emphasis added). Use of the word "shall" demonstrates that detention under this  
11 section is mandatory. By contrast, section 1226 provides for discretionary detention. It states that  
12 "an alien *may* be arrested and detained pending a decision on whether the alien is to be removed  
13 from the United States." 8 U.S.C. § 1226(a) (emphasis added). Generally speaking, the  
14 government may detain an alien subject to this section or release them on bond or parole. *See id.*;  
15 *but see* 8 U.S.C. § 1226(c) (mandating detention for individuals implicated in certain crimes).

16  
17 58. Many district courts have held that section 1226(a), rather than section  
18 1225(b)(2), applies to noncitizens who reside in the United States. *See., e.g., Lopez Benitez v.*  
19 *Francis*, 2025 WL 2371588, at \*5 (S.D.N.Y. Aug. 13, 2025); *Martinez v. Hyde*, 2025 WL  
20 2084238, at \*7 (D. Mass. July 24, 2025); *Gomes v. Hyde*, 2025 WL 1869299, at \*7 (D. Mass.  
21 July 7, 2025); *see also Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025);  
22 *Sampiao*, slip op. at 23 (citing at least thirteen cases that have reached this result). (Exhibit C)

23  
24 59. By its terms, section 1225(b)(2)(A) only applies to aliens who are "seeking  
25 admission." Courts have logically reasoned that aliens who are already residing here are not  
26 "seeking admission." *Lopez Benitez*, 2025 WL 2371588 at \*5; *Martinez*, 2025 WL 2084238, at  
27 \*6-7. The use of the present progressive tense in seeking admission" denotes an ongoing process.  
28

See *Al Otro Lado v. Wolf*, 952 F.3d 999, 1011-12 (9th Cir. 2020); *Martinez*, 2025 WL 2084238, at

\*6. Moreover, if all applicants for admission were subject to mandatory detention, the phrase “seeking admission” would become mere surplusage. See *Lopez Benitez*, 2025 WL 2371588 at \*6; *Martinez*, 2025 WL 2084238, at \*6. The canons of statutory construction assume that Congress “acted intentionally in choosing different words in a statute, such that different words and phrases should be accorded different meanings.” *Lopez Benitez*, 2025 WL 2371588 at \*6.

60. Another portion of section 1226 would be rendered superfluous by the BIA’s interpretation of the statutes. Subsection (c)(1)(E) mandates detention for aliens who are both inadmissible and who are implicated in certain crimes. If the mandatory detention provision of section 1225 applies to all noncitizens who have not been admitted, then section 1226(c)(1)(E), which only applies to a subset of that group, is meaningless. *Rodriguez*, 779 F. Supp. 3d at 1258; see also *Lopez Benitez*, 2025 WL 2371588, at \*7; *Martinez*, 2025 WL 2084238, at \*7; *Gomes*, 10 2025 WL 1869299, at \*7.

61. Furthermore, some of the provisions of section 1226(c) were enacted by Congress just months ago in the Laken Riley Act. *Rodriguez*, 779 F. Supp. 3d at 1259. When Congress amends a statute, courts should “presume it intends its amendment to have real and substantial effect.” *Id.* (quoting *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995)).

62. Although section 1226(a) expressly excludes certain “criminal aliens” from its discretionary detention framework, it does not expressly exclude noncitizens who would be subject to mandatory detention under section 1225(b)(2). See 8 19 U.S.C. § 1226(a) (allowing for release “[e]xcept as provided in subsection (c)”). This one express exception to section 1226(a) implies that there are no other circumstances under which detention is mandated. *Gomes*, 2025 WL 1869299, at \*6. When Congress creates a specific exception to a statute’s applicability, courts should presume that the statute applies unless the specific exception pertains. *Rodriguez*, 779 F. Supp. 3d at 1256-57.

63. Statutes should also be construed to avoid absurd or impracticable results. *United States v. Romo-Romo*, 246 F.3d 1272, 1275 (9th Cir. 2001). If section 1225(b)(2)(A) applied to all inadmissible aliens, millions of undocumented immigrants would be subject to mandatory detention. *Martinez*, 2025 WL 2084238, at \*5. It is absurd to think that Congress intended such an impracticable result.

64. Agency “interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute’s meaning.” *Loper Bright*, 603 U.S. at 394. The detention provisions of sections 1225(b)(2) and 1226(c) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Shortly thereafter, EOIR drafted regulations explaining that immigrants who are present without having been admitted would be eligible for bond. See *Martinez*, 2025 WL 18 2084238, at \*8; 62 Fed. Reg. 10312, 10323 (March 6, 1997). For decades, this has been the rule. However, on July 8th 19 of this year, ICE, in coordination with DOJ, announced a new policy, which states that all applicants for admission are subject to mandatory detention under section 1225. See *Martinez*, 2025 WL 2084238, at \*4. The BIA adopted ICE’s interpretation in *Yajure Hurtado*, disregarding the decades of contrary practice and statements in its own prior cases. 29 I&N Dec. at 225 & n.6; see *Rodriguez*, 779 F. Supp. 3d at 1261 (discussing unpublished BIA decisions that seem to conflict with *Yajure Hurtado*); *Matter of Q. Li*, 29 I&N Dec. 66, 69 (BIA 2025) (distinguishing, in May of this year, between “an applicant for admission who is arrested and detained without a warrant while arriving in the United States” and aliens who may be detained pursuant to section 1226).

65. In *Yajure Hurtado*, the BIA stated that it would be “incongruous” to reward aliens who enter unlawfully and remain in the country for years by allowing them an opportunity for a bond hearing, while aliens who present themselves at a port of entry are ineligible for bond. 29 I&N Dec. at 228. However, courts have noted that there is a good reason to treat aliens who have

1 been in the country for years differently—their ties to the country. “[O]ur immigration laws have  
2 long made a distinction between those aliens who have come to our shores seeking admission ...  
3 and those who are within the United States after an entry, irrespective of its legality. In the latter  
4 instance the Court has recognized additional rights and privileges not extended to those in the  
5 former category who are merely ‘on the threshold of initial entry.’” *Leng May Ma v. Barber*, 357  
6 U.S. 185, 187 (1958). Indeed, “the idea that a different detention scheme would apply to  
7 non-citizens ‘already in the country,’ . . . as opposed to those ‘seeking admission into the  
8 country,’ . . . is consonant with the core logic of our immigration system.” *Martinez*, 2025 WL  
9 2084238, at \*8 (quoting *Jennings*, 583 U.S. at 289); *see also D.H.S. v. Thuraissigiam*, 591 U.S.  
10 103, 107 (2020) (distinguishing between “aliens who have established connections in this  
11 country” and those “at the threshold of entry”).

12  
13 66. Here, Petitioner entered the United States without admission sometime in 1997.  
14 He was never apprehended or detained near the border. After residing in the United States for  
15 almost thirty years, he was arrested on August 18, 2025, and has been in immigration custody  
16 since then. Although Petitioner and his counsel do not have copies of the warrant used for his  
17 arrest on August 18, 2025, DHS Counsel confirmed at the bond hearing on September 3, 2025  
18 that Petitioner was arrested subject to a warrant. Now, he can only be detained pending a  
19 decision on removal pursuant to section 1226(a). See *Lopez Benitez*, 2025 WL 2371588, at \*8  
20 (“Mr. Lopez Benitez’s initial arrest is not what is at issue in this case. It is his 2025 arrest, which  
21 occurred at a time when he was (and had long been) residing in the United States, and thus  
22 subject to §1226(a).”).

23  
24 67. Since Petitioner is subject to section 1226(a), the IJ was correct at the time to  
25 conclude that he had authority to release Petitioner on bond.  
26

27 **PRAYER FOR RELIEF**

28 For the reasons stated above, Petitioner respectfully requests that this Court:

68. Issue a writ of habeas corpus ordering Respondents to immediately release  
Petitioner from custody;
69. Declare that Petitioner's detention violates the Fifth Amendment to the United  
States Constitution;
70. Enjoin Respondents from deporting Petitioner pending these proceedings;
71. Award Petitioner his costs and reasonable attorneys' fees in this action as  
provided for by the Equal Access to Justice Act and 28 U.S.C. § 2412; and
72. Grant such further relief as the Court deems just and proper.

Date: September 16, 2025

Respectfully Submitted,

/s/ Nicole Alicia Gorney

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