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

Armando BECERRA VARGAS,

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;

SYLVESTER ORTEGA
Field Office Director
for Detention and Removal, U.S.
Immigration and Customs Enforcement,

REYNALDO CASTRO, Warden,
South Texas Detention Complex;

Respondents-Defendants.

Civ. No. 25-1023

DHS File Number: [redacted]

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; PETITION FOR HABEAS CORPUS

The Petitioner, Armando Becerra Vargas ("Mr. Becerra"), 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.

I. INTRODUCTION

1. This lawsuit seeks the immediate release of Plaintiff-Petitioner Armando Becerra Vargas ("Petitioner"), age 45, from unlawful detention in violation of his constitutional and statutory rights.
2. Petitioner was detained at his regularly scheduled Immigration and Customs Enforcement (ICE) check-in appointment on June 10, 2025 in San Antonio, Texas that he has attended since his release by ICE approximately 13 years ago, and remains in civil detention in the custody of ICE at South Texas Detention Complex at Pearsall, Texas.
3. Petitioner has been in the United States for over 23 years and is the father of four U.S. citizen children, three of whom are minors and one who is 22 years old. He lives with and supports his family in San Antonio, Texas. This detention is a substantial deprivation and burden that puts Petitioner and his family at risk without his parental and financial support.
4. Petitioner has one criminal case from an arrest on November 28, 2005 for Battery-Touch or Strike, under Florida Statutes §784.03, that resulted in the State dropping the charge. He was not put into removal proceedings as a result of that arrest. He was arrested in San Antonio in June 2012 for speeding, which resulted in him being placed in ICE custody, where after several hours he was released on his own recognizance. He has never failed to appear in any criminal or immigration proceedings. ICE did not notify him why on June 10, 2025 at his routine check-in they decided to revoke his release on recognizance and hold him without bond.

5. Petitioner's detention became unlawful on August 11, 2025, when an Immigration Judge ("IJ") at the South Texas Detention Complex in Pearsall, TX, Eric Tijerina, that Petitioner was not entitled to bond due to the government's assertion that he fell was detained pursuant to 8 U.S.C. § 1225(b)(2), rather than 8 U.S.C. § 1226.

6. Petitioner is represented in immigration removal proceedings by counsel. Petitioner has filed an application for non-LPR cancellation of removal pursuant to 8 U.S.C. § 1229b(b)(1) as he has been physically present in the United States for at least 10 years and been a person of good moral character during that period. Moreover, he has no criminal convictions and has U.S. citizen children upon whom his removal would cause exceptional and extremely unusual hardship.

7. Petitioner respectfully requests this Court grant the instant petition for a writ of habeas corpus under 28 U.S.C. § 2241 and enjoin Respondent's continued detention of Petitioner to ensure his due process rights and his ability to provide care for his four children, who have needs that require Petitioner's presence and support. In the alternative, he respectfully requests the Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C. § 2243. His continued detention is an unlawful violation of due process, incorrect interpretation of immigration law, and is *ultra vires*.

II. JURISDICTION AND VENUE

8. Petitioner is detained in civil immigration custody at Frio County at the South Texas Detention Complex, Pearsall, Texas. He has been detained since or about, June 10, 2025. He has no criminal convictions.

9. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq*.

10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and where applicable Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

11. Venue is proper in the Western District of Texas under 28 U.S.C. § 1391, because at least one Defendant is in this District, Petitioner is detained in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. Venue is also proper under 28 U.S.C. § 2243 ecause the immediate custodians of Petitioner reside in this District.

III. REQUIREMENTS OF 28 U.S.C. § 2243, Writ of Habeas Corpus Issuance, Return, Hearing, and Decision

12. The Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response "within three days" unless this Court permits additional time for good cause, which is not to exceed twenty days. 28 U.S.C. § 2243.

13. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time. *Rhueark v. Wade*, 540 F. 2d 1282, 1283 (5th Cir. 1976); *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978). Due to the nature of this proceeding,

Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice.

IV. PARTIES

14. Petitioner is 45 years old. He was born in Mexico in 1979 and came to the United States in 2002. Prior to his detention, he was living with and supporting his four U.S. citizen children in San Antonio, Texas. Petitioner is the subject of a removal proceeding based upon the charges of being present in the U.S. without being "admitted or paroled, or [having] arrived in the [U.S.] at any time or place other than as designated by the Attorney General" under INA § 212(a)(6)(A)(i), codified at 8 U.S.C. § 1182(a)(6)(A)(i).

15. He has been in civil immigration detention since June 10, 2025.

16. Respondent Pamela Bondi is named in their official capacity as the U.S. She is responsible for the administration and policy of the immigration courts, which resulted in the denying of this noncitizen's attempt to seek a custody redetermination from the U.S. Department of Justice under 8 C.F.R. §1003.19.

17. Respondent Kristi Noem is named in their official capacity as the Secretary of U.S. Department of Homeland Security. DHS is a department of the executive branch of the U.S. government that is tasked with, among other things, administering and enforcing the federal immigration laws. Secretary Noem is ultimately responsible for the actions of ICE; specifically, they are responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a). Secretary Noem is legally responsible for the Office of the Principle Legal Advisor of ICE, and in any effort to detain and remove the Petitioner and as such is a legal custodian of Petitioner.

18. Respondent Todd M. Lyons is named in their official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. ICE is the agency within DHS that is specifically responsible for managing all aspects of the immigration enforcement process, including immigration detention. ICE is responsible for apprehension, incarceration, and removal of noncitizens from the United States and as such Acting Director Lyons is a legal custodian of Petitioner.

19. Respondent Sylvester Ortega is named in their official capacity as the Field Office Director for the San Antonio Field Office of ICE. Director Ortega is responsible for the enforcement of the immigration laws within this district, and for ensuring that ICE officials follow the agency's policies and procedures. Director Ortega is a legal custodian of Petitioner.

20. Respondent Reynaldo Castro is named in their official capacity as the warden of the South Texas Detention Complex. They have immediate physical custody of Petitioner pursuant to an agreement with ICE to detain noncitizens and is a legal custodian of Petitioner.

V. FACTUAL ALLEGATIONS

21. Petitioner was detained at his annual ICE check-in on June 10, 2025 in San Antonio, Texas. ICE has held him without bond. Section 236 of the INA is codified at 8 U.S.C. § 1226 and noncitizens held under its authority have a right to have their custody determination reviewed by an IJ. *See id.*

22. On August 5, 2025, immigration counsel for Petitioner submitted a Motion for Bond Determination Hearing before the IJ and submitted evidence regarding his ties to the United States to demonstrate that he is neither a flight risk nor a danger to the community and is statutorily eligible to be considered for multiple reliefs from removal.

23. A custody and bond determination hearing was held on August 11, 2025, and counsel for ICE argued that Petitioner was not entitled to bond due to the government's assertion that he fell was detained pursuant to 8 U.S.C. § 1225(b)(2), rather than 8 U.S.C. § 1226. The IJ, Eric Tijerina at the Pearsall Immigration Court, determined that Petitioner was ineligible for bond under 8 U.S.C. § 1225 and determined he thus had no jurisdiction to consider a redetermination of bond.

24. It has been widely reported that ICE internally released "interim guidance" regarding a change in their longstanding interpretation of which noncitizens are eligible for release on bond; specifically, ICE is now arguing that only those already admitted to the U.S. (typically requiring lengthy legal efforts with representation of counsel, such as adjusting status to a legal permanent resident or refugee) are eligible to be released from custody during their removal proceedings, and that all others are subject to mandatory detention under 8 U.S.C. § 1225, instead of 8 U.S.C. § 1226, and will remain detained with only extremely limited parole options *at ICE's discretion*. Ex. 1, Interim Guidance Regarding Detention Authority for Application for Admission (July 8, 2025). This is a reversal of ICE's established practice of releasing from custody the majority of noncitizens in removal proceedings, who are found not to pose a flight risk or a danger to the community, on bond.

25. This novel interpretation means that potentially millions noncitizens who entered the United States without inspection (who have not already been formally admitted or paroled) that are contacted by ICE in the interior of the U.S. will be treated as if they were an "arriving alien" at the border and subject to mandatory detention, regardless of how long they have been present in the United States or other equities (such as complete lack of criminal history or U.S. citizen family members including dependent children). ICE will now argue all of these

noncitizens are not even entitled to a bond hearing by an IJ on the issue of release from custody during the pendency of removal proceedings.

26. Petitioner has hired counsel to file an appeal of IJ Tijerina's bond decision to the Board of Immigration Appeals (BIA) on August 18, 2025. Petitioner will update this Court with proof that the bond appeal is pending.

27. Petitioner remains in detention and separated from his family and community. He is experiencing significant and deep emotional and mental trauma from this separation from all those he loves. His wife, Maria Torres Aldana, and the three minor children are struggling to get ready for school without their father's support. The older children are being forced into a more parental role to account for the deprivation their family is currently experiencing.

28. In addition, Petitioner is unable to support and provide for his family because he is detained and unable to continue as a breadwinner. His elder children are only able to communicate with their father via pre-paid phone calls. It is too emotional for the younger children to communicate with their father on the phone, so they have been entirely separated from contact with him this whole time.

29. Petitioner's continued detention separates him from his family, prohibits his removal defense in many ways, including by making it difficult to communicate with witnesses, gather evidence, and afford legal representation, among other related harms.

30. Despite having hired counsel to file and attend a bond redetermination hearing, there has been no hearing and he remains detained over one hour away from his family, his counsel, and support system and continues to be subjected to the aforementioned harms.

VI. LEGAL FRAMEWORK: Due Process Clause

31. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom 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 v. Davis*, 533 U.S. 678, 690 (2001).

32. Due Process requires that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690.

33. "The fundamental requirement of due process is the opportunity be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To determine what process Petitioner is due, this Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.* at 335.

A. Immigration and Nationality Act

34. Title 8 of the United States Code, Section 1221 *et seq.*, controls the United States Government's authority to detain noncitizens during their removal proceedings.

35. The INA authorizes detention for noncitizens under four distinct provisions:

1) **Discretionary Detention. 8 U.S.C. § 1226(a)** generally allows for the detention of noncitizens who are in regular, non-expedited removal proceedings; however, permits those noncitizens who are not subject to mandatory detention to be released on bond or on their own recognizance.

2) **Mandatory Detention of "Criminal" Noncitizens. 8 U.S.C. § 1226(c)** generally requires the mandatory detention of noncitizens who are removable because of certain criminal or terrorist-related activity after they have been released from criminal incarceration.

3) **Mandatory Detention of "Applicants for Admission." 8 U.S.C. § 1225(b)** generally requires detention for certain noncitizen applicants for admission, such as those noncitizens arriving in the U.S. at a port of entry or other noncitizens who have not been admitted or paroled into the U.S. and are apprehended soon after crossing the border.

4) **Detention Following Completion of Removal Proceedings. 8 U.S.C. § 1231(a)** generally requires the detention of certain noncitizens who are subject to a final removal order during the 90-day period after the completion of removal proceedings and permits the detention of certain noncitizens beyond that period. *Id.* at § 1231(a)(2), (6).

36. The instant case concerns the detention provisions at §§ 1226(a) and 1225(b). Both detention provisions, §§ 1226(a) and 1225(b), were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104—208, Div. C, §§

302–03, 110 Stat. 3009- 546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

37. Following enactment of the IIRIRA, the Executive Office for Immigration Review drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225(b) and that they were instead detained under § 1226(a) after an arrest warrant was issued by the Attorney General. *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) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) ***will be eligible for bond and bond redetermination***") (emphasis added).

38. For nearly thirty years, the practice of the government, specifically ICE and Executive Office for Immigration Review, which operate under DHS, was that most individual noncitizens that were apprehended in the interior of the United States after they had been living in the U.S. for more than two years (as opposed to "arriving" at a point of entry, border crossing, or being apprehended near the border and soon after entering without inspection) received a bond hearing. If determined to not be a danger to the community or a flight risk and, as a result, granted a change in custody status, the individuals were released from detention either on their own recognizance or after paying the bond amount set by the IJ in full. 8 U.S.C. § 1226(a)(2)(A).

39. Recently, ICE has—without warning and without any publicly stated rationale—reversed course and adopted a policy of attempting to treat all individual noncitizens that were not

previously admitted to the U.S. that are contacted in the interior of the U.S. at any time after their entry as "arriving" and ineligible for bond regardless of the particularities of their case. As a result, ICE is now ignoring particularities that have historically been highly relevant to determinations whether a noncitizen such remain or custody or be released—such as: when, why, or how they entered the U.S.; whether they have criminal convictions; whether they present a danger to the community or flight risk; whether they have serious medical conditions requiring ongoing care; whether U.S. citizen family members dependent upon them to provide necessary care; or, whether the noncitizen's detention is in the community's best interest. Though no public announcement of this sweeping new interpretation of these statutes was announced, ICE now reasons, and argued in front of the IJ at Petitioner's bond redetermination hearing, that the mandatory detention provision of § 1225(b)(2)(A) applies to all people who enter without inspection who are alleged to be subject to grounds of inadmissibility at § 1182.

40. As a result of ICE's interpretation and practice change, individual noncitizens, including long-time U.S. community members and even those who have had their particular circumstances reviewed and were ordered to be released upon posting bond by an IJ, continue to be detained by ICE. Here, Petitioner's circumstances were not reviewed because of ICE's and IJ Tijerina's erroneous interpretation of the statutory scheme. To be clear, other noncitizens are being held in continued ICE detention, even when IJs do not agree with ICE's interpretation of the statutes and regulations at hand. "The idea that a different detention scheme would apply to non-citizens 'already in the country,' as compared to those 'seeking admission into the country,' is consonant with the core logic of our immigration system." *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025)

(citing *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)); *see also Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) ("the Court need not reach the outer limits of the scope of the phrase 'seeking admission' in § 1225(b)—it is sufficient here to conclude that it does not reach someone who has been residing in this country for more than two years, and that as someone 'already in the country,' *Jennings*, 583 U.S. at 289, [Petitioner] may be subject to detention ***only*** as a matter of discretion under § 1226(a)") (emphasis added).

41. The government's erroneous interpretation of the INA defies the plain text of 8 U.S.C. § 1226. The government's assertion that Petitioner is detained under § 1225—even though he was arrested and detained under § 1226—is meritless. Petitioner came to be in immigration proceedings based on a DHS filing that clearly identified him as subject to detention "pursuant to the authority contained in section 236"; (section 236 of the INA is codified at 8 U.S.C. § 1226.). For decades, § 1225 has applied only to noncitizens "seeking admission into the country"—i.e., new arrivals. *Jennings*, 583 U.S. at 289. This contrasts with § 1226, which applies to noncitizens "already in the country." *Id.* at 289. Petitioner has been in the United States for over 25 years.

42. This new interpretation is now advanced by the government after decades of consistent use to the contrary. The government's position contravenes the plain language of the INA and its regulations and has been consistently rejected by courts. See, e.g., *Martinez*, 2025 WL 2084238; *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025). *See also* Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining that "[d]espite being applicants for admission, aliens who

are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

43. This new interpretation is inconsistent with the plain language of the INA. First, the government disregards a key phrase in § 1225. "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien ***seeking admission*** is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a[.]" 8 U.S.C. § 1225(b)(2)(A) (emphasis added). In other words, mandatory detention applies when "the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Martinez*, 2025 WL 2084238, at *2.

44. The "seeking admission" language, "necessarily implies some sort of present tense action." *Martinez*, 2025 WL 2084238, at *6; *see also Matter of MD-C-V-*, 28 I. & N. Dec. 18, 23 (B.I.A. 2020) ("The use of the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographic limit . . . ."); *U.S. v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress'use of verb tense is significant in construing statutes.").

45. In other words, the plain language of § 1225 applies to immigrants currently seeking admission into the United States at the nation's border or another point of entry. It does not apply to noncitizens "already present in the United States"—only § 1226 applies in those cases. *See Jennings*, 583 U.S. at 303.

46. When interpreting a statute, "every clause and word . . . should have meaning." *United States ex rel. Polansky, M.D. v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (internal quotation marks and citation omitted). And "the words of the statute must be read in their context and with a view to their place in the overall statutory scheme." *Gundy v. United*

States, 588 U.S. 128, 141 (2019) (quotation omitted). The government's position requires the Court to ignore critical provisions of the INA.

47. Second, the government's interpretation would render newly enacted portions of the INA superfluous. "When Congress amends legislation, courts must presume it intends its amendment to have real and substantial effect." *Van Buren v. United States*, 593 U.S. 374, 393 (2021). Congress passed the Laken Riley Act (the "Act") in January 2025. The Act amended several provisions of the INA, including §§ 1225 and 1226. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Relevant here, the Act added a new category of noncitizens subject to mandatory detention under § 1226(c)—those already present in the United States who have also been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); 8 U.S.C. § 1182(a)(6)(A). Of course, under the government's position, these individuals are already subject to mandatory detention under § 1225—rendering the amendment redundant. Likewise, mandatory-detention exceptions under § 1226(c) are meaningful only if there is a default of discretionary detention—and there is, under § 1226(a). *See Rodriguez*, 2025 WL 1193850, at *12.

48. Additionally, "[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction, the court generally presumes that the new provision works in harmony with what came before." *Monsalvo v. Bondi*, 604 U.S. ___, 145 S. Ct. 1232, 1242 (2025). Congress adopted the Act against the backdrop of decades of agency practice applying § 1226(a) toimmigrants like Petitioner, who are present in the United States but have not been admitted or paroled. *Rodriguez*, 2025 WL 1193850, at *15; *Martinez*, 2025 WL 2084238, at *4; 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants

for admission, aliens who are present without having been admitteor paroled . . . will be eligible for bond and bond redetermination.").

49. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." Removal hearings for noncitizens under 1226(a) are held under § 1229a, which "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

50. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States.

51. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner.

52. Petitioner's continued detention under the automatic stay will never be reviewed. His only option is to wait for the BIA to take up the underlying matter.

B. Board of Immigration Appeals

53. However, the BIA's appellate process does not offer a meaningful or timely opportunity to correct Respondent's errors.

54. According to the agency's own data, during fiscal year 2024, the BIA's average processing time for a bond appeal was 204 days, approximately seven months. Meaning for an average case where bond was granted in July 2025 it would not be heard until February 2026. *See Vazquez v. Bostock*, 3:25-CV-05240-TMC (D. W.D. Wash. May 2, 2025).

55. The 204 days is only for the average case. Cases can take longer or shorter, meaning that there is no definite timeline for resolution and release.

56. The months a person waits for appellate review deprives them of time with their children, spouses, family and community members, and liberty.

57. Their family and community, who are often U.S. citizens or lawful permanent residents, are similarly deprived of the love, care, financial support, and meaningful contributions the detained person provides.

58. Detained individual noncitizens are often incarcerated in jail, or jail-like, settings. They are forced to sleep in communal spaces, receive inadequate medical care, and subjected to other degrading treatment.

59. While not all noncitizens succeed in their appeals, some do. The BIA's months-long appellate review means that for those individuals, they have spent months of unnecessary time in detention and suffered the harm outlined above.

60. Failing to provide timely appellate review of erroneous interpretations of the INA violates the Due Process Clause.

VII. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
Violation of the Due Process Clause of the Fifth Amendment of the United States Constitution

61. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

62. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty.

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

64. 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." As a

noncitizen who shows well over "two years" physical presence in the United States (indeed he has 24 years), Mr. Becerra 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 justification" to outweigh the significant deprivation of liberty. *Id.* at 690.

65. Respondents have deprived Mr. Becerra of his liberty interest protected by the Fifth Amendment by detaining him since June 10, 2025.

66. Mr. Becerra'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).

67. Respondents' actions in detaining Mr. Becerra without any legal justification violate the Fifth Amendment.

68. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his

community and family.

69. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

SECOND CAUSE OF ACTION
Violation of Immigration and Nationality Act

70. Petitioner repeats and incorporates by reference all allegations in paragraphs 1-99 as though set forth fully herein.

71. Petitioner was detained pursuant to "authority contained in section 236" of the INA; section 236 is codified at 8 U.S.C. § 1226. Despite this, the IJ and the DHS now find that he is detained subject to 8 U.S.C. § 1225(b)(2)

72. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. Mandatory detention does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

73. Respondents have wrongfully adopted a policy and practice of arguing all noncitizens, such as Petitioner, are subject to mandatory detention under § 1225(b)(2).

74. The unlawful application of § 1225(b)(2) to Petitioner violates the INA.

THIRD CAUSE OF ACTION
Fifth Amendment – Due Process
Denial of Opportunity to Contest Mis-Inclusion in Mandatory Category of Detention

75. Petitioner re-alleges and incorporates by reference the paragraphs above.

76. Mr. Becerra 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 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.

77. 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.

78. At a minimum, in order to lawfully re-arrest Mr. Becerra, 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. Becerra on July 9, 2025, violated these regulations, laws, and due process.

79. 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.

FOURTH CAUSE OF ACTION:
ADMINISTRATIVE PROCEDURE ACT

80. Petitioner re-alleges and incorporates by reference the paragraphs above.

81. Respondents' continued efforts to deny him bond violate the INA, Administrative

Procedures Act (APA), and the U.S. Constitution.

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

83. 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. Becerra 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.

84. 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[1] to determine whether or not Plaintiff is properly designated an arriving alien subject to mandatory detention during the pendency of his removal proceedings.

FIFTH CAUSE OF ACTION:
STAY OF REMOVAL CLAIM

85. Petitioner re-alleges and incorporates by reference the paragraphs above.

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

87. The Court should grant the stay of Mr. Becerra'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.

SIXTH CAUSE OF ACTION
SUSPENSION CLAUSE CLAIM

88. Petitioner re-alleges and incorporates by reference the paragraphs above.

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

90. To invoke the Suspension Clause, a petitioner must satisfy a three-factor test: "(1) the

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[1] 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..

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. Becerra satisfies these three requirements and may invoke the Suspension Clause.

91. First, although Mr. Becerra is not a U.S. citizen or resident, he has lived here for 16 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 Mexico. Mr. Becerra has significant family connections in the United States, including his stepmother, Rosa Becerra, who is a U.S. citizen. All of which establishes a substantial legal relationship with the United States.

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

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

94. There is no adequate alternative to a habeas petition. The refusal of the immigration court to grant Mr. Becerra 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.

SEVENTH CAUSE OF ACTION:
INJUNCTIVE RELIEF

95. Petitioner re-alleges and incorporates herein by reference each and every allegation contained in the above paragraphs of this Petition.

96. 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.*

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

VIII. RELIEF SOUGHT

WHEREFORE, Petitioner respectfully requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Declare that ICE's June 10, 2025, apprehension and detention of Mr. Becerra 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. Becerra outside of the Western District of Texas

while this matter is pending;

(6) Grant the writ of habeas corpus ordering Respondents to release Mr. Becerra 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 mis-classifies 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; undersigned counsel recognizes the Fifth Circuit's decision in *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023) ruling that fees are not available to be awarded in 28 U.S.C. § 2241. Nonetheless, the issue is ripe for redetermination at the Fifth Circuit. At least two Circuit Courts and two district courts have disagreed with *Barco*. *See Vacchio v. Ashcroft,* 404 F.3d 663, 670-72 (2d Cir. 2005); *In re Petition of Hill,* 775 F.2d 1037, 1040-41 (9th Cir. 1985); *Abioye v. Oddo*, 2024 U.S. Dist. LEXIS 174205 (W. D. Penn. 2024): *Arias v. Choate*, 2023 U.S. Dist. LEXIS 119907 (Dist. Colo. 2023). Given ICE's recent actions in detaining individuals without substantial justification, EAJA fees are needed to ensure attorneys can confront detention that is unconstitutional.

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

Respectfully submitted on this 19th day of August, 2025

/s/ Stephen O'Connor

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

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

Dated this 19th day of August, 2025.

s/ Stephen O'Connor
Stephen O'Connor