IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

SAMUEL OCHOA OCHOA, Petitioner, v. KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity; TODD M. LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; SAMUEL OLSON, Field Office Director, Chicago Field Office, Immigration and Customs Enforcement, in his official capacity; Respondents.	Case No. 25-cv-10865

AMENDED PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Samuel Ochoa Ochoa is a 28-year-old noncitizen, gay man from Venezuela who seeks protection in the United States after facing harassment, threats to his life, and physical attacks in Venezuela because of his political activism and sexual orientation. He fled Venezuela in 2023 and entered the United States on or about October 11, 2023. Ex. A, Notice to Appear.

2. Less than a day after his arrival in the United States, Respondents placed him in standard removal proceedings and released him into the United States on his own recognizance. For nearly two years after his release into this country, Petitioner was complying with all conditions

of release, and he timely filed an application for asylum before the Chicago Immigration Court. Ex. B, Form I-589, Application for Asylum and Supporting Documents.

3. But then, on June 12, 2025, nearly two years after his release, Respondents reversed course. Without notice to Petitioner, individualized justification, or change in his personal circumstances, Respondents moved to dismiss his standard removal proceedings to place him in expedited removal proceedings pursuant to 8 U.S.C. § 1225. Ex. C, DHS Motion to Dismiss. Even though the Immigration Judge did not dismiss proceedings that day, the Department of Homeland Security (DHS) detained him after he appeared at the Chicago Immigration Court.

4. Petitioner was then detained in multiple locations. He was detained in Bourbon County Jail in Kentucky, Hopkins County Jail in Kentucky, and in two facilities in El Paso and Webb, Texas. He was later taken to Clay County, Indiana, transferred to ICE's Broadview Processing Center just outside Chicago, Illinois, and then returned to Clay County. At the initiation of this case, Petitioner was detained in Broadview; he is now held in Clay County, Indiana.

5. On June 26, 2025, the Cleveland Immigration Court granted DHS' motion to dismiss proceedings at a hearing where Petitioner was not present. Ex. D, Order of the Immigration Judge. Petitioner moved to reconsider the dismissal of his case, but that motion was denied on July 24, 2025. He promptly appealed the dismissal to the Board of Immigration Appeals (BIA) on July 25, 2025, where it remains pending. Ex. E, Notice of Appeal; Ex. F, Proof of Pending Appeal.

6. Though Respondents detained Petitioner so that they could place him into expedited removal proceedings under 8 U.S.C. § 1225, they have not done so and, on information and belief, they no longer intend to subject him to expedited removal.

7. For several reasons, Petitioner's current detention is invalid and unlawful.

8. The government has detained Petitioner without bond, but no authority in the Immigration and Nationality Act (INA) authorizes the mandatory detention of a person in Petitioner's position. The mandatory detention provisions in 8 U.S.C. § 1226(c) do not apply to Petitioner because he has not been convicted of any crimes and none of the security-related grounds for such detention apply. The mandatory detention provisions in Section 1225 are likewise inapplicable.

9. Detention under Section 1225(b)(1) is limited to noncitizens charged with enumerated grounds of inadmissibility and placed in expedited removal proceedings, but as Respondents now concede, Petitioner has not been placed in expedited removal proceedings. Though his case was dismissed for that purpose, he appealed that decision, his appeal is pending, and he has never been served an order of expedited removal. He instead remains in standard removal proceedings where he is charged with a ground of inadmissibility not found in Section 1225(b)(1). As a result, his full removal proceedings remain ongoing.

10. Section 1225(b)(2) applies to recent arrivals seeking to enter the country at a port of entry, not individuals like Petitioner who were released on recognizance upon entering the United States, placed in standard removal proceedings, and detained nearly two years later while living within the United States.

11. With these options aside, the only possible basis for Petitioner's detention is 8 U.S.C. § 1226(a), which allows for release on bond or conditional parole. Indeed, when the government released Petitioner on his own recognizance, it relied on the discretionary detention authority of Section 1226(a) and found that he was neither a danger to the community nor a flight risk. However, the government has now detained him without bond, instead erroneously relying on the assertion that he is subject to mandatory detention. Therefore—without an individualized

determination that Petitioner is now a danger to the community or a flight risk—his current detention is unlawful.

12. Petitioner's unlawful detention has also subjected him to harassment and threats in detention because of his sexual orientation. Ex. G, Email Correspondence with ICE. Exposure to such physical and psychological harm in detention is unreasonable as a matter of due process.

13. For these reasons, Petitioner is entitled to a writ of habeas corpus under 28 U.S.C. § 2241 and release from custody. In the alternative, he requests that this Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C. § 2243.

PARTIES

14. Petitioner Samuel Ochoa Ochoa is a 28-year-old Venezuelan national. Nearly two years after the government released him into the United States on his own recognizance so that he could pursue his claim for asylum, it reversed itself by arresting and detaining him. It did so as he was complying with his obligation to attend an immigration hearing in connection with his asylum application. He is now detained at Clay County Jail, in Indiana.

15. Respondent Kristi Noem is the Secretary of Homeland Security. She is sued in her official capacity. In that capacity, Defendant Noem is responsible for overseeing the enforcement of federal immigration policies, including those that resulted in Petitioner's detention.

16. Respondent Todd Lyons is named in his official capacity as Acting Director of ICE. As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Petitioner. As such, he is also a legal custodian of Petitioner.

17. Respondent Samuel Olson is sued in his official capacity as the Chicago Field Office Director of U.S. Immigration and Customs Enforcement (ICE), which has administrative jurisdiction over Petitioner's detention.

JURISDICTION AND VENUE

18. This court has subject-matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Federal questions in this case arise under the Immigration and Naturalization Act, 8 U.S.C. § 1101-1524, and the United States Constitution.

19. 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.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

20. Under 28 U.S.C. § 2241 and § 1391(b), (e), venue is proper in this district. Venue is proper because, when this case was initiated, Petitioner was in Respondents' custody in the Northern District of Illinois. *See, e.g.*, *Vidal-Martinez v. Prim,* 2020 WL 6441341, at *4-6 (N.D. Ill. 2020). Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this district, where Petitioner is now in Respondent's custody.

EXHAUSTION OF REMEDIES

21. No statutory requirement of administrative exhaustion applies to Petitioner's case. Moreover, the judicially created "general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts" does not apply to Petitioner's present challenge, as there are no prescribed administrative remedies to which he could resort. *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992), *superseded by statute on other grounds as recognized in Woodford v. Ngo*, 548 U.S. 81 (2006).

22. Respondent has not taken a position before this Court on the statutory basis of Petitioner's detention. However, when Petitioner was initially detained, Respondents moved to dismiss his removal proceedings to pursue expedited removal. Though Respondents now appear

to concede that expedited removal proceedings are not currently pending against Petitioner, to the extent that Petitioner's detention was prompted by an intent to place him in expedited removal, that would erroneously and invalidly place him in mandatory detention under 8 U.S.C. § 1225(b)(1).

23. More recently, on September 15, 2025, an immigration judge cited to a published decision from the Board of Immigration Appeals to deny Petitioner bond. That decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), held that "Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission." *Id.* at 225. Under the BIA's interpretation, Petitioner is ineligible for bond as a noncitizen who entered the United States without inspection, and nothing else about his time in the United States, his release from custody under 8 U.S.C. § 1226(a), or his placement into full removal proceedings matters. Thus, there are no administrative remedies that could result in release.

24. Further, neither an immigration judge nor the Board of Immigration Appeals can rule on a petitioner's constitutional claims. *See Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (B.I.A. 2020) (holding that IJs and the BIA lack any authority to consider the constitutionality of the statutes or regulations governing immigration detention that they administer and are bound to follow); *Matter of C--*, 20 I. & N. Dec. 529, 532 (B.I.A. 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."); *see also Gonzalez v. O'Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that "the BIA has no jurisdiction to adjudicate constitutional issues").

FACTUAL BACKGROUND

25. Petitioner is a 28-year-old man from Venezuela. While living in Venezuela, he faced harassment and threats because of his identity as a gay man that were so severe that he experienced severe depression and suicidal ideation. Ex B. His sexual orientation further limited his access to education and job opportunities, which ultimately led him to join and work for an opposition political party in Venezuela. *Id.* Due to his activism, he suffered threats from police officers and physical attacks that forced him to flee the country. *Id.*

26. Fearing for his life, Petitioner fled Venezuela, arrived in the United States in October 2023, and promptly turned himself in to immigration authorities near El Paso, Texas, to seek asylum. Ex. A. Immigration authorities then released him on his own recognizance and initiated standard removal proceedings by filing a Notice to Appear. *Id.*

27. On September 26, 2024, Petitioner timely applied for asylum, withholding of removal, and relief under the Convention Against Torture. Ex. B. Petitioner remained compliant with all conditions of his release for nearly two years after his arrival in the United States.

28. On June 12, 2025, Petitioner appeared for a hearing before the Chicago Immigration Court. At the hearing, the government orally moved to dismiss his removal proceedings to pursue expedited removal.[1] The judge reset the case to allow Petitioner the opportunity to respond. As Petitioner was leaving the court, Respondents detained him even though the government's dismissal motion had not been granted and despite the government's prior decision to release him on his own recognizance and permit him to apply for asylum in standard removal proceedings.

[1] The government subsequently filed a written motion to dismiss on June 12, 2025. Ex. B.

29. Petitioner's case was then venued with the Cleveland Immigration Court, without the requisite motion, notice, an opportunity to respond, or a balancing of relevant factors. 8 C.F.R. § 1003.20(b); *Matter of Rahman,* 20 I&N Dec. 480, 484 (BIA 2012). In fact, venue in Cleveland was based on an erroneous (and now obsolete) assertion by DHS regarding Petitioner's location.

30. On June 26, 2025, a judge in Cleveland dismissed Petitioner's removal proceedings without a hearing. Ex. D. Petitioner moved to reconsider dismissal, but that motion was denied on July 24, 2025. Petitioner appealed to the Board of Immigration Appeals. Ex E; Ex. F. His appeal remains pending, meaning that the judge's decision granting dismissal is not administratively final. 8 U.S.C. § 101(a)(47)(B); 8 C.F.R. § 1003.39.

31. On information and belief, Respondents do not intend to proceed with the expedited removal process while Petitioner's appeal remains pending.

32. On September 9, 2025, Deportation Officer Raphael Davis informed counsel that Petitioner would be issued a new Notice to Appear because of the decision in *Coalition for Humane Immigrant Rights. v. Noem,* No. 25-CV-872 (JMC), 2025 WL 2192986 (D.D.C. Aug. 1, 2025) *appeal pending* at No. 25-5289 (D.C. Cir.). That decision has, however, been partially stayed, and Petitioner is unsure if that stay has or will result in a change in Respondent's position. As of this date, Petitioner has not been issued a new Notice to Appear in full removal proceedings.

33. As a result of his detention, Petitioner has faced harmful conditions of confinement. On August 25, 2025, counsel informed Respondents that Petitioner was suffering from severe harassment by other detained individuals on account of his sexual orientation. Petitioner had already previously been moved from one dorm to another because of similar harassment.

34. Counsel explained that, Petitioner was experiencing "near constant harassment," that he was "unable to sleep," and that she was therefore "concerned for his safety." Ex G. Counsel

requested Petitioner's release, but Respondents responded that Petitioner was "no longer having any issue with a cellmate and did not feel unsafe in his cell." *Id.* However, Petitioner later clarified that his decision not to pursue further complaints was in response to being presented with solitary confinement as the only other option.

35. Shortly thereafter, Petitioner was transferred numerous times, first to Clay County Jail in Brazil, Indiana, then to Port Isabel Detention Center in Texas, then to Webb County Detention Center, also in Texas, then back to Clay County, then to Broadview, and now back to Clay County as of this filing. Exs. G-I.

LEGAL BACKGROUND

A. Framework for Detention Under Sections 1226 and 1225 and Respondents' Efforts to Expand the Scope of Detention Under Section 1225.

36. As relevant here, the Immigration and Nationality Act (INA) prescribes two forms of detention for the vast majority of noncitizens in removal proceedings.

37. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens "already in the country." *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Section 1226(a) "sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of a[] [noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States." *Id.* at 288 (quoting § 1226(a)). Individuals in Section 1226(a) detention are generally entitled to a bond hearing at the outset of their detention. *See* § 1226(a)(2); 8 C.F.R. §§ 1003.19(a), 1236.1(d).

38. Section 1226(c) "carves out a statutory category" of noncitizens from Section 1226(a) for whom detention is mandatory, comprised of individuals who have committed certain "enumerated … criminal offenses [or] terrorist activities." *Jennings* at 289 (citing § 1226(c)(1)). Among the individuals carved out and subject to mandatory detention are certain categories of

"inadmissible" noncitizens. § 1226(c)(1)(A), (D), (E). Reference to such inadmissible noncitizens makes clear that, by default, people who are applicants for admission but encountered in the interior are afforded a bond hearing under subsection 1226(a). Courts have recently confirmed this understanding of Section 1226. *See Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. Apr. 24, 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)) ("When Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies."); *see also, e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *6 (D. Mass. July 7, 2025) ("inadmissibility on one of the three grounds specified in Section 1226(c)(1)(E)(i) is not by itself sufficient to except [a noncitizen] from Section 1226(a)'s discretionary detention framework").

39. Second, the INA provides for mandatory detention of certain categories of noncitizens "seeking entry into the United States" under 8 U.S.C. § 1225(b). *Jennings*, 583 U.S. at 297; *see* § 1225(b) ("Inspection of applicants for admission").

40. In *Jennings*, the Supreme Court explained that this mandatory scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] *seeking to enter* the country is inadmissible." *Jennings* at 287 (emphasis added). Noncitizens subject to mandatory detention under Section 1225 may not be released except "for urgent humanitarian reasons or significant public benefit" under the parole authority provided by 8 U.S.C. § 1182(d)(5)(A). *See Id.* at 300.

41. Section 1225 is split into two categories. Section 1225(b)(1) applies narrowly to arriving noncitizens who are determined to be inadmissible based on 8 U.S.C. § 1182(a)(6)(C) (misrepresentation) or 8 U.S.C. § 1182(a)(7) (lack of valid documentation). Such individuals are ordered removed "without further hearing or review" under an expedited removal process unless

the noncitizen has expressed an intent to apply for asylum or a fear of persecution. *Id.* § 1225(b)(1)(A)(i). Only those placed in expedited removal shall be detained under Section 1225(b)(1). *See* 8 C.F.R. § 235.3(b)(1), (b)(3).

42. Section 1225(b)(2) applies only to noncitizens who recently arrived at a border or port of entry. *See infra* ¶ 45-55.

43. Since January 2025, however, Respondents have taken various steps seeking to expand their use of mandatory detention under Section 1225 beyond its plain language.

44. First, DHS expanded expedited removal under Section 1225(b)(1) to apply nationwide and to certain noncitizens who are unable to prove they have been in the country continuously for two years. 15 Fed. Reg. 8139 ("the January Designation").

45. The January 2025 Designation expands the pool of noncitizens who can be subjected to the summary removal process, and the mandatory detention that comes with it, to include noncitizens who are apprehended anywhere in the United States and who have not been in the United States continuously for more than two years. *Id.* at 8140.

46. On information and belief, Respondents have in various moments interpreted this provision relating to two years of presence to begin at the moment of a person's entry into the United States and to end at their first encounter with immigration officials in the United States, even if that encounter did not result in a "determination of inadmissibility under this subparagraph" as is required by 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

47. Then, on July 8, 2025, Respondents appear to have switched their reliance to Section 1225(b)(2). They issued guidance instructing that all undocumented noncitizens deemed "applicants for admission" are subject to mandatory detention under Section 1225(b)(2)(A). *See* U.S. Immigration and Customs Enforcement, Interim Guidance Regarding Detention Authority

for Applicants for Admission (July 8, 2025), https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

48. The policy purports to apply even to those, like Petitioner, whom at the time of the policy shift, the government had already released from Section 1226(a) detention on his own recognizance, placed in standard removal proceedings, and allowed to apply for asylum.

49. The Board of Immigration Appeals then formalized this position in a published decision holding that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are ineligible for immigration judge bonds. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025).

B. Respondent's Policy on Section 1225(b)(2) is Incorrect

50. Respondent's policy, that all undocumented noncitizens who entered without inspection are considered applicants for admission and subject to mandatory detention under Section 1225(b)(2)(A), is incorrect. Instead, the statutory text, the statutory framework, Congressional intent, the longstanding practice of the agency, and the decisions of many federal courts across the nation limit Section 1225(b)(2)'s scope to noncitizens who recently arrived at a border or port of entry.

Statutory Text and Framework

51. The text of Section 1225, along with its placement in the overall detention scheme of the INA, make clear that the terms "applicant for admission" and "seeking admission" in Section 1225(b)(2) do not include individuals who have entered without inspection and are apprehended when already inside the United States.

52. Section 1225's title, "Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing" indicates its limited application to noncitizens

entering the country, particularly when compared to Section 1226's general title, "Apprehension and detention of aliens." (emphasis added).

53. Further, Section 1225(b)(2)'s specific subheading, "Inspection of Other Aliens," subsection 1225(b)(2)(B)'s mention of "crewm[e]n" and "stowaway[s]," and subsection 1225(b)(2)(C)'s use of the active language "arriving," reinforce the limited scope of Section 1225(b)(2)'s applicability to those who have recently arrived at a border or port of entry.

54. In addition, the INA's entire framework is premised on Section 1225 governing detention of "arriving [noncitizens]" while Section 1226 acts as the "default rule" and "applies to [noncitizens] already present in the United States." *Jennings*, 583 U.S. at 288, 301. Notably, Section 1226(c) includes carve outs for certain categories of inadmissible noncitizens, who would otherwise fall under Section 1226(a), that are instead subject to mandatory detention. 8 U.S.C. § 1226(c)(1)(A), (D), (E). The inclusion of these carve outs in Section 1226(c) indicates that, contrary to Respondents' policy, there are noncitizens who have not been admitted and that are not governed by Section 1225's mandatory detention scheme. Indeed, if the government's policy were correct, it would render these portions of Section 1226(c) superfluous since those same individuals would already be subject to mandatory detention under Section 1225(b)(2). A fundamental principle of statutory construction is that courts must interpret statutes to give meaning to all provisions and avoid reading out or rendering superfluous any single provision. *Corley v. United States*, 556 U.S. 303, 314 (2009) ("one of the most basic interpretive canons . . . [a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant[.]") (cleaned up). The government's current reading of Section 1225(b)(2) violates this principle.

55. The recent amendment to Section 1226(c) confirms this statutory framework. Just this year, Congress passed the Laken Riley Act, which added additional categories of Section 1226(a) carve outs that are now subject to mandatory detention under Section 1226(c). Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). Specifically, the Laken Riley Act mandates the detention of noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens "present in the United States without being admitted or paroled"), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and who have been arrested for, charged with, or convicted of certain crimes. *Id.* Again, if Section 1225(b)(2) were already meant to subject these groups of inadmissible noncitizens to mandatory detention, it would render this portion of the Laken Riley Act redundant.

Congressional Intent and Longstanding Agency Practice

56. Congressional intent and longstanding historical practice underscore Petitioner's reading of the statute.

57. The current detention system has been in place since the passage 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.

58. Following the 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 Section 1225 and that they were instead detained under Section 1226(a). *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

59. In the decades that followed, most people who entered without inspection and were apprehended inside the United States were detained under Section 1226(a) and received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with

many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an immigration judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that Section 1226(a) simply "restates" the detention authority previously found at Section 1252(a)).

Recent Federal Court Decisions Confirming Petitioner's Position

60. Numerous federal courts have reached conclusions consistent with Petitioner's position. For example, after immigration judges in the Tacoma, Washington, stopped providing bond hearings for persons who entered the United States without inspection, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that Section 1226(a), not Section 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. Apr. 24, 2025). Other courts have reached the same conclusion, rejecting Respondent's erroneous interpretation of the INA both prior to and since ICE implemented its July 8, 2025, interim guidance. *See, e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Jacinto v. Trump, et al.*, 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Minn. Aug. 24, 2025); *Herrera Torralba v. Knight*, 2:25-cv-03166-RFB-DJA, 2025 WL 2581792 (D. Nev. Sep. 5, 2025).

61. The Board of Immigration Appeals' decision in *Yajure Hurtado* has not slowed the steady flow of decisions rejecting Respondents' position. *See, e.g., Jimenez v. FCI Berlin*, No. 25-CV-326-LM-AJ, 2025 WL 2639390, at *10 n.9 (D.N.H. Sept. 8, 2025) ("the court is not persuaded by the B.I.A.'s analysis in [*Matter of Yajure Hurtado*]"); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *6-8 (E.D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis and according no deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024)); *Sampiao v. Hyde*, 2025 WL 2607924, at *8 n.11 (D. Mass. Sept. 9, 2025) (same); *Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *9 (N.D. Cal. Sept. 12, 2025) (same).

C. Petitioner's Detention is Invalid and Unlawful

62. Petitioner's detention is not authorized under either Section 1225(b)(1) or (b)(2).

63. Upon entering the United States, Petitioner turned himself in to immigration authorities and was subsequently released from custody. As discussed above, the only mechanism for release from mandatory detention under Section 1225 is through humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). Rather than receiving a formal parole document, Petitioner was released on his own recognizance, as authorized by Section 1226(a)(2)(B) for noncitizens detained pursuant to Section 1226(a).

64. Further, as discussed above, mandatory detention under Section 1225(b)(1) is narrowly applied to those charged with certain enumerated grounds of inadmissibility and placed in expedited removal proceedings. Petitioner, however, is not and never has been in expedited removal proceedings. Further, Petitioner's NTA charged him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), which is not one of the enumerated grounds in Section 1225(b)(1). *See* Ex. A. Instead, Petitioner was placed in standard removal proceedings, which remain active while his

appeal of the judge's decision dismissing his case is pending with the Board of Immigration Appeals. *See* Ex. E, F.

65. In addition, Petitioner's detention is not authorized by Section 1225(b)(2) because it applies only to noncitizens who recently arrived at a border or port of entry, not individuals who entered without inspection and were later detained inside the country. Noncitizens like Petitioner, who entered without inspection, were placed in standard removal proceedings, and released on their own recognizance, are not subject to mandatory detention under Section 1225(b)(2).

66. Petitioner's detention is not authorized by Section 1226(a), either. Individuals in Section 1226(a) detention may be released on bond or on their own recognizance. Here, the government has previously considered Petitioner's facts and circumstances, determined that he was not a flight risk or danger to the community, and released him on his own recognizance so he may apply for asylum. To detain him once more under Section 1226(a) would require an individualized determination that Petitioner has become a danger to the community or a flight risk. No such determination has happened, and in fact he has been denied a bond since being taken into custody. Nor are there any changes to the facts that would justify the revocation of his release on recognizance. Petitioner has committed no crimes and was arrested while voluntarily appearing as required at his immigration proceedings. Lacking any statutory basis for his detention, Respondent must release Petitioner or, in the alternative, promptly hold a bond hearing to determine whether he should remain in custody.

CLAIMS FOR RELIEF

COUNT I
Violation of the Immigration and Nationality Act

67. This ground for release incorporates all previous paragraphs.

68. To the extent that Respondents purport to detain Petitioner pursuant to 8 U.S.C. § 1225(b), his detention under that statute is unlawful. The mandatory detention provision at 8 U.S.C. § 1225(b)(1) is limited to noncitizens in expedited removal proceedings. Meanwhile, the mandatory detention provision at 8 U.S.C. § 1225(b)(2) applies only to noncitizens arriving at ports of entry who recently entered the United States. As relevant here, it does not apply to those who previously entered the country, were released on their own recognizance, and have been residing in the United States prior to being detained. To the extent that Respondents wish to detain someone in this posture, they must do so under 8 U.S.C. § 1226(a), unless they are subject to mandatory detention under 8 U.S.C. §§ 1226(c) or 1231. But their actions here violate this provision too because, to date, Respondents have refused to consider Petitioner for bond.

69. The application of § 1225(b)(1) or (b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II
Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)
(Detention unauthorized as Abuse of Discretion)

70. This ground for release incorporates all previous paragraphs.

71. Under the APA, a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

72. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. Of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

73. To avoid an abuse of discretion, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

74. By revoking Petitioner's order of release on recognizance without consideration of any individualized facts and circumstances applicable to him, and without finding that he is a danger to the community or a flight risk, and while his standard removal proceedings are still pending, Respondents have violated the APA.

75. Respondents previously considered Petitioner's facts and circumstances and determined that he was not a flight risk or danger to the community. No changes to the facts have occurred that might justify this revocation of his release. Indeed, respondents could not plausibly contend that Petitioner is a flight risk because he was arrested while voluntarily appearing as required at his immigration proceedings.

76. The fact that Respondents have already released Petitioner under the same facts and circumstances shows that Respondents do not consider him to be a danger to the community or a flight risk. By detaining the Petitioner without articulating a rationale based on his individualized circumstances, and by detaining him in contradiction of his individualized circumstances as Respondents have previously assessed them, they have abused their discretion under the APA.

COUNT III
Violation of Due Process
(Arbitrary Detention)

77. This ground for release incorporates all previous paragraphs.

78. The Due Process Clause of the Fifth Amendment to the United States Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. The Due Process Clause of the Fifth Amendment to

the Constitution applies to all persons within the United States. Once a noncitizen enters this country, whether the presence is "lawful, unlawful, temporary, or permanent," the Due Process Clause applies. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

79. Petitioner has a fundamental interest in liberty and being free from official restraint. Government decisions that are arbitrary are not compatible with due process. *See County of Sacramento v. Lewis,* 523 U.S. 833, 845 (1988).

80. The government has previously and affirmatively released Petitioner into the United States and allowed him to remain at liberty on his own recognizance while he applied for asylum. As a matter of due process, the government may not arbitrarily reverse that previous decision. Respondent's decision to do so is arbitrary because it is not based on any justification, facts, or logic, including any individualized factors, that are compatible with due process.

81. In the time since his arrival, Petitioner has been complying with his obligations to attend his immigration hearings. Further, he is not alleged to be, and is not, a flight risk. Finally, he is not alleged to be, and is not, dangerous or otherwise a threat to community safety.

82. In addition, the government has detained Petitioner considering his release on bond, and without conducting a bond redetermination hearing where the relevant considerations are whether he is a flight risk or danger to others. This deprivation separately violates his right to due process.

COUNT IV
Violation of Due Process
(Detention Unreasonable Because of Conditions of Confinement)

83. This ground for release incorporates all previous paragraphs.

84. The Due Process Clause of the Constitution prohibits the government from civilly detaining persons not convicted of crimes to conditions that are unreasonably dangerous.

85. Petitioner's confinement is unreasonably dangerous. During his detention he has suffered harassment and threats from other detainees because of his sexual orientation that caused him to be unable to sleep and fear for his safety. The facility demonstrated an unwillingness to meaningfully protect him and has threatened him with the use of solitary confinement and subsequently transferred him to four different detention centers in the span of two weeks.

86. Because the government has denied Petitioner adequate protection from daily harassment and threats, impacting his mental health and well-being, as a matter of due process Petitioner is entitled to a writ of habeas corpus for his immediate release.

PRAYER FOR RELIEF

Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;
2. Order Respondents to refrain from transferring Petitioner outside of the jurisdiction of the Northern District of Illinois without the Court's approval;
3. Declare that Petitioner's current detention without an individualized determination is unlawful;
4. Issue a writ of habeas corpus ordering Respondents to release Petitioner from custody, or, in the alternative, hold a prompt bond hearing;
5. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
6. Grant any further relief this court deems just and proper.

Dated: September 18, 2025

Respectfully submitted,

s/ Keren Zwick
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