MICHAEL KAGAN
Nevada Bar No. 12318C
DRIANNA DIMATULAC
YILU SONG
Student Attorneys Practicing
Under Nevada Supreme Court Rule 49.3
UNLV IMMIGRATION CLINIC
Thomas & Mack Legal Clinic
William. S. Boyd School of Law
University of Nevada, Las Vegas
P.O. Box 71075
Las Vegas Nevada
Telephone: (702) 895-3000
Facsimile: (702) 895-2081
Email: Michael.Kagan@unlv.edu
Email: DimatD1@unlv.nevada.edu
Email: SongY10@unlv.nevada.edu

Counsel for Petitioner

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA (Las Vegas)

E.C.

Petitioner,

v.

KRISTI NOEM,
in her official capacity as
Secretary, U.S. Department of
Homeland Security; 245 Murray Lane
SW, Washington, DC 20528;

U.S. DEPARTMENT OF HOMELAND SECURITY;

PAMELA J. BONDI,
in her official capacity as
Attorney General of the United States,
950 Pennsylvania Avenue, NW,
Washington, DC, 20530;

U.S. DEPARTMENT OF JUSTICE;

Case No.: 2:25-cv-01789-RFB-BNW
Agency No: [redacted]

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

TODD LYONS,
in his official capacity as Acting Director and Senior Official Performing the Duties of the Director for U.S. Immigration and Customs Enforcement, 500 12th Street, SW, Washington, DC 20536;

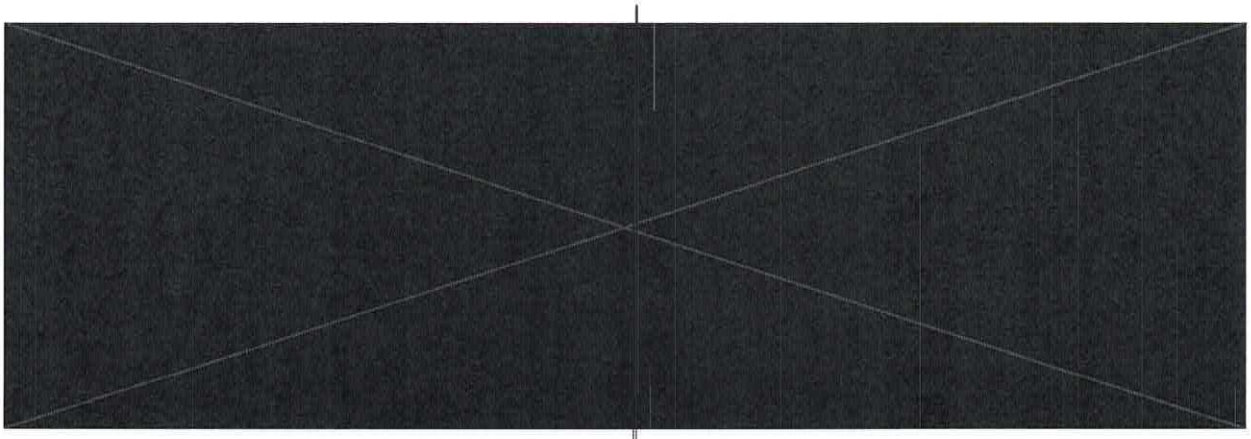
JASON KNIGHT,
in his official capacity as Acting Field Office Director, Salt Lake City Field Office Director, U.S. Immigration & Customs Enforcement, 2975 Decker Lake Drive Suite 100, West Valley City, UT 84119-6096

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; and

JOHN MATTOS,
in his official capacity as Warden, Nevada Southern Detention Facility, 2190 E. Mesquite Ave. Pahrump, NV 89060

Respondents.

INTRODUCTION



2. Three months ago, Petitioner was stripped away from his family, job, and community, after Utah police—who did not speak Spanish and therefore could not

communicate with Petitioner—mistakenly arrested him for [redacted] robbery, and [redacted] *Id* at 004; *see also* Minutes Showing Not Guilty Verdicts On All Counts ("**Ex. B**") at 006–018. At trial, a unanimous jury acquitted Petitioner on all counts. *See* Jury Verdict Form ("**Ex. C**") at 019–021. But rather than being released, Immigration and Customs Enforcement ("ICE") immediately seized and transferred Petitioner to the Nevada Southern Detention Center ("NSDC") in Pahrump, Nevada.

3. Despite his full acquittal by a jury, ICE included him on a "Worst of the Worst" public media post and in a related "tweet" on the social media platform X, posting a photo of him with his full name, and stating that he had been "arrested" for [redacted]" and that he had "criminal history," while omitting that he had been found innocent by a jury on those charges. *See* ICE, "Worst of the Worst" [redacted] 2025) ("**Ex. D**") at 022–026; ICE [redacted] Tweet [redacted] 2025) ("**Ex. E**") at 027–028.

4. Petitioner has now been detained for seven weeks without receiving a bond hearing. This is a clear violation of both the Immigration and Nationality Act ("INA") and the Due Process Clause of the United States Constitution.

5. Normally, Petitioner would be able to request a bond hearing in Immigration Court under the INA and long-standing policy and practice. But this year, in violation of the INA, the Board of Immigration Appeals ("BIA") ordered that all individuals who entered the U.S. without inspection (known as "EWI") are subject to mandatory detention and are therefore ineligible for bond. *See Matter of Yajure Hurtado,* 29 I&N Dec. 216, 228 (BIA 2025) ("**Ex. F**") at 043. Petitioner thus seeks relief from this Court to restore his statutory and constitutional due process right to a bond hearing.

6. Petitioner further asks this Court to recognize that the Laken Riley Act ("LRA"), 8 U.S.C. § 1226(c)(1)(E)(ii) cannot constitutionally be applied to him and cannot be invoked to prevent him from applying for bond as a § 1226(a) detainee. While Petitioner would ordinarily be entitled to a bond hearing, the LRA passed in January 2025 states that any individual who is *charged with*, *arrested for*, or convicted of acts which constitute the essential elements of burglary, theft, larceny, and shoplifting are subject to mandatory detention under § 1226(c). Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) (*emphasis added*). Despite Petitioner's acquittal on all charges from the June 2025 arrest, the LRA on its face renders him ineligible for bond. However, under the well-established *Mathews v. Eldridge* test, depriving Petitioner of a bond hearing based on criminal charges for which he has been fully acquitted violates his due process rights. *See Mathews v. Eldridge*, 424 U.S. 319 (1976). Petitioner thus seeks relief from this Court to determine that § 1226(c), as applied to his case, violates constitutional due process.

7. To be clear, Petitioner does not ask this Court to adjudicate his removability. He merely seeks a bond hearing in Immigration Court to demonstrate that he poses neither a danger to the community nor a flight risk. This hearing would allow him to reunite with his family, work and earn income, and access greater resources while pursuing his pending asylum application.

JURISDICTION AND VENUE

8. Petitioner is in the custody of Respondents. Petitioner is detained at the Nevada Southern Detention Center, 2190 E Mesquite Ave, Pahrump, NV 89060. NSDC is a private detention center operated by CoreCivic, Inc., under contract with ICE.

9. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

10. This Court may grant relief in accordance with 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 this District under 28 U.S.C. § 2241; 28 U.S.C. § 1391(b); and 28 U.S.C. § 1391(e)(1) because this petition was filed when Petitioner was detained within the geographic jurisdiction of the District of Nevada (Las Vegas). Venue is also proper under 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and a substantial part of the events or omissions giving rise to these claims occurred in this district. *See* 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court must grant the petition for a writ of habeas corpus or order Respondents to show cause "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

14. Petitioner is a [redacted] who has resided in the United States since February 2024.

15. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

16. Respondent Department of Homeland Security is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens. Respondent DHS is a legal custodian of Petitioner.

17. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

18. Respondent Department of Justice is the federal agency responsible for adjudicating removal and related bond cases. EOIR, and its components the immigration courts and Board of Immigration Appeals is a division of DOJ.

19. Respondent Todd Lyons is the Acting Director and Senior Officer Performing the Duties of the Director of ICE. Respondent Lyons is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants during their removal procedures. Respondent Lyons is a legal custodian of Petitioner. Respondent Lyons is sued in his official capacity.

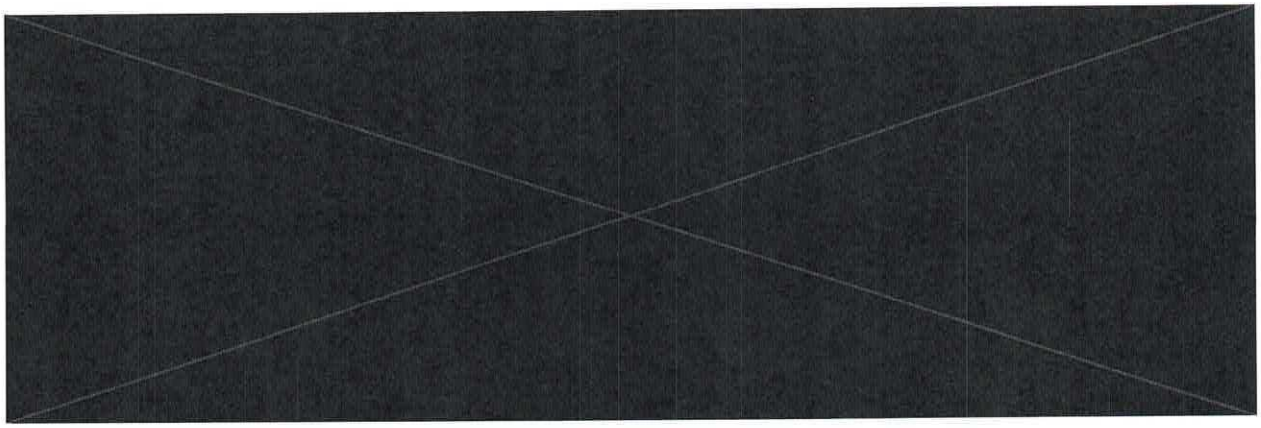
20. Respondent ICE is the subagency of DHS that is responsible for carrying out removal orders and overseeing immigration detention. Respondent ICE is a legal custodian of Petitioner.

21. Respondent Jason Knight is the Acting Director of the Salt Lake City Field Office of ICE Enforcement and Removal Operations, a federal law enforcement agency within the Department of Homeland Security. ERO is a directorate within ICE whose responsibilities include operating the immigration detention system. In his capacity as ICE ERO Salt Lake City, Acting Field Office Director, Respondent Knight exercises control over and is a custodian of immigration detainees held at NSDC. At all times relevant to this Complaint, Respondent Knight was acting within the scope and course of his employment with ICE. He is sued in his official capacity.

22. Respondent John Mattos is the Warden of NSDC which detains individuals suspected of civil immigration violations pursuant to a contract with ICE. Respondent Mattos exercises physical control over immigration detainees held at NSDC. Respondent Mattos is sued in his official capacity.

23. Respondents individually and collectively will be referred to as "Respondents."

FACTS



[redacted]

27. Petitioner last entered the United States on February 2, 2024. *Id.*

28. Upon arrival, he immediately presented himself to immigration authorities. *Id.* DHS detained him for one day, served him a Notice to Appear, then released him. *Id*; *see also* Notice to Appear ("**Ex. G**") at 044–046.

29. The NTA designated him as "an alien present in the United States who has not been admitted or paroled." *Id.* It further stated that Petitioner is removal under INA § 212(a)(6)(A)(i) as "an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General." *Id.* Lastly, it scheduled a removal hearing on April 9, 2027. *Id.*

30. After release, Petitioner traveled to Orem, Utah, to unite with his family. Ex. A at 003. Petitioner, [redacted], their two sons, and their five-month-old baby [redacted], now live together in Orem, Utah. *Id.* [redacted] was born in Provo, Utah, and is a United States citizen. *See* Son's Birth Certificate ("**Ex. L**") at 060–063.

31. On August 14, 2024, Petitioner filed an I-589 application for asylum. *Id.* at ¶ 7; *see also* I-589 Application for Asylum ("**Ex. H**") at 047–050.

32. On June 16, 2025, Petitioner was arrested for charges arising out of a misunderstanding with police. Ex. A at 004; Declaration of [redacted] ("**Ex. I**") at 053. [redacted], who was experiencing a manic episode linked to post-partum symptoms, became upset when Petitioner had to leave for work. Ex. A at 004. While Petitioner attempted to prevent [redacted] from harming herself, she hurt her arm on the car door. *Id.* A neighbor who heard the commotion called the police for assistance. *Id.* The responding officer, who did not speak Spanish and therefore could not communicate with Petitioner or [redacted], mistakenly attributed her injuries to him. *Id.* Consequently, he was arrested and booked in Utah County Jail. *Id.*

33. The State of Utah charged Petitioner with robbery, [redacted] and [redacted]. *Id*; Ex. B at 007. After a two-day jury trial, at which [redacted] testified for Petitioner, a unanimous jury found him not guilty on all counts. Ex. C at 020–021. The judge dismissed the case on August 4, 2025. Ex. B. 018.

34. Immediately upon Petitioner's release from jail, ICE seized him and brought him to the Nevada Southern Detention Center in Pahrump, Nevada. Ex. A at 004. He has been detained there since August 4, 2025. *Id.*

35. Petitioner is the primary breadwinner for his family of five. He initially provided for them as a DoorDash deliver driver. *Id.* at 004. Through this role, he met [redacted], who recognized Petitioner's hard-working nature and commitment to his family. *Id.* at 004–005. [redacted] helped Petitioner obtain employment with his employer at the time, [redacted] where [redacted] and Petitioner worked together installing windows and doors in new-construction neighborhoods. *Id.*

36. Because [redacted] and Petitioner have spent time together at [redacted] driving to job sites and working long shifts together [redacted] is familiar with Petitioner's strong work ethic. *Id.* [redacted] has therefore offered him a job at his new company [redacted] and [redacted] where he plans to work upon release. *Id.* [redacted] and Petitioner have also become close friends—with their families spending barbeques holiday parties together and Petitioner even naming his youngest son after [redacted]. *Id.*

37. [redacted] is also Petitioner's sponsor, who affirms that he will support Petitioner upon his release and help ensure his appearance at future hearings. *See* Affidavit of Support – [redacted] ("**Ex. J**") at 054–057; *see also* Letter of Support – [redacted] ("**Ex. K**") at 058–059.

38. Petitioner is a valued member of his community who leads his life through perseverance and faith. He has been an active member of Alcoholics Anonymous for over 26 years, during which he has maintained sobriety and overcome significant challenges, including economic hardship and past substance abuse. Ex. A at 005. He is also deeply involved with the Church of Jesus Christ of Latter-day Saints and was on the path to formal membership before his recent detention. *Id.*

39. Petitioner aspires to [redacted]. *Id.* [redacted]. *Id.*

LEGAL FRAMEWORK

Discretionary and Mandatory Detention

40. The Immigration and Nationality Act, codified at Title 8 of the United States Code, prescribes three basic forms of detention for noncitizens in removal proceedings—

discretionary detention under § 1226(a), mandatory detention under § 1226(c), and mandatory detention under § 1225. *See* 8 U.S.C. § 1229(a).

41. The Supreme Court describes § 1226 detention as relating to people "inside the United States" and "present in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018).

42. Under § 1226(a), the Department of Homeland Security ("DHS") may detain noncitizens who are placed in removal proceedings, but such detention is discretionary. *See* 8 U.S.C. § 1226(a). These individuals are entitled to a custody redetermination (or "bond hearing") before an immigration judge who determines whether they should be released on bond. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). Bond must be at least $1,500 and is subject to any other conditions imposed by the Attorney General. *See* 8 U.S.C. § 1226(a)(2).

43. In contrast to § 1226(a), noncitizens who have been convicted of certain criminal convictions are subject to mandatory detention under § 1226(c). *Demore v. Kim*, 538 U.S. 510, 513 (2003). Congress added this provision through passing the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") to address concerns that criminal noncitizens frequently failed to appear at their removal proceedings. *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020). Relying on legislative findings that individuals with certain convictions posed elevated risks of danger and flight, Congress mandated detention for noncitizens convicted of serious crimes such as aggravated felonies, drug trafficking, and crimes involving moral turpitude. *Demore*, 538 U.S. at 518–20.

44. In January 2025, Congress passed the Laken Riley Act, which amended the INA to add a new category of noncitizens subject to mandatory detention. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Under the new provision § 1226(c)(1)(E), detention is required if:

(1) the noncitizen is inadmissible under paragraph (6)(A), (6)(C), or (7) or § 1182(a) of Title 8,[1] and (2) the noncitizen is *charged with*, *arrested for*, or *convicted of* acts which constitute the essential elements of burglary, theft, larceny, and shoplifting. *See* 8 U.S.C. § 1226(c)(1)(E). Unlike the IIRIRA amendments, however, the LRA provides no exception for mistaken arrests, dismissed charges, or acquittals. *See id.* Nor did Congress cite any data linking mere arrests or charges for these offenses with higher risks of flight or danger. *See id.*

45. Lastly, 8 U.S.C. § 1225(b) provides mandatory detention for two categories of noncitizens: (1) noncitizens subject to expedited removal under § 1225(b)(1); and (2) noncitizens "seeking admission" at the border under § 1225(b)(2). *See Jennings*, 583 U.S. at 287 (2018) (noting that this process generally begins at the Nation's borders and ports of entry).

Entry Without Inspection

46. After Congress passed IIRIRA, the Executive Office of Immigration Review ("EOIR") drafted new regulations explaining that, generally, people who entered the country without inspection (known as "EWIs") were not considered detained under § 1225 and were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

47. Accordingly, in the decades after IIRIRA, EWIs were placed in standard removal proceedings generally received bond hearings, unless they were ineligible for bond due to their criminal history.

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[1] These grounds of inadmissibility are, generally: presence in the United States without being admitted or paroled. 8 U.S.C. § 1182(a)(6)(A)(i); seeking to procure a visa, other documentation, or admission into the United States by fraud or misrepresentation. § 1182(a)(6)(C)(i); and failure to possess a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter. § 1182(a)(7)(A)(i)(I).

48. However, on July 8, 2025, ICE, "in coordination with" the Department of Justice ("DOJ"), announced a new policy that reversed decades of well-established practice and understanding of the statutory framework.

49. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[2] claims that all persons who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

50. On September 5, 2025, the BIA published a new decision holding that IJs lack jurisdiction to grant bond to individuals present in the U.S. without admission. *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N 216 (BIA 2025).[3] The BIA held that all persons who entered the U.S. without inspection are considered "applicants for admission" under 8 U.S.C. § 1225(a)(1) and are therefore subject to mandatory detention under § 1225(b)(2)(A), rendering them ineligible for bond hearings before an IJ.

51. The BIA's interpretation defies the INA. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

52. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph

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[2] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

[3] *Available at* https://www.justice.gov/eoir/media/1413311/dl?inline.

(E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

53. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention 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 admissible." *Jennings*, 583 U.S. at 287.

54. The BIA's novel interpretation of § 1225(b)(2)(A) would deem the LRA meaningless and duplicative. The LRA specifically targets individuals who are inadmissible under § 1182(a)(6)(A) for entering without inspection, but *only* when they also face the criminal liabilities enumerated in the LRA. If § 1225(b)(2)(A) already required mandatory detention for all who entered without inspection—as the BIA now claims—the LRA would add nothing new. Congress would not have created mandatory detention rules for a group already swept in, leaving the LRA without any independent effect. Courts reject such interpretations because they render statutes superfluous. *See Duncan v. Walker,* 533 U.S. 167, 174 (2001).

55. The statutory text is plain. The LRA carved out a narrow group for mandatory detention—not *all* who entered without inspection. The BIA's new interpretation erases much of § 1226, contradicts the LRA, and departs from the government's own position held until July

2025. No statutory amendment changed the text of either § 1225 or § 1226. The only change is the BIA's sudden reinterpretation. That shift confirms the interpretation is plainly wrong.

56. To the extent that the INA's text is ambiguous, this Court should resolve it in favor of liberty. The Supreme Court has long applied the rule of lenity in criminal cases, holding that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *United States v. Bass*, 404 U.S. 336, 347 (1971) (internal citations omitted). Under the rule of lenity, "any reasonable doubt about the application of a penal law must be resolved in the favor of liberty." *Wooden v. United States*, 595 U.S. 360, 388 (2022) (Kavanaugh, J., concurring).

57. That same principle applies here, as the Supreme Court has recognized that the rule of lenity applies in the immigration context. *See Clark v. Martinez*, 543 U.S. 371, 380 (2005) (quoting *Leocal v. Ashcroft*, 543 U.S. 1, 11–12, n. 8 (2004)); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 449 (1987).

58. Further, courts are guided "by the general rule to resolve any ambiguities in a jurisdiction stripping statute in favor of the narrower interpretation and by the strong presumption in favor of judicial review." *Arce v. United States*, 899 F. 3d 796, 801 (9th Cir. 2018) (*per curiam*) (internal quotations and citations omitted). Adopting the DHS' interpretation of the INA would strip this court of jurisdiction to adjudicate the instant petition. This directly contradict the strong presumption in favor of judicial review when interpreting INA provisions.

59. Notably, this Court—along with at least 20 other district courts, 9 of which are in the Ninth Circuit—have acknowledged that § 1225(b)(2)(A) cannot be read to apply indefinitely to all noncitizens who enter without inspection. *Maldonado Vazquez v. Feeley*, No. 2:25-cv-

01542-RFB-EJY, Order (D. Nev. September 17, 2025) (Boulware, J.). This Court reasoned that the plain language of the statute, legislative history, and longstanding agency practice support this conclusion. *Id.* ***First***, the plain meaning of the statute, including its title which indicates that it concerns "inspection by immigration officers," and "expedited removal of inadmissible arriving aliens" indicates that § 1225 is limited in temporal scope, and applies only to "noncitizens entering, attempting to enter, or who have recently entered the U.S." *Id.* at *23. ***Second***, in enacting IIRIRA, Congress specified that § 1226(a) simply restated the discretionary detention authority applicable to all noncitizens *present* in the U.S. pending deportability proceedings, formerly codified at 8 U.S.C. § 1252(a) (1994). *Id.* at *26. Plus, Congress enacted IIRIRA under the backdrop that noncitizens who have never entered the country have less due process protections than those present in the U.S. *Id; see Zadvydas v. Davis*, 533 U.S. 678, 693–94 (2001) (collecting cases setting forth this longstanding distinction). ***Third***, the BIA's reading is undermined by the fact that it vests immensely broad detention authority in DHS—a shift of "vast economic and political significance"—while contradicting decades of agency practice. *Id.* at *27; *See e.g.*, Util. Air Regul. Grp. V. EPA, 573 U.S. 302, 324 (2014) (When an agency claims to discover in a long-extant statute an unheralded power. . . [the courts] typically greet its announcement with a measure of skepticism. We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance.") (citations omitted). Given these factors, this Court concluded that it is highly improbable that § 1225(b)(2)(A) applies to *all* noncitizens, namely, those who are already present in the U.S.

60. Petitioner has lived in the U.S. for eighteen months, is not currently seeking admission, and DHS has not designated him as an individual "seeking admission" into the U.S. *See* Ex. G. Because § 1225(b) governs the detention of noncitizens seeking admission, Petitioner is not subject to mandatory detention. He is instead subject to § 1226, which applies to noncitizens who are present in the United States.

The Laken Riley Act and Procedural Due Process

61. The LRA provisions imposing mandatory detention under § 1226(c) would be unconstitutional as applied to Petitioner. It provides that the Attorney General shall take into custody any noncitizen who:

> is ***charged with***, is ***arrested for***, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person[.]

U.S.C. § 1226(c)(1)(E)(ii) (***emphasis added***).

62. Petitioner was acquitted by a jury on the robbery charge that, on its face, triggers § 1226(c). Robbery in Utah does include the essential elements of theft or larceny. Utah Code § 76-6-301. But to impose mandatory detention based solely on mere charges and an arrest, without regard to his acquittal, violates fundamental due process principles. The jury's unanimous verdict of not guilty already resolved the criminal allegations against him. To nevertheless impose mandatory detention under § 1226(c) would deprive Petitioner of the benefit of the process he was afforded. Accordingly, to subject Petitioner—who has never been convicted of any crime—to mandatory detention under § 1226(c) is unconstitutional as applied and violates his due process rights.

63. At least one other court has recognized that the LRA can only be constitutional if the criminal charges that trigger its application are subject to procedural due process. A recent decision from the District of Massachusetts considered whether the LRA is constitutional when applied to a noncitizen ("Doe") was arrested for an uncharged shoplifting arrest. *John Doe v. Antone Moniz*, No. 1:25-cv-12094-IT, Mem. & Order (D. Mass. Sept. 5, 2025) (Talwani, D.J.), available at https://www.aclum.org/sites/default/files/2025.09.05_-_dkt_62_-_doe_mem_order.pdf. Since no criminal charges were filed, Doe had no process by which to challenge the allegations. Applying the *Mathews v. Eldridge* test, the court concluded that: (1) Doe's liberty interest in freedom from physical detention was severely burdened; (2) because detention rested on an arrest never followed by charges, the risk of erroneous deprivation was substantial; and (3) the government lacked any legitimate public interest in detaining, without bond, an individual against whom no charges were pending. *Id.* at *19–21. Thus, the court ruled that Doe was entitled to a bond hearing. *Id.* at *21.

64. Petitioner in this case was arrested and charged, but was acquitted by a jury. He had a process, and prevailed. The *Mathews* analysis that compelled the court's decision in *Doe* is identical here—Petitioner's fundamental liberty interest in being free from detention is at stake; the risk of erroneous deprivation is substantial because his charges are based on charges and an arrest that were dismissed; and the government lacks any legitimate interest in detaining Petitioner without bond, as he is not a criminal, a danger, or a flight risk. Accordingly, the LRA is unconstitutional as applied to Petitioner, and he is not subject to mandatory detention.

65. This leaves Petitioner with discretionary detention under § 1226(a), which entitles him to a bond hearing before an IJ to demonstrate why he should be released on bond.

CLAIMS FOR RELIEF

Count 1 – Violation of the INA

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

67. 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. As relevant here, it 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), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

Count 2 – Violation of Due Process

69. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

70. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. Due process applies to *all*, including noncitizens. *See Zadvydas*, 533 U.S. at 679 (due process applies whether one's presence is lawful, unlawful, temporary, or permanent); U.S. Const. amend. V.

71. Petitioner's fundamental liberty interest is at stake. Freedom from government-imposed restraint is the most significant liberty interest there is. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas*, 533 U.S. at 690 (stating that freedom from imprisonment lies at the heart of the liberty that the Clause protects).

72. Application of 8 U.S.C. § 1226(c)(1)(E)(ii) to Petitioner would violate Petitioner's right to due process. His detention is based on criminal charges from which he was acquitted. Further, without a bond hearing, Petitioner is deprived of the opportunity to reunite with his community, work to financially provide for his family, and access resources to assist with his pending asylum case.

73. Providing Petitioner with a bond hearing would not pose an undue burden on Respondent. Instead, it would enable Respondent to satisfy legitimate government interests. By requiring Petitioner to demonstrate he is not a danger or flight risk, Respondent can be sure that detention is unnecessary and therefore save resources long-term. In contrast, not providing Petitioner with a bond hearing is a substantial burden for him. He has been incarcerated and separated from his family for three months, has been unable to work despite being his family's primary provider, and has limited access to resources due to pursue his asylum claim.

74. The government continues to detain Petitioner, and the BIA's recent decision bars IJs from granting bond hearings to all individuals who entered the U.S. without inspection. That decision rests on a flawed reading of the INA and violates Petitioner's due process rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Enjoin respondents from transferring Petitioner outside the District of Nevada;

c. Issue a writ of habeas corpus requiring that an Immigration Judge schedule a bond hearing within seven days, or in the alternative, order Petitioner's immediate release from detention.

d. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

e. Grant any other and further relief that this Court deems just and proper.

DATED this 22nd day of September, 2025.

Respectfully Submitted,
/s/Michael Kagan
Michael Kagan
Nevada Bar. No. 12318C

/s/Drianna Dimatulac
Drianna Dimatulac
Student Attorney Practicing
Under Nevada Supreme Court Rule 49.3

/s/Yilu Song
Yilu Song
Student Attorney Practicing
Under Nevada Supreme Court Rule 49.3

UNLV IMMIGRATION CLINIC
Thomas & Mack Legal Clinic
William S. Boyd School of Law
University of Nevada, Las Vegas
P.O. Box 71075
Las Vegas, Nevada 89170
Telephone: 702-895-3000
Facsimile: 702-895-2081

LOCAL RULE IA 11-5 STATEMENT
REGARDING LAW STUDENT APPEARANCE

Petitioner in this matter is co-represented by third-year law students who are certified student attorneys under Nevada Supreme Court Rule 49.3. They are students in the UNLV Immigration Clinic, part of the Thomas & Mack Legal Clinic at the William S. Boyd School of Law.

I am a member of the faculty at the William S. Boyd School of Law and Director of the UNLV Immigration Clinic. I have been a licensed attorney since 2000, and I am the supervising attorney of the student attorneys in this case.

I hereby certify that I have and will ensure full compliance with all requirements of LR IA 11-5 governing appearance by law students in this court.

/s/ Michael Kagan
Michael Kagan
Nevada Bar. No. 12318C

UNLV Immigration Clinic
Thomas & Mack Legal Clinic
University of Nevada, Las Vegas
P.O. Box 71075
Las Vegas, Nevada 89170
zghaib@unlv.nevada.edu
wur7@unlv.nevada.edu
Telephone: 702-895-3000
Facsimile: 702-895-2081

EXHIBIT LIST

Exhibit	Document	Page
A	Declaration of Petitioner	001–005
B	Minutes Showing Not Guilty Verdicts On All Counts	006–018
C	Jury Verdict Form	019–021
D	ICE, "Worst of the Worst"	022–026
E	ICE [redacted] Tweet	027–028
F	*Matter of Yajure Hurtado*	044–046
G	Notice to Appear	047–042
H	I-589 Application for Asylum	047–050
I	Declaration of [redacted]	051–053
J	Affidavit of Support – [redacted]	054–057
K	Letter in Support of Bond – [redacted]	058–059
L	Son's Birth Certificate	060–063