

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

JOSE GUADALUPE HERNANDEZ
RAMIRO

Petitioner,

VS.

PAM BONDI,
United States Attorney General;

KRISTI 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.

Civ. No. 5:25- 01207

DHS File Number:

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

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PRELIMINARY STATEMENT

This petition challenges the unlawful detention of Petitioner Jose Guadalupe Hernandez Ramiro¹ (“Mr. Hernandez”), a 40-year-old father of three U.S. citizen children, who has resided in the United States for more than 24 years. Petitioner was arrested after a routine traffic stop in Austin, Texas, where he has a passenger, he has since been held at the South Texas Detention Complex in Pearsall, Texas, without a bond hearing. *See* Exh. 1, ICE Locator Search Results. The Department of Homeland Security (“DHS”) asserts that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b), despite Congress’s separate detention framework in 8 U.S.C. § 1226(a), which governs interior arrests and provides discretionary bond and immigration-judge (“IJ”) review.

DHS’s novel position—recently endorsed in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 220 (B.I.A. 2025)—contradicts the Immigration and Nationality Act’s (INA) text, the canon against surplusage, longstanding administrative practice, and Due Process. It effectively erases section 236(a) of the INA, collapses Congress’s dual-track detention scheme, and imposes categorical detention on long-time residents like Mr. Hernandez who present no danger and are not flight risks.

The human consequences are immediate and severe. Mr. Hernandez’s three children (ages 4, 6, and 17) have lost their father’s daily care and stability; his eldest has been forced into an adult role; his spouse is struggling to keep the household afloat. The Constitution, the INA, and basic principles of fairness do not permit this outcome. Petitioner respectfully requests immediate release or, at minimum, a prompt custody redetermination under § 236(a).

¹ DHS has his name misspelled as “Jose Guadalupe Hernandez Ramirez.”

I. INTRODUCTION

1. This Petition seeks the immediate release of Petitioner Jose Guadalupe Hernandez Ramiro (“Petitioner”), age 40, from unlawful detention in violation of his constitutional and statutory rights.
2. Petitioner was detained after a traffic stop where he was a passenger on September 16, 2025, in Austin, Texas, 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 24 years and is the father of three U.S. citizen children, all minor children, ages 4, 6, and 17. He lives with and supports his family in Austin, 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 January 14, 2022 for Driving While Intoxicated, under Texas Statute § 49.04, that resulted in a conviction and 3 days confinement. He was not put into removal proceedings as a result of that arrest. He has no other arrests.
5. Petitioner’s detention is based on DHS’s assertion that, because he entered the United States without inspection, he falls under mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). The Immigration Court, before Judge Alcorn, has not yet ruled, but Petitioner anticipates that the court will adopt DHS’s position in light of *Matter of Yajure-Hurtado*, thereby denying him access to a bond hearing under 8 U.S.C. § 1226.
6. Petitioner is eligible for Cancellation of Removal before the immigration court if released. 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 three 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.

I. JURISDICTION AND VENUE

8. Petitioner is detained in civil immigration custody at Frio County at the South Texas Detention Complex, Pearsall, Texas. *See* Exh. 1. He has been detained since or about, September 16, 2025.
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 Respondent 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 because the immediate custodians of Petitioner reside in this District.

II. 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). 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.

III. PARTIES

14. Petitioner Jose Guadalupe Hernandez Ramiro is a 40-year-old citizen of Mexico. He entered the United States in or about 2001 without inspection and has resided here continuously for over 24 years. Prior to his detention, he lived in Austin, Texas, with his wife and three U.S. citizen children and served as the family’s primary breadwinner.

15. Respondent Pamela Bondi is named in her official capacity as Attorney General of the United States. She is responsible for the administration of the Executive Office for

Immigration Review (“EOIR”), including policies that bear on immigration judges’ jurisdiction over custody.

16. Respondent Kristi Noem is named in her official capacity as Secretary of the U.S. Department of Homeland Security (“DHS”). DHS is the department charged with administering and enforcing federal immigration laws. Secretary Noem is ultimately responsible for the actions of U.S. Immigration and Customs Enforcement (“ICE”) and is a legal custodian of Petitioner.
17. Respondent Todd M. Lyons is named in his official capacity as Acting Director of ICE. He oversees ICE operations, including detention and removal, and is a legal custodian of Petitioner.
18. Respondent Sylvester Ortega is named in his official capacity as Field Office Director of the San Antonio ICE Field Office. He is responsible for ICE enforcement in this District and is a legal custodian of Petitioner.
19. Respondent Reynaldo Castro is named in his official capacity as Warden of the South Texas Detention Complex in Pearsall, Texas. He has immediate physical custody of Petitioner pursuant to an agreement with ICE to detain noncitizens.
20. Each Respondent is sued in his or her official capacity as a custodian and/or policymaker responsible for Petitioner’s continued detention.

IV. FACTUAL ALLEGATIONS

21. Petitioner was detained following a routine traffic stop in Austin, Texas, on September 16, 2025, where he was a passenger. He was transferred to ICE custody and transported to the South Texas Detention Complex in Pearsall, Texas.

22. ICE has held Petitioner without bond, asserting he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).
23. On August 5, 2025, Petitioner's immigration counsel moved for a bond hearing supported by evidence of his long-standing residence, family ties, and lack of dangerousness. The matter is before Immigration Judge Alcorn, who has not yet ruled. A bond hearing is calendared for October 1, 2025, *See* Exh. 3, Notice of Bond Re-Determination Hearing. In light of *Matter of Yajure-Hurtado*, Petitioner anticipates a denial for lack of jurisdiction. Petitioner will promptly update this Court with any ruling.
24. ICE's litigation stance reflects "interim guidance" issued July 8, 2025, reinterpreting detention authority to treat nearly all noncitizens present without admission as "arriving" and ineligible for bond. Exh. 2, Lyons Memo, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025).
25. Petitioner has chronic medical conditions, including diabetes and hypercholesterolemia, for which he must take daily prescription medications. *See* Exh. 4, Photo of his Daily Medication. He is currently prescribed four medications. *Id.* Despite informing facility staff upon intake, he was not provided any of his medications for the first four days of detention; when medications were finally administered, he received only two of the four. During the period without his full medication regimen, Petitioner experienced headaches and dizziness, consistent with uncontrolled blood sugar and cholesterol levels. The gap and ongoing under-administration of his prescribed medicines endanger his health, exacerbate his symptoms, and further underscore the urgency of judicial relief and the need to allow him to manage his conditions safely at home with his family and physician.

26. For nearly three decades, DHS and EOIR treated individuals arrested in the interior and present without admission as detained under § 1226(a), subject to IJ bond hearings unless § 1225(b)(1), § 1226(c), or § 1231 applied.
27. Once the immigration judge denies bond for lack of jurisdiction, Petitioner will pursue an administrative appeal to the Board of Immigration Appeals (“BIA”). BIA bond appeals typically take months, during which detention continues, rendering administrative review an inadequate and delaying remedy in these circumstances.
28. Petitioner’s detention has inflicted severe hardship on his family. His younger children are unable to speak with him on the phone due to distress; his 17-year-old has assumed adult caregiving responsibilities; and his spouse struggles to manage childcare and finances alone.
29. Petitioner’s ongoing detention severely impedes his ability to defend against removal, including gathering evidence and coordinating with counsel and witnesses.
30. Petitioner remains detained solely because DHS misclassified his custody under § 1225(b) rather than § 1226(a), contrary to statutory text, constitutional principles, and historical practice.

V. LEGAL FRAMEWORK: DUE PROCESS CLAUSE

30. The Fifth Amendment’s Due Process Clause applies to “all persons” within the United States, including noncitizens. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Id.* at 690. In the immigration context, detention is constitutionally justified only to prevent flight or protect the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

31. Congress created two distinct detention regimes. Section 235(b) governs inspection and limited mandatory detention of arriving aliens or those apprehended shortly after entry; § 236(a) governs interior arrests on warrant, authorizing detention pending a removal decision with discretionary release on bond. *See Jennings v. Rodriguez*, 583 U.S. 281, 297, 302–03 (2018) (describing § 235(b) as “primarily” for those seeking entry and § 236(a) as applying to aliens “already in the United States” and arrested “on warrant”). *See also Matter of Q. Li*, 29 I. & N. Dec. 66, 70 (B.I.A. 2025) (quoting *Jennings*).
32. The Laken Riley Act confirms Congress preserved § 236(a)’s discretionary bond regime for most inadmissible entrants arrested in the interior by adding a narrow new mandatory-detention category under § 236(c)(1)(E) (pairing inadmissibility under 8 U.S.C. § 1182(a)(6)(A), (6)(C), or (7) with specified crimes). If § 235(b) already mandated detention for all inadmissible entrants, § 236(c)(1)(E) would be redundant—an outcome courts must avoid. *See Corley v. United States*, 556 U.S. 303, 314 (2009); *Van Buren v. United States*, 593 U.S. 374, 393 (2021). Congress legislated against decades of agency practice applying § 236(a) to interior arrests, and courts presume amendments harmonize with that practice. *Monsalvo v. Bondi*, 604 U.S. ___, 145 S. Ct. 1232, 1242 (2025).
33. Within the span of only a few months, the BIA has issued contradictory decisions on the same statutory question: *Matter of Q. Li* reaffirmed decades of practice treating interior arrests under § 236(a) (*see Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997)), while *Matter of Yajure-Hurtado* abruptly reversed course and extended § 235(b) mandatory detention to long-resident noncitizens. This inconsistency highlights the instability of DHS’s position and confirms that only this Court’s independent application of the INA’s text and structure can resolve the issue.

34. On September 5, 2025, the BIA in *Matter of Yajure-Hurtado* adopted DHS’s position that immigration judges lack bond jurisdiction for noncitizens present without admission because they are “applicants for admission” detained under § 235(b)(2)(A) for the duration of proceedings. 29 I. & N. Dec. at 220 (relying on *Jennings*, 583 U.S. at 300). But *Jennings* construed statutory text and explicitly left open constitutional challenges. *Id.* at 303. Moreover, the Supreme Court has since overruled Chevron deference; courts must independently interpret the INA rather than deferring to agency readings. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385–86 (2024).

35. Only months earlier, however, the BIA in *Matter of Q. Li* reached the opposite conclusion, relying on *Jennings* to explain the distinct scope of §§ 235 and 236. The Board emphasized that

[s]ection 236(a) ‘applies to aliens already present in the United States’ and ‘authorizes detention only ‘[o]n a warrant issued’ by the Attorney General leading to the alien’s arrest.’ *Jennings*, 583 U.S. at 302–03 (emphasis added) (quoting INA § 236(a), 8 U.S.C. § 1226(a)); see also *Matter of M-S-*, 27 I&N Dec. at 515 (‘Section 236, however, permits detention only on an arrest warrant issued by the Secretary.’). By contrast, section 235(b) ‘applies primarily to aliens seeking entry into the United States’ and authorizes DHS to ‘detain an alien without a warrant at the border.’ *Jennings*, 583 U.S. at 297, 302.

Matter of Q. Li, 29 I. & N. Dec. at 70.

36. This reasoning in *Q. Li* is irreconcilable with *Yajure-Hurtado*—the Board cannot within months construe the same statutory text to mandate bond eligibility for interior arrests under § 236(a) and then categorically deny jurisdiction by invoking § 235(b)(2). These contradictions confirm that agency interpretations are not entitled to Chevron deference—especially after *Loper Bright*, which requires courts to exercise their own independent judgment in construing the INA’s detention provisions.

37. Under well-settled canons, including the rule of lenity in immigration law, any ambiguity must be resolved in favor of the noncitizen. *See Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948); *Leocal v. Ashcroft*, 543 U.S. 1, 11 n.8 (2004); *Carachuri-Rosendo v. Holder*, 560 U.S. 563, 581 (2010); *Moncrieffe v. Holder*, 569 U.S. 184, 191 (2013); *Zadvydas v. Davis*, 533 U.S. 678, 689–90 (2001); *Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008); *Lugo-Resendez v. Lynch*, 831 F.3d 337, 343 (5th Cir. 2016). Although several of these cases arose in the criminal-removal context, courts have consistently extended the lenity canon to civil immigration statutes as well, because deportation and detention implicate fundamental liberty interests. Accordingly, this Court must apply the statute’s text, structure, and constitutional principles rather than defer to inconsistent and shifting agency views.
38. Longstanding agency materials confirm that individuals encountered inside the country without admission were treated under § 236(a) and were “eligible for bond and bond redetermination.” *Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). DHS itself historically limited the “applicant for admission” designation to encounters within a short time and distance from the border. *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 121, 130 n.2 (2020) (describing DHS’s 2004 14-day/100-mile policy for expedited removal).
39. Arrest authority reinforces this divide: warrantless arrests are narrowly permitted under 8 U.S.C. § 1357(a) (INA § 287(a)); otherwise, interior arrests proceed on warrant (Form I-200) and fall under § 236(a). *See Matter of Mariscal-Hernandez*, 28 I. & N. Dec. 666, 668–71 (B.I.A. 2022) (equating “reason to believe” with probable cause; warrantless arrests are exceptional). Mr. Hernandez’s interior arrest should have been (and, on information and

belief, was) effectuated pursuant to an I-200 warrant—placing him squarely within § 236(a).

40. Statutes must be read “with a view to their place in the overall statutory scheme,” giving effect to every clause and word. *Gundy v. United States*, 588 U.S. 128, 141 (2019) (quotation omitted); *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023). DHS’s view collapses §§ 235 and 236, nullifies § 236(c)(1)(E), and contradicts the INA’s structure.
41. Federal courts addressing DHS’s new theory have rejected it and ordered relief, concluding § 236(a) governs noncitizens “already in the country.” *See, e.g., Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *2, *6 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2267803, at *4–7 (S.D.N.Y. Aug. 8, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *4–7 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 1193850, at *11–16 (W.D. Wash. Apr. 24, 2025); *Pinchi v. Noem*, No. 25-cv-05632-RMI, 2025 WL 1853763, at *3 (N.D. Cal. July 4, 2025); *Valdez v. Joyce*, No. 25-cv-4627, 2025 WL 1707737, at *5 (S.D.N.Y. June 18, 2025); *Ercelik v. Hyde*, No. 1:25-cv-11007-AK, 2025 WL 1361543, at *15–16 (D. Mass. May 8, 2025); *Günaydin v. Trump*, No. 25-cv-01151, 2025 WL 1459154, at *10–11 (D. Minn. May 21, 2025); *Cuevas-Guzman v. Andrews*, No. 1:25-cv-00759, 2025 WL 2617256, at *7 (E.D. Cal. Aug. 2025); *Alvarez-Martinez v. Noem*, No. 5:25-cv-00876, 2025 WL 2598379, at *4–5 (W.D. Tex. Aug. 2025); *Pizarro Reyes v. Raycraft*, No. 2:25-cv-11641, 2025 WL 2609425, at *3 (E.D. Mich. Aug. 2025); *Rosado v. Figueroa*, No. 2:25-cv-02157-DLR, 2025 WL 2337099, at *5–7 (D. Ariz. Aug. 11, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988, at *6–8 (D. Mass. Aug. 14, 2025);

Maldonado v. Olson, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411, at *4–6 (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 1:25-cv-11631-BEM, 2025 WL 2403827, at *3–5 (D. Mass. Aug. 19, 2025); *Benitez v. Noem*, No. 5:25-cv-02190-RGK-AS, slip op. at 3–5 (C.D. Cal. Aug. 26, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136, at *8–10 (W.D. La. Aug. 27, 2025).

42. Even under DHS’s classification, constitutional avoidance and due process require meaningful review of whether mandatory detention actually applies (a *Joseph*-type inquiry), and courts must preserve habeas for unlawful detention. *See Jennings*, 583 U.S. at 303; *Clark v. Martinez*, 543 U.S. 371, 380–82 (2005); *INS v. St. Cyr*, 533 U.S. 289, 314 (2001).
43. The equities here underscore the *Mathews v. Eldridge* balance: (1) Petitioner’s profound liberty and family interests; (2) the high risk of erroneous deprivation from DHS’s categorical no-bond stance (and the value of individualized hearings); and (3) minimal governmental burden to provide the longstanding process Congress preserved. *See* 424 U.S. 319, 333, 335 (1976).
44. Because Mr. Hernandez was arrested in the interior and (on information and belief) under warrant authority, § 236(a) governs his detention. DHS’s attempt to shoehorn him into § 235(b)(2) is contrary to the statutory text, structure, and constitutional principles. He is entitled to release or, at minimum, a prompt bond hearing before an IJ applying the correct legal standard.

VI. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Violation of the Due Process Clause of the Fifth Amendment of the United States Constitution

41. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.
42. 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.
43. Mr. Hernandez continued detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.
44. 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. Hernandez 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.
45. Respondents have deprived Mr. Hernandez of his liberty interest protected by the Fifth Amendment by detaining him since September 16, 2025.
46. Mr. Hernandez'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.

47. *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).
48. Respondents' actions in detaining Mr. Hernandez without any legal justification violate the Fifth Amendment.
49. 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.
50. 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

50. Petitioner re-alleges and incorporates by reference the paragraphs above.
51. 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, DHS finds that he is detained subject to 8 U.S.C. § 1225(b)(2) and the IJ lacks jurisdiction under *Matter of Yajure Hurtado* on the same basis.
52. 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.

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

54. 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

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

56. Mr. Hernandez 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 three 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.

57. 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

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

60. Respondents' continued efforts to deny him bond violate the INA, Administrative Procedures Act (APA), and the U.S. Constitution.

61. 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.
62. 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. Hernandez 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 Petitioner remains in custody.
63. 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 hold that Petitioner is detained under § 236(a), not § 235(b), and order his immediate release or, in the alternative, direct the Immigration Court to conduct a custody redetermination hearing

under § 236(a) in which Petitioner has a meaningful opportunity to show that he is not a danger or flight risk. Any contrary reliance on *Matter of Yajure-Hurtado* would unlawfully misapply the statute and deprive Petitioner of his rights under the INA, the APA, and the Due Process Clause.

**FIFTH CAUSE OF ACTION:
STAY OF REMOVAL CLAIM**

64. Petitioner re-alleges and incorporates by reference the paragraphs above.
65. The denial of a bond hearing, followed by removal of Mr. Hernandez from the United States would cause him irreversible harm and injury because he is mis-classified by the Government as subject to mandatory detention.
66. The Court should grant the stay of Mr. Hernandez'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**

67. Petitioner re-alleges and incorporates by reference the paragraphs above.
68. If 8 U.S.C. § 1252 stripped the Court jurisdiction from this matter, it would be unconstitutional as applied because it would deny Mr. Hernandez the opportunity for meaningful review of the unlawfulness of his detention and removal.
69. To invoke the Suspension Clause, a petitioner must satisfy a three-factor test: "(1) the 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. Hernandez satisfies these three requirements and may invoke the Suspension Clause.

70. First, although Mr. Hernandez is not a U.S. citizen or resident, he has lived here for over 24 years, and he qualifies under the INA to seek Cancellation of Removal, because he has no disqualifying criminal history, 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. Hernandez has significant family connections in the United States, including his three U.S. citizen children, who are all minors. All of which establishes a substantial legal relationship with the United States.

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

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

73. There is no adequate alternative to a habeas petition. The refusal of the immigration court to grant Mr. Hernandez 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**

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

75. 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.*

76. Respondents’ actions have caused Petitioner harm that warrants immediate relief.

VII. RELIEF SOUGHT

WHEREFORE, Petitioner respectfully requests that this Court:

- (1) Assume jurisdiction over this matter;
- (2) Declare that ICE’s September 16, 2025, apprehension and detention of Mr. Hernandez 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. Hernandez outside of the Western District of Texas while this matter is pending;
- (6) Grant the writ of habeas corpus ordering Respondents to release Mr. Hernandez 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 misclassifies him as subject to mandatory detention, in the alternative order a hearing under *Matter of Joseph*.

- (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. Pa. 2024); *Arias v. Choate*, 2023 U.S. Dist. LEXIS 119907 (D. 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.

PRAYER FOR EXPEDITED CONSIDERATION

Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests expedited consideration. Each day of unlawful detention inflicts irreparable harm on Petitioner and his U.S. citizen children, depriving them of their father's care, stability, and support. Prompt judicial intervention is necessary to protect Petitioner's constitutional rights and his family's well-being.

Respectfully submitted,

/s/ Maria Nereida Jaimes
Counsel for Petitioner
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Jose Guadalupe Hernandez Ramiro, 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 25th day of September, 2025.

/s/ Maria Nereida Jaimes

Counsel for Petitioner
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CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2025, I caused a true and correct copy of the foregoing Petition for Writ of Habeas Corpus and all accompanying exhibits to be served by certified mail, return receipt requested, on the following:

U.S. Attorney's Office for the Western District of Texas
Attn: Stephanie Rico | Civil Process Clerk
601 N.W. Loop 410, Suite 600
San Antonio, TX 78216

Warden, South Texas Detention Complex
Reynaldo Castro
566 Veteran's Drive
Pearsall, TX 78061

Service on the United States Attorney constitutes service on all named federal Respondents in this matter, and service has also been made directly on the Warden as Petitioner's immediate custodian.

Dated this 25th day of September, 2025.

/s/ Maria Nereida Jaimes
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