UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

Jose Luis Nieto Torres, Petitioner, Kristi Noem, Secretary of Homeland Security; Pamela Bondi, U.S. Attorney General, Todd M. Lyons, Acting Director of Immigration and Customs Enforcement; Joshua Johnson, Dallas Field Office Director; Marcello Villegas, Warden of Bluebonnet Detention Center Respondents.	**Civil Case No. 1:25-cv-197**

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. Congress "does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001). The government's recent misconstruction of 8 U.S.C. § 1225 to provide for mandatory detention of *all* noncitizens who enter the country illegally is akin to finding an elephant in a mousehole. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The plainly wrong construction of the statute has caused the Petitioner—and many others like him—to be unlawfully detained without bond.

2. For nearly thirty years immigration judges (IJ), immigration lawyers for noncitizens, and attorneys from the Department of Homeland Security (DHS) construed 8 U.S.C. § 1226(a) to allow for bond eligibility for noncitizens who entered the country without inspection. This was well-settled law. Indeed, just this year when Congress passed the Laken Riley Act (LRA) it revealed its understanding that noncitizens who entered the country without inspection are eligible for a bond.

The LRA's amendments to 8 U.S.C. § 1226(c) add provisions providing that noncitizens who entered the country illegally and commit certain enumerated offenses are not eligible for a bond. Congress would not have passed the LRA if it understood that noncitizens who entered the country unlawfully were already subject to mandatory detention under 8 U.S.C. § 1225.

3. Notwithstanding the plain language of §§ 1226 and 1225, on September 5, 2025, the BIA of Immigration Appeals (BIA) decided *Yajure Hurtado*, in which it determined that any person who entered the United States without admission is mandatorily detained under 8 U.S.C. § 1225(b)(2)(A). 29 I&N Dec. at 216. By disregarding the statutes' plain meaning, the BIA dramatically changed the practice of immigration resulting in the illegal detention of noncitizens across the country. *See, e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Martinez v. Hyde*, CV No. 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Aguilar Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Otero Escalante v. Bondi*, No. 25-cv-3051-ECT-DJF, --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-*

Campos v. Raycraft, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304-CAS-BFM, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546-RJW-APP, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25-cv-00494-JFB-RCC, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Reynosa Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 4, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

4. After an IJ entered an order granting the Petitioner a bond, the Respondents filed an automatic stay of the IJ's order under 8 C.F.R. § 1003.19(i)(2). This unilateral filing prevents the Petitioner from posting bond, and from being released from custody. The automatic stay violates the Petitioner's due process right to liberty because it provides the Petitioner with no opportunity to challenge the stay. *See, e.g., Uritsky v. Ridge*, 286 F. Supp. 2d 842 (E.D. Mich. 2003); *Alvarez Martinez v. Noem, et al.*, 5:25-c-01007-JKP-ESC, 2025 WL 2598379 at *1 (W.D. Tex. Sept. 9, 2025).

5. The Petitioner accordingly files this petition seeking a writ of habeas corpus ordering his release from custody as ordered by the IJ approximately 30 days ago.

II. PARTIES

6. Petitioner Jose Luis Nieto Torres is a noncitizen who is currently detained in immigration detention at the Bluebonnet Detention Center in Anson, Texas.

7. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and is charged with implementing the immigration laws of the United States. Secretary Noem is being sued in her official capacity.

8. Respondent Pamela Bondi is the Attorney General for the United States and is charged with overseeing the Executive Office of Immigration Review (EOIR). General Bondi is being sued in her official capacity.

9. Respondent Todd M. Lyons is the Acting Director of the Immigration and Customs Enforcement (ICE), a sub-agency of Homeland Security. It is under ICE's authority that the Petitioner is being held without bond. Acting Director Lyons is being sued in his official capacity.

10. Respondent Joshua Johnson is the Dallas ICE Field Office Director. It is under Respondent Johnson's order that the Petitioner is in immigration custody. Respondent Johnson is being sued in his official capacity.

11. Respondent Marcello Villegas is the Warden and/or immediate custodian at the Bluebonnet Detention Center in Anson, Texas. Respondent Villegas is being sued in his official capacity.

III. JURISDICTION

12. This Court has subject matter jurisdiction over Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The Court also has jurisdiction pursuant to 28 U.S.C. § 1331 (Federal Question Jurisdiction) inasmuch as the case is a civil action arising under the laws of the United States.

13. Although only the Court of Appeals has jurisdiction to review removal orders directly through a petition for review, *see* 8 U.S.C. §§ 1252(a)(l), (a)(5), (b), District Courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 292-96

(2018); *Demore v. Hyung Joon Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

14. Venue is proper in this district because the Petitioner is detained within this district, and a substantial amount of the events giving rise to this claim occurred within this district. 28 U.S.C. § 1391(e)(1).

IV. LEGAL FRAMEWORK REGARDING MANDATORY IMMIGRATION DETENTION AND BOND ELIGIBILITY

A. Congress deliberately provided for immigration detention in two different statutes, 8 U.S.C. § 1226 and 8 U.S.C. § 1225, to address two very different groups of noncitizens in different circumstances.

15. This case involves the interplay between the general custody for individuals in traditional removal proceedings before an IJ under 8 U.S.C. § 1226 and the mandatory custody provisions for those noncitizens seeking admission at the port of entry or the border under 8 U.S.C. § 1225. The Respondents' authority to detain noncitizens under §§ 1226 or 1225 depends on the individualized circumstances of the noncitizen and the procedural posture of the removal case.

16. Both §§ 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 to provide detention for different subsets of noncitizens. Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. According to IIRIRA's legislative history, § 1226(a) was intended to "restate[] the [then-] current provisions of section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release *on bond* an alien who is not lawfully in the United States." *See Rodriguez v Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. Sep. 30, 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996) (emphasis added)). Noncitizens found within the country are detained under § 1226(a), while those seeking admission into the United States are detained under § 1225(b)(2).

17. In 1997, following the enactment of the IIRIRA, the Executive Office for Immigration Review (EOIR) drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a) "and eligible for bond and bond redetermination." *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).

18. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings under § 1226(a). 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 IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H. Rept. No. 104-469, Part 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

19. Since the Petitioner was found in the United States approximately 16 years after his unlawful entry, he is obviously *not* seeking admission into the country and § 1225(b)(2) is inapplicable.

i. The Petitioner is in custody under 8 U.S.C. § 1226 and the IJ can order his release on bond.

20. Section 1226(a) "authorizes the Government to detain certain aliens *already in the country* pending outcome of removal proceedings." *Jennings*, 583 U.S. at 289 (emphasis added). The Petitioner was already in the country—for at least 16 years—and is in custody pending the outcome of his removal proceedings. He was issued a notice to appear (NTA) before an IJ and has a hearing on October 16, 2025. The logical conclusion, therefore, is that he is in custody under § 1226(a).

21. Section 1226(a) establishes the discretionary framework for noncitizens arrested and detained "[o]n warrant issued by the Attorney General." For such individuals, the Attorney General

(1) "may continue to detain the arrested alien," (2) "may release the alien on . . . bond of at least $1,500," or (3) "may release the alien on . . . conditional parole." 8 U.S.C. §§ 1226(a)(1)-(2). DHS makes an initial custody determination on whether to allow the noncitizen to be released pending the posting of a bond. 8 C.F.R. § 1236. However, such determinations "may be reviewed by an Immigration Judge pursuant to 8 C.F.R. § 1236." § 1003.19(a).

22. Under 8 U.S.C. § 1226, an IJ may grant bond if the noncitizen demonstrates that he is not a danger to the community or pose a significant risk of flight. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). Once a bond has been granted by the IJ, DHS is only authorized to revoke a bond upon a finding of materially changed circumstances meriting the noncitizen's return to custody. *See, e.g., Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) (finding a change in circumstances, in part, when it was determined that the noncitizen was "wanted for murder in the Philippines . . . .").

23. Section 1226(c) requires mandatory detention for specifically enumerated categories of noncitizens. Section 1226(c), until recently, required the detention of noncitizens who are inadmissible or deportable because they have committed or been sentenced for certain criminal offenses, or because they are affiliated with terrorist groups or activities. *See* §§ 1226(c)(1)(A)-(D).

24. In January 2025, Congress enacted the Laken Riley Act (LRA), which expanded this list by adding § 1226(c)(1)(E), which requires detention of individuals who (1) are inadmissible under §§ 1182(a)(6)(A), (C), or (7), *and* (2) who have been charged with, arrested for, or convicted of certain crimes, including burglary, theft, shoplifting, or crimes resulting in death or serious bodily injury. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

25. The enactment of the LRA confirms that Congress did not intend for noncitizens who entered the country unlawfully and are found within the interior of the United States to be subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Indeed, the LRA explicitly provides for mandatory detention for noncitizens who both entered the country unlawfully *and* committed one of the above enumerated offenses within the United States. By carving out an exception to the general rule allowing for bond for noncitizens who entered the country unlawfully, the LRA reflects Congress' understanding that not all noncitizens who entered the country illegally are subject to mandatory detention under § 1225(b)(2). *Yajure Hurtado* effectively provides that LRA was an unnecessary, needless bill.

26. Section 1226(a) leaves no doubt that it applies to people who confront removal for being inadmissible to the United States, including those who are present without admission or parole.

i. The Petitioner is not subject to mandatory immigration under § 1225(b)(2).

27. Section 1225(b)(2), the provision invoked by the Respondents, is plainly not applicable here since it only applies to those noncitizens seeking admission at the border. The statute states:

> In the case of an *who is an applicant for admission*, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

(Emphasis added). For § 1225(b)(2)(A) to apply, "several conditions must be met—in particular, an 'examining immigration officer' must determine that the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Martinez v. Hyde*, CV No. 25-11613-BEM, at *6-7.

28. As the Supreme Court has explained, the detention authority under 1225(b)(2)(A) applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." *Jennings*, 583 U.S. at 287. A person detained under §

1225(b)(2) may be released only if paroled "for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A).

29. As stated above, the Petitioner has been in the United States for over a decade subsequent to an unlawful entry. He was arrested in the interior of the United States and, as such, is certainly in custody after seeking admission.

B. The Respondents' misconstruction of § 1225(b)(2) as encompassing all noncitizens who entered the country illegally is contrary to decades of established practice and has resulted in the unlawful detention of the Petitioner.

30. The Respondents' misconstruction of the statutes is part of their scheme to greatly expand immigration detention in general by using the mandatory detention provisions of 8 U.S.C. § 1225.

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

32. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, greatly affecting those who have resided in the United States for months, years, and even decades.

33. On September 5, 2025, the BIA—reversing decades of practice—adopted this same position in *Yajure Hurtado*. 29 I&N Dec. at 216. There, the BIA held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings. *Id.*

34. The Respondents efforts to expand 8 U.S.C. § 1225 to provide for more mandatory detention has been rejected by courts across the nation. Even before ICE or the BIA introduced

these nationwide policies, the Tacoma, Washington immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. *See, e.g.*, *Rodriguez*, 779 F. Supp. 3d at 1256. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Id.* at 1256–57.

35. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

V. LEGAL FRAMEWORK GOVERNING APPEALS OF IMMIGRATION JUDGE BOND DECISIONS AND STAYS WHILE BOND APPEAL IS PENDING

36. Once an IJ has set a bond, either party can appeal the IJ's order on bond to the BIA. 8 C.F.R. § 1003.19(f).

37. A DHS appeal from an IJ order releasing a noncitizen standing alone does not stay the IJ's order. Rather, DHS must apply for a stay of custody pending the appeal under 8 C.F.R. § 1003.19(i). The regulation provides two alternatives for DHS when seeking to stay an IJ bond order:

> (1) **General discretionary stay authority**. The Board of Immigration Appeals (Board) has the authority to stay the order of an immigration judge redetermining the conditions of custody of an alien when the Department of Homeland Security appeals the custody decision or on its own motion. DHS is entitled to seek a discretionary stay (whether or not on an emergency basis) from the Board in connection with such an appeal at any time.

> (2) **Automatic stay in certain cases**. In any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR-43) with the immigration court within one business day of the order, and, except as otherwise provided in 8 CFR 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR-43 is subject to the discretion of the Secretary.

8 C.F.R. §§ 1003.19(i)(1)-(2). In this case, DHS elected to pursue an automatic stay under paragraph 2.

39. The filing of an automatic stay provides the noncitizen with no process to contest the stay order before the IJ or the BIA.

40. To maintain the automatic stay, 8 C.F.R. § 1003.19(i)(2) requires the DHS to file a notice to appeal with the BIA and include a "certification by a senior legal official that –

> (i) The official has approved the filing of the notice of appeal according to review procedures established by DHS; and
>
> (ii) The official is satisfied that the contentions justifying the continued detention of the alien have evidentiary support, and the legal arguments are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing precedent or the establishment of new precedent."

8 C.F.R. § 1003.6(c).

41. The filing of the notice of appeal with the above certification ensures that the automatic stay will remain in place while the DHS pursues its appeal. Noncitizens are not afforded any procedure to challenge the filing of the stay or the validity of the certification.

42. "If the Board has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal." 8 C.F.R. § 1003.6(c)(4). However, the DHS can then seek a discretionary stay "at a reasonable time before the expiration of the period of the automatic stay . . . ." 8 C.F.R. § 1003.6(c)(5). Thus, the potential for prolonged custody may exceed far more than 90 days.

VI. FACTS

43. The Petitioner, a citizen of Mexico, entered the United States without inspection approximately 18 years ago. He is married and is the father to a minor U.S. citizen child. Petitioner is the sole financial provider for his family. His family is suffering substantial emotional, psychological, and financial hardship as a result of the Petitioner's unlawful detention.

38. On or around August 9, 2025, the Petitioner was apprehended within the interior of the United States by the Respondents and placed in traditional removal proceedings before an IJ. *See* Exh. A (Notice to Appear). The NTA alleges that the Petitioner entered the country without inspection.

39. On or around August 8, 2025, the DHS executed a Form I-200, Warrant for Arrest of Alien. *See* Exh. B (Warrant of Arrest). The warrant provides that the authorization for arrest is under "sections 236 and 287 of the Immigration and Nationality Act." *Id.* INA § 236 corresponds with 8 U.S.C. § 1226. Thus, the Respondents invoked their authority to detain noncitizens under § 1226, and, consequently, the Respondent is bond eligible under paragraph (a) of § 1226(a).

40. The Respondents are detaining the Petitioner with no bond at the Bluebonnet Detention Center in Anson, Texas.

41. On August 28, 2025, IJ Jessica Miles specifically found that the Petitioner was detained under 8 U.S.C. § 1226 and ordered that he be released upon posting a $4,000 bond. *See* Exh. C (Order of the IJ). IJ Miles reasoned:

> The Court finds that the respondent is detained under INA 236 based on the service of a warrant of arrest on the respondent when placed into removal proceedings. The Court is not persuaded that INA 236 categorically cannot apply to detention of noncitizens who are charged under INA 212(a)(6)(A)(i). The plain language of INA 236 indicates that it applies to an alien for whom the DHS has issued a warrant to arrest. Furthermore, INA 236(a) specifically excepts aliens who are inadmissible under INA 212(a)(3)(B), 212(6)(A), (6)(C), or (7), and 212(a)(2) generally under INA 236(c). Neither *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019) and *Matter of Q.Li*, 29 I&N Dec. 66 (BIA 2025) created any per se rules foreclosing noncitizens charged under INA 212 from being detained under INA 236. Indeed, this would cut against the plain language of INA 236, which explicitly addresses noncitizens charged under INA 212. **The respondent in this case is not and has never been placed in expedited removal proceedings, and the evidence in the record indicates he was detained on a warrant of arrest and therefore subject to INA 236 detention.**

Id. (emphasis added).

42. Unhappy with the IJ's decision, the DHS reserved appeal to the BIA and filed an automatic stay of the IJ's decision pursuant to 8 C.F.R. § 1003.19(i)(2). *See* Exh. D (EOIR-43). Such automatic stays of bond orders violate procedural and substantive due process of law since they are filed without allowing the Petitioner an opportunity to respond and do not allow the BIA an opportunity to decide the merits of the stay. The auto-stay essentially elevates ICE to act as prosecutor and judge.

43. On September 5, 2025, the BIA issued its clearly erroneous precedential decision in *Yajure Hurtado*.

44. On September 12, 2025, the DHS perfected its appeal to the BIA by filing a notice of appeal with a certification from Chief Counsel Elisabeth Courson, thus complying with the requirements to continue the automatic stay.

45. The Petitioner is afforded no process or opportunity to challenge the validity of the stay before the BIA. He is provided with no process whatsoever to challenge the automatic stay of the IJ's order.

46. The Petitioner and his family are suffering as a result of his prolonged, unconstitutional detention.

VII. EXHAUSTION OF ADMINISTRATIVE REMEDIES

47. The Petitioner has exhausted his administrative remedies to the extent required by law.

VIII. CLAIMS FOR RELIEF

Count I. Statutory claim: The Petitioner is eligible for bond under § 1226(a) and is not subject to mandatory detention under § 1225(b)(2).

48. The Petitioner has a clear right to a custody hearing by an IJ under 8 U.S.C. § 1226(a)(2). The Respondents are detaining the Petitioner in direct violation of this statute which authorizes the IJ to grant release on bond.

49. The statute cannot be clearer and requires the Petitioner's release from custody as ordered by the IJ. While the BIA reached the opposite conclusion in *Yajure Hurtado*, this interpretation is erroneous and even if it were plausible, it is not entitled to *Chevron* deference pursuant to the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*. 603 U.S. 369, 369 (2024) (overruling *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). The Petitioner, as such, is entitled to release on bond as ordered by the IJ under the statute's plain language.

50. Moreover, in *Monteon-Camargo v. Barr*, the Fifth Circuit found that where the BIA announces a "new rule of general applicability" which "drastically change[s] the landscape." retroactive application would "contravene basic presumptions about our legislative system" and should in that case be disfavored unless the government can demonstrate that the advantages of retroactive application outweigh these grave disadvantages. 918 F.3d 423, 430-431 (2019) (quoting *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847, 849, 852 (BIA 2016)).

51. Applying *Yajure Hurtado* to individuals like Petitioner, who entered the United States without inspection years before the BIA's decision, would be impermissibly retroactive. The BIA's decision contradicts decades of statutory practice and administrative precedent, under which such individuals were detained under § 1226(a) and entitled to a bond hearing. Retroactively applying *Yajure Hurtado* would strip these long-established rights and impose a new disability by rendering them ineligible for bond, contrary to settled expectations. *See Landgraf v. Usi Film Prods.*, 511 U.S. 244, 265 (1994) ("As Justice Scalia has demonstrated, . . . [e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted.").

52. Finally, in violation of BIA precedent, ICE has not provided a material change in circumstances justifying the Petitioner's re-detention. *Sugay*, 17 I&N Dec. at 640. *Yajure Hurtado* is not a valid change in circumstances as the decision contravenes the plain text of § 1226(a) and decades of bond practice and precedent.

Count II. *Accardi* Violation

53. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of Aliens," the agencies explained that

"[d]espite being applicants for admission, aliens who are *present without having been admitted or paroled* (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

54. Nonetheless, pursuant to *Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner.

55. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention in violation of § 1226(a) and its regulations at 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, which for decades have recognized that noncitizens present without admission are eligible for a bond hearing. *See Jennings*, 583 U.S. at 288-29 (describing § 1226 detention as relating to people "inside the United States" and "present in the country."). Such protection is not a mere regulatory grace but is a baseline Due Process requirement. *See Hernandez-Lara v Lyons*, 10 F. 4th 19, 41 (1st Cir. 2021). The only exception for such noncitizens subject to § 1226(a) is where the noncitizen is subject to mandatory detention under 8 U.S.C. § 1226(c) for certain crimes and certain national security grounds of removability. *See Demore v. Kim*, 538 U.S. 510, 512 (2003).

56. Government agencies are required to follow their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *United States v. Heffner*, 420 F.2d 809, 811 (4th Cir. 1969) ("An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down."). A violation of the *Accardi* doctrine may itself constitute a violation of the Fifth Amendment Due Process Clause and justify release from detention. *See, e.g., United States v.*

Teers, 591 F. Appx. 824, 840 (11th Cir. 2014); *Sering Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 160 (W.D.N.Y. 2025) (citing *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)).

Count III. The Automatic Stay Violates the Petitioner's Right to Substantive Due Process under the Fifth Amendment

57. The Fifth Amendment provides that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

58. This guarantee "include[s] a substantive component" which prohibits the government from infringing on certain fundamental liberty interests, regardless of what process the government provides, "unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 301-02 (1993). "[A]t the heart of the liberty that [the Due Process] Clause protects" is "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint." *Zadvydas*, 533 U.S. at 690.

59. Government detention violates the Due Process Clause "unless the detention is ordered in a *criminal* proceeding with adequate procedural protections or, in certain special and 'narrow' nonpunitive circumstances where a special justification . . . outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* (internal citations and quotation marks omitted; emphasis in original). These protections extend to noncitizens who have entered the country, even if they are in removal proceedings. *Id.* at 693.

60. The Respondents have no special justification, or even a rational basis, that permits them to continue to hold the Petitioner without bond. Any interests they may have had were accounted for by the IJ when she ordered his release upon posting a cash bond.

Count IV: The Automatic Stay Violates the Petitioner's Right to Procedural Due Process under the Fifth Amendment

61. When the Government interferes with a liberty interest, "the procedures attendant upon that deprivation [must be] constitutionally sufficient." *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). The constitutional sufficiency of procedures is determined by weighing three factors: (1) the private interest that will be affected by the official action: (2) the risk of erroneous deprivation of that interest through the available procedures; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

62. The Petitioner has a weighty liberty interest as his freedom "from government [] detention . . . lies at the heart of the liberty that [the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 693.

63. The risk of erroneous deprivation of the Petitioner's liberty is extremely high, given that the DHS used the automatic stay provision to unilaterally override the IJ's determination without any procedural protections at all. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews*, 424 U.S. at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). Yet the DHS's decision to seek an automatic stay is not subject to review by an impartial adjudicator. Indeed, the Petitioner is not even afforded a process by which he can be heard at all.

64. The DHS's interest in preserving its unilateral authority to prevent the release of noncitizens who have already shown they are neither a flight risk nor a danger is minimal. Providing additional procedural protections here introduces no additional administrative burdens because the regulations already provide the DHS with the opportunity to seek a discretionary stay on an emergency basis. Unlike the automatic stay invoked in this case, the discretionary stay requires DHS to justify the stay to the BIA and affords the noncitizen an opportunity to respond.

Permitting the BIA to determine whether a stay of release is in fact warranted reduces the risk of erroneous deprivation without any meaningful costs to the government.

65. The DHS is confining the Petitioner in violation of his Fifth Amendment rights. Therefore, the Court should issue a writ of habeas corpus ordering his release.

Count V: The Automatic Stay Regulation is *Ultra Vires*

66. The automatic stay regulation set forth in 8 C.F.R. § 1003.19(i)(2) is *ultra vires* because it exceeds the scope of authority granted by Congress to the Attorney General.

67. Under 8 U.S.C. § 1226(a), the Attorney General has the authority to detain or release noncitizens on bond. Congress also permits the Attorney General to delegate this authority to "any other officer, employee, or agency of the Department of Justice." *See* 28 U.S.C. § 510. Immigration Judges, as appointed administrative judges within EOIR, properly exercise this delegated authority. In contrast, the Department of Homeland Security (DHS)—the agency invoking the automatic stay—is not within the Department of Justice. *See* 6 U.S.C. § 111.

68. By allowing DHS to unilaterally impose an automatic stay and prolong a noncitizens' detention, the regulation improperly extends authority beyond what Congress delegated to the Attorney General rendering it invalid. *See Anicasio*, 2025 WL 2374224 at *5 ("Agency actions beyond delegated authority are 'ultra vires,' and courts must invalidate them.") (citing *U.S. ex rel. O'Keefe v. McDonnell Douglas Corp.*, 132 F.3d 1252, 1257 (8th Cir. 1998)).

IX. PRAYER FOR RELIEF

For the foregoing reasons, the Petitioner requests that the Respondents be cited to appear and that, upon due consideration, the Court enter an order:

a. Granting a writ of habeas corpus finding that the Petitioner's detention is in violation of the due process clause;

b. Providing declaratory relief that the Petitioner's detention is unlawful;

c. Ordering the Petitioner's release from custody;

d. Ordering that Respondents not transfer the Petitioner to any facility outside of the boundaries of the Abilene Division of the Northern District of Texas while this writ is pending.

e. Awarding Petitioner reasonable attorney's fees, expenses and costs; and

f. Granting Petitioner such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

VERIFICATION UNDER 28 U.S.C. § 2242

Acting on behalf of the Petitioner, I verify that the foregoing factual allegations are true and correct as required by 28 U.S.C. § 2242.

/s/ Lance Curtright

Lance Curtright