UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

SHAHROKH RAHIMI, *Petitioner,* v. **PERRY GARCIA,** Warden, La Salle County Regional Detention Center; **MIGUEL VERGARA,** Field Office Director, San Antonio Field Office, United States Immigration and Customs Enforcement; **TODD M. LYONS**, Acting Director, United States Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary of United States Department of Homeland Security; **UNITED STATES DEPARTMENT OF HOMELAND SECURITY**; **PAMELA BONDI,** United States Attorney General; **EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**; *in their official capacities,* *Respondents.*	Case No. _____ **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 OR ORDER TO SHOW CAUSE WITHIN THREE DAYS**

PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 OR ORDER TO SHOW CAUSE WITHIN THREE DAYS

I. INTRODUCTION

1. Petitioner Shahrokh Rahimi is a fifty-three-year-old Iranian man who has been residing freely and without any criminal record in the United States for over twenty years. Mr. Rahimi fled Iran in 2001 after two of his brothers were murdered for political reasons and he himself was jailed and tortured by the government. He entered the United States without inspection in 2003

and an immigration judge granted him withholding of removal in 2010. For the past fifteen years, he has dutifully complied with every condition of his release, yet he is now incarcerated in an immigration detention center, torn away from his work as a caregiver, his church, his wife, and his eleven-year-old daughter.

2. On Sunday, June 22, 2025, officers with the Department of Homeland Security (DHS) came to Mr. Rahimi's house and arrested him in front of his family and neighbors. For the past three months, he has been incarcerated at two immigration detention facilities. He is now in the physical custody of Respondents at the La Salle County Regional Detention Center (La Salle) in Encinal, Texas.

3. On August 11, 2025, an immigration judge (IJ) reopened Mr. Rahimi's immigration proceedings to allow him to apply for asylum and cancellation of removal. Ex. 2. Mr. Rahimi also applied for a custody redetermination, but on September 9, the IJ denied the request, citing a new agency interpretation of the Immigration and Nationality Act (INA). Ex. 3 at 3.

4. Specifically, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond. *Id.* The IJ in Mr. Rahimi's case cited *Matter of Yajure Hurtado* when denying his request for a bond hearing. Ex. 3 at 3.

5. Mr. Rahimi's detention violates the plain language of the INA. Section 1225(b)(2)(A) applies only to people who are both an "applicant for admission" and "seeking admission" to the United States. It does not apply to people who, like Mr. Rahimi, previously entered and are

now living in the United States. Detention of such individuals is governed by a different statute, section 1226(a), which allows for release on conditional parole or bond. That statute expressly applies to people who, like Mr. Rahimi, are "already present in the United States" and are charged as inadmissible for having entered without inspection. *See Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018).

6. Respondents' novel interpretation of the INA is plainly contrary to the statutory framework and contrary to decades of agency practice applying section 1226(a) to people like Mr. Rahimi.

7. Accordingly, Mr. Rahimi seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under section 1226(a) within seven days.

II. JURISDICTION AND VENUE

8. Jurisdiction is proper under 28 U.S.C. §§ 1331, 2241, and the Suspension Clause, U.S. Const. art. I, § 9, cl. 2.

9. 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.

10. Venue is proper in the United States District Court for the Southern District of Texas because at least one Respondent is in this District, Mr. Rahimi is detained in this District, and Mr. Rahimi's immediate physical custodian is in this District. *See* 28 U.S.C. § 1391(b).

III. PARTIES

11. Petitioner Shahrokh Rahimi is a noncitizen who was granted withholding of removal to Iran and has lived in the United States continuously for over twenty years. He has reopened his immigration case and has been in Immigration and Customs Enforcement (ICE) custody since June 22, 2025 and is currently detained at the La Salle County Regional Detention Center.

After arresting Mr. Rahimi at his home, ICE did not set bond, and Mr. Rahimi is unable to obtain review of his custody by an IJ, pursuant to the BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

12. Respondent Perry Garcia is the Warden for the La Salle County Regional Detention Center. He is the legal custodian of Mr. Rahimi and is named in his official capacity.

13. Respondent Miguel Vergara is the Field Office Director responsible for the San Antonio Field Office of ICE with administrative jurisdiction over Mr. Rahimi's case. He is a legal custodian of Mr. Rahimi and is named in his official capacity.

14. Respondent Todd Lyons is the Acting Director of ICE. He is a legal custodian of Mr. Rahimi and is named in his official capacity.

15. Respondent Kristi Noem is the Secretary of DHS. She is a legal custodian of Mr. Rahimi and is named in her official capacity.

16. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

17. Respondent Pamela Bondi is the Attorney General of the United States Department of Justice (DOJ). She is a legal custodian of Mr. Rahimi and is named in her official capacity.

18. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

19. Mr. Rahimi requested a bond hearing, but the IJ denied his request, citing lack of authority to grant bond for people "who are present without admission" pursuant to *Matter of Yajure Hurtado*. Ex. 3 at 3. Further exhaustion is unnecessary.

20. No statutory exhaustion requirement applies to a petition challenging immigration detention under 28 U.S.C. § 2241. *See, e.g.*, *Montano v. Texas*, 867 F.3d 540, 542 (5th Cir. 2017) ("Unlike 28 U.S.C. § 2254, Section 2241's text does not require exhaustion."); *Robinson v. Wade*, 686 F.2d 298, 303 n.8 (5th Cir. 1982) ("[S]ection 2241 contains no statutory requirement of exhaustion like that found in section 2254(b) . . . ."); *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007) ("Under the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.").

21. Mr. Rahimi claims that his detention is unconstitutional because it contravenes the Fifth Amendment and is unrelated to any legitimate government purpose. Exhaustion is not required where a claimant raises a constitutional claim that an agency would clearly reject. *Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) (citing *Taylor v. U.S. Treasury Dep't.*, 127 F.3d 470, 477 (5th Cir. 1997) (holding that a claim challenging the constitutionality of a regulation should not be dismissed for failure to exhaust with the agency enforcing the regulation)).

22. "Where Congress has not clearly required exhaustion, sound judicial discretion governs." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). In exercising that discretion, a court must weigh an individual's interest in accessing the court against the institutional interests in exhaustion: protecting agencies' authority and promoting judicial efficiency. *Id.* at 145–46.

23. An individual's interests "weigh heavily against requiring administrative exhaustion" when requiring exhaustion may unduly prejudice the plaintiff, when there is "some doubt as to whether the agency was empowered to grant effective relief," or when an administrative body is biased or has pre-determined the issue before it. *Id.* at 146–48.

24. Courts should not require exhaustion because of the risk of undue prejudice where there is an "unreasonable or indefinite timeframe for administrative action," or alternatively, where the petitioner "may suffer irreparable harm if unable to secure immediate judicial consideration of his claim." *Id.* at 147. Mr. Rahimi is irreparably harmed by his unlawful detention in and of itself, and would continue to be irreparably harmed for whatever period would be necessary for further exhaustion.

25. Mr. Rahimi claims that his detention is unconstitutional because it contravenes the Fifth Amendment and is unrelated to any legitimate government purpose. Even ignoring that fact, the Supreme Court has found "some doubt" sufficient to remove the exhaustion requirement where a case challenges "adequacy of the agency procedure itself," or where an agency lacks "institutional competence to determine the constitutionality of a statute." *Id.* at 147–48.

26. Moreover, further action with the agency is unnecessary where pursuing administrative remedies would be futile or the agency has predetermined a dispositive issue. *Id.* at 148. The BIA's decision in *Matter of Yajure Hurtado* demonstrates that the agency has predetermined the key issue in this petition. There, the agency held that it believes people like Mr. Rahimi, who have entered without inspection, are detained under section 1225(b)(2)(A) and subject to mandatory detention. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Further appeal to the BIA would be futile. *See Gallegos-Hernandez*, 688 F.3d at 194. Accordingly,

there are no genuine or meaningful administrative remedies available to Mr. Rahimi, and exhaustion is not required.

27. Finally, the issue presented in this habeas petition is a purely legal question of statutory interpretation: whether Petitioner is properly detained under section 1226(a) or section 1225(b)(2). *See Pizarro Reyes v. Raycraft,* No. 25-CV-12546, 2025 WL 2609425, at *3 (E.D. Mich. Sept. 9, 2025). Questions of statutory interpretation are historically within the province of the courts, and weigh against the institutional interests supporting administrative exhaustion requirements. *See id.* (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024)).

V. STATEMENT OF FACTS

28. Mr. Rahimi has lived in San Antonio, Texas for more than twenty years. Until June 22, 2025 he lived a quiet life with his wife and eleven-year-old daughter, both United States citizens.

29. Mr. Rahimi was born in Iran to parents who oppose the Iranian government. When he was growing up, his parents and siblings were involved in anti-government protests. One of his older brothers, Koroosh, was executed in 1993 after attending a protest. In 1999, another brother, Dariush, joined a reformist political party and ran for a seat in the Iranian parliament.

30. In July 1999, Mr. Rahimi went to videotape protests at Tehran University at the request of his brother. There, he saw some men kill a student by throwing them off of a roof. Government officials arrested Mr. Rahimi and took him to Evin Prison, where he was brutally tortured. He was released after one month.

31. Several months after he was released, Mr. Rahimi received an anonymous phone call saying that Dariush had been shot in the head and left on the side of the road. The government did not investigate the shooting. A short time later, Mr. Rahimi was again abducted, taken to Evin Prison, and tortured. He was again released.

32. The Iranian government continued to harass Mr. Rahimi and his family for the next few years. In 2001, he decided to flee the country. His wife believes his trauma from his experiences during incarceration in Iran even rise to the level of post-traumatic stress disorder. *See* Ex. 1, ¶ 13. Iranian government persecution remains a threat—to this day, Mr. Rahimi limits his contact with his family in Iran out of fear for his and their safety. His mother was arrested in late 2019 and is still being wiretapped.

33. Mr. Rahimi entered the United States from Canada without inspection in 2003 and settled in San Antonio, Texas. Mr. Rahimi formally converted to Christianity in 2007. That year, he also met his future wife, and they married in 2009. Ex. 1, ¶¶ 2, 4.

34. In 2010, an IJ granted Mr. Rahimi withholding of removal to Iran and released him with an order of supervision. In the fifteen years since, he has complied with all government conditions and diligently attended his regular check-ins.

35. Mr. Rahimi and his wife had a daughter in 2013. Ex. 1, ¶ 6. She is a very bright child: a straight-A student who just began attending a magnet school to pursue aeronautical engineering. *Id.* ¶ 14. Mr. Rahimi's presence and support of his family is essential to his wife and daughter's continued success and well-being. *See id.* ¶¶ 9–12, 15–17.

36. Mr. Rahimi provides essential financial support for his family, who will not be able to afford their mortgage without his income. Mr. Rahimi is a professional caretaker, and he was previously employed by the Veteran's Affairs Caretaker Program. Mr. Rahimi also contributes significantly to child care; he helps his daughter with projects, talks to teachers, picks her up from school, provides spiritual instruction, and cares for her over the summer while she is out of school, none of which is possible while he is in detention. *See* Ex. 1, ¶¶ 17, 9–10.

37. Mr. Rahimi is an active member of his church and contributes to his neighborhood and community. *See* Ex. 1, ¶ 20. For example, just a week before he was apprehended, he mowed three of his neighbors' lawns as a friendly gesture. *See id.*

38. Mr. Rahimi is not a flight risk nor a danger to his community. He has been well-settled with his family in San Antonio for decades, consistently attends his immigration meetings, and helps his community. *See* Ex. 1, ¶¶ 20–21.

39. However, on June 22, 2025, ICE agents arrived at Mr. Rahimi's home, placed him in handcuffs, and arrested him in front of his wife, daughter, and neighbors. Watching her father's arrest inflicted significant emotional distress on Mr. Rahimi's eleven-year-old daughter, who experienced a panic attack at the time and is now in weekly therapy. Ex. 1, ¶¶ 11, 16. She remains frightened by every knock at the front door and has asked her mom to purchase a camera and a doorbell because she no longer feels safe in her own home. *Id.* at ¶ 11.

40. On October 6, 2025, Mr. Rahimi was moved from the South Texas ICE Processing Center in Pearsall, Texas to the La Salle County Regional Detention Center in Encinal, Texas, where he is now detained. La Salle is much farther away from his family and will make visitation very difficult for them.

41. On July 15, 2025, Brandi Rahimi filed an I-130 application on Mr. Rahimi's behalf. On July 24, Mr. Rahimi moved to reopen his immigration proceedings and requested asylum and cancellation of removal before the EOIR Immigration Court of San Antonio, Texas. That motion was granted on August 11, 2025. *See* Ex. 2. Mr. Rahimi no longer has a pending order of removal.

42. On August 27, 2025 Mr. Rahimi requested that DHS release him on parole. Mr. Rahimi then applied for a bond hearing on September 4. The IJ denied the request, stating that "the Court

lacks authority to hear bond requests or to grant bond to aliens who are present in the United States without admission," under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Ex. 3.

43. Under this misinterpretation of sections 1226(a) and 1225(b)(2) Mr. Rahimi faces prolonged detention with no prospect of release or review. This detention is extremely detrimental to Mr. Rahimi's mental state and his family who rely on him.

VI. LEGAL FRAMEWORK

A. Respondent's Interpretation of Sections 1225 and 1226 Flies in the Face of the Plain Meaning of the INA.

44. Three provisions of the INA govern the detention of the majority of noncitizens in removal proceedings.

45. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings. *See* 8 U.S.C. § 1229a. People subject to detention under section 1226 are generally entitled to a bond hearing, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), unless they have been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c). *See Jennings*, 583 U.S. at 288.

46. Second, 8 U.S.C. § 1225 governs detention of noncitizens subject to expedited removal under section 1225(b)(1)[1] and detention of other recent arrivals who are both "applicant[s] for admission" and "seeking admission" under section 1225(b)(2)(A). § 1225(a)(3), (b)(2)(A). People detained under section 1225(b)(2)(A) are subject to mandatory detention.

47. Third, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

48. This case concerns the detention provisions at sections 1226(a) and 1225(b)(2).

[1] A summary removal process used at the discretion of DHS officials who encounter non-citizens at or near the border within two years of their entrance into the United States. Mr. Rahimi has never been subject to expedited removal.

49. Sections 1226 and 1225(b) were enacted in 1996 as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009-546 (1996). Congress amended section 1226 in early 2025 through the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

50. Before IIRIRA, most people detained within the United States—even those who entered without inspection—were entitled to a custody hearing, while people apprehended at the border were only eligible for release on parole. *See* 8 U.S.C. § 1252(a) (1994). When it enacted IIRIRA, Congress explained that section 1226(a) "restates the current provisions in section [1252(a)] regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (1996).

51. When EOIR issued regulations implementing IIRIRA in 1997, it explained that "[D]espite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination." 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).

52. Thus, the long-standing agency interpretation of the INA was that section 1225 governed detention of noncitizens at or near the border, while section 1226 governs "detention of those who are already present in the United States." *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at *4 (W.D. La. Sept. 11, 2025) (citing *Jennings*, 583 U.S. at 303). For decades, most noncitizens apprehended while they were already present in the United States were entitled to a bond hearing, unless their criminal history rendered them ineligible under section 1226(c).

53. In recent months, Respondents have adopted a novel interpretation of section 1225(b)(2)(A). On July 8, 2025, ICE, "in coordination with" the DOJ, announced a new policy[2] claiming that any noncitizen who ever entered without inspection is subject to mandatory detention under section 1225(b)(2)(A), regardless of when they entered, when they are apprehended, and how their ongoing detention may impact them and their families.

54. On September 5, 2025, the BIA parroted this novel interpretation in a published decision, *Matter of Yajure Hurtado.* 29 I&N Dec. 216 (BIA 2025). There, the BIA held that all noncitizens who are present in the United States without admission are subject to mandatory detention under section 1225(b)(2)(A) and are ineligible for bond hearings. *Yajure Hurtado*, 29 I&N at 216.

55. Specifically, the BIA argued that "under the plain reading of the INA," noncitizens "who are present in the United States without admission are applicants for admission as defined under" section 1225(b)(2)(A). *Id.* at 220.

56. Federal courts do not owe deference to agency interpretation of statutes; rather, they exercise "independent legal judgment" to interpret statutes. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 401 (2024). Thus, while the IJ was bound by the BIA's interpretation in *Matter of Yajure Hurtado*, this Court is not. *See Pizarro Reyes*, 2025 WL 2609425, at *6 (citing *Loper Bright*, 603 U.S. at 413).

57. Over the past few months, dozens of federal courts, including those in the Fifth Circuit, have rejected Respondents' interpretation of section 1225. *See, e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Rivera Zumba v. Bondi*, No. 25-

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

CV-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez Santos*, 2025 WL 2642278; *Pizarro Reyes* 2025 WL 2609425; *Campos Leon v. Forestal*, No. 1:25-CV-01774-SEB-MJD, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Barrajas v. Noem*, No. 4:25-CV-00322-SHL-HCA, 2025 WL 2717650 (S.D. Iowa Sept. 23, 2025); *Belsai D.S. v. Bondi*, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025) (granting summary judgment holding detention under section 1225(b)(2)(A) unlawful local class of people who ("1) have entered or will enter the United States without inspection, (2) are not apprehended upon arrival, (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231"); *Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Lopez v. Hardin*, No. 2:25-CV-830-KCD-NPM, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025).

58. Courts have uniformly rejected DHS and EOIR's new interpretation because it is contrary to the INA. As the *Lopez Santos* court and others have explained, the plain text of the two provisions demonstrates that section 1226(a), not section 1225(b)(2)(A), applies to people like Mr. Rahimi. 2025 WL 2642278, at *4.

59. Section 1225(b) "applies primarily to aliens seeking entry into the United States," while section 1226 "applies to aliens already present in the United States." *Jennings*, 583 U.S. at 297, 303; *see also Lopez Santos*, 2025 WL 2642278, at *4 (explaining that both statutes are necessary because they "differentiat[e] between the detention of arriving aliens who are seeking entry into the United States under § 1225 and the detention of those who are already present in the

United States under § 1226."). Indeed, "'our immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.'" *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)).

60. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." § 1226(a). These removal hearings are held under section 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]." 8 U.S.C. § 1229a(a)(1).

61. The text of section 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* § 1226(c)(1)(E). Subparagraph (E) states that people who are "inadmissible under paragraph (6)(A) . . . section 1182(a)"—noncitizens who have previously entered without inspection—and are charged with, arrested for, or convicted of certain crimes must be detained. *Id.* The explicit reference to such people in a specific exception makes clear that, by default, such people are afforded a bond hearing under section 1226(a). "When Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez*, 779 F. Supp. 3d at 1256–57 (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). Therefore, noncitizens like Mr. Rahimi, who are present in the United States and charged as inadmissible because they entered without inspection, are subject to detention under section 1226.

62. Meanwhile, section 1225(b) applies to people arriving at ports of entry or those who very recently entered the United States. The section's title refers to "*Inspection* by immigration

officers; expedited removal of inadmissible *arriving* aliens; referral for hearing." § 1225 (emphasis added). As several courts have noted, "[t]he added word of 'arriving' indicates that the statute governs 'arriving' noncitizens, not those present already." *Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (citing *Pizarro Reyes*, 2025 WL 2609425, at *5).

63. Furthermore, the text of section 1225 repeatedly refers to inspections, a term generally understood to refer to determinations of admissibility at time of entry. *See* Brief for American Immigration Lawyers Association and Capital Area Immigrants' Rights Coalition as Amici Curiae Supporting Plaintiffs' Motion for Preliminary Injunction, *Farmworker Ass'n of Fla. v. DeSantis*, 23-cv-226655-RKA, 716 F.Supp.3d 1312 (S.D. Fla. filed Aug. 25, 2023). The use of inspection indicates that the statute is concerned with people who have recently arrived in the United States.

64. The use of the present participle in section 1225 further demonstrates that its applicability does not extend to people already present in the United States. *See United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of verb tense is significant in construing statutes."). The present participle "denotes an ongoing process" that "necessarily implies some sort of present-tense action." *Martinez*, 2025 WL 2084238, at *6 (citations and internal quotations omitted) (concluding that noncitizen was not subject to detention under section 1225(b)(2)(A) because they were not seeking admission).

65. Section 1225(b)(2)(A) applies to noncitizens "seeking admission." The use of present participle in the phrase "seeking admission" implies a "present-tense action" and does not apply to a person who has been living in the country for decades. *Martinez*, 2025 WL 2084238, at *6; *Lopez Benitez*, 2025 WL 2371588 at *7 ("[S]omeone who enters a movie theater without

purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as 'seeking admission' to the theater.").

66. The regulations enacting section 1225(b)(2) similarly use the present participle to refer to "arriving aliens". 8 C.F.R. § 235.2(c). These regulations define "arriving alien" as "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2. A person who has been living in the United States for decades is plainly not "coming or attempting to come into the United States." *Id.*

67. Accordingly, the mandatory detention provision of section 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States when they were apprehended. Instead, Mr. Rahimi is detained under section 1226(a), which requires a bond hearing.

VII. CLAIMS FOR RELIEF

COUNT ONE

Violation of the INA

68. Mr. Rahimi realleges and incorporates by reference the allegations of fact set forth in the preceding paragraphs.

69. 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 section 1226(a), unless they are subject to sections 1225(b)(1), 1226(c), or 1231.

70. The continued application of section 1225(b)(2) to Mr. Rahimi, resulting in his mandatory detention, violates the INA.

COUNT TWO

Violation of Bond Regulations

71. Mr. Rahimi realleges and incorporates by reference the allegations of fact set forth in the preceding paragraphs.

72. An administrative agency is required to adhere to its regulations. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

73. 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* . . . will be eligible for bond and bond redetermination." 62 Fed. Reg. at 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 section 1226 and its implementing regulations.

74. Federal regulations require the government to grant bond hearings to people detained under section 1226(a) at the outset of their detention. 8 C.F.R. § 1236.1(d)(1); *see Jennings*, 583 U.S. at 306.

75. Nonetheless, pursuant to *Matter of Yajure Hurtado*, and in violation of long-standing regulations, EOIR now has a policy and practice of applying section 1225(b)(2) to individuals like Mr. Rahimi.

76. Accordingly, the continued application of section 1225(b)(2) to Mr. Rahimi, resulting in his mandatory detention, violates federal regulations.

COUNT THREE

Fifth Amendment Substantive Due Process

77. Mr. Rahimi realleges and incorporates by reference the allegations of fact set forth in the preceding paragraphs.

78. Mr. Rahimi's ongoing detention violates his substantive due process rights because his liberty is being restricted without justification. *See Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241(c)(3).

79. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

80. Further, courts have recognized that immigrants who the government granted a limited form of immigration relief and allowed to live in the country for years "under the understanding that [they are] unlikely to be subject to enforcement proceedings" possess a cognizable liberty interest. *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *10-11 (W.D. Tex. Oct. 2, 2025) (finding a person who lived in the U.S. for twenty years, including thirteen years with deferred action, has a cognizable liberty interest) (quoting *Gamez Lira v. Noem*, No. 1:25-CV-00855-WJ-KK, 2025 WL 2581710, at *3 (D.N.M. Sept. 5, 2025)).

81. Mr. Rahimi has a fundamental interest in his liberty. The only permissible detention purposes under section 1226—preventing danger and flight risk—are not present here, unlawfully

infringing upon Mr. Rahimi's liberty interest. *See Zadvydas*, 533 U.S. at 690–91; *Demore v. Kim*, 538 U.S. 510, 528 (2003).

82. Accordingly, Mr. Rahimi's continued detention is unconstitutional and he should be released.

COUNT FOUR

Fifth Amendment Procedural Due Process

83. Mr. Rahimi realleges and incorporates by reference the allegations of fact set forth in the preceding paragraphs.

84. The government's infringement on Mr. Rahimi's liberty interest triggers a right to contest that infringement, for example, through a hearing before the right is deprived. *See Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569–70 (1972).

85. The sufficiency of any process afforded is determined by weighing three factors: (i) the private interest that will be affected by the official action, (ii) the risk of erroneous deprivation of that interest through the available procedures, and (iii) 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). "The essence of procedural due process is that a person risking a serious loss be given notice and an opportunity to be heard in a meaningful manner and at a meaningful time." *M.S.L. v. Bostock*, No. 25-cv-1204, 2025 WL 2430267, at *8 (D. Or. Aug. 21, 2025) (citing *Mathews*, 424 U.S. at 348).

86. Mr. Rahimi has a private right to a bond hearing because he is properly detained under a statute, 8 U.S.C. § 1226, that allows for release on bond. Because he was denied any hearing or any other of the procedural protections that such a significant deprivation of his liberty interest would require, his continued detention violates his procedural due process rights. *See Mathews,* 424 U.S. at 332–33.

87. Respondent's failure to grant an individualized hearing on whether Mr. Rahimi's detention is justified to prevent flight or mitigate risk of danger to the community creates the highest risk of erroneous deprivation of liberty. *See Zadvydas*, 533 U.S. at 690.

88. Respondent incurs no additional burden by providing Mr. Rahimi with such process because it merely comports with both the requirements of the INA and the constitutional protections guaranteed by the Fifth Amendment.

89. For these reasons, Mr. Rahimi's ongoing detention is unconstitutional. He should be immediately released.

VIII. PRAYER FOR RELIEF

Wherefore, Mr. Rahimi prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Order that Mr. Rahimi shall not be transferred outside of the Southern District of Texas while this habeas petition is pending;
3. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
4. Issue a Writ of Habeas Corpus requiring that Respondents release Mr. Rahimi or, in the alternative, provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
5. Declare that Mr. Rahimi's detention is unlawful;
6. Grant Mr. Rahimi's any preliminary relief to which he shows himself to be entitled;
7. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, as amended, 28 U.S.C. § 2412, and on any other basis justified under law;
8. Grant any other and further relief that this Court deems just and proper.

Dated: October 8, 2025

/s/ Daniel Hatoum

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*Pro Hac Vice Application Forthcoming

I. VERIFICATION

I have read the foregoing Petition for Writ of Habeas Corpus. I have personal knowledge of the factual allegations contained therein, and if called as a witness to testify, I would competently testify as to the matters stated herein. This declaration is made pursuant to 28 U.S.C. § 1746. I declare under the penalty of perjury that the foregoing is true and correct.

/S/ _____

Petitioner: Shahvo Kh RAHIMI

Date: 10/3/2025