UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

ESVIN SANDOVAL HERNANDEZ-SANCHEZ

Petitioners,

v.

KRISTI NOEM,
Secretary, U.S. Department of Homeland Security;

PAMELA BONDI,
U.S. Attorney General;

GEORGE STERLING,
Deputy Field Office Director of the Atlanta Field Office, U.S. Immigration and Customs Enforcement; and

Warden of FOLKSTON ICE PROCESSING CENTER.

Respondents.

Case No. 2:25-tc-5000

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Esvin Sandoval Hernandez Sanchez ("Mr. Hernandez") entered the United States in 2005 and has resided continuously in the United States since then. Immigration agents recently encountered Mr. Hernandez and placed him in immigration custody pending completion of removal proceedings. Although he has no significant criminal history, and despite his actual arrival in the United States years ago, the Department of Homeland Security ("DHS") and the Executive Office of Immigration Review ("EOIR") have concluded that Mr. Hernandez is

subject to mandatory immigration detention because he is deemed to be "seeking admission" into the United States.

2. DHS and EOIR's position in this case is pursuant to a new policy shift, changing the government's decades-long practice. Respondents' insistence that Mr. Hernandez is subject to mandatory detention is not only a significant shift from past practice, but is contrary to the plain language of the INA and is also in violation of Mr. Hernandez's Constitutional rights.

3. This Court should therefore intervene and grant Mr. Hernandez's petition for a writ of habeas corpus and either order his release from immigration custody or, in the alternative, require EOIR to conduct a bond hearing under 8 U.S.C. § 1226(a) at which DHS bears the burden of proof that continued detention is required.

JURISDICTION AND VENUE

4. Petitioner Mr. Hernandez is detained at the Folkston ICE Processing Center in Folkston, Georgia, and is in the physical custody of Respondents. *See* Exh. A.

5. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. §§ 2201-02 (declaratory relief), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause). Petitioners' detention by Respondents is a "severe restraint" on their individual liberty "in custody in violation of the . . . laws . . . of the United States." *See Hensley v. Municipal Court, San Jose-Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973).

6. 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.

7. Venue lies in the United States District Court for the Southern District of Georgia, the judicial district in which Mr. Hernandez is detained as of the time the petition was filed. *Rumsfeld v. Padilla*, 542 U.S. 426, 434, 447 (2004).

REQUIREMENTS OF 28 U.S.C. § 2243

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

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

10. Mr. Hernandez requests the Court issue an Order to Show Cause, and direct Respondents to file a response within three days, in light of the significant restraint on his liberty.

PARTIES

11. Petitioner Esvin Sandoval Hernandez-Sanchez is a native and citizen of Guatemala who has been in immigration detention since August 29, 2025. Mr. Hernandez is detained in ICE custody at Folkston ICE Processing Center in Folkston, Georgia.

12. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act

(INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

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

14. Respondent George Sterling is the Deputy Field Office Director of the Atlanta Field Office of ICE's Enforcement and Removal Operations division. As such, he is Petitioner's immediate custodian and is responsible for his detention and removal. Mr. Sterling is sued in his official capacity.

15. Respondent Warden of the Folkston ICE Processing Center has direct physical custody of Petitioner. She/He is sued in her/his official capacity.

EXHAUSTION

16. The failure to exhaust administrative remedies does not bar Mr. Hernandez's claims unless "Congress specifically mandates" exhaustion. *Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022) (1993) (quoting *McCarthy v. Madigan*, 503. U.S. 140, 144 (1992)).

17. Moreover, because continued detention violates Mr. Hernandez's right to due process—a constitutional right—administrative exhaustion is excused. *See Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992) ("Exhaustion of administrative remedies may not be required when . . . a plaintiff has raised a 'substantial constitutional question.'").

18. Although the Court may impose exhaustion requirements as a prudential matter, it should not do so in this case because further administrative exhaustion would be futile. Mr. Hernandez has already sought bond before an immigration judge, who has already ruled that he

did not have jurisdiction over the request. *See* Exh. B. Critically, as part of the recent policy shift, the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), concluding that noncitizens who entered the United States without inspection at any point are forever after considered to be "arriving aliens" who are "seeking admission" and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Even though, as discussed below, this decision is legally erroneous, all immigration judges—including Appellate Immigration Judges at the Board of Immigration Appeals—are obligated to apply published Board precedent, and thus the result of any attempted bond request or appeal on the issue is foreclosed. 8 C.F.R. § 103.10(b).

STATEMENT OF FACTS

19. Mr. Hernandez entered the United States approximately twenty years ago at an unknown place and on an unknown date, without inspection or admission. He has resided in the United States since then, and, prior to being placed in detention, lived in Maryland with his wife and three U.S. citizen children. He has lived at the same address for five years. Mr. Hernandez a ticket for failure to display a registration card in violation of Maryland Code § TA.13.409, and otherwise has no criminal history. As such, Mr. Hernandez is neither a flight risk nor a danger to the community.

20. On August 29, 2025, ICE officers encountered and arrested Mr. Hernandez.

21. Upon information and belief, following Mr. Hernandez's arrest, ICE issued a custody determination to continue his detention without an opportunity to post bond or be released on other conditions. He was initially detained at the Riverside Regional Jail in Prince George County, Virginia.

22. On August 30, 2025, ICE filed a Notice to Appear (NTA) with the immigration court charging Mr. Hernandez as an alien present in the United States who has not been admitted

or paroled under 8 U.S.C. § 1182(a)(6)(A)(i) as a noncitizen "present in the United States who has not been admitted or paroled." Exh. C. The NTA did not charge Mr. Hernandez as an arriving alien or applicant for admission. *Id.*

23. Mr. Hernandez then sought a custody redetermination before an immigration judge. Before the hearing could be held, he was transferred to the Elizabeth Contract Detention Facility in Elizabeth, New Jersey.

24. On September 9, 2025, Mr. Hernandez was present by video teleconference for a custody redetermination hearing at the Annandale Immigration Court in Annandale, Virginia. The Immigration Judge concluded that, under *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the immigration court has no jurisdiction to review Mr. Hernandez's custody or set bond. Exh. B.

25. Mr. Hernandez was subsequently transferred to the Folkston ICE Processing Center in Folkston, Georgia, where he remains as of the time of filing this petition.

26. Without relief from this court, Mr. Hernandez faces the prospect of months, or even years, in immigration custody, separated from his family and community.

LEGAL BACKGROUND

27. The Immigration and Nationality Act ("INA") provides for the detention of noncitizens during the pendency of standard removal proceedings under 8 U.S.C. § 1229a, which applies to Mr. Hernandez. The default detention provision is 8 U.S.C. § 1226(a), which provides that a noncitizen "may be arrested and detained pending a decision on whether the alien is to be removed from the United States[.]" 8 U.S.C. § 1226(a). After an arrest, the noncitizen may continue to be detained, released on conditional parole, or released on a bond of at least $1,500. *Id.*

28. Once a noncitizen is detained, DHS makes an initial custody determination. 8 C.F.R. §§ 1003.19(a), 1236.1(d). The noncitizen may have the initial custody determination reviewed by an immigration judge, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), and ultimately by the Board of Immigration Appeals, *see* 8 C.F.R. § 1236.1(d)(3).

29. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208. Among other things, IIRIRA mandated the detention of only certain classes of criminal noncitizens pending removal proceedings, making them generally ineligible for bond or release under 8 U.S.C. § 1226(c). *See* Pub. L. 104-208, Div. C, § 303(a) (codified at 8 U.S.C. § 1226(c)).

30. Separately, IIRIRA created the expedited removal process for certain noncitizens who are in the process of arriving in the United States. 8 U.S.C. § 1225(b). Notably, individuals subject to expedited removal are not eligible for bond pending completion of their removal hearings. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see id.* at 303 (distinguishing individuals subject to § 1225(b) from those "already present in the United States").

31. But outside individuals in the process of arriving in the United States and those subject to detention based on criminal history, noncitizens have been, historically, eligible for a bond hearing under § 1226(a). Indeed, nearly 30 years of agency interpretation of the law would have provided Mr. Hernandez with an opportunity to seek review of his custody through a hearing before an immigration judge under 8 U.S.C. § 1226(a). In fact, just weeks prior to *Yajure Hurtado*, the Attorney General designated for publication a decision recognizing that a noncitizen arrested in the interior of the United States and placed into removal proceedings under 8 U.S.C. § 1229a is detained under 8 U.S.C. § 1226(a) and eligible for release on bond. *See Matter of Akhmedov*, 29 I. & N. Dec. 166 (BIA 2025).

32. Nevertheless, on September 5, 2025, the Board of Immigration Appeals adopted the Department of Homeland Security's novel statutory reading of 8 U.S.C. § 1225(b)(2)(A) in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. The Board found no distinction between the statutory terms "applicant for admission" and "seeking admission," and concluded that § 1225(b)(2) must be read to include all noncitizens who have not been inspected and admitted at any point. *Id.* at 221-22. Further, the Board asserted that legislative history supported its construction, although it did not cite any legislative history addressing the detention statutes. *Id.* at 223-25.

33. Legislative history actually contradicts the Board's analysis. In February 1997, Congressman Lamar Smith, then Chair of the House Subcommittee on Immigration and Claims for the Committee on the Judiciary, wrote to the former Immigration and Naturalization Service ("INS") in response to the INS's proposed rulemaking to implement the provisions of IIRIRA. *See* Exh. D. In his comment on the proposed regulation, he explained the legislative intent behind several provisions of IIRIRA that focused on "prompt apprehension, adjudication, and removal of aliens who are not lawfully present in the United States." *Id.* at 4. Specifically, he discussed expedited removal, the concept of "arriving alien, limitations on relief, changes to proceedings before an immigration judge, and limitations of appeals. *See generally id.* Relevant here, Congressman Smith explained that the definition of "arriving alien" should be limited, and noted that the legislation used the term "arriving alien" "to distinguish aliens at the border of the United States from those who have made a substantial physical entry into the United States." *Id.* at 5-6. Congressman Smith thus recommended the regulations adopt a temporally limited limitation to who is considered "arriving," because "[c]riteria based on time are preferable . . . [and] would embrace both those who remain close to the border as well as those who escape shortly after having

made an entry." *Id.* at 6. Congressman Smith continued, "[b]riefly put, if the alien is caught on the day he or she arrives, the alien is an 'arriving' alien, but not otherwise. This is a common sense approach that should be easy for INS officials to understand and implement." *Id.*

34. In fact, the overwhelming number of Courts to have reviewed this issue agree with this "common sense approach." The recently adopted alternative reading of the statute has been overwhelmingly rejected by district courts that have considered the issue. *See, e.g., Hasan v. Crawford*, -- F. Supp. 3d --, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Sampiao v. Hyde*, -- F. Supp. 3d --, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Lopez Santos v. Noem*, No. 3:25-cv-1193-TAD-KDM (W.D. La. Sept. 11, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Cuevas Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO (HC), 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, No. 25-cv-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Doe v. Moniz*, No. 1:25-cv-12094-IT, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Hernandez Marcelo v. Trump*, No. 3:25-cv-94-RGE-WPK (S.D. Iowa Sept. 10, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Hernandez Nieves v. Kaiser*, No. 25-cv-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Francisco T. v. Bondi*, -- F. Supp. 3d --, 2025 WL 2629838 (D. Minn. Aug. 29, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29,

2025); *Ermeo Sicha v. Bernal*, No. 1:25-cv-00418-SDN, 2025 WL 2494530 (D. Me. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670, at *8 (D. Minn. Aug. 27, 2025); *Calderon v. Kaiser*, 2025 U.S. Dist. LEXIS 163975 (N.D. Cal. Aug. 22, 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); *Arrazola-Gonzales v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Arostegui Castellon v. Kaiser*, No. 1:25-cv-00968 JLT EPG, 2025 WL 2373425 (E.D. Cal. Aug. 14, 2025); *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *1 (S.D.N.Y. Aug. 13, 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); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at * 11-12 (N.D. Cal. Sept. 12, 2025); *Chafla v. Scott*, 2:25-cv-00437-SDN, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Herrera Torralba v. Knight*, No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Ashley v. Ridge*, 288 F. Supp.2d 662, 670 (2003); *Zavala v. Ridge,* 310 F. Supp. 2d 1071, 1077-78 (N.D. Cal. 2004); *Mohammed H. v. Trump*, No. 25-1576 (JWB/DTS), 2025 U.S. Dist. LEXIS 117197, at *15 (D. Minn. June 17, 2025); *Günaydin v. Trump*, No. 0:25-cv-01151-JMB-DLM, 2025 WL 1459154,

at *8-9 (D. Minn. May 21, 2025); *Nguyen v. Scott*, -- F.Supp.3d --, 2025 WL 2419288, at *18-19 (W.D. Wash. Aug. 21, 2025); *Alvarez-Martinez*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 at *4 (W.D. Tex., Sept. 8, 2025); *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446, 451 (D. Conn 2003); *Singh v. Lewis*, No. 4:25-cv-96-RGJ (W.D. Ky. Sept. 22, 2025); *Beltran Barrera v. Tindall*, No. 3:25-cv-541-RGJ (W.D. Ky. Sept. 19, 2025); *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC) (E.D. Cal. Sept. 23, 2025); *Hernandez Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM (M.D. Fla. Sept. 25, 2025); *Encarnacion v. Moniz*, No. 25-12237 (D. Mass. Sept. 5, 2025); *Hilario Rodriguez v. Moniz*, No. 25-12358 (D. Mass. Sept. 18, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Campos Leon v. Forestal*, No. 1:25-cv-01774-SEB-MJD, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Brito Barrajas v. Noem*, No. 4:25-cv-00322 (S.D. Iowa Sept. 23, 2025); *Lorenzo Perez v. Kramer*, No. 4:25-cv-3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Ozuna Carlon v. Kramer*, No. 4:25-cv-3178, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Genchi Palma v. Trump*, No. 4:25-cv-3176, 2025 WL 2624385 (D. Neb. Sept. 11, 2025); *Duenas Arce v. Trump*, No. 8:25-cv-00520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025), *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Sanchez Roman v. Noem*, No. 2:25-cv-01684, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Jimenez v. Bostock*, No. 3:25-cv-00570, 2025 WL 2430381 (D. Or. Aug. 22, 2025); *Garcia Cortez v. Noem*, No. 1:25-cv-02677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Salazar v. Dedos*, No. 1:25-cv-00835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Gamez Lira v. Noem*, No. 1:25-cv-00855 (D.N.M. Sept. 24, 2025); *see also, e.g.*, *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566 at *2 (D. Neb. Sept. 3, 2025); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271

at *3 (D. Neb. Aug. 19, 2025); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025).

35. The new precedent of the Board in *Matter of Yajure Hurtado* deprives Mr. Hernandez of any process by subjecting him—without any relevant criminal history and with many years' residence in the United States—to the same mandatory detention provisions for applicants at the border seeking to initially enter the U.S. or otherwise convicted of serious criminal offenses.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF SUBSTANTIVE DUE PROCESS

36. Mr. Hernandez realleges and incorporates by reference the paragraphs above.

37. As a person living within the United States for many years, Mr. Hernandez is entitled to due process of law. U.S. Const. amend. V; *see generally Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

38. 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*, 533 U.S. at 690.

39. The "Fifth and Fourteenth Amendments' guarantee of 'due process of law' [] include[s] a substantive component, which forbids the government to infringe certain 'fundamental' liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (emphasis in original). Substantive due process "prevents the government from engaging

in conduct that shocks the conscience, or interferes with rights implicit in the concept of ordered liberty." *United States v. Salerno*, 481 U.S. 739, 746 (1987).

40. The substantive due process right to be free from arbitrary detention extends to noncitizens detained during removal proceedings, and even those who have already been ordered removed from the U.S. on account of past criminal violations. *Zadvydas*, 533 U.S. at 690 (permitting detention in non-punitive circumstances only where "special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint.").

41. Indeed, the liberty interest in freedom from detention "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 FU.S. 507, 529 (2004).

42. Mr. Hernandez has a fundamental interest in liberty and being free from official restraint, and the government's detention of him without a bond redetermination hearing before a neutral arbiter to determine whether he is a flight risk or danger to others violates his right to due process.

COUNT TWO

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

43. Mr. Hernandez realleges and incorporates by reference the paragraphs above.

44. Mr. Hernandez also should not be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). However, absent this Court granting bond outright or otherwise ordering the immigration court to consider bond while not applying 8 U.S.C. § 1225(b)(2)(A), the immigration court will still find him subject to mandatory detention. This is because the Board of Immigration Appeals recently ruled that all noncitizens who have entered the United States without being admitted (i.e., without inspection and admission on a visa), are subject to mandatory detention under 8 U.S.C. § 1225(b). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216.

45. This Court should declare that Mr. Hernandez is subject to detention under § 1226(a), not § 1225(b)(2)(A). The Supreme Court has long recognized a clear distinction between noncitizens who are stopped at our borders and those who have entered the United States, even illegally. *See Zadvydas*, 533 U.S. at 693; *United States* v. *Verdugo Urquidez,* 494 U. S. 259, 269 (1990) (Fifth Amendment's protections do not extend to noncitizens outside the territorial boundaries); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). The Supreme Court has stressed that once noncitizens "enter the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary or permanent." *Zadvydas*, 533 U.S. at 693.

46. Consistent with that distinction, the INA establishes separates procedures for the removal and detention of arriving or recently arrived noncitizens and those who have entered and established a presence in the United States, even those who have done so in violation of the immigration laws. For the latter, like Mr. Hernandez, the INA mandates that "an immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of a [noncitizen]." 8 U.S.C. § 1229a(a)(1). Removal proceedings under 8 U.S.C. § 1229a(a)(1) "shall be the sole and exclusive procedure from the United States" unless otherwise specified in the INA. 8 U.S.C. § 1229a(a)(3).

47. For noncitizens in standard removal proceedings under § 1229a (§ 240 of the INA), as Petitioners are, the INA mandates detention pending proceedings for certain classes of criminal noncitizens, as discussed above. *See* 8 U.S.C. § 1226(c). But, as discussed above, the application of § 1226(c) to Petitioners violates their Constitutional due process rights.

48. For noncitizens not subject to § 1226(c) detention, a noncitizen "may be arrested and detained" pending removal "[o]n a warrant issued by the Attorney General." 8 U.S.C.

§ 1226(a). For noncitizens held under § 1226(a), DHS makes an initial custody determination. 8 C.F.R. §§ 1003.19(a), 1236.1(d). The noncitizen may continue to be detained, released on conditional parole, or released on a bond of at least $1,500. *See* 8 U.S.C. § 1226(a). The noncitizen may, upon request, have the initial custody determination reviewed by an immigration judge, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), and ultimately by the Board, *see* 8 C.F.R. § 1236.1(d)(3).

49. In 1996, Congress created separate, expedited procedures for certain "applicants for admission" deemed to be "arriving aliens."[1] 8 U.S.C. § 1225(b). The INA defines an applicant for admission as a noncitizen "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including a [noncitizen] who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1). The INA further clarifies that the term "application for admission" has "reference to the application for admission *into* the United States," making clear that the term applies to those applying to enter into the United States in a geographic sense. 8 U.S.C. § 1101(a)(4) (emphasis added).

50. As Congressman Lamar Smith explained in his comment on the 1997 INS regulation, "the intent of these provisions [was] to deter alien smuggling and other attempts to enter the United States illegally," and also to ensure those who had a reasonable possibility of being granted asylum were provided full hearings to seek that relief. *See* Exh. D at 1-2.

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[1] "Arriving alien" is a term of art defined by regulation as "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port of entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to designated port of entry and regardless of the means of transport." 8 C.F.R. § 1.2.

51. Critically, expedited removal proceedings do not apply to all "applicants for admission." Instead, they may be applied only to: (1) individuals who are arriving in the United States at a port of entry without valid documents; and (2) those without valid documents who have been in the United States for less than two years and have not been admitted or paroled. 8 U.S.C. § 1225(b)(1)(A)(iii)(II); *see Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020). Further, this second subset of individuals—noncitizens who have been in the United States for less than two years and have not been admitted or paroled—only become subject to expedited removal if so designated by DHS.[2] *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I) (granting discretionary authority to apply expedited removal to any or all noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II)); *Thuraissigiam*, 591 U.S. at 109; *United States v. Texas*, 144 F.4th 632 (5th Cir. 2025). Noncitizens placed in expedited removal proceedings are referred to standard removal proceedings under § 1229a if they establish a credible fear of persecution if removed. *See* 8 U.S.C. § 1225(b). Otherwise, the noncitizen is ordered removed "without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii). Further, any noncitizen "subject to the procedures under [8 U.S.C. § 1225(b)] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iv).

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[2] On January 24, 2025, the Department of Homeland Security issued a notice designating the entire subset of noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II) subject to expedited removal: noncitizens "determined to be inadmissible under [8 U.S.C. §§ 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown . . . that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility." Notice, Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025). Yet, the District Court for the District of Columbia recently stayed this designation in *Make the Road New York v. Noem*, No. 25-cv-190, 2025 WL 2494908 (D.D.C. Aug. 29, 2025).

52. Finally, § 1225(b)(2) includes a provision mandating the detention of certain "applicants for admission" not covered by § 1225(b)(1). Yet in keeping with the statute's focus on arriving aliens, the statute does not mandate detention for all applicants for admission but only those who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2). Courts and the U.S. Government have consistently taken the position that noncitizens who have entered without inspection and are encountered in the United States years after their initial entry are entitled to removal proceedings under § 1229a and subject to detention under § 1226. *See, e.g.*, *Jennings*, 583 U.S. at 303 ("While the language of §§ 1225(b)(1) and (b)(2) is quite clear, §1226(c) is even clearer. As noted, § 1226 applies to *aliens already present in the United States.*") (emphasis added); IIRIRA Implementing Regulation, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite 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."); *Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025) (holding that a noncitizens who has been residing in the United States for more than two years cannot be classified as an "alien seeking admission"); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025).

53. Yet on July 8, 2025, the Government abruptly rejected the reading of 8 U.S.C. § 1226(a) it had employed for decades. In a complete reversal, "DHS, in coordination with the Department of Justice (DOJ). . . revisited its legal position on detention and release authorities," and issued guidance instructing all ICE employees that 8 U.S.C. § 1225 rather than § 1226 "is the applicable immigration detention authority for all applicants for admission." Exh. E, Interim Guidance Regarding Detention Authority for Applicants for Admission. This reading of the statute has been overwhelmingly rejected by district courts that have considered the issue. *See, supra* ¶ 34.

54. This court should join its sister districts and conclude that individuals like Mr. Hernandez who have been in the United States for decades are not subject to detention under 8 U.S.C. § 1225(b)(2). The plain language of the INA is clear: § 1225(b)(2) "authorizes the Government to detain aliens *seeking admission into the country*," and § 1226(a) "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Jennings*, 583 U.S. at 289; *accord Sampiao*, --F. Supp. 3d--, 2025 WL 2607924, at *8; *Gomes*, 2025 WL 1869299, at *5; *Carmona-Lorenzo*, 2025 WL 2531521, at *2.

55. As the Supreme Court recognized in *Jennings*, § 1225(b) focuses on individuals arriving at the border and ports of entry and thus are in the process of "seeking admission." *Jennings*, 583 U.S. at 297, 303; *see also* 8 C.F.R. § 1.2 (addressing noncitizens who are geographically "coming or attempting to come into the United States."). Conversely, § 1226(a) focuses on individuals who are in the United States and the Government is seeking to remove through removal proceedings. *Jennings*, 583 U.S. at 303. The INA further clarifies that the term "application for admission" has "reference to the application for admission into the United States," making clear that the term applies to those applying to enter into the United States physically. 8 U.S.C. § 1101(a)(4). Mr. Hernandez, who has been physically present and established significant connections in the United States for many years cannot reasonably described as "seeking admission."

56. Conversely, to apply the statute to "all applicants for admission" regardless of whether they are "seeking admission," as EOIR has concluded in *Matter of Yajure Hurtado*, would render the phrase "seeking admission" redundant. *See Martinez*, 2025 WL 2084238, at *2. And to "treat[] the terms 'applicant for admission' and 'alien seeking admission' as synonymous [would] violate[] the principle that Congress is presumed to have acted intentionally in choosing different

words in a statute, such that different words and phrases should be accorded different meanings." *Benitez*, 2025 WL 2371588, at *6.

57. Additionally, applying § 1225(b)(2) to all noncitizens except those who have been admitted could not have been Congress's intent because it would render other mandatory detention provisions, such as § 1226(c)(1)(E), superfluous. *Sampiao*, -- F. Supp. 3d --, 2025 WL 2607924, at *8; *Rodriguez*, 779 F. Supp. 3d at 1259; *Gomes*, 2025 WL 1869299, at *7. As discussed above, that provision requires mandatory detention for individuals who are present in the United States without being admitted or paroled and who are subject to specific criminal conduct criteria. *Sampiao*, -- F. Supp. 3d --, 2025 WL 2607924, at *8. If all noncitizens who are inadmissible are subject to mandatory detention, there would be no reason for Congress to have enumerated which inadmissible noncitizens are subject to mandatory detention under § 1226(c).[3] *Id.* And if Congress intended § 1225(b) detention to extend to all noncitizens who have not been admitted, the recent amendments would be unnecessary. *Sampiao*, -- F. Supp. 3d --, 2025 WL 2607924, at *8 (citing the *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.").

58. Thus, this Court must find that to subject Mr. Hernandez to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) would be a clear violation of the INA.

COUNT THREE

VIOLATION OF PROCEDURAL DUE PROCESS

59. Mr. Hernandez realleges and incorporates by reference the paragraphs above.

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[3] *See also* Exh. D at 4 (stating only that IIRIRA required detention of "criminal aliens from the time of their apprehension until they are removed from the United States"—not all noncitizens who had not been admitted upon entry).

60. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). The Supreme Court has been clear that for noncitizens "*on the threshold of initial entry* . . . [w]hatever the procedure authorized by Congress is, it is due process." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (emphasis added). However, Mr. Hernandez—after many years in the United States—is clearly not on the threshold of initial entry. Indeed, it is well established that noncitizens like him who "once passed through our gates, even illegally" are entitled to greater constitutional protections. *Id.*; *see also Zadvydas v. Davis*, 553 U.S. 678, 693 (2001) ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to [noncitizens] outside of our geographic borders."). Thus, even if the Government were to argue that he is properly detained under § 1225(b)(2)—which he is not—his detention still does not comply with due process. Rather, as an individual who has "passed through our gates" he is entitled to greater constitutional protections than those at the threshold of initial entry for whom due process is defined by the procedures set by Congress. *Miranda v. Garland*, 34 F.4th at 346-47 (recognizing due process rights for those who have entered without inspection).

61. In Respondents' contrasting version of the INA, as espoused in *Matter of Yajure Hurtado*, Mr. Hernandez may be stripped of any mechanism to require the government to justify his detention. Such a lack of *any* process, necessarily leading to an erroneous deprivation of liberty, cannot be supported by the Constitution.

PRAYER FOR RELIEF

Based on the foregoing, Mr. Hernandez requests that this Court:

a. Assume jurisdiction over the matter;

b. Declare that 8 U.S.C. § 1226(a) governs Mr. Hernandez's detention by U.S. immigration authorities;

c. Order that Mr. Hernandez be released from immigration custody or, alternatively, afforded a bond hearing as authorized under 8 U.S.C. § 1226(a) at which 8 U.S.C. § 1225(b)(2)(A) cannot be applied, DHS bears the burden of proof, and the immigration judge consider his ability to pay bond as part of the factors in setting bond;

d. Award attorney's fees and costs under the Equal Access to Justice Act; and

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

Dated: October 3, 2025

Respectfully submitted,

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