

Eastern District of Kentucky  
**FILED**

OCT 23 2025

AT LEXINGTON

Robert R. Carr

CLERK U.S. DISTRICT COURT

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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY

B.D.E.,

Petitioner,

v.

Russell HOTT, Field Office Director of  
Enforcement and Removal Operations, Chicago  
Field Office, Immigration and Customs  
Enforcement; Kristi NOEM, Secretary, U.S.  
Department of Homeland Security; U.S.  
DEPARTMENT OF HOMELAND  
SECURITY; Pamela BONDI, U.S. Attorney  
General; EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW; James DALEY,  
Campbell County Detention Center Jailer,

Respondents.

Case No. 2:25-cv-168-DCC

**PETITION FOR WRIT OF  
HABEAS CORPUS**

1 **INTRODUCTION**

2 1. Petitioner B.D.E. ("Petitioner" or "B.D.E.") is in the physical custody of  
3 Respondents at the Campbell County Detention Center in Newport, Kentucky. She now faces  
4 unlawful detention because the Department of Homeland Security (DHS) and the Executive  
5 Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory  
6 detention under 8 U.S.C. § 1225(b)(2)(A).

7 2. B.D.E. is a 29-year-old single mother of three United States citizen children and  
8 domestic violence survivor. She was brought to the United States shortly before her eighth  
9 birthday. She has resided in Chicago, Illinois since 2004.

10 3. B.D.E. is represented by counsel in her removal proceedings. She is eligible and  
11 has applied for two forms of cancellation of removal under 8 U.S.C. § 1229b(b)(1) and (b)(2),  
12 including for battered spouses.

13 4. B.D.E. is charged with, inter alia, having entered the United States without  
14 inspection. 8 U.S.C. § 1182(a)(6)(A)(i).

15 5. B.D.E. was initially detained by Immigration & Customs Enforcement (ICE) on  
16 November 22, 2022. She was processed by ICE and released on her own recognizance under 8  
17 U.S.C. § 1226(a) with a Notice to Appear in immigration court.

18 6. Although B.D.E. fully complied with her obligations under immigration law and  
19 has multiple pending applications for immigration relief, on August 29, 2025, ICE took her into  
20 its custody, where she remains. She was detained by ICE outside her home after dropping her  
21 children off at school.

22 7. On July 8, 2025, DHS issued a new policy instructing all Immigration and  
23 Customs Enforcement (ICE) employees to consider anyone inadmissible  
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1 under Section 1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to  
2 be an “applicant for admission” under Section 1225(b)(2)(A) and therefore subject to mandatory  
3 detention. Consistent with this policy, DHS has denied Petitioner release from immigration  
4 custody.

5 8. Petitioner’s detention on this basis violates the plain language of the Immigration  
6 and Nationality Act (INA). Section 1225(b)(2) does not apply to individuals like Petitioner, who  
7 entered the United States 21 years ago and who was apprehended hundreds of miles from any  
8 border or port of entry. Instead, such individuals are subject to discretionary detention  
9 under Section 1226(a), which allows for release on conditional parole or bond. That statute  
10 expressly applies to people who, like Petitioner, are charged as inadmissible for having entered  
11 the United States without inspection.

12 9. Respondents’ new legal interpretation is plainly contrary to the statutory text,  
13 statutory framework, Congressional intent, decades of agency practice, and decisions of federal  
14 courts across the nation, which apply Section 1226(a) to people like Petitioner.  
15 Further, Respondents’ detention of Petitioner without a bond redetermination hearing  
16 to determine whether she is a flight risk or danger to others violates her right to due process.

17 10. Accordingly, B.D.E. seeks a writ of habeas corpus requiring that she be released  
18 from custody, or in the alternative, B.D.E. respectfully requests that this Court order  
19 Respondents to show cause why this Petition should not be granted within three days. *See* 28  
20 U.S.C. § 2243.

## 21 JURISDICTION

22 11. Petitioner is in the physical custody of Respondents. She is detained at the  
23 Campbell County Detention Center in Newport, Kentucky.

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1 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208  
2 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

3 18. “At its historical core, the writ served as a means of reviewing the legality of  
4 Executive detention. The traditional remedy provided by habeas is removing the injury of unjust  
5 and illegal confinement. The traditional function of the writ is to secure release from illegal  
6 custody.” *Hamama v. Adducci*, 912 F.3d 869, 875 (6th Cir. 2018) (cleaned up).

7 **PARTIES**

8 19. Petitioner B.D.E. is a citizen of Mexico who has been in immigration detention  
9 since August 29, 2025. After arresting Petitioner in Chicago, Illinois, ICE did not set bond. On  
10 September 17, 2025, B.D.E. was denied bond by an IJ at the Chicago Immigration Court because  
11 she was deemed an “applicant for admission” pursuant to *Matter of Yajure Hurtado*, 29 I. & N.  
12 Dec. 216 (BIA 2025). B.D.E. has resided in the United States since 2004.

13 20. Respondent Russell Hott is the ICE Field Office Director for the Chicago Area of  
14 Responsibility, which includes Kentucky. As such, Russell Hott is Petitioner’s immediate  
15 custodian and is responsible for Petitioner’s detention and removal. He is named in his official  
16 capacity.

17 21. Respondent Kristi Noem is the Secretary of the Department of Homeland  
18 Security. She is responsible for the implementation and enforcement of the Immigration and  
19 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms.  
20 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

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



1 second case earlier this year. Since her last criminal arrest in February 2022, B.D.E. has had no  
2 further violations of the law.

3 29. B.D.E.'s oldest child has been diagnosed with trauma disorder and ADHD. After  
4 expressing suicidal ideations in 2024, she began seeing a therapist and was still seeing the  
5 therapist at the time of B.D.E.'s arrest.

6 30. DHS placed B.D.E. in removal proceedings before the Chicago Immigration  
7 Court pursuant to 8 U.S.C. § 1229a in November 2022, subsequent to her last DUI arrest. ICE  
8 charged B.D.E. with, inter alia, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone  
9 who entered the United States without inspection. ICE decided not to take B.D.E. into custody,  
10 instead releasing her on her own recognizance under 8 U.S.C. § 1226(a).

11 31. B.D.E. has demonstrated that she is neither a flight risk nor a danger to the  
12 community. Prior to her August 29, 2025, detention, B.D.E. attended all required ICE  
13 appointments and court dates and filed multiple applications for relief, including applications for  
14 a U non-immigrant visa and cancellation of removal pursuant to 8 U.S.C. § 1229b(b). B.D.E. has  
15 a strong defense to deportation and every incentive to continue attending court dates.

16 32. B.D.E. has been an integral member of her community. Over the last few years,  
17 she has regularly volunteered with her children's school and her church, and she has always been  
18 willing to lend a helping hand to those around her. Prior to her detention, she had recently  
19 received her employment authorization document and social security card and was working hard  
20 to build a stable life for herself and her children.

21 33. B.D.E. has been committed to her rehabilitation since her last DUI more than two  
22 and a half years ago. B.D.E. participated in treatment programs and regularly attended AA  
23 meetings. She has not had a drink in almost three years.

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1           34.     On August 29, 2025, just after dropping two of her kids off at school, B.D.E. was  
2 arrested outside her home. Her son was inside the home at the time, as he was ill and had not  
3 gone to school that day. Without regard for her child, plainclothes ICE officers forced B.D.E.  
4 into a van and took her to the ICE processing center in Broadview, Illinois, where she remained  
5 in poor conditions for three days. B.D.E. was then transferred to the Campbell County Detention  
6 Center, where she remains detained.

7           35.     B.D.E., who suffers from depression and PTSD, has struggled in detention. She  
8 has held on for the sake of her children. B.D.E.'s twelve-year-old daughter is currently staying  
9 with a friend while her younger two children are in the custody of their father, the ex-partner  
10 who abused B.D.E. for several years and against whom B.D.E. has an active order of protection.

11           36.     Following B.D.E.'s arrest and transfer to Campbell County Detention Center,  
12 B.D.E. filed a motion for custody redetermination with the Immigration Court on the morning of  
13 September 5, 2025. Later that same day, the Board issued its decision in *Matter of Yajure*  
14 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Pursuant to *Matter of Yajure Hurtado*, at B.D.E.'s  
15 bond hearing on September 17, 2025, the Immigration Judge denied bond based on a finding that  
16 he lacked jurisdiction.

17           37.     Any appeal of this determination is futile, as the BIA recently held in a published  
18 decision that persons like Petitioner are subject to mandatory detention as applicants for  
19 admission under § 1225(b)(2)(A). *See Mosqueda v. Noem*, 2025 WL 2591530, at \*7 (C.D. Cal.  
20 Sept. 8, 2025) (noting that BIA's decision in *Yajure Hurtado* renders prudential exhaustion  
21 futile).

22           38.     As a result, B.D.E. remains in detention. Without relief from this court, she faces  
23 the prospect of months, or even years, in immigration custody, separated from her children –  
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1 whom she had been raising on her own – and community, without ever receiving an  
2 individualized hearing justifying her detention in violation of the INA and Due Process.

### 3 EXHAUSTION OF REMEDIES

4 39. No statutory requirement of administrative exhaustion applies to Petitioner’s case.  
5 Moreover, the judicially created “general rule that parties exhaust prescribed administrative  
6 remedies before seeking relief from the federal courts” does not apply to Petitioner’s present  
7 challenge, as there are no prescribed administrative remedies to which she could  
8 resort. *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992), *superseded by statute on other*  
9 *grounds as recognized in Woodford v. Ngo*, 548 U.S. 81 (2006).

10 40. In particular, DHS has taken the position that a noncitizen like Petitioner, who  
11 entered without inspection, is subject to mandatory detention under 8 U.S.C. § 1225, and the  
12 Executive Office for Immigration Review has affirmed that view. In a published decision, the  
13 Board of Immigration Appeals recently held that “Immigration Judges lack authority to hear  
14 bond requests or to grant bond to [noncitizens] who are present in the United States without  
15 admission.” *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under the BIA’s  
16 interpretation, Petitioner is ineligible for bond as a noncitizen who entered the United States  
17 without inspection. Accordingly, there are no administrative remedies that she could exhaust  
18 before seeking habeas relief. *See Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219, at \*3  
19 (W.D. Ky. Sept. 22, 2025) (“[t]he United States has made clear their position on Section  
20 1225, and it is being applied at all levels within the DHS. Therefore, it is unlikely that any  
21 administrative review would lead to the United States changing its position and precluding  
22 judicial review”); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at \*4  
23 (E.D. Mich. Aug. 29, 2025) (“Because exhaustion would be futile and unable to provide Lopez-  
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1 Campos with the relief he requests in a timely manner, the Court waives administrative  
2 exhaustion and will address the merits of the habeas petition.”).

3 41. Further, neither an immigration judge nor the Board of Immigration Appeals can  
4 rule on a petitioner’s constitutional claims. *See Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2  
5 (B.I.A. 2020) (holding that IJs and the BIA lack any authority to consider the constitutionality of  
6 the statutes or regulations governing immigration detention that they administer and are bound to  
7 follow); *Matter of C--*, 20 I. & N. Dec. 529, 532 (B.I.A. 1992) (“[I]t is settled that the  
8 immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act  
9 and the regulations.”); *see also Gonzalez v. O’Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004)  
10 (noting that “the BIA has no jurisdiction to adjudicate constitutional issues”).

#### 11 LEGAL FRAMEWORK

##### 12 I. Detention Authority and Respondent’s Efforts to Expand Mandatory Detention

13 42. The INA prescribes three basic forms of detention for the vast majority  
14 of noncitizens in removal proceedings.

15 43. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens “already in the  
16 country.” *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Section 1226(a) “sets out the  
17 default rule: The Attorney General may issue a warrant for the arrest and detention of a[]  
18 [noncitizen] ‘pending a decision on whether the [noncitizen] is to be removed from the United  
19 States.’” *Id.* at 288 (quoting § 1226(a)). Individuals in Section 1226(a) detention  
20 are generally entitled to a bond hearing at the outset of their detention. *See* § 1226(a)(2); 8  
21 C.F.R. §§ 1003.19(a), 1236.1(c)(8), (d)(1); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239,  
22 1247 (W.D. Wash. 2025) (“those detained under Section 1226(a) are entitled to a bond hearing  
23 before an [immigration judge] at any time before entry of a final removal order.”).

1           44.     Section 1226(c) “carves out a statutory category” of noncitizens from Section  
2 1226(a) for whom detention is mandatory, comprised of individuals who have committed certain  
3 “enumerated ... criminal offenses [or] terrorist activities.” *Jennings*, 583 U.S. at 289 (citing §  
4 1226(c)(1)). Among the individuals carved out and subject to mandatory detention are certain  
5 categories of “inadmissible” noncitizens. § 1226(c)(1)(A), (D), (E). Reference to such  
6 inadmissible noncitizens makes clear that, by default, people who are applicants for admission  
7 but encountered in the interior are afforded a bond hearing under subsection 1226(a). Courts  
8 have recently confirmed this understanding of Section 1226. *See Rodriguez Vazquez*, 779 F.  
9 Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393,  
10 400 (2010)) (“When Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’  
11 that absent those exceptions, the statute generally applies.”); *see also, e.g., Gomes v. Hyde*, No.  
12 1:25-CV-11571-JEK, 2025 WL 1869299, at \*6 (D. Mass. July 7, 2025) (“inadmissibility on one  
13 of the three grounds specified in Section 1226(c)(1)(E)(i) is not by itself sufficient to except [a  
14 noncitizen] from Section 1226(a)’s discretionary detention framework”).

15           45.     Second, the INA provides for mandatory detention of certain categories of  
16 noncitizens “seeking entry into the United States” under 8 U.S.C. § 1225(b). *Jennings*, 583 U.S.  
17 at 297; *see* § 1225(b) (“Inspection of applicants for admission”).

18           46.     In *Jennings*, the Supreme Court explained that this mandatory scheme applies “at  
19 the Nation’s borders and ports of entry, where the Government must determine  
20 whether a[] [noncitizen] seeking to enter the country is inadmissible.” *Jennings*, 583 U.S. at 287  
21 (emphasis added). Noncitizens subject to mandatory detention under Section 1225 may not be  
22 released except “for urgent humanitarian reasons or significant public benefit” under the parole  
23 authority provided by 8 U.S.C. § 1182(d)(5)(A). *See id.* at 300.

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1           47. Section 1225 is split into two categories. Section 1225(b)(1) provides for  
2 mandatory detention of noncitizens charged with enumerated grounds of inadmissibility and  
3 placed in expedited removal proceedings. 8 U.S.C. § 1225(b)(1)(A)(i). Meanwhile, Section  
4 1225(b)(2) applies only to recently arrived noncitizens seeking entry at a border or port of  
5 entry. *See infra* ¶ 55-69.

6           48. Last, the INA also provides for detention of noncitizens who have been ordered  
7 removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)-(b).

8           49. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

9           50. Respondents have recently taken various steps seeking to expand their use of  
10 mandatory detention under Section 1225(b)(2) beyond its plain language.

11           51. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that  
12 rejected well-established understanding of the statutory framework and reversed decades of  
13 practice. *See* U.S. Immigration and Customs Enforcement, Interim Guidance Regarding  
14 Detention Authority for Applicants for Admission (July 8, 2025), [https://www.aila.org/ice-](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission)  
15 [memo-interim-guidance-regarding-detention-authority-for-applications-for-admission](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission).

16           52. The new policy claims that all persons who entered the United States without  
17 inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225 and therefore  
18 are subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of  
19 when a person is apprehended and affects those who have resided in the United States for  
20 months, years, and even decades.

21           53. On September 5, 2025, the Board of Immigration Appeals (BIA) issued a  
22 published decision adopting this same position. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216  
23 (BIA 2025). That decision holds that all noncitizens who entered the United States without  
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1 admission or parole are considered applicants for admission and are ineligible for immigration  
2 judge bond hearings.

3 **II. Respondent's Policy on Section 1225(b)(2) Is Incorrect**

4 54. Respondent's policy, that all undocumented noncitizens who entered without  
5 inspection are considered applicants for admission and subject to mandatory detention under  
6 Section 1225(b)(2)(A), is incorrect. Instead, the statutory text, the statutory framework,  
7 Congressional intent, the longstanding practice of the agency, and the decisions of many federal  
8 courts across the nation – including this one – limit Section 1225(b)(2)'s scope to recently  
9 arrived noncitizens seeking admission at a border or port of entry.

10 a. *Statutory Text*

11 55. The text of Section 1225, along with its placement in the overall detention scheme  
12 of the INA, make clear that the terms “applicant for admission” and “seeking admission” in  
13 Section 1225(b)(2) do not include individuals who have entered without inspection and are  
14 apprehended when already inside the United States.

15 56. Section 1225 is titled: “Inspection by immigration officers; expedited removal of  
16 inadmissible *arriving* aliens; referral for hearing.” (emphasis added). As courts  
17 have recognized, “[t]he added word of ‘arriving’ indicates that the statute governs ‘arriving’  
18 noncitizens, not those present already.” *Beltran Barrera v. Tindall*, No. 3:25-CV-541-RGJ,  
19 2025 WL 2690565, at \*4 (W.D. Ky. Sept. 19, 2025) (citing *Pizarro Reyes v. Raycraft*, No. 25-  
20 CV-12546, 2025 WL 2609425, at \*5 (E.D. Mich. Sept. 9, 2025)). This limitation is particularly  
21 clear when compared to Section 1226's general title: “Apprehension and detention of aliens.”

22 57. Further, Section 1225(b)(2)'s specific subheading, “Inspection of Other Aliens,”  
23 subsection 1225(b)(2)(B)'s mention of “crewm[e]n” and “stowaway[s],” and subsection  
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1 1225(b)(2)(C)'s use of the active language "arriving," reinforce the limited scope of Section  
2 1225(b)(2)'s applicability to those who have recently arrived at a border or port of entry.

3 58. Finally, the term "seeking" in "seeking admission" "implies action – something  
4 that is currently occurring, and in this instance, would most logically occur at the border upon  
5 inspection." *Lopez-Campos*, 2025 WL 2496379, at \*6 (E.D. Mich. Aug. 29, 2025); *see*  
6 *also Beltran Barrera*, 2025 WL 2690565, at \*4. Noncitizens who are present in the country for  
7 years are not "seeking admission." *Lopez-Campos*, at \*6; *Beltran Barrera*, at \*4.

8 **b. Statutory Framework**

9 59. The statutory framework further supports that Section 1225(b)(2) does not apply  
10 to noncitizens, like Petitioner, who have lived in the United States for years and who were  
11 apprehended while residing within the United States.

12 60. The INA's entire framework is premised on Section 1225 governing detention of  
13 "arriving [noncitizens]" while Section 1226 "applies to [noncitizens] already present in the  
14 United States." *Jennings*, 583 U.S. at 288, 301; *see also Lopez Benitez v. Francis*, No. 25 CIV.  
15 5937 (DEH), 2025 WL 2371588, at \*8 (S.D.N.Y. Aug. 13, 2025) ("[T]he line historically drawn  
16 between sections 1225 and 1226, which makes sense of their text and the overall statutory  
17 scheme, is that section 1225 governs detention of non-citizens 'seeking admission into the  
18 country,' whereas section 1226 governs detention of non-citizens 'already in the  
19 country.'" (cleaned up) (citing *Jennings*, 583 U.S. at 288-89); *Martinez v. Hyde*, 2025 WL  
20 2084238, at \*8 (D. Mass. July 24, 2025) ("The idea that a different detention scheme would  
21 apply to non-citizens 'already in the country,' as compared to those 'seeking admission into the  
22 country,' is consonant with the core logic of our immigration system ") (cleaned up)  
23 (citing *Jennings*, 583 U.S. at 289).

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1           61.     A fundamental principle of statutory construction is that courts must interpret  
2 statutes to give meaning to all provisions and avoid reading out or rendering superfluous any  
3 single provision. *Corley v. United States*, 556 U.S. 303, 314 (2009) (“one of the most basic  
4 interpretive canons . . . [a] statute should be construed so that effect is given to all its provisions,  
5 so that no part will be inoperative or superfluous, void or insignificant[.]”) (cleaned up). The  
6 government’s current reading of Section 1225(b)(2) violates this principle.

7           62.     Section 1226(c) includes carve outs for certain categories of inadmissible  
8 noncitizens, who would otherwise fall under Section 1226(a), that are instead subject to  
9 mandatory detention. 8 U.S.C. § 1226(c)(1)(A), (D), (E). The inclusion of these carve outs in  
10 Section 1226(c) indicates that, contrary to Respondents’ interpretation, there are noncitizens who  
11 have not been admitted and that are not governed by Section 1225’s mandatory detention  
12 scheme. Indeed, if the government’s interpretation were correct, it would render these portions of  
13 Section 1226(c) superfluous since those same individuals would already be subject to mandatory  
14 detention under Section 1225(b)(2).

15           63.     The recent amendment to Section 1226(c) confirms this statutory framework. Just  
16 this year, Congress passed the Laken Riley Act, which added additional categories of Section  
17 1226(a) carve outs that are now subject to mandatory detention under Section 1226(c). Laken  
18 Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). Specifically,  
19 the Laken Riley Act mandates the detention of noncitizens who are inadmissible under  
20 §§ 1182(a)(6)(A) (noncitizens “present in the United States without being admitted or paroled”),  
21 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and who have  
22 been arrested for, charged with, or convicted of certain crimes. *Id.* Again, if Section 1225(b)(2)  
23 were already meant to subject these groups of inadmissible noncitizens to mandatory detention, it

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1 would render this portion of the Laken Riley Act redundant. *See Beltran Barrera*, 2025 WL  
2 2690565, at \*4; *Lopez-Campos*, 2025 WL 2496379, at \*8.

3 c. ***Congressional Intent and Longstanding Agency Practice***

4 64. Congressional intent and longstanding historical practice  
5 underscore Petitioner's reading of the statute.

6 65. The current detention system has been in place since the passage of the Illegal  
7 Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208,  
8 Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585.

9 66. Following the enactment of the IIRIRA, the Executive Office for Immigration  
10 Review drafted new regulations explaining that, in general, people who entered the country  
11 without inspection were not considered detained under Section 1225 and that they were instead  
12 detained under Section 1226(a) and eligible for bond and bond redetermination. *See* 62 Fed. Reg.  
13 10312, 10323 (Mar. 6, 1997).

14 67. In the decades that followed, most people who entered without inspection and  
15 were apprehended inside the United States were detained under Section 1226(a) and received  
16 bond hearings, unless their criminal history rendered them ineligible. That practice was  
17 consistent with many more decades of prior practice, in which noncitizens who were  
18 not deemed “arriving” were entitled to a custody hearing before an immigration judge or other  
19 hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229  
20 (1996) (noting that Section 1226(a) simply “restates” the detention authority previously found at  
21 Section 1252(a)).

22 d. ***Recent Federal Court Decisions Confirming Petitioner's Position***

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1           68. Numerous federal courts have reached conclusions consistent  
2 with Petitioner's position. For example, after immigration judges in the Tacoma, Washington,  
3 stopped providing bond hearings for persons who entered the United States without inspection,  
4 the U.S. District Court in the Western District of Washington found that such a reading of the  
5 INA is likely unlawful and that Section 1226(a), not Section 1225(b), applies to noncitizens who  
6 are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F.  
7 Supp. 3d 1239. Other courts have reached the same conclusion, rejecting  
8 Respondent's erroneous interpretation of the INA both prior to and since ICE implemented its  
9 July 8, 2025, interim guidance. *See, e.g., Gomes v. Hyde*, 2025 WL 1869299, at  
10 \*8; *Martinez*, 2025 WL 2084238; *Lopez Benitez*, 2025 WL 2371588; *Garcia Jimenez v.*  
11 *Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar*  
12 *Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15,  
13 2025); *Arrazola-Gonzalez v Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. Cal.  
14 Aug. 15, 2025); *Jacinto v. Trump, et al.*, 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb.  
15 August 19, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D.  
16 Md. Aug. 24, 2025); *Lopez-Campos*, 2025 WL 2496379; *Herrera Torralba v. Knight*, 2:25-cv-  
17 03166-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025).

18           69. The BIA's decision in *Yajure Hurtado* has not slowed the steady flow of  
19 decisions rejecting Respondents' position. *See, e.g., Singh v. Lewis*, 2025 WL 2699219, at  
20 \*3 (disagreeing with BIA's analysis and according no deference under *Loper Bright Enters. v.*  
21 *Raimondo*, 603 U.S. 369, 413 (2024)); *Beltran Barrera*, 2025 WL 2690565, at  
22 \*5 (same); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at \*6-8 (same); *Sampiao v. Hyde*, 2025

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1 WL 2607924, at \*8 n.11 (D. Mass. Sept. 9, 2025) (same); *Aceros v. Kaiser*, No. 25-CV-06924-  
2 EMC (EMC), 2025 WL 2637503, at \*9 (N.D. Cal. Sept. 12, 2025) (same).

3 **III. Petitioner's Detention Violates the INA**

4 70. Petitioner's detention is not authorized under Section 1225(b)(2).

5 71. As discussed above, mandatory detention under Section 1225(b)(2) applies only  
6 to recently arrived noncitizens seeking admission at a border or port of entry, not individuals  
7 who entered without inspection and were later detained inside the country.

8 72. Here, "there is nothing in the record to suggest that Petitioner ever attempted to  
9 gain lawful entry." *Lopez-Campos*, 2025 WL 2496379, at \*6. Petitioner entered without  
10 inspection, never encountered a DHS official, and lived in the United States for over 20  
11 years prior to being detained. When Petitioner was detained in 2022, DHS released her on her  
12 own recognizance under Section 1226(a) as the detention authority. In fact, it was not  
13 until Petitioner's bond hearing that Respondents claimed the actual basis for her detention was  
14 Section 1225(b)(2). Such a post-hoc justification deserves no credit. *Beltran Barrera*, 2025 WL  
15 2690565, at \*4; *Singh v. Lewis*, 2025 WL 2699219, at \*5; *Lopez-Campos*, 2025 WL 2496379, at  
16 \*7.] As such, Petitioner is not subject to mandatory detention under Section 1225(b)(2).

17 73. Petitioner's detention is not authorized under Section 1226(a), either. As  
18 discussed above, Section 1226(a)'s discretionary detention framework requires a bond hearing to  
19 make an individualized custody determination based on Petitioner's risk of flight  
20 or dangerousness. Here, Respondents have failed to provide such a hearing. Further, there is no  
21 information indicating that Petitioner is a flight risk or danger to the community.

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1           74. Lacking any statutory basis for her detention, Respondent must release Petitioner  
2 or, in the alternative, promptly hold a bond hearing to determine whether she should remain in  
3 custody.

4 **IV. Due Process Clause**

5           75. Noncitizens are entitled to due process of the law under the Fifth  
6 Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292,  
7 306 (1993)). To determine whether civil detention violates a noncitizen's Fifth Amendment due  
8 process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

9           76. Under *Mathews*, courts weigh the following three factors: 1) "the private interest  
10 that will be affected by the official action;" 2) "the risk of an erroneous deprivation of such  
11 interest through the procedures used, and the probable value, if any, of additional or substitute  
12 procedural safeguards;" and 3) "the Government's interest, including the function involved and  
13 the fiscal and administrative burdens that the additional or substitute procedural requirement  
14 would entail." 424 U.S. at 335.

15 **a. Private Interest**

16           77. As to the first *Mathews* factor, "[t]he interest in being free from physical  
17 detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529,  
18 531 (2004). Petitioner has been detained for 53 days at Campbell County Detention Center in  
19 conditions that are indistinguishable from criminal incarceration. This detention prevents her  
20 from seeing her family, going to work to support herself and her three U.S. citizen children who  
21 she is raising as a single-parent, and deprives her of any privacy and freedom of movement.

22 **b. Risk of Erroneous Deprivation**

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1           78. As to the second *Mathews* factor, courts must “assess whether the challenged  
2 procedure creates a risk of erroneous deprivation of individuals’ private rights and the degree to  
3 which alternative procedures could ameliorate these risks.” *Gunaydin v. Trump*, No. 25-CV-  
4 01151 (JMB/DLM), 2025 WL 1459154, at \*8 (D. Minn. May 21, 2025). The current procedures  
5 cause an erroneous deprivation of Petitioner’s liberty interest in remaining free from detention.

6           79. As discussed above, the statutory text, statutory framework, Congressional intent,  
7 the longstanding practice of the agency, and the decisions of many federal courts across the  
8 nation leave no doubt that Section 1225(b)(2) applies only to recently  
9 arrived noncitizens seeking entry at a border or port of entry, not noncitizens who entered  
10 without inspection and were detained inside the country.

11           80. Here, Petitioner was not arriving at a border or port of entry when  
12 she was detained, nor was she ever seeking admission to the country. Instead, she entered  
13 without inspection, never had any encounter with DHS officials, and lived in the United States  
14 for 21 years before being detained. As such, Petitioner is not subject to mandatory detention  
15 under Section 1225(b)(2).

16           81. Therefore, it is clear that the government’s current procedure, subjecting  
17 Petitioner to mandatory detention under Section 1225(b)(2), creates a substantial risk  
18 of erroneous deprivation of Petitioner’s interest in being free from arbitrary confinement.

19           82. Additionally, there are reasonable alternatives available for Respondent to  
20 pursue. As discussed above, Section 1226(a) applies to noncitizens facing charges  
21 of inadmissibility, including noncitizens like Petitioner who entered without inspection and were  
22 later detained while residing inside the country. As such, proper application of the INA’s  
23 detention scheme allows for the possibility of detaining Petitioner under Section 1226(a)

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1 but first requires a bond hearing to make an individualized determination of her risk of flight or  
2 dangerousness. Such a hearing has not happened. Without it, the risk of erroneous deprivation of  
3 Petitioner's freedom is high. *See Singh v. Lewis*, 2025 WL 2699219, at \*9 ("the risk of  
4 erroneously depriving him of his freedom is high if the IJ fails to assess his risk of flight or  
5 dangerousness.").

6 c. *Government Interest*

7 83. As to the third *Mathews* factor, the government's interest in maintaining the  
8 current procedure is minimal here. The new interpretation of Section 1225(b)(2) – that people  
9 like Petitioner who have resided in the United States for years are now subject to mandatory  
10 detention – flies in the face of the statutory text, statutory framework, Congressional  
11 intent, almost three decades of prior practice, and the decisions of federal courts across the  
12 nation. Any government interest in public safety or ensuring that Petitioner attends future  
13 immigration proceedings would be satisfied through proper application of Section 1226(a),  
14 which requires a bond redetermination hearing where an immigration judge will consider  
15 Petitioner's individualized facts and circumstances to determine whether she is a danger to the  
16 community or a flight risk.

17 **CLAIMS FOR RELIEF**

18 **COUNT I**  
19 **Violation of the INA**

20 84. Petitioner incorporates by reference the allegations of fact set forth in the  
21 preceding paragraphs.

22 85. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply  
23 to all noncitizens residing in the United States who are subject to the grounds of inadmissibility.  
24 As relevant here, it does not apply to those who previously entered the country, were released on

1 recognizance and placed in standard removal proceedings, and who have been residing in the  
2 United States prior to being detained. Such noncitizens are detained under § 1226(a), unless they  
3 are subject to § 1225(b)(1), § 1226(c), or § 1231. But Respondents' actions here violate §  
4 1226(a) too because, to date, Respondents have refused to consider Petitioner for bond without  
5 ever demonstrating that she is a flight risk or danger to others.

6 86. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued  
7 detention and violates the INA.

8 **COUNT II**  
9 **Violation of Due Process**

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

12 88. The government may not deprive a person of life, liberty, or property without due  
13 process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government  
14 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the  
15 Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653  
16 (2001).

17 89. Petitioner has a fundamental interest in liberty and being free from official  
18 restraint.

19 90. Petitioner entered the country without inspection, had no contact with any DHS  
20 officials, and lived in the United States for over 20 years before being detained. Such an  
21 individual may only be subject to discretionary detention under 8 U.S.C. § 1226, which provides  
22 for release on bond. Despite having previously released Petitioner on an order of recognizance  
23 under § 1226, Respondents now erroneously detain Petitioner under the mandatory provision in §  
24 1225(b)(2).



**VERIFICATION**

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Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that the facts set forth in the foregoing Petition for Habeas Corpus are true and correct.

Executed this 21<sup>st</sup> of October, 2025.

/s/ Lisa Chun  
Lisa Chun