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

DUAHIT JOB GUEVARA-VASQUEZ,

Petitioner,

vs.

ROSE THOMPSON,
Warden of Karnes County Immigration
Processing Center,
409 FM 1144,
Karnes City, TX 78118;

SYLVESTER M ORTEGA,
Enforcement and Removal Operations,
U.S. Immigration and Customs Enforcement,
1777 NE Loop 410,
Floor 15,
San Antonio, TX 78217;

TODD LYONS, Director of the
Immigration and Customs Enforcement,
500 12th Street, S.W.,
Washington, DC 20536;

KRISTI NOEM, Secretary of
the Department of Homeland Security,
Washington, D.C. 20528;

PAMELA JO BONDI, U.S.A.G,
950 Pennsylvania Ave., NW,
Washington, D.C. 20530;

Respondents.

Case No. 5:25-cv-1372

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

INTRODUCTION

1. Petitioner, Mr. Duahit Job Guevara-Vasquez ("Mr. Guevara-Vasquez"), is a native and citizen of Peru who entered the United States in February 2018. Shortly after his entry, he was apprehended and detained by the Department of Homeland Security ("DHS"). While detained, he was found to have a credible fear of persecution and was issued a Notice to Appear ("NTA"), placing him in removal proceedings before an immigration judge.
2. On March 7, 2018, DHS set a bond of $7,500 for Mr. Guevara-Vasquez, and on March 23, 2018, Mr. Guevara-Vasquez was released from immigration detention after posting the bond.
3. On August 17, 2022, Mr. Guevara-Vasquez's removal proceedings were dismissed without prejudice, pursuant to an agreement between him and DHS.
4. On or about October 14, 2025, Mr. Guevara-Vasquez was arbitrarily re-arrested by Respondents while driving home on the George Washington Memorial Parkway in Virginia, despite having had NO brushes with law enforcement of any kind since August 17, 2022, and despite committing NO traffic violations on that day. Following his arrest, DHS issued a new NTA to commence removal proceedings against Mr. Guevara-Vasquez anew.
5. Since his arrest, Mr. Guevara-Vasquez has remained detained at the behest of DHS, and he is current detained at the Karnes County Immigration Processing Center in Karnes City, Texas.
6. Mr. Guevara-Vasquez is prevented from seeking bond before an immigration judge based on the recently issued decision by the Board of Immigration Appeals ("BIA"), *Matter of Yajure Hurtado*, which held that noncitizens present in the United States without admission—regardless of how many years they have been present—are "applicants for admission" under Section 235(a)(1) of the Immigration and Nationality Act ("INA") (8 U.S.C. § 1225(a)(1)) and thus are ineligible for bond hearings before an immigration judge under INA § 235(b)(2)(A)

(8 U.S.C. § 1225(b)(2)(A)). 29 I&N Dec. 216, 220 (BIA 2025).

7. Having no other recourse, Mr. Guevara-Vasquez brings this petition to remedy violations of the Due Process Clause of the Fifth Amendment and the Administrative Procedure Act ("APA"), and respectfully requests that this Court issue a writ of habeas corpus ordering Respondents to release him from custody, or, at a minimum, conduct a custody redetermination hearing under INA § 236(a) (8 U.S.C. § 1226(a)).

CUSTODY

8. Mr. Guevara-Vasquez is in the physical custody of Respondents as he is being detained at the Karnes County Immigration Processing Center, 409 FM 1144, Karnes City, TX 78118, at the behest of Respondents. Mr. Guevara-Vasquez is under the direct control of Respondents and their agents.

JURISDICTION

9. This Court has jurisdiction to entertain this habeas petition under 28 U.S.C. § 1331; 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; the Due Process Clause of the Fifth Amendment, U.S. CONST. amend. V; and the Suspension Clause, U.S. CONST. art. I, § 9.

10. The Court has jurisdiction in equity to order Petitioner's immediate release from unlawful custody. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (holding that "[t]he typical remedy [for unlawful detention] is, of course, release") (citation omitted).

11. While the federal courts of appeals have jurisdiction to review removal orders directly through petitions for review, *see* 8 U.S.C. § 1252(a)(1), (b), the federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by the Respondents. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

VENUE

12. Venue is proper in the Western District of Texas under 28 U.S.C. § 1391 and 28 U.S.C. § 2242 because at least two Respondents are located in this District, Mr. Guevara-Vasquez is detained in this District, Mr. Guevara-Vasquez's immediate physical custodian is located in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) ("[T]he proper respondent to a habeas petition is 'the person who has custody over the petitioner'") (citing 28 U.S.C. § 2242).

PARTIES

13. Petitioner, Mr. Guevara-Vasquez, is currently detained at the Karnes County Immigration Processing Center at the behest of Respondents.
14. Respondent Rose Thompson is the warden of the Karnes County Immigration Processing Center, where Petitioner is currently detained. In her capacity as Warden, she oversees the administration and management of the Karnes County Immigration Processing Center. She is a legal custodian of Mr. Guevara-Vasquez and is being sued in her official capacity.
15. Respondent Sylvester M Ortega is the Field Office Director of the San Antonio Office for Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO"), within the DHS. In this capacity, Mr. Ortega is responsible for the administration of immigration laws and execution of detention and removal determinations across Central Texas and, as such, is an immediate custodian of Mr. Guevara-Vasquez. Mr. Ortega is being sued in his official capacity.
16. Respondent Todd M. Lyons is the Director of ICE. Mr. Lyons is a legal custodian of Petitioner and he is being sued in his official capacity. In this capacity, Mr. Lyons is responsible for the

administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), he routinely transacts business in the Western District of Texas, he supervises Respondent Ortega, and he is legally responsible for Petitioner's detention.

17. Defendant Kristi Noem is the Secretary of the DHS and she is being sued in her official capacity. In this capacity, Ms. Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), she routinely transacts business in the Western District of Texas, she supervises Respondents Lyons and Ortega, and she is legally responsible for Petitioner's detention.

18. Respondent Pamela Jo Bondi is being sued in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). Ms. Bondi routinely transacts business in the Western District of Texas and is legally responsible for administering Petitioner's custody redetermination proceedings and the standards used in those proceedings.

FACTS

19. Mr. Guevara-Vasquez is a native and citizen of Peru who entered the United States in February of 2018. Soon after he entered, he was apprehended and detained by border patrol officers and issued an expedited removal order under INA § 235(b)(1) (8 U.S.C. § 1225(b)(1)). (Exhibit B.) While detained, Mr. Guevara-Vasquez established a credible fear of persecution. (Exhibit B.) Consequently, DHS issued an NTA, placing Mr. Guevara-Vasquez in removal proceedings under INA § 240 (8 U.S.C. § 1229a). (Exhibit B.) The NTA identified him as "an alien present in the United States who has not been admitted or paroled," as opposed to an "arriving alien," and charged him with INA § 212(a)(6)(A)(i) (present in the United States without being

admitted or paroled) and INA § 212(a)(7)(A)(i)(I) (not in possession of valid entry document at time of application for admission), but the latter charge was subsequently withdrawn by the Immigration Court. (Exhibit B.) Additionally, the NTA expressly stated that the "Section 235(b)(1) order was vacated" and that the NTA "is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution of torture." (Exhibit B.)

20. On March 7, 2018, DHS issued a Notice of Custody Determination and set a bond of $7,500 for Mr. Guevara-Vasquez, specifically stating that the bond was authorized "[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act." (Exhibit A.) On or about March 23, 2018, Mr. Guevara-Vasquez posted the bond and was released from immigration detention. (Exhibit B.)

21. On August 17, 2022, Mr. Guevara-Vasquez's removal proceedings were dismissed without prejudice by the Hyattsville, Maryland Immigration Court, pursuant to an agreement between him and DHS. (Exhibit D.)

22. On or about October 14, 2025, Mr. Guevara-Vasquez was arbitrarily re-arrested by Respondents while driving home on the George Washington Memorial Parkway in Virginia, despite having had NO brushes with law enforcement of any kind since August 17, 2022, and despite committing NO traffic violations on that day.

23. Following his arrest, DHS issued a new NTA to commence removal proceedings against Mr. Guevara-Vasquez anew, charging him, again, with INA § 212(a)(7)(A)(i)(I) and INA § 212(a)(6)(A)(i). (Exhibit C.) Like the 2018 NTA, this new NTA identifies Mr. Guevara-Vasquez as "an alien present in the United States who has not been admitted or paroled." (Exhibit C.) But, unlike the 2018 NTA, this new NTA does not reference Mr. Guevara-

Vasquez's 2018 expedited removal order or his credible fear of persecution. (Exhibit C.)

24. Since October 14, 2025, Mr. Guevara-Vasquez has remained detained at the behest of DHS, and he is currently detained at the Karnes County Immigration Processing Center in Karnes City, Texas. (Exhibit E.)

25. This petition follows.

EXHAUSTION

26. Mr. Guevara-Vasquez is not required to exhaust administrative remedies before filing the instant petition for a writ of habeas corpus challenging his unlawful detention.

27. Foremost, Mr. Guevara-Vasquez is not seeking review of a final order of removal, and there is no statutory requirement to exhaust administrative remedies before challenging the legality of a noncitizen's detention. *Cf* 8 U.S.C § 1252(d)(1) (requiring exhaustion of administrative remedies prior to challenging removal order in circuit court).

28. Additionally, Mr. Guevara-Vasquez alleges that his ongoing detention violates his Fifth Amendment right to due process, which is a constitutional issue that cannot be addressed administratively. *See Maramba v. Mukasey*, No. 3:08-CV-0351-K, 2008 WL 1971378, at *4 (N.D. Tex. Apr. 28, 2008) (concluding that when a petitioner "seeks to raise a pure constitutional challenge to the statute that permits his detention . . . the court should exercise jurisdiction without first requiring exhaustion of administrative remedies"); *Ayobi v. Castro*, No. SA-19-CV-01311-OLG, 2020 WL 13411861, at *3 n.5 (W.D. Tex. Feb. 25, 2020) (determining that there was no requirement that a 1226(a) detainee must exhaust other remedies before pursuing a Fifth Amendment habeas claim); *Malm v. Holder*, No. CIV.A. H-11-2969, 2012 WL 2568172, at *4 (S.D. Tex. June 29, 2012) (same); *Kambo v. Poppell*, No. SA-07-CV-800-XR, 2007 WL 3051601, at *13 (W.D. Tex. Oct. 18, 2007) (citing *Fuller v. Gonzales*, No. Civ. A. 3:04CV2039SRU (D. Conn. April 8, 2005)) (explaining that the

petitioner's constitutional challenges to his detention did not have to be exhausted through the Board of Immigration Appeals because the BIA cannot address constitutional issues).

29. Furthermore, exhaustion would have been futile in light of the recently issued decision by the BIA, *Matter of Yajure Hurtado*, which held that noncitizens present in the United States without admission—regardless of how many years they have been present—are "applicants for admission" under INA § 235 (8 U.S.C. § 1225) and thus are ineligible for bond hearings before an immigration judge. 29 I&N Dec. at 220. *See Fuller v. Rich*, 11 F.3d 61, 61 (5th Cir. 1994) (holding that "[e]xceptions to the exhaustion requirement are appropriate where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action); *Covarrubias v. Vergara*, 2025 WL 2950096, at *6 (S.D. Tex. Oct. 3, 2025) (finding that exhaustion of administrative remedies would be futile because unreasonable delay of such process would frustrate the petitioner's claims); *Lopez Arevelo v. Ripa*, 2025 WL 2691828, at *6 (W.D. Tex. Sept. 22, 2025) (finding that requiring the petitioner to wait indefinitely to exhaust administrative remedy would be inappropriate); *Kostak v. Trump et al.*, No. 3:25-cv-01093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025) (holding that exhaustion was not required as the federal district court "is the proper forum in which Petitioner can bring her constitutional claims"); *Lopez-Campos v. Raycraft*, --- F. Supp. 3d ---, 2025 WL 2496379, at *4–5 (E.D. Mich. Aug. 29, 2025) (holding that "prudential exhaustion" should be waived where, as here, "exhaustion would not effectively afford [the petitioner] the relief he seeks" and "BIA lacks authority to review constitutional challenges").

30. In sum, administrative remedies would neither be effective nor adequately address the injury caused by Mr. Guevara-Vasquez's unlawful detention. Habeas corpus is the only adequate

remedy under these circumstances.

LEGAL FRAMEWORK FOR IMMIGRATION-RELATED DETENTION

31. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.

32. First, the INA provides for mandatory detention of noncitizens subject to expedited removal under INA § 235(b)(1) (8 U.S.C. § 1225(b)(1)) and for other recent arrivals seeking admission referred to under INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)). As explained by the Supreme Court of the United States in *Jennings v. Rodriguez*, INA § 235 (8 U.S.C. § 1225) "applies primarily to [noncitizens] seeking entry into the United States." 583 U.S. 281, 306 (2018). Noncitizens detained under this provision may be released only through DHS's exercise of its parole authority under INA § 212(d)(5)(A) (8 U.S.C. § 1182(d)(5)(A)). *Jennings*, 583 U.S. at 300.

33. Second, INA § 236 (8 U.S.C. § 1226) authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Noncitizens in INA § 236(a) (8 U.S.C. § 1226(a)) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* INA § 236(c) (8 U.S.C. § 1226(c)).

34. Last, the INA also provides for detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings, *see* INA § 241(a)-(b) (8 U.S.C. § 1231(a)–(b)). This provision is not at issue in the instant matter.

35. The detention provisions at INA § 236(a) (8 U.S.C. § 1226(a)) and INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. INA §236(a) (8 U.S.C. § 1226(a)) was most

recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

36. Following enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who were present in the United States without having been admitted or paroled were not considered detained under INA § 235 (8 U.S.C. § 1225) and that they were instead detained under INA § 236(a) (8 U.S.C. § 1226(a)). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

37. Thus, in the decades that followed, most people who were present in the United States without having been admitted or paroled—unless they were subject to some other detention authority—received bond hearings. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an immigration judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that 8 U.S.C. § 1226(a) simply "restates" the detention authority previously found at 8 U.S.C. § 1252(a)).

38. In the early spring of 2025, Respondents quietly implemented a new policy that turns this well-established understanding on its head and violates the statutory scheme.

39. This new legal theory that noncitizens who are presented in the United States without admission or parole are ineligible for bond hearings was rejected by a District Court in the Western District of Washington, finding that such individuals are entitled to bond redetermination hearings before immigration judges, and rejecting the application of INA § 235(b)(2) (8 U.S.C. §1225(b)(2)) to such cases. *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *12 (W.D. Wash. Apr. 24, 2025).

40. Undeterred, the Respondents continued to assert this new theory, and a May 22, 2025 unpublished BIA decision confirms that EOIR is taking this same position that noncitizens who are present in the United States without admission or parole are ineligible for bond hearings before immigration judges.

41. This new immigration detention policy was finally officially confirmed on July 8, 2025, when the Director of Immigration and Customs Enforcement, Todd Lyons, issue a policy memo entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission" ("Lyons Memo"). The Lyons Memo directed ICE to apply INA § 235 to *any* noncitizen who are present in the United States without admission or parole, regardless of when noncitizen entered the United States, even if it was decades ago or where the noncitizen was encountered, such as in the interior of the United States.

42. On September 5, 2025, the BIA issued its decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting the position announced in the Lyons Memo that noncitizens who are present in the United States without admission or parole are ineligible for bond hearings before an immigration judge. The immigration courts and the BIA are part of the EOIR, which in turn are part of the Department of Justice, which is controlled by the U.S. Attorney General, Pamela Jo Bondi.

43. This interpretation defies the INA. The plain text of the statutory provisions demonstrates that INA § 236(a) (8 U.S.C. § 1226(a)), not INA § 235(b) (8 U.S.C. § 1225(b)), applies to people like Mr. Guevara-Vasquez.

44. The text of INA § 236 (8 U.S.C. § 1226) explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are

afforded a bond hearing under subsection (a). INA § 236 (8 U.S.C. § 1226) therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole. INA § 236(a) (8 U.S.C. § 1226(a)) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under INA § 240 (8 U.S.C. § 1229a), which "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

45. By contrast, INA § 235 (8 U.S.C. § 1225) applies to noncitizens arriving at U.S. ports of entry or who have recently entered the United States. While this section defines "applicants for admission" as those who "ha[ve] not been admitted or who arrive[] in the United States," INA § 235(a)(1) (8 U.S.C. § 1225(a)(1)), it mandates detention only for three specific subcategories of such applicants. First, INA § 235(b)(1)(A)(i) (8 U.S.C. § 1225(b)(1)(A)(i)) mandates the detention and expedited removal of "applicants for admission" who are "arriving in the United States." Second, INA § 235(b)(1)(A)(iii)(II) (8 U.S.C. § 1225(b)(1)(A)(iii)(II)) mandates the detention and expedited removal of noncitizens who cannot show that they have been physically present in the United States for two years. Lastly, INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)), mandates the detention of "applicants for admission" who are "seeking admission" to the United States during the pendency of their removal proceedings. The term "admission," in turn, is defined as "the lawful *entry* of the alien into the United States after inspection and authorization by an immigration officer." INA § 101(a)(13)(A) (8 U.S.C. § 1101(a)(13)(A)).

46. The plain text of the statute thus excludes "applicants for admission" who have already entered the country years ago, as such persons cannot logically be deemed to be "arriving in" or "seeking admission," i.e. as pursuing lawful *entry*, to the United States.

47. Indeed, the federal courts have overwhelmingly rejected the DHS' legal position in the Lyons Memo and in the BIA's decision in *Matter of Yajure Hurtado*. *See, e.g, BDVS v. Forestal*, No. 25-1968 (S.D. In. Oct. 8, 2025) (Evans Barker, J.); Eliseo v. Olson, No. 25-3381, (D. Mn. Oct. 8, 2025) (Blackwell, J.); *Buenrostro-Mendez v. Bondi,* No. 25-3726, (S.D. Tx. Oct. 7, 2025) (Rosenthal, J.); *Echevarria v. Bondi*, No. 25-3252, 2025 LX 492534 (D. Ariz. Oct. 3, 2025); *Belsai D.S. v. Bondi*, No. 25-3682 (D. Mn. Oct. 1, 2025) (Menendez, J.); *Santiago Santiago v. Noem*, No. 25-361 (W.D. Tx. Oct. 1, 2025) (Cardone, J.); *Quispe-Ardiles v. Noem*, No. 1:25-CV-01382-MSN-WEF, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025) (Nachmanoff, J.); *Rodriguez Vazquez v. Bostock*, No. 25-5240, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025) (Cartwright, J.); *Da Silva v. ICE*, No. 25-284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025) (McCafferty, J.); *Quispe v. Crawford*, No. 25-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025) (Trenga, J.); *Inlago Tocagon v. Moniz*, No. 25-12453, 2025 WL 2778023 (D. Mass. Sept. 29, 2025) (Joun, J.); *Barrios v. Shepley*, No. 25-406, 2025 WL 2772579 (D. Maine Sept. 29, 2025) (Woodcock, Jr.); *J.U. v. Maldonado*, No. 25-4836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025) (Merchant, J.); *Savane v. Francis*, No. 25-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Woods, J.); *Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025) (Hayden, J.); *Villanueva Herrera v. Tate*, No. 25-3364 (S.D. Tx. Sept 26, 2025) (Hittner, J.); *Gamez Lira v. Noem*, No. 25-855 (D.N.M. 25-855) (Johnson, J.); *Singh v. Lewis*, No. 25-96, 2025 LX 400065 (W.D. Ky. Sept. 22, 2025) (Jennings, J.); *Chafla v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025) (Neumann, J.); *Hasan v. Crawford*, No. 25-1408, 2025 LX 499354 (E.D. Va. Sept. 19, 2025) (Brinkema, J.); *Barrera v. Tindall*, No. 25-451, 2025 LX 435572 (W.D. Ky. Sept. 19, 2025) (Jenning, J.); *Salazar v. Dedos*, No. 25-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025) (Urias, J.); *Garcia Cortes v. Noem*, No. 25-2677,

2025 WL 2652880 (D. Colo. Sept. 16, 2025) (Sweeney, J.); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (White, J.); *Sampiao v. Hyde*, No. 25-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (Kobick, J.); *Jimenez v. FCI Berlin*, No. 25-326, 2025 LX 360066 (D.N.H. Sept. 8, 2025) (McCafferty, J.); *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025) (Talwani, J.); *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (Ho, J.); *Lopez-Campos v. Raycraft*, No. 25-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (McMillion, J.); *Diaz v. Mattivelo*, No. 25-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025) (Kobick, J.); *Jose J.O.E. v. Bondi*, No. 25-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) (Tostrud, J.); *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (Rubin, J.); *Romero v. Hyde*, No. 25-11631, __ F.Supp.3d __, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (Murphy, J.); *Samb v. Joyce*, No. 25-6373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (Ho, J.); *dos Santos v. Noem*, No. 25-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (Kobick, J.); *Diaz Martinez v. Hyde*, No. 25-11613, __ F.Supp.3d __, 2025 WL 2084238 (D. Mass. July 24, 2025) (Murphy, J.); *Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299 (D. Mass. July 7, 2025) (Kobick, J.).

48. Mr. Guevara-Vasquez asserts that his current detention is governed by INA § 236 (8 U.S.C. § 1226). Foremost, DHS has consistently treated Mr. Guevara-Vasquez as subject to INA § 236 (8 U.S.C. § 1226). When DHS released Mr. Guevara-Vasquez on bond in 2018, it issued a notice expressly stating that the bond was authorized "[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act." (Exhibit A.) Release on bond is a mechanism authorized exclusively under INA § 236(a) (8 U.S.C. § 1226(a)), and not under INA § 235 (8 U.S.C. § 1225). Additionally, in both his 2018 and 2025 NTAs, DHS classified

Mr. Guevara-Vasquez as an "alien present in the United States," as opposed to an "arriving alien." (Exhibit B.) Accordingly, when DHS re-arrested and re-detained Mr. Guevara-Vasquez in October 2025—more than seven years after his entry into the United States—his immigration status was simply that of a noncitizen present in the United States without admission or parole. DHS could not have detained him under INA § 235(b)(1)(A)(i) (8 U.S.C. § 1225(b)(1)(A)(i)), because he was not "arriving in" the United States or otherwise an "arriving alien," as reflected in both his 2018 and 2025 NTAs; nor under INA § 235(b)(1)(A)(iii)(II) (8 U.S.C. § 1225(b)(1)(A)(iii)(II)), because he has been physically present in the country for more than two years. This conclusion is further supported by the fact that, unlike the 2018 NTA, the new NTA issued by DHS makes no reference to Mr. Guevara-Vasquez's previous credible fear interview or vacated expedited removal order, confirming that DHS is not detaining him under INA § 235(b)(1)(A)(i) or (iii)(II) (8 U.S.C. § 1225(b)(1)(A)(i) or (iii)(II)), which govern procedures involving noncitizens subject to expedited removal. (Exhibit C.) Furthermore, DHS could not have detained him under INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)), which applies only to recent arrivals "seeking admission," that is, seeking lawful *entry* into the country, whereas Mr. Guevara-Vasquez has already entered the United States, has long been residing here, and is thus not seeking admission, but rather a lawful means to *remain* here. *See* INA § 101(a)(13)(A) (8 U.S.C. § 1101(a)(13)(A)).

49. Because INA § 235 (8 U.S.C. § 1225) applies only to three specific categories of noncitizens, and Mr. Guevara-Vasquez falls into none of them, his detention must necessarily be governed by INA § 236 (8 U.S.C. § 1226), which entitles him to a bond hearing before an immigration judge.

50. Accordingly, this Court should determine that Mr. Guevara-Vasquez's ongoing detention,

premised on the BIA's erroneous interpretation of INA § 235 (8 U.S.C. § 1225) in *Matter of Yajure Hurtado,* which denies him the opportunity for a bond hearing, is unlawful, and should order either his immediate release or, alternatively, mandate that Respondents provide him with a bond hearing.

CLAIMS OF RELIEF

COUNT ONE

VIOLATION OF PROCEDURAL DUE PROCESS
U.S. Const. amend. V

51. Mr. Guevara-Vasquez realleges and incorporates by reference each and every allegation contained above.

52. As the Supreme Court has repeatedly instructed, freedom "from government custody, detention, or other forms of physical restraint" is at "the heart" of what the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. at 690 (2001); *see also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action"). This is particularly true in the context of civil detention. *See, e.g., Addington v. Texas*, 441 U.S. 418, 425 (1979) ("This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection"); *Kansas v. Hendricks*, 521 U.S. 346, 368 (1997) (requiring "strict procedural safeguards" to justify involuntary civil commitment of certain sex offenders); *Foucha*, 504 U.S. at 81-82, 86 (holding unconstitutional a state civil commitment "statute that place[d] the burden on the detainee to prove that he is not dangerous").

53. To determine whether a civil detention violates a detainee's procedural due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See*

Hernandez v. Cremer, 913 F.2d 230, 238 (5th Cir. 1990).

54. Pursuant to *Mathews*, courts weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335; *also see Hernandez v. Cremer*, 913 F.2d at 238.

55. The first *Mathews* factor requires consideration of the private interest affected by Respondents' invocation of the automatic stay provision. This factor weighs heavily in Mr. Guevara-Vasquez's favor because his interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

56. The second *Mathews* factor requires courts to assess whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks. Here, that risk is evident because it does not appear that any individualized determination was made either prior to or contemporaneously with the decision to detain Mr. Guevara-Vasquez in October 2025, and there was no change in circumstances between the time DHS released Mr. Guevara-Vasquez on bond in 2018 to his re-arrest and detention in 2025. In the absence of such an individualized determination or any change in circumstances, the risk of erroneous deprivation of Mr. Guevara-Vasquez's liberty interest is high.

57. The third *Mathews* factor, the government's interest, also weighs in favor of granting this petition. The government here, DHS, only has one legitimate interest at stake, which is

ensuring that noncitizens facing removal do not endanger the public or abscond during the pendency of their removal cases. Notably, DHS already determined that Mr. Guevara-Vasquez was neither a flight risk nor a danger to the community and released him on bond in 2018, and there has been no change in circumstances since that determination. Thus, Mr. Guevara-Vasquez's continued detention serves no significant governmental interest.

58. Mr. Guevara-Vasquez's ongoing detention therefore deprives him of his right to procedural due process, and he is entitled to immediate release.

COUNT TWO

VIOLATION OF SUBSTANTIVE DUE PROCESS
U.S. Const. amend. V

59. Mr. Guevara-Vasquez realleges and incorporates by reference each and every allegation contained above.

60. The Fifth Amendment provides in pertinent part: "No person shall be...deprived of life, liberty, or property, without due process of law[.]" U.S. CONST. amend. V.

61. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690.

62. At a bare minimum, "the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention." *Zadvydas*, 533 U.S. at 718 (Kennedy, J., dissenting) (emphasis added).

63. To meet the strictures of due process, Mr. Guevara-Vasquez's detention must "bear[] a reasonable relation to [the] purpose[s]" of civil immigration detention, which the Supreme Court has identified as mitigating flight risk and mitigating danger to the community. *See Zadvydas*, 533 U.S. at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715 (1972)) (quotation marks

omitted).

64. "Government detention violates that Clause unless the detention is ordered in a *criminal* proceeding with adequate procedural protections or, in certain special and 'narrow' nonpunitive 'circumstances' where a special justification...outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Zadvydas*, 533 U.S. at 690 (emphasis in original) (internal citations omitted).

65. No such "special justification" exists here in this matter. Notably, DHS previously determined that Mr. Guevara-Vasquez was neither a flight risk nor a danger to the community and released him on bond. Mr. Guevara-Vasquez is not aware of any "special justification" that would permit DHS to reverse course and now detain him, thereby continuing to deprive him of his physical liberty. Nor is his current detention narrowly tailored to serve any other compelling state interest.

66. Mr. Guevara-Vasquez's detention therefore deprives him of his right to substantive due process, and he is entitled to immediate release.

COUNT THREE
VIOLATION OF THE APA

67. Mr. Guevara-Vasquez realleges and incorporates by reference each and every allegation contained above.

68. Under the APA, a reviewing court shall "hold unlawful and set aside" agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

69. Mr. Guevara-Vasquez's ongoing detention violates the APA because it is contrary to the plain text of INA §§ 235 and 236.

70. INA § 235 (8 U.S.C. § 1225), by its plain language, applies only to individuals arriving at a

U.S. port of entry or who have recently entered, and subjects such noncitizens to mandatory detention. In contrast, individuals like Mr. Guevara-Vasquez, who are present in the United States without having been admitted or paroled, are subject to immigration detention under INA § 236(a) (8 U.S.C. § 1226(a)), which grants immigration judges the authority to re-determine custody status unless mandatory detention applies. The INA also empowers the BIA to review immigration judges' custody redeterminations.

71. Yet, the BIA in *Matter of Yajure Hurtado* erroneously concluded that individuals like Mr. Guevara-Vasquez are subject to INA § 235 (8 U.S.C. § 1225), thereby unlawfully depriving them of their statutory right to seek bond before immigration judges, which Congress expressly provided under INA § 236(a) (8 U.S.C. § 1226(a)).

72. Thus, Mr. Guevara-Vasquez's continued detention under INA § 235 (8 U.S.C. § 1225), without being provided an individualized bond review under INA § 236(a) (8 U.S.C. § 1226(a)) violates the APA, and he is entitled to immediate release from custody.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Enjoin Respondents from transferring Petitioner outside the jurisdiction of the San Antonio Field Office and the Western District of Texas pending the resolution of this case;

(3) Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;

(4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

(5) Declare that Petitioner's detention violates the Administrative Procedure Act;

(6) Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from

custody on his own recognizance or under parole, bond, or reasonable conditions of supervision; or, in the alternative, ordering Respondents to provide a prompt and individualized bond hearing before a neutral Immigration Judge applying the proper standards under INA § 236(a) (8 U.S.C. § 1226(a));

(7) Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and,

(8) Grant any other and further relief which this Court deems necessary and proper.

Respectfully submitted on this 24th day of October, 2025.

Duahit Job Guevara-Vasquez

By his attorneys,

/s/ Timothy W. Davis
Timothy W. Davis*
VA Bar # 96593
Law Office of Timothy W. Davis, LLC
1521 South Edgewood Street, Suite B
Baltimore, Maryland 21227
Phone: (443) 923-7000
Fax: (443) 927-7979
Email: twdavislaw@gmail.com

through local counsel.

/s/ Javier N. Maldonado
Javier N. Maldonado
TX Bar No. 00794216
Law Office of Javier N. Maldonado, PC
8620 North New Braunfels, Suite 605
San Antonio, Texas 78217
Phone: (210) 277-1603
Fax: (210) 587-4001
Email: jmaldonado.law@gmail.com

* *Application for admission pro hac vice pending*