

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

**JOSE ADOLFO GALDAMEZ MARTINEZ,**  
A 

*Petitioner,*

v.

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

**PAMELA BONDI,**  
U.S. Attorney General;

**MIGUEL VERGARA,**  
Field Office Director of Enforcement and Removal  
Operations, San Antonio Field Office, Immigration  
and Customs Enforcement; and

**ROSE THOMPSON,**  
Warden of Karnes County Immigration Processing  
Center.

*Respondents.*

Case No. 25-cv-1373

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

**INTRODUCTION**

1. Petitioner Jose Adolfo Galdamez Martinez (“Mr. Galdamez”) is a noncitizen who entered the United States over twenty years ago and has resided continuously in this country since his entry. On October 13, 2025, U.S. Immigration and Customs Enforcement (“ICE”) arrested Mr. Galdamez without probable cause and placed him in immigration custody pending completion of removal proceedings. Although Mr. Galdamez doesn’t have a 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. Galdamez is

subject to mandatory immigration detention under 8 U.S.C. § 1225(b)(2) because he should be deemed to be an “applicant for admission” who is “seeking admission” to the United States.

2. DHS’s interpretation of its detention authority under 8 U.S.C. § 1225(b)(2) marks a complete reversal of the interpretation of the statute that the government has embraced since its inception three decades ago, its prior practice, Supreme Court precedent, and the plain language of the Immigration and Nationality Act (“INA”).

3. This Court should grant Mr. Galdamez’s petition for writ of habeas corpus and 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 to prove that continued detention is required to protect the community and/or ensure his appearances for future removal proceedings.

#### **JURISDICTION AND VENUE**

4. Mr. Galdamez is detained at the Karnes County Immigration Processing Center in Karnes City, Texas, and is in the physical custody of Respondents. *See* Exh. A, ICE Detainee Locator.

5. This action arises under the Due Process Clause of the Fifth Amendment and the INA, 8 U.S.C. § 1101 *et seq.*

6. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. §§ 2201-02 (declaratory relief). Mr. Galdamez’s detention by Respondents is a “severe restraint” on his 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).

7. 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.

8. Venue lies in the United States District Court for Western District of Texas, the judicial district in which Mr. Galdamez is detained when the petition was filed. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 434, 447 (2004).

**REQUIREMENTS OF 28 U.S.C. § 2243**

9. Under 28 U.S.C. § 2243, a court “entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant . . . is not entitled thereto.” 28 U.S.C. § 2243. Once the Court issues an Order to Show Cause, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

10. 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).

11. While the time limit found in § 2243 “are subordinate to the district court’s authority to set deadlines under Rule 4 of Rules Governing Section 2254 Cases in the United States District Courts, . . . courts have found that a 14-day deadline for respondents to respond to show cause orders to be reasonable.” *Laguna v. Lyons*, 2025 WL 1173438 (W.D. Tex. Apr. 17, 2025).

12. The reading of 8 U.S.C. § 1225(b)(2) offered by DHS to argue that detention is mandated by the INA has been almost universally rejected by district courts across the country, including this Court, over the past three months. Allowing Respondents to continue detaining Mr.

Galdamez without the opportunity to seek release on bond based on a strained reading of the INA that has been overwhelmingly rejected only compounds the due process concerns in this case.

13. In light of the significant and unlawful restraint on Mr. Galdamez's liberty and clear Constitutional violations in this case, coupled with the fact that the issues in this case have been addressed in other recent cases in this court and around the country, he requests the Court issue an Order to Show Cause, and direct Respondents to file a response within three days.

#### **PARTIES**

14. Petitioner, Jose Adolfo Galdamez Martinez is a native and citizen of Honduras who has been in immigration detention since October 13, 2025. ICE is currently detaining him at the Karnes County Immigration Processing Center in Karnes City, Texas. *See* Exh. A, ICE Detainee Locator.

15. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees ICE, the agency responsible for Mr. Galdamez's detention. Secretary Noem has ultimate custodial authority over Mr. Galdamez and is sued in her official capacity.

16. Respondent Pamela Bondi is the United States Attorney General. She has supervisory authority over the Executive Office of Immigration Review, which oversees the immigration courts and the Board of Immigration Appeals. She is sued in her official capacity.

17. Respondent Miguel Vergara is the Field Office Director for ICE's San Antonio Field Office. He oversees the operation of detention facilities within the San Antonio Field Office's area of responsibility, including Karnes County Immigration Processing Center. He is sued in his official capacity.

18. Respondent Rose Thompson is the Warden of Karnes County Immigration Processing Center and is the immediate custodian of Mr. Galdamez. She is sued in her official capacity.

**EXHAUSTION**

19. The failure to exhaust administrative remedies is not jurisdictional. *See Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012).

20. Moreover, because Mr. Galdamez’s continued detention violates his constitutional right to due process, administrative exhaustion is excused. *See id.* (concluding exhaustion of due process claims was not required); *Portela-Gonzalez v. Sec’y of the Navy*, 109 F.3d 74, 78 (1st Cir. 1997) (Recognizing “the inappropriateness of requiring exhaustion when further proceedings would be futile”); *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.’”).

21. Although the Court may impose exhaustion requirements as a prudential matter, it should not do so in this case because seeking administrative relief from either DHS or EOIR in this case would be futile. Critically, the Board of Immigration Appeals (“Board”) recently issued a precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), adopting the new interpretation of 8 U.S.C. § 1225(b)(2) that DHS announced in its recent July 8, 2025 policy memorandum. *Matter of Yajure Hurtado* holds that noncitizens who entered the United States without inspection at any point are considered to be “arriving aliens” who are “seeking admission” and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Although, 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 the Board’s published precedent and deny any motion for a custody redetermination filed by Mr. Galdamez. 8 C.F.R. § 103.10(b). For this reason, Mr. Galdamez has not gone through the futile exercise of moving the immigration court for release on bond.

**STATEMENT OF FACTS**

22. Mr. Galdamez entered the United States approximately twenty-two years ago without inspection or admission. He has resided in the United States since then, and prior to being detained, lived in Virginia with his son, his daughter, and two U.S. citizen grandchildren. Mr. Galdamez is an active member of Oasis de Vida Church in Norfolk, Virginia, where he serves the community in various ways. He offers support to individuals in distress and assists members of the congregation and newcomers alike. In addition, he helps welcome and guide attendees, fulfilling duties similar to those of an usher. Mr. Galdamez has been working in the construction industry for several years.

23. Mr. Galdamez has no significant criminal convictions and is neither a danger to society nor a flight risk.

24. Nonetheless, on October 13, 2025, without probable cause or an administrative warrant, ICE officers approached Mr. Galdamez while he was driving on his way to buy construction equipment for his job. The officers did not indicate that he had violated any traffic laws, nor did they inform him of the reason for the stop. ICE arrested him, took him into custody, and transferred him to Farmville Detention Center in Farmville, Virginia.

25. On October 20, ICE transferred Mr. Galdamez to Karnes County Immigration Processing Center in Karnes City, Texas, where he remains. *See* Exh. A, ICE Detainee Locator.

26. ICE has placed Mr. Galdamez in removal proceedings.

**LEGAL BACKGROUND**

*Warrantless Arrests*

27. The Fourth Amendment protects “[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures.” U.S. Const. amend. IV. “Except at the border and its functional equivalents,” immigration officers may stop individuals in public only after

identifying “specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion” of a violation of immigration law. *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975); *see also United States v. Chavez*, 281 F.3d 479, 485 (5th Cir. 2001).

28. A stop, however brief, must be supported by reasonable suspicion if “a reasonable person would [believe] that he was not free to leave.” *See United States v. Mendenhall*, 446 U.S. 544, 554 (1980). Reasonable suspicion is a “fact-intensive test” involving factors such as behavior and whether individuals in a vehicle are trying to hide. *Brignoni-Ponce*, 422 U.S. at 884-85.

29. Reasonable suspicion cannot be based “on broad profiles which cast suspicion on entire categories of people without any individualized suspicion of the particular person to be stopped.” *United States v. Rodriguez Sanchez*, 23 F.3d 1488, 1492 (9th Cir. 1994). Further, “ethnicity alone cannot supply reasonable suspicion.” *United States v. Lopez*, 817 F. Supp. 2d 918, 926 n.57 (S.D. Miss. 2011) (citing *Brignoni-Prince*, 422 U.S. at 885-87); *Sanchez v. Sessions*, 885 F.3d 782, 792 (4th Cir. 2018) (recognizing that “a stop based *solely* on race or ethnicity is *per se* egregious. In other words, since race or ethnicity cannot provide reasonable suspicion for a stop or seizure, where an officer relies *only* on race or ethnicity, he necessarily lacks reasonable suspicion for his actions.”); *cf. Chavez*, 281 F.3d at 485-86 (upholding a stop of a security guard at a night club when it was well-known that the club employed undocumented individuals as security guards).

30. Like the authority to stop and question individuals, both the INA and the Fourth Amendment limit ICE’s authority to arrest noncitizens without a warrant. *See* 8 U.S.C. § 1357(a); *Brignoni-Ponce*, 422 U.S. at 884 (1975).

31. Under the INA, immigration officers are generally required to obtain a warrant prior to arresting and detaining noncitizens. *See* 8 U.S.C. § 1226(a) (“*On a warrant issued by the Attorney*

*General*, a [noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed.”).

32. While the INA allows ICE officers to make warrantless arrests, its authority is limited to exigent circumstances and constrained by Fourth Amendment principles. *See* 8 U.S.C. § 1357(a).

33. Apart from noncitizens observed at the border entering or attempting to enter the United States, the statute only authorizes ICE to “arrest a [noncitizen] in the United States [without a warrant], if he has reason to believe that the [noncitizen] so arrested is in the United States in violation of any [immigration] law or regulation and is likely to escape before a warrant can be obtained for his arrest.” 8 U.S.C. § 1357(a)(2).

34. Courts “have consistently held that the ‘reason to believe’ phrase in § 1357 “must be read in light of constitutional standards, so that ‘reason to believe’ must be considered the equivalent of probable cause.” *United States v. Varkonyi*, 645 F.2d 453, 458 (5th Cir. 1981); *see also United States v. Santos-Portillo*, 997 F.3d 159, 163 (4th Cir. 2021) (recognizing that probable cause is required for a warrantless arrest under § 1357); *United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir. 2010) (“Because the Fourth Amendment applies to arrests of illegal aliens, the term ‘reason to believe’ in § 1357(a)(2) means constitutionally required probable cause.”); *Tejeda-Mata v. I.N.S.*, 626 F.2d 721, 725 (9th Cir. 1980) (“The phrase ‘has reason to believe’ has been equated with the constitutional requirement of probable cause.”) (citing *United States v. Cantu*, 519 F.2d 494, 496 (7th Cir. 1975)); *Lau v. U.S. Immigr. & Naturalization Serv.*, 445 F.2d 217, 222 (D.C. Cir. 1971) (“Reason to believe” is “considered the equivalent of probable cause.”).

35. Moreover, Courts have repeatedly held, consistent with the statute’s plain language, that ICE exceeds its statutory authority under 8 U.S.C. § 1357(a) when it makes a warrantless arrest

without a determination that a suspected removable individual is likely to escape before a warrant can be obtained. *De La Paz v. Coy*, 786 F.3d 367, 376 (5th Cir. 2015) (“[E]ven if an agent has reasonable belief, before making an arrest, there must also be a likelihood of the person escaping before a warrant can be obtained for his arrest.”) (internal quotations omitted); *Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995) (“Section 1357(a)(2) requires that the arresting officer reasonably believe that the alien is in the country illegally *and* that she ‘is likely to escape before a warrant can be obtained for [her] arrest.’”) (quoting 8 U.S.C. § 1357(a)(2)) (emphasis in original); *Westover v. Reno*, 202 F.3d 475, 479-80 (1st Cir. 2000) (noting that an immigration arrest was “in direct violation” of Section 1357(a)(2) because “[w]hile INS agents may have had probable cause to arrest [plaintiff] by the time they took her into custody, there is no evidence that [plaintiff] was likely to escape before a warrant could be obtained for her arrest”).

36. Federal regulations track these strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii) (“A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained.”).

#### Detention Authority

37. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), Pub. L. 104-208, which set forth separate procedures for the removal and detention of arriving or recently arrived noncitizens and noncitizens who have entered and established a presence in the United States, even those who did so in violation of the immigration laws. *Compare* 8 U.S.C. § 1225, *with* 8 U.S.C. §§ 1226, 1229a. For individuals with an established presence in the United States, 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).

38. During the pendency of standard removal proceedings under 8 U.S.C. § 1229a, § 1226 provides for the detention of noncitizens already in the United States, even those who entered illegally or without inspection. For noncitizens subject to detention under § 1226, § 1226(a) sets the default rule, giving the government the discretion to arrest and detain noncitizens “pending a decision on whether the alien is to be removed from the United States,” while § 1226(c) mandates the detention of certain classes of criminal noncitizens. 8 U.S.C. § 1226(a), (c). After an initial arrest, a noncitizen subject to detention under § 1226(a) may continue to be detained, released on conditional parole, or released on a bond of at least \$1,500. *Id.*

39. Once a noncitizen is detained under § 1226(a), DHS makes an initial custody determination. 8 C.F.R. §§ 1003.19(a), 1236.1(d). The noncitizen may have DHS’s 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).

40. In contrast to the discretionary detention scheme established for noncitizens already in the United States, IIRIRA created a separate, expedited removal process for certain “applicants for admission” deemed to be “arriving aliens.” 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. 8 U.S.C. § 1101(a)(4) (emphasis added).

Notably, individuals subject to expedited removal are not eligible for bond pending completion of their expedited 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”).

41. 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. *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)); *see also* Notice, Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025) (designating the entire subset of noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II) subject to expedited removal: i.e., 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”).

42. Noncitizens placed in expedited removal proceedings are referred to standard removal proceedings under § 1229a if they establish that they have 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).

43. Finally, § 1225(b)(2) mandates 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).

44. Since IIRIRA was first enacted, 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.”); *see also Lopez Benitez v. Francis*, No. 25-cv-5937, -- F. Supp. 3d --, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (holding that a noncitizen who has been residing in the United States for more than two years cannot be classified as an “alien seeking admission”); *Martinez v. Hyde*, No. 25-cv-11613, -- F. Supp. 3d --, 2025 WL 2084238, at \*8 (D. Mass. July 24, 2025) (rejecting the Government’s “novel interpretation” that 1225(b) applies to noncitizens detained while present in the United States).

45. Despite amending the INA numerous times since passing IIRIRA, *see, e.g.*, REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302, Congress has never seen fit to clarify or alter this universally accepted interpretation of the statute.

46. Yet on July 8, 2025, the Government abruptly rejected its understanding of the interplay between 8 U.S.C. § 1226(a) and § 1225(b) that it adopted when IIRIRA was first enacted and embraced for the next three 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. B, ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission.

47. On September 5, 2025, the Board adopted DHS’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.<sup>1</sup> *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.

48. In fact, legislative history actually contradicts the Board’s analysis. In February 1997, Congressman Lamar Smith, then Chair of the House Subcommittee on Immigration and Claims

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<sup>1</sup> Indeed, nearly thirty years of agency interpretation of the law would have provided Petitioners with an opportunity to seek review of DHS’s custody determination in a hearing before an immigration judge under 8 U.S.C. § 1226(a). In fact, just weeks prior to *Matter of 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).

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. C, IIRIRA Legislative History. 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 aliens, limitations on relief, changes to proceedings before an immigration judge, and limitations of appeals. *See generally id.* 49.

Relevant here, Congressman Smith explained that the definition of “arriving alien” should be limited. He 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 that the proposed regulations adopt a temporally limited measure as 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.*

50. Indeed, courts that have reviewed this issue have almost universally agreed with this “common sense approach” and overwhelmingly rejected Respondents’ new reading of the statute. *See Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Alvarez-Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at \*4 (W.D. Tex., Sept. 8, 2025); *see also Lopez Benitez*, -- F. Supp. 3d --, 2025 WL 2371588; *Martinez*, No. 25-cv-11613, 2025 WL 2084238; *Hasan v. Crawford*, -- F. Supp. 3d --, 2025 WL 2682255 (E.D. Va.

Sept. 19, 2025); *Lopez Santos v. Noem*, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Buenrostro-Mendez v. Bondi*, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025).

51. The new Board precedent deprives Mr. Galdamez of any process by subjecting him, a man who has resided for many years in the United States with no criminal history to speak of, to the same mandatory detention regime reserved for applicants at the border seeking initial entry into the United States.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

#### ***Violation of Procedural Due Process (Accardi Claim – No Probable Cause for Arrest)***

52. Mr. Galdamez realleges and incorporates by reference the paragraphs above.

53. The Supreme Court’s decision in *United States ex. rel. Accardi v. Shaughnessy* established the now well-settled principle that agency actions in violation of its own regulations and procedures offends due process. 347 U.S. 260, 267-68 (1954) (finding that the agency must exercise its judgment in a habeas case because the agency committed itself by regulation).

54. The *Accardi* doctrine applies with particular force “[w]here the rights of individuals are affected.” *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). “The *Accardi* doctrine ‘stands for the unremarkable proposition that an agency must abide by its own regulations.’” *Richardson v. Joslin*, 501 F.3d 415, 418 (5th Cir. 2007) (quoting *Chevron Oil Co. v. Andrus*, 588 F.2d 1383, 1386 (5th Cir. 1979)).

55. Under 8 U.S.C. § 1357(a)(2), an agent may make an immigration arrest without a warrant only if they have “reason to believe” that (1) the individual “is in the United States in violation of any [immigration] law or regulation,” and (2) the individual “is likely to escape before

a warrant can be obtained for his arrest.” *See also* 8 C.F.R. § 287.8(c)(2)(i), (ii) (same). Reason to believe must be considered the equivalent of probable cause. *See supra*, ¶ 34.

56. In detaining Mr. Galdamez, ICE failed to abide by 8 U.S.C. § 1357 and its own regulations limiting the circumstances under which it may make warrantless arrests. 8 C.F.R. § 287.8(c)(2)(i) (“An arrest shall be made only when the designated immigration officer has reason to believe that the person to be arrested has committed an offense against the United States or is an alien illegally in the United States.”). There is no indication that ICE had probable cause to arrest Mr. Galdamez in this case.

**COUNT TWO**  
***Violation of Procedural Due Process***  
***(Accardi Claim – No Flight Risk Analysts)***

57. Mr. Galdamez realleges and incorporates by reference the paragraphs above.

58. The Supreme Court’s decision in *Accardi* established the now well-settled principle that agency actions in violation of its own regulations and procedures offends due process. 347 U.S. 260, 267-68 (1954) (finding that the agency must exercise its judgment in a habeas case because the agency committed itself by regulation).

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60. Under 8 U.S.C. § 1357(a)(2), an agent may make an immigration arrest without a warrant only if they have “reason to believe” that (1) the individual “is in the United States in violation of any [immigration] law or regulation,” and (2) the individual “is likely to escape before

a warrant can be obtained for his arrest.” *See also* 8 C.F.R. § 287.8(c)(2)(i), (ii) (same). Reason to believe must be considered the equivalent of probable cause. *See supra*, ¶ 34.

61. In detaining Mr. Galdamez, ICE failed to abide by its own regulations limiting the circumstances under which it may make warrantless arrests. 8 C.F.R. § 287.8(c)(2)(ii) (“A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained.”). There is no indication that ICE conducted any analysis of flight risk before arresting Mr. Galdamez in this case.

### **COUNT THREE**

#### ***Violation of Substantive Due Process Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226***

62. Mr. Galdamez realleges and incorporates by reference the paragraphs above.

63. 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. Indeed, the liberty interest in freedom from detention “is the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

64. Mr. Galdamez has a fundamental interest in liberty and being free from official restraint, and the government’s new, erroneous classification of Mr. Galdamez as an “arriving alien” who is “seeking admission” to the United States and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) without any avenue to challenge that detention violates his substantive right to due process.

65. Respondents’ insistence that Mr. Galdamez remain in immigration custody pursuant to these policies is a violation of Mr. Galdamez’s due process rights.

**COUNT FOUR**

***Violation of Procedural Due Process  
Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226***

66. Mr. Galdamez realleges and incorporates by reference the paragraphs above.
67. 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. Galdamez—after many years in the United States—is clearly not on the threshold of initial entry. Indeed, it is well established that noncitizens like Mr. Galdamez who “once passed through our gates, even illegally” are entitled to greater constitutional protections. *Id.*; *United States v. Benitez-Villafuerte*, 186 F.3d 651, 656 (5th Cir. 1999) (“[Noncitizens] who have entered the United States unlawfully are assured the protection of the Fifth Amendment due process clause.”); *see also Zadvydas*, 553 U.S. at 693 (“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 Mr. Galdamez is properly detained under § 1225(b)(2)—which he is not—his detention does not comply with due process.
68. In Respondents’ contrasting version of the INA, as espoused in *Matter of Yajure Hurtado*, Mr. Galdamez 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.

**COUNT FIVE**

***Violation of Immigration and Nationality Act  
Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226***

69. Mr. Galdamez realleges and incorporates by reference the paragraphs above.
70. This Court should rule that Mr. Galdamez is subject to detention under § 1226(a).

Respondents' contrary reading of the statute has been overwhelmingly rejected in more than one hundred district courts decisions that have ruled on the issue. *See, e.g., Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Alvarez-Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at \*4 (W.D. Tex., Sept. 8, 2025); *Lopez Santos v. Noem*, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Buenrostro-Mendez v. Bondi*, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *see also Mendoza Gutierrez v. Baltasar*, No. 1:25-cv-2720, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Lopez Benitez v. Francis*, --- F. Supp. 3d ---, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025); *Martinez v. Hyde*, -- F. Supp. 3d --, 2025 WL 2084238 (D. Mass. July 24, 2025); *Gomes v. Hyde*, -- F. Supp. 3d --, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. Apr. 24, 2025); *Singh v. Lyons*, No. 1:25-cv-1606, 205 WL 2932635 (E.D. Va. Oct. 14, 2025); *Hasan v. Crawford*, No. 1:25-cv-01408-LMB-IDD, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Sampiao v. Hyde*, -- F. Supp. 3d --, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Leal-Hernandez*, No. 1:25-cv-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025).

71. 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 Mendoza Gutierrez*, 2025 WL 2962908, at \*5; *Sampiao*, 2025 WL 2607924, at \*8; *Gomes*, 2025 WL 1869299, at \*5. The titles of the two statutory sections make this distinction clear. Compare 8 U.S.C. § 1225 (titled “Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing”), with 8 U.S.C. § 1226 (“Apprehension and detention of aliens”).

72. Furthermore, to equate the term “applicant for admission” with “seeking admission,” as EOIR has concluded in *Matter of Yajure Hurtado*, would render the phrase “seeking admission” superfluous because it violates 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.” *Lopez Benitez*, 2025 WL 2371588, at \*6; *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“[N]o clause, sentence, or word shall be superfluous, void, or insignificant.”); *accord Martinez*, 2025 WL 2084238, at \*2; *Mendoza Gutierrez*, 2025 WL 2962908, at \*7. Section 1225’s mandatory detention regime applies to noncitizens who meet three criteria; first, the noncitizen must be “an ‘applicant for admission’ (a ‘term of art’ in the INA that includes noncitizens who ‘arrive[] in the United States,’ as well as those already ‘present in the United States who ha[ve] not been admitted,” second, the noncitizen must be “actively ‘seeking admission’ to the country,” and third, the noncitizen must be “one whom an examining immigration officer determines ‘is not clearly and beyond a doubt entitled to be admitted.’” *Lopez Benitez*, 2025 WL 2371588, at \*6 (quoting *Martinez*, 2025 WL 2084238, at \*2). Each of these criteria must have independent meaning and thus “applicant for admission” cannot be identical to “seeking admission.” The Court should therefore conclude that § 1225(b)(2) defines an individual (an applicant for admission), and action (who is seeking admission), and a limiting criteria (whom the immigration officer determines is not entitled to be admitted). Thus, an “applicant for admission” must also be “seeking admission.”

73. In addition, “Respondents’ reading of § 1225(b)(2)(A) ‘negates the plain meaning of the text.’” *Id.* (quoting *Martinez*, 2025 WL 2084238, at \*6). The phrase “seeking admission,” is in the present tense, connoting a current action. Yet, Mr. Galdamez was not actively seeking

admission when DHS apprehended him and placed him in custody; he “ha[d] already ‘entered’ the country (albeit unlawfully).” *Id.*

74. Similarly, the ordinary meaning of the terms “seeking” and “admission” do not apply to noncitizens, like Mr. Galdamez, who are not actively seeking inspection to enter the United States but instead have been residing in the country for many years. *Lopez Benitez*, 2025 WL 2371588; *Jose Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025).

75. 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), unnecessary. *Sampiao*, 2025 WL 2607924, at \*8; *Rodriguez Vasquez*, 779 F. Supp. 3d at 1259; *Gomes*, 2025 WL 1869299, at \*7. Section 1225(c) 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*, 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)(1)(E). *Id.* If Congress intended § 1225(b) detention to extend to all noncitizens who have not been admitted, the recent amendments would be surplusage. *Sampiao*, 2025 WL 2607924, at \*8 (citing *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.”)).

76. For these reasons, the plain language of § 1225(b)(2)(A) demonstrate that an individual, such as Mr. Galdamez, is not an “applicant for admission” who is “seeking admission” to the United States.

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

**PRAYER FOR RELIEF**

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

- (1) Assume jurisdiction over this matter;
- (2) Issue an order requiring Respondents to show cause why this Petition should not be granted within three days;
- (3) Declare that the government violated its regulations at 8 C.F.R. § 287.8(c)(2)(i)-(ii) and arrested Mr. Galdamez without probable cause or an analysis of flight risk;
- (4) Declare that 8 U.S.C. § 1226(a) governs Mr. Galdamez's detention by U.S. immigration authorities;
- (5) Order that Mr. Galdamez be released from immigration custody with all of his personal belongings based on his warrantless arrests;
- (6) Alternatively, order 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 considers Mr. Galdamez's ability to pay bond as part of the factors in setting bond; and
- (7) Grant any other and further relief this Court deems just and proper.

Dated: October 26, 2025

Respectfully submitted,

/s/ Jessica A. Dawgert

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Local Counsel

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S  
BEHALF PURSUANT TO 28 U.S.C. § 2242.**

I am submitting the verification on behalf of Mr. Galdamez. I am Mr. Galdamez's attorney and I or others in my office have discussed the facts presented in this Petition with Mr. Galdamez or his family. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: October 26, 2025

Respectfully submitted,

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