

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ABRAHAM AVILA MALTOS,

Case No. 1:25-cv-1299

Petitioner,

Hon. Robert J. Jonker
U.S. District Court Judge

v.

KRISTI NOEM, Secretary, U.S. Department of
Homeland Security; ROBERT LYNCH, Field Office
Director, Detroit Field Office, Immigration Customs
Enforcement,

Respondents.

**ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS AND
COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF**

Respondents, Kristi Noem, Secretary, U.S. Department of Homeland Security (DHS) and Robert Lynch¹, Field Office Director, Detroit Field Office, Immigration and Customs Enforcement (ICE), by and through their attorneys, answer the Petition for Writ of Habeas Corpus and Complaint for Emergency Injunctive Relief of Petitioner Abraham Avila Maltos as follows:

Introduction

1. Petitioner is presently being detained by U.S. Immigration and Customs Enforcement (“ICE”) at the North Lake Correctional Facility, located in Baldwin, Michigan.

ANSWER – Admitted.

¹ Petitioner named Robert Lynch as a Respondent, as Field Office Director for ICE’s Detroit Field Office in his official capacity. Mr. Lynch no longer occupies that position and the current Field Office Director, Kevin Raycraft, should automatically be substituted as the Field Office Director Respondent under Fed. R. Civ. P. 25(d).

2. Petitioner is a native and citizen of Mexico. He has been present in the United States since 2002. He has no criminal history.

ANSWER: Respondents admit that Petitioner is a native and citizen of Mexico. Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

3. Petitioner's three U.S. citizen children and other family members are present in the United States. Petitioner's detention is a substantial deprivation and burden that puts Petitioner and his family at risk without his support.

ANSWER: Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of this paragraph. Respondents deny the remaining allegations of this paragraph.

4. Petitioner's detention became unlawful on October 15, 2025, when he was taken into custody by ICE/ERO officials. His continued detention is an unlawful violation of due process and an incorrect interpretation of immigration law.

ANSWER: Respondents deny that ICE detained Petitioner on October 15, 2025, and affirmatively state that ICE detained him on October 16, 2025. The remaining allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the remaining allegations of this paragraph.

5. Petitioner was initially detained on October 15, 2025 in the Chicago area. The circumstances surrounding the encounter are unknown, but Petitioner has no criminal record.

ANSWER: Respondents admit that Petitioner was detained by ICE on October 16, 2025, in Chicago, Illinois. Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph. See also, Respondents' answer to paragraph 4.

6. Petitioner was previously located at the Broadview Detention Center in Broadview, Illinois. He was then transferred to North Lake Processing Center in Baldwin, Michigan, where he is presently detained.

ANSWER: Admitted.

7. Petitioner respectfully asks this Court to issue a temporary restraining order directing Petitioner's release and enjoin Respondents' continued detention of Petitioner or a temporary restraining order directing Respondents to conduct a bond hearing to ensure his due process rights.

ANSWER: This paragraph contains a prayer for relief to which no response is required. To the extent this paragraph is deemed to allege facts to which a response is required, Respondents deny the allegations as untrue.

8. In the alternative, Petitioner respectfully requests the Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C. § 2243.

ANSWER: This paragraph contains a prayer for relief to which no response is required. To the extent this paragraph is deemed to allege facts to which a response is required, Respondents deny the allegations as untrue.

Jurisdiction and Venue

9. The action arises under the Constitution of the United States, the Immigration and Nationality Act of 1952, as amended (“INA”), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny that the Court has jurisdiction over this case and deny the remaining allegations of this paragraph. Further answering, Respondents refer the Court to, and incorporate, their Response to Habeas Petition (“Response”), filed concurrently with this Answer.

10. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241, and Article I, section 9, clause 2 of the United States Constitution (the “Suspension Clause”), as Petitioner is presently subject to immediate detention and custody under color of authority of the United States government, and said custody is in violation of the Constitution, law or treaties of the United States.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny that the Court has jurisdiction over this case and deny the remaining allegations of this paragraph. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

11. This action is brought to compel the Respondents, officers of the United States, to accord Petitioner the due process of law to which he is entitled under the Fifth and Fourteenth Amendments of the United States Constitution.

ANSWER: This paragraph is a characterization of the Petition to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph, including any allegations of due process violations.

12. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1361 (mandamus), and the All Writs Act, 28 USC § 1651.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny that the Court has jurisdiction over this case and deny the remaining allegations of this paragraph. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

13. Venue is proper in the Western District of Michigan because Petitioner is presently detained by Respondents at North Lake Processing Center – which is located within the Western District. 28 U.S.C. § 1391(b), (e)(1).

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents do not contest venue in this case.

Parties

14. Petitioner ABRAHAM AVILA MALTOS is a native and citizen of Mexico. Petitioner is presently detained at North Lake Processing Center, located in Baldwin, Michigan.

ANSWER: Admitted.

15. Respondent KRISTI NOEM is being sued in her official capacity only. Pursuant to the Homeland Security Act of 2002, Pub. L. 107-296, Defendant NOEM, through her

delegates, has broad authority over the operation and enforcement of the immigration laws.

ANSWER: Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of this paragraph. The second sentence of this paragraph states legal conclusions to which no response is required. To the extent a response is required, Respondents deny Petitioner's attempt to summarize a statute and defer to the text of the statute itself.

16. Respondent ROBERT LYNCH is being sued in his official capacity only, as the Field Office Director of the Detroit Field Office of ICE. As such, he is charged with the detention and removal of aliens which fall under the jurisdiction of the Detroit Field Office.

ANSWER: Respondents deny that Robert Lynch is the Field Office Director of the Detroit Field Office of ICE. The Acting Field Office Director is Kevin Raycraft. Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of the first sentence of this paragraph. The second sentence of this paragraph states legal conclusions to which no response is required. To the extent a response is required, Respondents admit that the Field Office Director is charged with the detention and removal of aliens which fall under the jurisdiction of the Detroit Field Office. Respondents deny the remaining allegations of this paragraph.

Custody

17. Petitioner ABRAHAM AVILA MALTOS is being unlawfully detained by ICE and he is not likely to be removed in the reasonably foreseeable future.

ANSWER: Denied.

Factual and Procedural Background

18. Petitioner ABRAHAM AVILA MALTOS is a native and citizen of Mexico. He entered the United States in 2002 and has remained ever since.

Respondents admit the allegations in the first sentence of this paragraph. Respondents lack knowledge or information sufficient to form a belief as to the remaining allegations of this paragraph.

19. Petitioner's three U.S. citizen children, partner, and other family members live in the United States. Petitioner has no criminal history.

ANSWER: Respondents lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

20. Petitioner was recently detained by DHS and initially taken to Broadview Detention Center in Broadview, Illinois. He was then transferred to North Lake Processing Center in Baldwin, Michigan.

ANSWER: Admitted.

21. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued the decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This decision, for the first time in immigration history, proclaimed that any person who crossed the border unlawfully and is later taken into immigration detention is no longer eligible for release on bond.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny Petitioner’s attempt to summarize a BIA decision and defer to the text of the decision itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

22. Before September 5, 2025, just three months prior, the official position of the BIA was that the Immigration Judge had power to grant release on bond under INA section 236(a) if the person did not have a disqualifying criminal record and the judge was satisfied, after a hearing, that the person was not a danger to the community or a flight risk. *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025).

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny Petitioner’s attempt to summarize a BIA decision and defer to the text of the decision itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

23. Moreover, ICE had a longstanding practice of treating noncitizens taken into custody while living in the United States as detained pursuant to 8 U.S.C. section 1226(a). *Rocha Rosado v. Figueroa*, 2025 WL 2337099, (D. Arizona August 11, 2025); see *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024) (“[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court’s] determination of what the law is.”). However, this position changed on July 8, 2025, when internal “interim guidance” was released regarding a change in their longstanding interpretation of which noncitizens are eligible for release on bond. Ex. 1, Interim

Guidance (July 8, 2025). ICE's position is that only those already admitted to the U.S. are eligible to be released from custody during their removal proceedings, and that all others are subject to mandatory detention under 8 U.S.C. § 1225, instead of 8 U.S.C. § 1226, and will remain detained with only extremely limited parole options at ICE's discretion. *See id.*

ANSWER: Respondents deny Petitioner's attempt to summarize a federal district court decision and a Supreme Court decision and defer to the text of the decisions themselves. Respondents also deny Petitioner's attempt to summarize an ICE Interim Guidance document and defer to the text of the document itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

24. Petitioner's continued detention, without the possibility to request a bond hearing, separates him from his family, prohibits him from being able to financially provide for his family, and inhibits his removal defense in many ways, including by making it difficult to communicate with witnesses, gathering evidence, and afford legal representation, among other related harm.

ANSWER: Respondents deny that Petitioner does not have the opportunity to request a bond hearing. Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

25. Due to the September 5, 2025, BIA decision, Petitioner now has no opportunity to seek a request for bond redetermination and must remain detained away from his family, counsel, and support system and continues to be subjected to the aforementioned harms.

ANSWER: Respondents deny that Petitioner does not have the opportunity to seek a request for bond redetermination. Respondents lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

26. Because Petitioner is not presently subject to a removal order and his removal proceedings will remain pending until there is resolution by an immigration judge, there is little likelihood that Petitioner's removal will occur in the reasonably foreseeable future.

ANSWER: Denied.

Legal Framework

Due Process Clause

27. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny Petitioner's attempt to characterize Supreme Court decisions and defer to the text of the decisions themselves. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

28. In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner’s attempt to characterize Supreme Court decisions and defer to the text of the decisions themselves. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

29. “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). In this case, to determine the due process to be afforded to Petitioner, the Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government’s interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.* at 335.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny Petitioner’s attempt to characterize a Supreme Court decision and defer to the

text of the decision itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

Detention Provisions under the Immigration and Nationality Act

30. The Immigration and Nationality Act is codified at Title 8 of the United States Code, Section 1221 *et seq.*, and controls the United States Government's authority to detain noncitizens during their removal proceedings.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner's attempt to characterize a statute and defer to the text of the statute itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

31. The INA authorizes detention for noncitizens under four distinct provisions:

- 1) **Discretionary Detention.** 8 U.S.C. § 1226(a) generally allows for the detention of noncitizens who are in regular, non-expedited removal proceedings; however, permits those noncitizens who are not subject to mandatory detention to be released on bond or on their own recognizance.
- 2) **Mandatory Detention of "Criminal" Noncitizens.** 8 U.S.C. § 1226(c) generally requires the mandatory detention of noncitizens who are removable because of certain criminal or terrorist-related activity after they have been released from criminal incarceration.
- 3) **Mandatory Detention of "Applicants for Admission."** 8 U.S.C. § 1225(b) generally requires detention for certain noncitizen applicants for admission, such as those noncitizens arriving in the U.S. at a port of entry or other noncitizens who have not been admitted or paroled into the U.S. and are apprehended soon after crossing the border.

- 4) **Detention Following Completion of Removal Proceedings 8 U.S.C. § 1231(a)** generally requires the detention of certain noncitizens who are subject to a final removal order during the 90-day period after the completion of removal proceedings and permits the detention of certain noncitizens beyond that period. *Id.* at § 1231(a)(2), (6).

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner’s attempt to characterize a statute and defer to the text of the statute itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

32. This case concerns the detention provisions at §§ 1226(a) and 1225(b). Both detention provisions, §§ 1226(a) and 1225(b), 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, 3009–585.²

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny Petitioner’s attempt to characterize a statute and defer to the text of the statute itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

33. Following enactment of the IIRIRA, the Executive Office for Immigration Review (“EOIR”) drafted new regulations explaining that, in general, people who entered the

² Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

country without inspection were not considered detained under § 1225(b) and that they were instead detained under § 1226(a) after an arrest warrant was issued by the Attorney General. *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) (“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*”) (emphasis added).

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner’s attempt to characterize statements in the federal register and defer to the text of the statements themselves. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

34. The legislative history behind § 1226 also demonstrates that it governs noncitizens, like Petitioner, who were deemed inadmissible upon inspection at the border, released into the United States at the border after being placed into removal proceedings, and were present in the United States for a number of years prior to being taken into detention. Before passage of the Immigration Reform and Immigrant Responsibility Act (“IRIRA”), the predecessor statute to § 1226(a) governed deportation proceedings for all noncitizens arrested within the United States, and like § 1226(a), included a provision allowing for discretionary release on bond. *See* 8 U.S.C. § 1252(a)(1)

(1994).³ After passing the IIRIRA, Congress declared the new § 1226(a) “restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond” a noncitizen “who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229. *See also* H.R. Rep. No. 104-828, at 210. Because noncitizens like Petitioner were entitled to discretionary detention under § 1226(a)’s predecessor statute, and Congress declared the statute’s scope unchanged by IIRIRA, the Court should interpret § 1226 to allow for a discretionary release on bond for noncitizens in a situation similar to Petitioner.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner’s attempt to characterize a statute, congressional reports, and a federal circuit court decision, and defer to the text of the statute, reports, and decision themselves. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

35. On September 5, 2025, the Board of Immigration Appeals issued its decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) and proclaimed for the first time that any person who crossed the border unlawfully and is later taken into immigration detention is no longer eligible for release on bond.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the

³ See 8 U.S.C. § 1252(a)(1) (1994) (“Pending a determination of deportability...any [noncitizen]...may, upon warrant of the Attorney General, be arrested and taken into custody.”); *Hose v. Immigration & Naturalization Serv.*, 180 F.3d 992, 994 (9th Cir. 1999)(noting a “deportation hearing” was the “usual means” of proceeding against an alien physically in the United States).

allegations of this paragraph. Respondents also deny Petitioner’s attempt to characterize a BIA decision and defer to the text of the decision itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

36. This decision ignores decades of immigration law and precedent by the Supreme Court, as well as the policies and procedures that had been in place before EOIR for more than 30 years.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner’s attempt to characterize a BIA decision and defer to the text of the decision itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

37. In *Jennings v. Rodriguez*, the Supreme Court analyzed the statutory sections in question, 8 U.S.C. section 1225 and 8 U.S.C. 1226. 583 U.S. at 287. The Court held that section 1225(b) “applies primarily to aliens seeking entry into the United States.” *Id.* At 297 Then, the Court noted that section 1226 “applies to aliens already present in the United States.” *Id.* At 303.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner’s attempt to characterize a Supreme Court decision and defer to the text of the decision itself.

Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

38. The Court specifically found that “Section 1226(a) creates a default rule for those aliens by permitting- but not requiring- the Attorney General to issue warrants for their arrest and detention pending removal proceedings. Section 1226(a) also permits the Attorney General to release those aliens on bond, ‘except as provided in subsection (c) of this section.’” (subsection pertains to aliens who fall into categories involving criminal offenses or terrorist activities). *Id.* At 303. “Federal regulations provide that alien detained under §1226(a) receive bond hearings at the outset of detention.” *Id.* At 306; 8 CFR 236.1(d)(1), 1236.1(d)(1)

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner’s attempt to characterize a Supreme Court decision and defer to the text of the decision itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

39. The Supreme Court’s analysis in *Jennings* demonstrates the difference between detention of arriving aliens who are seeking entry into the United States under section 1225 and the detention of those who are already present in the United States under section 1226.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner’s attempt to

characterize a Supreme Court decision and defer to the text of the decision itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

40. The BIA’s erroneous interpretation of the INA defies the plain text of 8 U.S.C. §§ 1225 and 1226. A key phrase in § 1225 states that “[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a[.]” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). In other words, mandatory detention applies when “the individual is: (1) an ‘applicant for admission’; (2) ‘seeking admission’; and (3) ‘not clearly and beyond a doubt entitled to be admitted.’” *Martinez*, 2025 WL 2084238, at *2.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner’s attempt to characterize a statute and federal district court decision and defer to the text of the statute and decision itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

41. The “seeking admission” language, “necessarily implies some sort of present tense action.” *Martinez*, 2025 WL 2084238, at *6; *see also Matter of M- D-C-V-*, 28 I&N Dec. 18, 23 (BIA 2020) (“The use of the present progressive tense ‘arriving,’ rather than the past tense ‘arrived,’ implies some temporal or geographic limit”); *U.S. v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of verb tense is significant in construing statutes.”).

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner’s attempt to characterize a federal district court decision, a Supreme Court decision, and a BIA decision, and defer to the text of the decisions themselves. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

42. In other words, the plain language of § 1225 applies to immigrants currently seeking admission into the United States at the nation’s border or another point of entry. It does not apply to noncitizens “already present in the United States”—only § 1226 applies in those cases. *See Jennings*, 583 U.S. at 303.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner’s attempt to characterize a Supreme Court decision and defer to the text of the decision itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

43. When interpreting a statute, “every clause and word . . . should have meaning.” *United States ex rel. Polansky, M.D. v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (internal quotation marks and citation omitted). And “the words of the statute must be read in their context and with a view to their place in the overall statutory scheme.” *Gundy v. United States*, 588 U.S. 128, 141 (2019) (quotation omitted).

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner’s attempt to characterize Supreme Court decisions and defer to the text of the decisions themselves. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

44. The *Matter of Yajure Hurtado* decision requires the Court to ignore critical provisions of the INA and it also renders portions of the newly enacted provisions of the INA superfluous. “When Congress amends legislation, courts must presume it intends its amendment to have real and substantial effect.” *Van Buren v. United States*, 593 U.S. 374, 393 (2021).

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner’s attempt to characterize a Supreme Court decision and defer to the text of the decision itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

45. Congress passed the Laken Riley Act (the “Act”) in January 2025. The Act amended several provisions of the INA, including §§ 1225 and 1226. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Relevant here, the Act added a new category of noncitizens subject to mandatory detention under § 1226(c)—those already present in the United States who have also been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); 8 U.S.C. § 1182(a)(6)(A). Of course, under the

government's position, these individuals are already subject to mandatory detention under § 1225—rendering the amendment redundant. Likewise, mandatory-detention exceptions under § 1226(c) are meaningful only if there is a default of discretionary detention—and there is, under § 1226(a). *See Rodriguez*, 2025 WL 1193850, at *12.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents admit that Congress passed the Laken Riley Act in January 2025, which amended the INA. Respondents deny the remaining allegations of this paragraph. Respondents also deny Petitioner's attempt to characterize a statute and federal district court decision and defer to the text of the statute and decision themselves. Further answering, Respondents refer the Court to, and incorporate herin, their Response, filed concurrently with this Answer.

46. Additionally, “[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction, the court generally presumes that the new provision works in harmony with what came before.” *Monsalvo v. Bondi*, 604 U.S., 145 S. Ct. 1232, 1242 (2025). Congress adopted the Act against the backdrop of decades of agency practice applying § 1226(a) to immigrants like Petitioner, who are present in the United States but have not been admitted or paroled. *Rodriguez*, 2025 WL 1193850, at *15; *Martinez*, 2025 WL 2084238, at *4; 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.”).

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner’s attempt to characterize a Supreme Court decision, federal district court decisions, and congressional reports, and defer to the text of the decisions and reports themselves. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

47. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” Removal hearings for noncitizens under 1226(a) are held under § 1229a, which “decid[e] the inadmissibility or deportability of a[] [noncitizen].” By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner’s attempt to characterize a statute and defer to the text of the statute itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

48. The analysis and holding by the BIA in *Matter of Yajure Hurtado* has also consistently been rejected by district courts across the country over the last several months. *See, e.g., Jose J.O.E.*, 2025 WL 2466670; *Maldonado*, 2025 WL 2374411; *Ferrera Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025); *Aguilar Vazquez v. Bondi*, 25-cv-03162 (D. Minn. Aug 19, 2025); *Tiburcio Garcia v. Bondi*, 25-CV-03219 (D.

Minn. Aug. 29, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, No. 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Campos Leon v. Forestal*, No. 1:25-CV-01774 (S.D. Ind. Sept. 22, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (addressing *Matter of Hurtado* and finding that the Board's analysis is incorrect); *Jimenez v. FCI Berlin*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, No. 1:25-CV-12094-IT, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero*, 2025 WL 2403827; *Martinez*, 2025 WL 2084238; *dos Santos v. Noem*, No. 1:25-CV-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Choglio Chafra v. Scott*, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Chiliquina Yumbillo v. Stamper*, No. 2:25-CV-00479-SDN, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Lopez Benitez*, 2025 WL 2371588; *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Hasan v.*

Crawford, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-CV-01789-ODW (DFMX), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Jabara Oliveros v. Kaiser*, 2025 WL 2677125 (N.D. Cal. Sept. 18, 2025); *Castellanos v. Kaiser*, No. 25-CV-07962, 2025 WL 2689853 (N.D. Cal. Sept. 18, 2025); *Leon Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2675785 (E.D. Cal. Sept. 18, 2025); *Rosado*, 2025 WL 2337099; *Alvarez Martinez v. Noem, et al.*, 5:25-CV-01007-JKP (W.D. TX Sept. 8, 2025)(finding section 1225 does not apply); *see also* Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining that “[d]espite 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”).

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny Petitioner’s attempt to characterize federal district court decisions and defer to the text of the decisions themselves. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

49. This Court is not required, and should not, give deference to the recent *Matter of Yajure Hurtado* decision. In *Loper Bright*, the Supreme Court was clear that “[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority,” and indeed “may not defer to an agency interpretation of the law simply because a statute is ambiguous.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Rather, this Court can simply look to the Supreme Court’s own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens “seeking admission into the country”—i.e., new arrivals, and that this contrasts with § 1226, which applies to noncitizens “already in the country.” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner’s attempt to characterize Supreme Court decisions and defer to the text of the decisions themselves. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

Claims for Relief

FIRST CAUSE OF ACTION

Violation of the Due Process Clause of the Fifth Amendment
of the United States Constitution

50. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

ANSWER: Respondents adopt by reference their responses to all the prior paragraphs as though fully incorporated herein.

51. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty by refusing him the opportunity to request a bond hearing.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner's attempt to characterize the Constitution and defer to the text of the Constitution itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

52. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community and family.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner’s attempt to characterize a Supreme Court decision and defer to the text of the decision itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

53. The *Matter of Yajure Hurtado* decision wrongly interprets the Immigration and Nationality Act.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner’s attempt to characterize a BIA decision and defer to the text of the decision itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

54. This Court is not required to give deference to *Matter of Yajure Hurtado*. In *Loper Bright*, the Supreme Court was clear that “[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority,” and indeed “may not defer to an agency interpretation of the law simply because a statute is ambiguous.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024).

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner’s attempt to characterize a Supreme Court decision and defer to the text of the decision itself.

Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

55. Rather, this Court can simply look to the Supreme Court's own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens "seeking admission into the country"—i.e., new arrivals, and that this contrasts with § 1226, which applies to noncitizens "already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). By keeping Petitioner detained today, his detention is unconstitutional as applied to him and in violation of his due process rights. Petitioner should have the opportunity to have a bond hearing before an Immigration Judge.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner's attempt to characterize a Supreme Court decision and defer to the text of the decision itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

56. By issuing its decision in *Matter of Yajure Hurtado*, the BIA has taken nearly all bond authority away from Immigration Judges.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner's attempt to characterize a BIA decision and defer to the text of the decision itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

57. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

ANSWER: Denied.

SECOND CAUSE OF ACTION

Violation of the Immigration and Nationality Act

58. Petitioner repeats and incorporates by reference all allegations above as though fully set forth fully herein.

ANSWER: Respondents adopt by reference their responses to all the prior paragraphs as though fully incorporated herein.

59. Petitioner has been detained and will not be afforded the opportunity to have a bond redetermination hearing before an Immigration Judge pursuant to *Matter of Yajure Hurtado*.

ANSWER: Respondents admit that Petitioner has been detained but deny that he does not have the opportunity to seek a request for bond redetermination. The remaining allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the remaining allegations of this paragraph.

60. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. Mandatory detention does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), §

1226(c), or § 1231.

ANSWER: The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is required, Respondents deny the allegations of this paragraph. Respondents also deny Petitioner's attempt to characterize a statute and defer to the text of the statute itself. Further answering, Respondents refer the Court to, and incorporate, their Response, filed concurrently with this Answer.

61. The BIA has wrongfully issued its decision in *Matter of Yajure Hurtado* finding all noncitizens, such as Petitioner, are subject to mandatory detention under § 1225(b)(2).

ANSWER: Denied.

62. The unlawful application of § 1225(b)(2) to Petitioner violates the INA.

ANSWER: Denied

The remainder of the Petition is a Prayer for Relief to which no response is required. To the extent that the Prayer for Relief is deemed to allege facts to which a response is required, Respondents deny the allegations.

Any allegation in the Petition that has not been expressly admitted is hereby denied.

Respectfully submitted,
TIMOTHY VERHEY
United States Attorney

Dated: November 19, 2025

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