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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

J. Guadalupe Mariscal Serrano,

Petitioner-Plaintiff,

v.

Sandra Salazar, IMMIGRATION CUSTOMS ENFORCEMENT AND REMOVAL OPERATIONS CHICAGO FIELD OFFICE DIRECTOR; Shawn Byers, DEPUTY IMMIGRATION CUSTOMS ENFORCEMENT FIELD OFFICE DIRECTOR; Marcos Charles, ACTING EXECUTIVE ASSOCIATE DIRECTOR, ENFORCEMENT AND REMOVAL OPERATIONS; Todd M. Lyons, ACTING DIRECTOR, IMMIGRATION CUSTOMS ENFORCEMENT, Madison Sheahan, DEPUTY DIRECTOR, IMMIGRATION CUSTOMS ENFORCEMENT; Kristi Noem, SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY; Andrew S. Boustros, UNITED STATES ATTORNEY; Pam Bondi, ATTORNEY GENERAL OF THE UNITED STATES; and Donald J. Trump, PRESIDENT OF THE UNITED STATES,

Respondents

Case No. 1:25-cv-13170

Honorable Judge ___________________

PETITION FOR WRIT OF HABEAS CORPUS AND REQUEST FOR RELEASE FROM DETENTION

Expedited Hearing Requested

PETITION FOR WRIT OF HABEAS CORPUS AND REQUEST FOR RELEASE FROM DETENTION

NOW COMES the Petitioner, Mr. J. Guadalupe Mariscal Serrano ("Petitioner" or "Mr. Mariscal Serrano") by and through his attorney, Angelika D. Charczuk of ADC Immigration Law, and hereby submits a Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 to this Court.

INTRODUCTION

1. Petitioner, Mr. Mariscal Serrano was apprehended by the Department of Homeland Security (DHS) U.S. Immigration & Customs Enforcement (ICE) officers in a warrantless immigration enforcement action on or about October 27, 2025, while working as a landscaper in Chicago, Illinois. ICE has specifically targeted landscapers in and around Chicagoland in their operation known as Operation Midway Blitz.

2. Mr. Mariscal Serrano has resided at his current address in Illinois for approximately eleven (11) years.[1] He is the father of two minor U.S. citizen children and a U.S. citizen adult daughter, all three of whom reside with him and rely on his financial, emotional, and physical support. He is an involved member of his local community and based on initial inquiries appears to have no criminal record.

3. Both of Petitioner's parents are Lawful Permanent Residents (LPRs) with considerable health complications, including cancer. Petitioner's parents require emotional and financial support for their cancer treatments. Petitioner actively participates in his parents' care, contributes to their financial support, and maintains strong emotional ties with them.

4. At the time of filing, it was last known that Mr. Mariscal Serrano is detained in the U.S. Immigration & Customs Enforcement Broadview Facility at 1930 Beach St., Broadview,

[1] Petitioner's full residential address is known to counsel and will be provided to the Court upon request.

IL 60155, where he was transported shortly after his arrest in Chicago, Illinois, and remained through and including the evening hours of October 27, 2025. However, Mr. Mariscal Serrano has not been located through the public ICE Online Locator site, which raises serious humanitarian concerns about his whereabouts and the conditions of his detention. Additionally, Counsel was unable to confirm his exact location upon entering Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, in the ICE ERO online portal and attempting to utilize the "Schedule a Visit" option – a fact that further underscores the troubling circumstances of lack of access to legal counsel by detainees in ICE custody.

5. Petitioner faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have alleged Petitioner is subject to mandatory detention per current application of the DHS July 8, 2025, policy as well as the September 5, 2025, Board of Immigration Appeals ("Board" or "BIA") decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Mr. Mariscal Serrano is filing this petition shortly after his detention due to this well-documented practice of ICE denying similarly situated individuals the ability to seek a custody redetermination, and thus subjecting them to arbitrary confinement.

6. Petitioner is neither a flight risk nor a danger to the community, as he has resided at his most recent address in Illinois for approximately eleven years, has strong and extensive ties to the community, and has LPR parents and U.S. citizen children who depend on him. His U.S. citizen children and LPR parents will suffer exceptional and extremely unusual hardship while Petitioner is absent, particularly given their strong family relationships.

7. However, on or about October 27, 2025, ICE detained him without notice,or opportunity to be heard, on the decision of an individual without authority to do so, without

findings required by law, without a warrant, and in violation of the Constitution, agency rules, and the October 7, 2025, Order in the *Castañon Nava* Settlement.

8. Petitioner is presumed to be charged with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i). At the time of this filing, Petitioner has not been served any documents. As of time of filing, Petitioner's DHS Form I-862, Notice to Appear, has not been docketed with any Immigration Court within the EOIR.

9. Based on this presumed allegation in Petitioner's removal proceedings, DHS will deny Petitioner's release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone alleged to be inadmissible under § 1182(a)(6)(A)(i)—i.e., those who are alleged to have entered the United States without admission or inspection—to be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

10. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an Immigration Judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond, thus stripping the authority of Immigration Judges to provide a bond for individuals similar to Petitioner.

11. Further, despite a legal ruling in *Rodriguez v. Bostock*, 2025 WL 1193850 (W.D. Wa. Apr. 24, 2025), rejecting this position, Respondents continue to maintain that noncitizens who entered the United States without inspection are not eligible for bond redetermination

hearings, because they are applicants for *admission* within the meaning of 8 U.S.C. § 1225(b)(2)(A).

12. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

13. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A), mandating detention "in 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" does not apply to individuals like Petitioner – alleged to have previously entered without inspection and firmly established in the United States. 8 U.S.C. § 1225(b)(2)(A) (emphasis added). There is no evidence in the record, and certainly none presented by the arresting officers *prior* to Mr. Mariscal Serrano's detention, that he was *seeking* admission or that the immigration officers engaged in the act of *examining* any purported application for admission. To the contrary, Petitioner's warrantless detention appears to have resulted from the officers observing his commute to a job site while towing a trailer loaded with landscaping equipment.

14. Instead, individuals like Mr. Mariscal Serrano – i.e. already present in the United States at the time of their apprehension – are subject to a different statute, § 1226(a), titled "Apprehension and detention of aliens" and specifically addressing their "[a]rrest, detention, and release." *Id.* Section 1226(a) allows for the issuance of a warrant and detention of alleged noncitizens, as well as release on conditional parole or bond. *See Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018) ("As noted, § 1226 applies to aliens *already present* in the United States … [and] 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.") (emphasis added). That statute expressly applies where individuals, like Petitioner, are alleged to be charged as inadmissible for having entered the United States without inspection.

15. More importantly, the Government has changed course and now adopts the opposite view. Respondents should be judicially estopped from asserting their current interpretation of 8 U.S.C. § 1225(b)(2)(A), because they previously prevailed in litigation after asserting the opposite interpretation. As explained in *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial estoppel applies when a party assumes a position in a legal proceeding, succeeds in maintaining that position, and then adopts a contrary position in a subsequent proceeding to gain an unfair advantage. Here, Respondents previously, and successfully, argued that individuals who entered the United States without inspection were subject to detention under § 1226(a), and not § 1225(b)(2)(A), and courts accepted that position. Respondents now reverse course and assert that such individuals are subject to mandatory detention under § 1225(b)(2)(A), thereby denying them bond hearings. This shift in legal position undermines the integrity of the judicial process and imposes an unfair detriment on Petitioners who relied on the prior interpretation. Accordingly, Respondents should be estopped from asserting this inconsistent position.

16. Respondents are treating every noncitizen as alleged to be "present without admission" as though they are still standing at a port of entry. That interpretation is not only inconsistent with the regulatory definition of *"arriving alien"* but has repeatedly been rejected as an impermissible expansion of detention authority. *See Castañon Nava v. DHS*, No. 18-cv-3757, slip op. at 38–41 (N.D. Ill. Oct. 7, 2025) ("ICE's interpretation would effectively convert nearly every civil immigration arrest into a case of mandatory detention, contrary to the narrow statutory

categories Congress created."). *See* 8 U.S.C. § 1225(b)(2); *See* 8 U.S.C. § 1226. DHS cannot rewrite that jurisdictional boundary by redefining long-settled statutory terms.

17. Judge Cummings rejected ICE's practice of invoking "mandatory detention" as a one-size-fits-all rationale for civil immigration arrests, finding that such an approach "would effectively convert nearly every civil immigration arrest into a case of mandatory detention, contrary to the narrow statutory categories Congress created." *Castañon Nava v. DHS*, No. 18-cv-3757, slip op. at 40 (N.D. Ill. Oct. 7, 2025). The Court further held that ICE cannot rely on post-hoc paperwork or internal relabeling to transform a discretionary 8 U.S.C. § 1226(a) arrest—or an unauthorized, warrantless detention—into a "mandatory" 8 U.S.C. § 1225(b)(2) custody.

18. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

PARTIES

19. Petitioner, Mr. J. Guadalupe Mariscal Serrano, has lived at his current address in the United States for at least eleven (11) years. Prior to Petitioner's detention on or about October 27, 2025, he resided in Chicago, Illinois. Petitioner is believed to still be currently detained in the U.S. Immigration & Customs Enforcement Broadview Staging Facility at 1930 Beach St., Broadview, IL 60155, and in the physical custody of the above-named Respondents.

20. Respondents Shawn Byers and Sandra Salazar are the Immigration Customs Enforcement and Removal Operations Chicago Field Office Directors, and are custodial officials acting within the boundaries of the judicial district of the United States Court for the Northern District of Illinois, acting with authority designated to them in their official capacity by

Respondents Marcos Charles, Acting Executive Associate Director, Enforcement and Removal Operations, Todd M. Lyons, Acting Director, Immigration Customs Enforcement, Madison Sheahan, Deputy Director, Immigration Customs Enforcement, Kristi Noem, Secretary of DHS, Pam Bondi, Attorney General of the United States, and Donald J. Trump, President of the United States.

JURISDICTION

21. The Petitioner is in the physical custody of Respondents. The Petitioner is believed to be detained in the U.S. Immigration & Customs Enforcement Broadview Facility at 1930 Beach St., Broadview, IL 60155, where he was taken on October 27, 2025. His continued detention at the facility was last confirmed that same evening.

22. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 1570. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 and the Suspension Clause of the Constitution because this action is a habeas corpus petition, and under 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.*, and Administrative Procedure Act, 5 U.S.C. § 551, *et seq*. In sum, this Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

23. 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.

24. Although Congress has stripped district courts of habeas jurisdiction in various immigration provisions, *e.g.*, 8 U.S.C. § 1252, those provisions are inapplicable here. Although Congress has the power to deprive district courts of habeas jurisdiction, that power is strictly construed. See, *e.g.*, *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-84 (1999) (finding it "implausible" that listing three discrete actions is Congress' way of referring to all claims arising from removal proceedings); see also *Jennings v. Rodriguez*, 138 S. Ct. 830, 840-41 (2018) (observing that, historically, when confronted with "capacious" phrases, the Court has rejected "uncritical literalism"). Because the vast majority of jurisdiction-stripping provisions do not mention challenges to detention decisions, they do not deprive this Court of habeas jurisdiction over Petitioner's challenges to his detention. See, *e.g.*, 8 U.S.C. § 1252(a)(2)(A) (depriving district courts of habeas jurisdiction to review expedited orders of removal); 8 U.S.C. § 1252(a)(2)(B) (depriving district courts of habeas jurisdiction over certain forms of deportation relief).

25. The only provision that conceivably applies to Petitioner's challenges is 8 U.S.C. § 1226(e), which purports to deprive district courts of jurisdiction over "discretionary" detention decisions. However, that provision does not apply to challenges brought within a petition for habeas corpus. As the Supreme Court has explained, because immigration law has historically used "judicial review" and "habeas corpus" to mean different things, a jurisdiction-stripping provision in the INA must explicitly reference "habeas corpus" or "28 U.S.C. § 2241" to deprive district courts of habeas jurisdiction at all. *INS v. St. Cyr*, 533 U.S. 289, 311-13 (2001).

26. The inapplicability of § 1226(e) to habeas challenges is confirmed by the statutory history of the INA. Prior to the Supreme Court's decision in *INS v. St. Cyr*, the INA's jurisdiction-stripping provisions did not specifically mention "habeas corpus." *See, e.g.*, 8 U.S.C.

§ 1252(a)(2)(A) (2000) (no mention of habeas corpus). The Supreme Court then concluded that, because they did not specifically mention habeas corpus, all issues remained reviewable in habeas corpus proceedings. *See Cyr*, 533 U.S. at 312-13. Congress then amended the INA to specifically include references to habeas corpus in several jurisdiction-stripping provisions. *Compare, e.g.*, 8 U.S.C. § 1252(a)(2)(A) (2000) (no mention of habeas corpus) with 8 U.S.C. § 1252(a)(2)(A) (2005) (mentioning habeas corpus). This was done in direct response to the Court's decision in *St. Cyr*. H.R. Rept. No. 109-72, 173-76 (2005) (explaining Supreme Court's ruling in *St. Cyr*, discussing its impact, and describing how changes to the INA are intended to mitigate and resolve perceived issues).

27. At that time, Congress did not amend § 1226(e) to include reference to habeas corpus, and it still has not. *Compare, e.g.*, 8 U.S.C. § 1252(a)(2)(A) (2005) (mentioning habeas corpus) with 8 U.S.C. § 1226(e) (2005) (no mention of habeas corpus) *and* 8 U.S.C. § 1226(e) (2020) (still no mention of habeas corpus). This observation lends strong credence to the notion that Congress intended that § 1226(e) would leave habeas review intact. See also H.R. Rept. No. 109-72, 175 (2005) (amendments "would not preclude habeas review over challenges to detention that are independent of challenges to removal orders. Instead, the bill would eliminate habeas review only over challenges to removal orders").

28. That conclusion is supported by canons of statutory construction. "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. INS*, 514 U.S. 386, 397 (1995) (citing *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979) and *Moskal v. United States*, 498 U.S. 103, 109-11 (1990)). Reasoning by contrapositive, it follows that when Congress intends no change to occur, it will not amend a statute. So, by leaving § 1226(e) alone, it follows that Congress intended to leave intact district

courts' habeas corpus jurisdiction over challenges to detention decisions by immigration enforcement agencies.

29. Furthermore, even if § 1226(e) *did* apply to petitions for habeas corpus in general, it would not apply to Petitioner's specific claims. Section 1226(e) only purports to deprive district courts of jurisdiction to review the agency's "discretionary judgment." Administrative agencies do not have discretion to violate the constitution, so decisions that do so, by definition, are not "discretionary judgments." *See* 8 U.S.C. § 1226(e). It follows that, as a matter of statutory construction, § 1226(e) cannot be said to apply to constitutional claims challenging detention.

30. Therefore, this Court holds the jurisdiction to review this habeas petition on behalf of the Petitioner-Plaintiff.

VENUE

31. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Northern District of Illinois, the judicial district in which Petitioner is believed to be currently detained.

32. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Northern District of Illinois.

33. Under 28 U.S.C. § 1391(e)(1), the proper venue lies in the United States District Court for the Northern District of Illinois, the judicial district in which DHS originally arrested and is believed to be currently detaining Petitioner, where Petitioner lives, and where Respondents Shawn Byers and Sandra Salazar act as the Immigration Customs Enforcement and Removal Operations Chicago Field Office Directors.

REQUIREMENTS OF 28 U.S.C. § 2243

34. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

35. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. 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).

LEGAL FRAMEWORK

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

37. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge ("IJ"). *See* 8 U.S.C. § 1229(a). Individuals in § 1226(a) detention are generally 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* 8 U.S.C. § 1226(c). Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2). Last,

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

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

39. The detention provisions at § 1226(a) and § 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. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

40. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 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).

41. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). 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 IJ 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 § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

42. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

43. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when and where a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

44. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

45. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

46. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States and ordered bond hearing under § 1226(a). *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

47. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and

recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789- ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025).

48. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to individuals like Petitioner.

49. Section 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 § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

50. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those alleged to have entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such individuals makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); see also *Gomes*, 2025 WL 1869299, at *7.

51. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are alleged to be present without admission or parole.

52. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

53. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

54. Exhaustion is not required of this claim. *See Gonzalez v. O'Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004). Exhaustion is not required in four (4) circumstances: (1) When delay would cause undue prejudice; (2) When the agency lacks the ability or competence to resolve the dispute; (3) When exhaustion would be futile because the agency has already decided the issue; and (4) When substantial constitutional questions are raised. *Id.* (citing *Iddir v. INS*, 301 F.3d 492, 498 (7th Cir. 2002)). This claim falls into three of the four exceptions to exhaustion.

55. First and foremost, delay would cause undue prejudice to Petitioner as, per *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA held that under the "plain language" of INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), immigration judges categorically lack jurisdiction

to conduct bond hearings for noncitizens deemed "present in the United States without admission," even in cases where the Department of Homeland Security (DHS) has elected to place such individuals into removal proceedings under INA § 240. *Id.* at 229. The Board's decision recharacterizes § 235(b)(2)(A) as a sweeping "catch-all" detention mandate for virtually all applicants for admission not subject to expedited removal under § 235(b)(1). *Id.* at 219-220. In doing so, the Board selectively relies on *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018), to claim that detention under § 235(b)(2)(A) must continue "until removal proceedings have concluded." *Id.* at 225.

56. For the same reason explained above, this claim falls into two (2) other exceptions: the agency lacks the ability or competence to resolve the dispute and exhaustion would be futile because the agency has already decided the issue.

57. Secondly, since the Immigration Judge (IJ) is not empowered to overrule Board of Immigration Appeals precedent, particularly with respect to case law that is so recent, it would be futile to require Petitioner to first seek custody redetermination before the IJ. Crucially, the reasoning explained above represents a striking departure from decades of agency practice and jurisprudence. For years, DHS and the Immigration Courts have recognized the authority of Immigration Judges to conduct custody redetermination hearings in precisely these circumstances. The Board's sudden and disingenuous reinterpretation of the statute disregards both its own precedent and the constitutional concerns raised by prolonged detention without individualized review. By invoking "plain language" now—after years of contrary interpretation—the agency effectively insulates detention decisions from meaningful administrative review.

58. Accordingly, the Petitioner has no further recourse within the Immigration Court system or the Board. The exhaustion requirement is therefore satisfied. In light of the Board's

denial of Immigration Judge jurisdiction to hear custody redetermination requests, habeas corpus is the only mechanism available to challenge Respondent's ongoing detention and to vindicate constitutional rights at stake. This habeas is being filed immediately because of the response of the Immigration Court and Board to individuals similar to Petitioner.

59. Nor does 8 U.S.C. § 1226(e) bar review of this claim. Supreme Court and Seventh Circuit precedent establish that § 1226(e) does not strip district courts of habeas jurisdiction over challenges to the government's detention authority under the statute. *See Jennings*, 138 S. Ct. at 841 (citing *Demore v. Kim*, 538 U.S. 510, 516 (2003)); *see also Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999). This claim fits comfortably within that description. Furthermore, even if those cases did not leave this court's habeas jurisdiction intact, the Constitution itself would. *See* U.S. Const., Art. I, § 9, cl.2; *see also Boumediene v. Bush*, 553 U.S. 723, 792-93 (2008) (attempts to strip habeas jurisdiction that do not leave an adequate alternative are inoperative). Petitioner is exercising his right to challenge the legality of his detention that falls under the jurisdiction of this honorable Court.

60. Because the Immigration Court currently lacks jurisdiction to evaluate Petitioner's custody determination, Petitioner asks this Court to do so, and order that he be released immediately.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

61. Mr. J. Guadalupe Mariscal Serrano was born in 1975, and is thirty-five (35) years old. He has resided in the United States continuously for at least 11 years, and he has resided at his current address in Chicago, Illinois, since approximately June 2014.

62. Petitioner is the father of two U.S. citizen children, aged 14 and 17, as well as a U.S. citizen daughter, K. A. M. G. (age 21), all of whom reside in his care. He financially

provides for and supports them, and his continued presence in the United States is vital to their safety, well-being, and stability.

63. Mr. Mariscal Serrano is a devoted husband to his longtime spouse and deeply engaged and supportive parent to his U.S. citizen children. He is actively involved in the day-to-day care and upbringing of his children, ensuring that they have the necessities of life, as well as love and emotional support.

64. Additionally, Petitioner has two LPR parents who are suffering from serious health conditions due to cancer diagnoses. Petitioner provides financial and emotional support to both of his parents, who will suffer exceptional and extremely unusual hardship while he remains detained.

65. Petitioner is employed in the landscaping industry, where he contributes valuable labor to his community. Through his steady employment, he is able to provide for his nuclear family and parents, as well as contribute to the local economy.

66. Based on available information, Petitioner has no criminal convictions in any country. He has maintained a clean criminal record throughout his time in the United States, demonstrating his good moral character and dedication to abiding by the laws of this country.

67. Petitioner has established significant ties to the United States through his long-term residence, his family relationships, his employment, his religious involvement, and his integration into the community.

68. Petitioner's circumstances present compelling humanitarian factors, particularly the young age of his U.S. citizen children and his LPR parents who would suffer exceptional and extremely unusual hardship without his presence, financial, and emotional support.

69. Upon arrest on or about October 27, 2025, ICE transferred Mr. Mariscal Serrano to the U.S. Immigration & Customs Enforcement Broadview Facility, where he is believed to be currently detained. Petitioner's absence is creating a serious disruption to his children's lives, causing psychological and emotional distress at an age when parental presence is essential to their growth and development. In addition, his removal or detention would place them at risk of material deprivation, as they would lose their primary source of income and security. The U.S. citizen children need Petitioner to return to their home immediately for the continued care that Petitioner provides to his children.

70. Petitioner provides both the stability of a present and loving father for his U.S. Citizen children and the financial support needed to meet their basic needs, including food, housing, clothing, and medical care. In addition, Petitioner is also a present and loving son to his LPR parents who depend on his financial support to meet their basic needs and medical treatment. Without his ability to work in landscaping and support them, his children and parents would face exceptional and extremely unusual hardship.

71. If found to be inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and/or § 1182(a)(7)(A)(i), Petitioner would appear to be *prima facie* eligible for immigration relief under 8 U.S.C. § 1229b(b) (Cancellation of removal and adjustment of status for certain nonpermanent residents) in that **(1)** He has maintained continuous physical presence in the United States for more than ten (10) years; **(2)** He has also demonstrated good moral character throughout this time, with no criminal convictions, a record of steady employment in landscaping to support his family, and regularly filing federal taxes; **(3)** He has qualifying relatives, namely his two U.S. citizen children, age 14 and 17, and his two LPR parents and **(4)** His removal from the United States would cause them exceptional and extremely unusual hardship, given the young age of the

children, the serious health conditions of his parents, and the dependence on Petitioner for financial stability, emotional support, and access to essential needs such as food, housing, and medical care. These factors, considered in their totality, would establish Mr. Mariscal Serrano's statutory eligibility for immigration relief, if removal proceedings were initiated against him and he were found to be removable from the United States.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
VIOLATION OF THE INA

72. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

73. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all alleged noncitizens residing in the United States who are alleged to be subject to the grounds of inadmissibility. As relevant here, it does not apply to those who are alleged to have previously entered the country and have resided in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such alleged noncitizens are detained under § 1226(a), unless they are subject to §1225(b)(1), § 1226(c), or § 1231.

74. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

SECOND CLAIM FOR RELIEF
VIOLATION OF THE BOND REGULATIONS

75. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

76. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.

Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) *will be eligible for bond and bond redetermination*." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who are alleged to have entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

77. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner, who has been in the United States for at least 11 years, where he has worked, lived, and established long-term connections.

78. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

THIRD CLAIM FOR RELIEF
VIOLATION OF PROCEDURAL DUE PROCESS

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

80. 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 v. Davis*, 533 U.S. 678, 690 (2001).

81. Petitioner has a fundamental interest in liberty and being free from official restraint.

82. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process. His indefinite, unchecked detention fundamentally violates constitutional protections against arbitrary restraints – protections our Founders undoubtedly sought to safeguard and guarantee.

FOURTH CLAIM FOR RELIEF
EQUAL ACCESS TO JUSTICE ACT UNDER 28 U.S.C. 2412 63

83. If Petitioner prevails, he requests attorney's fees and costs under the Equal Access to Justice Act, as amended. 28 U.S.C. § 2412.

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that this Court:

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the Northern District of Illinois while this habeas petition is pending;

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner immediately or, in the alternative, immediately provide Petitioner with a bond hearing pursuant to 8 U.S.C. §1226(a);

e. Declare that Petitioner's detention is unlawful;

f. Set aside Respondents' unlawful detention policy under the APA, 5 U.S.C. § 706(2);

g. Award Petitioner reasonable attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified underlaw; and

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

Respectfully submitted,

DATED: 29 of October of 2025
Chicago, IL

s/Angelika D. Charczuk
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Illinois ARDC No. 6338808

Attorney for Petitioner-Plaintiff

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have reviewed relevant documentation of the events described in this Petition and Complaint reasonably available to me prior to and at the time of filing. On the basis of those documents, past discussions with the Petitioner, and discussions with individuals whom Petitioner authorized to speak on his behalf, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

DATED: 29 of October of 2025
Chicago, IL

s/Angelika D. Charczuk
Angelika D. Charczuk
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Illinois ARDC No. 6338808

Attorney for Petitioner-Plaintiff

CIVIL LOCAL RULE 3.2 DISCLOSURE STATEMENT

Counsel Petitioner furnishes this disclosure in compliance with Civil L.R. 3.2 and Fed. R. Civ. P. 7.1.

Full name of every party counsel represents in this case: J. Guadalupe Mariscal Serrano

The Petitioner is an individual, not a corporation.

Attorneys who will appear, or are expected to appear, for Petitioner include:

Angelika D. Charczuk, ADC Immigration Law

DATED: 29 of October of 2025.
Chicago, IL

s/Angelika D. Charczuk

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Attorney for Petitioner-Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned counsel, hereby certify that on this date I filed the Petition for Writ of Habeas Corpus and all accompanying attachments through the CM/ECF system. Upon receipt of the issued, stamped summons, I will promptly serve a copy of the petition and summons by U.S. Certified Priority Mail with Return Receipt Requested on each of the following individuals:

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DATED: 29 of October of 2025.
Chicago, IL

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