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

LUCAS CABRERA-HERNANDEZ, Petitioner, v. **PAMELA BONDI,** Attorney General of the United States; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; TODD LYONS, Acting Director of Immigration and Customs Enforcement; SYLVESTER M. ORTEGA, Acting Director of San Antonio Field Office, U.S. Immigration and Customs Enforcement; and PERRY GARCIA, Warden, La Salle County Regional Detention Center, in their official capacities, Respondents.	Case No. 5:25-cv-197 **PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1) Petitioner, Lucas Cabrera-Hernandez, is a Mexican national who has lived in the United States for more than 23 years, is married to a U.S. citizen, has three U.S. citizen children, has been deprived of his due process rights, and is currently being unlawfully detained at the La Salle County Regional Detention Center in Encinal, Texas. Department of Homeland Security ("DHS") officials have engaged in a coordinated effort to unlawfully detain Mr. Cabrera-Hernandez and deprive him of his right to a fair hearing in removal proceedings, following a

drastic reversal in the Agency's interpretation of which noncitizens are entitled to discretionary release following a custody and redetermination hearing with an Immigration Judge.

2) On July 8, 2025, Immigration and Customs Enforcement ("ICE") employees received a memorandum informing them of a radical change in the Agency's statutory interpretation that greatly expands the classes of noncitizens whom the Agency now deems ineligible for release on bond or release on recognizance under 8 U.S.C. 1226(a). Filing No. 1-1, Interim Guidance Regarding Detention Authority for Application for Admission (July 8, 2025).

3) In defiance of decades of Agency statutory interpretation and legal precedents stating otherwise, the guidance requires ICE employees to treat all noncitizens who entered the United States without legal admission as "applicants for admission," under 8 U.S.C. Sec. 1225, regardless of the length of time since their entry into the United States, or whether they were seeking admission into the United States when ICE arrested them. *Id.* It further mandates that such noncitizens may not be released for the duration of their removal proceedings under 8 U.S.C. Sec. 1225(b). *Id.* The ICE memorandum states that the new interpretation was written in coordination with the Department of Justice "DOJ"— which is the independent agency that reviews detention and custody decisions of ICE and DHS. 8 C.F.R. §§ 3.0, 1003.
Petitioner was arrested and detained under this new policy on July 26, 2025, and has been kept in detention in contravention to the Immigration and Nationality Act ("INA"). Filing No. 1-2, NTA dated July 26, 2025. Initially respondents detained Mr. Cabrera-Hernandez at the South Texas Immigration Processing Center in Pearsall, Texas. On October 19, 2025, Petitioner was transferred to the custody of La Salle Regional Detention Center in Encinal, Texas.

4) Following a custody redetermination hearing on August 6, 2025, an immigration judge ("I.J.") ordered Petitioner released on $5,000 bond, finding she had the jurisdiction to do

so under the INA at 8 U.S.C. Sec. 1226(a), and that Petitioner was not a danger to persons or property, and that he was likely to appear for his future proceedings. Filing No. 1-3, Order of the Immigration Judge (Aug. 6, 2025); Filing No. 1-3, Bond Memorandum of the Immigration Judge (Aug. 21, 2025).

5) Notwithstanding the I.J.'s determinations and order for release on bond, DHS officials refused to release Petitioner and continued to detain Mr. Cabrera-Hernandez, relying on a federal regulation that creates unilateral authority for DHS to block an I.J.'s custody order. Under that "automatic stay" regulation, 8 C.F.R. Sec. 1003.19(i)(2), if DHS disagrees with an I.J.'s custody determination, DHS can file a boilerplate notice of intent to appeal, which automatically stays the I.J.'s order. In other words, the prosecuting officials who failed to convince the I.J. to keep Mr. Cabrera-Hernandez detained in the first place can unilaterally block the I.J.'s order and force continued detention.

6) On the same day that the I.J. ordered Petitioner released upon posting bond, DHS asserted unilateral regulatory authority to automatically stay the I.J.'s order and to continue to detain Petitioner through the filing of an EOIR-43, Notice of Intent to Appeal Custody Redetermination, without making an individualized determination of the facts in his case. Filing No. 1-7, EOIR-43. In so doing, DHS has effectively overruled the I.J.'s order, exceeding its authority under the INA, and violated Petitioner's substantive and procedural due process rights under the Fifth Amendment.

7) 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 detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

8) Following the issuance of *Matter of Yajure-Hurtado*, the BIA then granted DHS's appeal challenging the I.J.'s bond decision, on grounds that the I.J. did not have jurisdiction to decide custody in this case under 8 U.S.C. Sec. 1225(b)(2). Filing No. 1-8, BIA Bond Appeal Decision Dated Oct. 12, 2025. This interpretation is contrary to decades of Agency interpretation, Congressional intent, and a plain reading of the INA.

9) Mr. Cabrera-Hernandez remains deprived of his liberty, separated from his wife and children, unable to care for their physical and mental health needs and to provide for them financially. He has been illegally detained, despite a valid order of an immigration judge ordering his release on bond, because of the government's use of the illegal automatic stay regulation and the unlawful interpretation of 8 U.S.C. Sec. 1225(b)(2).

10) The government's assertion that Mr. Cabrera-Hernandez is an applicant for admission seeking admission into the United States under 8 U.S.C. Sec. 1225(b)(2) is erroneous under the INA and should be declared unlawful.

11) Petitioner seeks habeas relief under 28 U.S.C. Sec. 2241, which is the proper vehicle for challenging his unlawful detention.

12) He respectfully requests that the Court find his detention unlawful and unconstitutional and issue a Writ of Habeas Corpus pursuant to 28 U.S.C. Sec. 2241 ordering Respondents to immediately release him from custody. He respectfully requests a preliminary injunction to end the deprivation of his rights during the pendency of his petition, enjoining Respondents from detaining him, and in the alternative, he asks the Court order Respondents to show cause why this Petition should not be granted within three days.

CUSTODY

13) Mr. Cabrera-Hernandez is currently in the custody of the DHS at La Salle County Regional Detention Center in Encinal, Texas. He has been in direct custody of the DHS since July 26, 2025. He remains in the physical custody of Respondents and under the direct control of Respondents and their agents.

JURISDICTION

14) This action arises under the Constitution of the United States and the Immigration and Nationality Act, 8 U.S.C. Sec. 1101 *et seq.*

15) This Court has subject matter jurisdiction under 28 U.S.C. Sec. 2241 (habeas corpus), 28 U.S.C. Sec. 1331 (federal question), and Article I, Sec. 9, cl. 2 of the United States Constitution (Suspension Clause).

16) This Court may grant relief under the habeas corpus statutes, 28 U.S.C. Sec. 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. Sec. 2201 *et seq.*, and the All Writs Act, 28 U.S.C. Sec. 1651.

VENUE

17) Venue is proper because Petitioner is detained at La Salle County Regional Detention Center in Encinal, Texas, which is in La Salle County and within the jurisdiction of this District; Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to his claims occurred in this District; and Petitioner resides in this District. 28 U.S.C. § 1391(e).

HABEAS CORPUS AND REQUIREMENTS OF 28 U.S.C. § 2243

18) A petitioner is entitled to habeas relief if she demonstrates that her detention violates the United States Constitution or federal law. 28 U.S.C. § 2241.

19) 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).

20) Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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).

PARTIES

Petitioner is a resident of San Antonio, Texas, and is a noncitizen in removal proceedings, currently detained at the La Salle Regional Detention Center in Encinal, Texas. Filing No. 1-17, Email Communication with La Salle County Regional Detention Center. He is in custody and under the direct control of Respondents and their agents.

21) Respondent Perry Garcia is the Warden of the La Salle Regional Detention Center in Encinal, Texas, and at the time of filing of his original petition, had immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens. He is being sued in his legal capacity as the Warden of the La Salle Regional Detention Center in Encinal, Texas.

22) Respondent Sylvester M. Ortega is sued in his official capacity as the Acting Director of the ICE San Antonio Field Office of U.S. Immigration and Customs Enforcement. Respondent Ortega is a legal custodian of Petitioner and has authority to release him.

23) Respondent Todd Lyons is sued in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement. In this capacity, Respondent Lyons is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants during their removal procedures. Respondent Lyons is a legal custodian of Petitioner.

24) Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement. Respondent Noem is a legal custodian of Petitioner.

25) Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the Board of Immigration Appeals ("BIA"). Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

26) Petitioner is a long-time resident of San Antonio, Texas, having moved to the city after arriving in the United States from Mexico on or around April 6, 2002, when he was 19 years old. Filing No. 1-4, NTA dated Oct. 3, 2013. A few years after he arrived in the United States, Mr. Cabrera-Hernandez met his U.S. citizen wife and they soon after became parents to their first child in 2005, then married in 2006. *See* Filing No. 1-3, Bond Memorandum of the

Immigration Judge. Mr. Cabrera-Hernandez is now 43 years old, and he and his U.S. citizen wife have three daughters, ages 20, 18, and 15, all born in San Antonio, Texas. *Id.*

27) More than 11 years after he first entered the United States and five years after marrying his wife, Petitioner first encountered ICE enforcement officials on October 3, 2013, in San Antonio, Texas. Filing No. 1-4. ICE officials detained Petitioner and issued a Notice to Appear ("NTA"), making factual allegations about his immigration status. *Id.* In the NTA, ICE officials marked "X" on the box indicating that he was "an alien present in the United States who has not been admitted or paroled," and alleged that he arrived at "the United States at or near Eagle Pass, Texas on or about April 6, 2002." *Id.*

28) Following a custody redetermination hearing with an immigration judge, Petitioner was released on $4,500 bond on October 22, 2013 under the INA at 8 U.S.C. Sec. 1226. Filing No. 1-5, Immigration Bond. On May 25, 2023, at the hearing to answer the allegations on his NTA, the immigration judge in this case dismissed Mr. Cabrera-Hernandez's removal proceedings. Filing No. 1-9, I.J. Order of Dismissal.

29) After the I.J. dismissed his removal proceedings, Mr. Cabrera-Hernandez and his U.S citizen wife diligently sought to pursue his legal immigration status in the United States. His wife filed an I-130 petition on his behalf. Filing No. 1-10, I-797 Receipt for I-130 dated June 9, 2023.

30) While they were waiting for approval of their I-130 petition, Mr. Cabrera-Hernandez submitted his application for the erstwhile "Keeping Families Together" parole program for spouses of U.S. citizens, so he could adjust his status inside the United States. Filing No. 1-11, I-797 Receipt for I-131F dated August 19, 2024. They were disappointed to learn a few months later that the program had been terminated, and USCIS would no longer process his application. Filing No. 1-12, I-797 Notice of Administrative Closure Notice dated Feb. 8, 2025. On March 5,

2025, USCIS approved Mr. Cabrera-Hernandez's wife's I-130 petition. Filing No. 1-13, I-130 Approval Notice. Mr. Cabrera-Hernandez and his wife paid the National Visa Center visa fees, and were preparing documents for his I-601A, Provisional Waiver for Unlawful Presence. Filing No. 1-14, NVC Fee Payment Receipt.

31) This July, ICE internally released "interim guidance" regarding a change in their longstanding interpretation of which noncitizens are eligible for discretionary release on bond under the INA at 8 U.S.C. Sec. 1226(a). Filing No. 1-1. Specifically, ICE is now arguing that only noncitizens who have been admitted with legal entry documents to the United States are eligible to be released from custody during their removal proceedings under 8 U.S.C. Sec. 1226, and that all others are subject to mandatory detention under 8 U.S.C. Sec. 1225 and will remain detained with only extremely limited parole options at ICE's discretion. *Id.*

32) The memo states that the DHS developed its new interpretation of the statutes "in coordination with the Department of Justice." *Id.*

33) This is a complete reversal from ICE's prior position, which they held for decades, that individuals already present in the United States, who entered without inspection and were encountered in the interior of the country long after they entered, are subject to the laws pertaining to arrest and detention at 8 U.S.C. Sec. 1226, and not subject to mandatory detention under 8 U.S.C. Sec. 1225(b). Until July 2025, ICE never previously had a policy of preventing the release of such individuals as the Agency for decades had determined that they were eligible for bond under 8 U.S.C. Sec. 1226(a).

34) Early in the morning on July 26, 2025, Mr. Cabrera-Hernandez was on his way to a work site when ICE officials surrounded and stopped his truck and arrested him, just around the corner from his home in San Antonio. His wife and children walked over to the scene of his

arrest and pleaded with no success that his removal proceedings had been dismissed, that he had an approved I-130 petition, and to not detain him.

35) After arresting Petitioner, ICE officials then detained Mr. Cabrera-Hernandez at the South Texas Immigration Processing Center. Filing No. 1-2. They then issued a second NTA, indicating again that he was "an alien present in the United States who has not been admitted or paroled," and again alleging that he arrived at "the United States at or near Eagle Pass, Texas on or about April 6, 2002." *Id.*

36) On August 4, 2025, Mr. Cabrera-Hernandez filed a request for bond and custody re-determination with the I.J. under the INA at 8 U.S.C. Sec. 1226(a). Congress has granted the Attorney General discretion to decide whether to detain or release certain noncitizens pending a removal decision. *See* 8 U.S.C. § 1226(a). The Attorney General has delegated that authority to I.J.s. 8 C.F.R. Sec. 1003.10. The discretionary detention provision, 8 U.S.C. Sec. 1226(a), applies only to noncitizens without serious criminal convictions. It contrasts with the mandatory detention provision, 8 U.S.C. Sec. 1226(c), which applies to noncitizens convicted of certain criminal offenses or involved in terrorist activities and requires continued detention.

37) When a noncitizen is detained under Section 1226(a), DHS makes the initial custody determination, but the detainee can request reconsideration by an I.J. Here, DHS initially detained Mr. Cabrera-Hernandez without bond.

38) Petitioner requested custody redetermination and bond with the I.J. and submitted more than 250 pages of evidence, demonstrating his more than 23 years of physical presence in the United States, the Texas birth certificates for his wife and three daughters, his wife's approved I-130 petition, as well as his eligibility for relief from removal through cancellation of

removal for certain nonpermanent residents. Filing No. 1-4, Bond Memorandum of the Immigration Judge, at p. 4.

39) During Petitioner's August 6, 2025 bond and custody redetermination hearing, the attorney representing DHS made the novel claim that the INA at 8 U.S.C. 1225(a)(1) deprived the I.J. of jurisdiction over Petitioner because they claimed Mr. Cabrera-Hernandez was "an applicant for admission" subject to mandatory detention under the INA at 8 U.S.C. 1225(b). In making this argument, DHS cited to the Board of Immigration Appeals decision in *Matter of Q. Li*. 29 I&N Dec. 66 (BIA 2025). *Id.*

40) In accordance with decades of practice and precedent, the I.J. rejected DHS's novel argument and determined she had jurisdiction to redetermine custody in Petitioner's case. Filing No. 1-2, Ex. 2, Bond Memorandum of the Immigration Judge, at p. 4. She stated in her written decision:

> DHS "cited no legal authority in support of its interpretation of INA § 235(a)(1) but rested its argument a 'plain reading' of that section. DHS also did not claim and did not present any evidence to show that the respondent has ever been encountered while arriving at or near the border, was ever the subject to a warrantless arrest, or was ever in expedited removal or other proceedings pursuant to § 235 in the past. Likewise, DHS has not argued or presented any evidence to show that the respondent was previously paroled into the U.S. or ought to be considered an arriving alien. The Court therefore finds respondent's case distinguishable from *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025)
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> *Id.*

41) After addressing jurisdiction and reviewing the more than 250 pages of evidence demonstrating good moral character and U.S. family and employment ties, the I.J. then found Mr. Cabrera-Hernandez not to be a danger to the community and granted release on condition of bond of $5,000. *Id.*; Filing No. 1-3, Order of the Immigration Judge (Aug. 6, 2025).

42) On the same day of the hearing, before Petitioner's wife could pay the bond, DHS filed a Notice of Intent to Appeal Custody Redetermination. Filing No. 1-7, EOIR-43. In so doing, DHS blocked the order of release on bond, prevented his wife from paying the bond, and prohibited Petitioner's release. *Id.* The form that DHS submitted to deprive Mr. Cabrera-Hernandez of his liberty does not include any stated rationale for his continued detention but simply asserted authority under Title 8 of the Code of Federal Regulations, Section 1003.19(i)(2) to "automatically" prevent execution of the I.J.'s order. *Id.*

43) This regulation, which was written by executive agencies and not Congress and exceeds the bounds of statutory authority under the INA and gives DHS license to ignore the orders of the delegated authority on custody determination under INA Sec. 1226. This regulation states, in whole:

> *Automatic stay in certain cases.* In any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, **any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR-43) with the immigration court within one business day of the order**, and, except as otherwise provided in 8 C.F.R. 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR-43 is subject to the discretion of the Secretary.
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> 8 C.F.R. § 1003.19(i)(2) (emphasis added).

44) The regulations for the unilateral automatic stay provide no meaningful opportunity to challenge the stay, which obliterates his due process rights. In practice, the automatic stay regulation renders the I.J.'s custody decisions ineffectual: If DHS disagrees with a custody decision, it can keep a noncitizen detained for a minimum of 90 days, without a truly discernable end point.

45) On September 5, 2025, the BIA affirmed the DHS's and the DOJ's position in the July 8, 2025 interim guidance, and issued a precedential decision in another case styled *Matter of*

Yajure-Hurtado. 29 I. & N. Dec. 216 (BIA 2025). The decision reiterated the agencies' position on mandatory detention of "applicants for admission," holding that immigration judges lacked the authority to hear a noncitizen's request for bond if they are an applicant for admission, subject to mandatory detention under INA at 8 U.S.C. 1225(b)(2)(A). *Id.*

46) In response to DHS's appeal of the I.J.'s order of Petitioner's release on bond case, the BIA vacated the I.J.'s bond order on October 12, 2025, following the BIA's decision in *Yajure*-Hurtado, which is binding on all similar cases. Filing No. 1-8, BIA Bond Appeal Decision dated Oct. 12, 2025. The BIA cited the Board's decision in *Matter of Yajure-Hurtado*.

47) Many district courts throughout the country—including the Southern District of Texas— determined the DHS's and the EOIR's DOJ's new interpretation of the mandatory detention law at 8 U.S.C. 1225 is plainly incorrect. *See Ortiz-Ortiz v. Bondi*, No. 5:25-CV-132, slip. op. at 5 (S.D. Tex. Oct. 25, 2025) ("As almost every district court, including another court in the Southern District of Texas, has concluded, 'the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades' support application of Section 1226."); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Tiburcio Garcia v. Bondi*, 25-CV-03219 (D. Minn. Aug. 29, 2025); *Ermeo Sicha v. Bernal,* 2025 WL 2494530 (D. Me. Aug. 29, 2025); *Lopez-Campos v. Raycraft,* 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Benitez v. Noem*, No. 5:25-cv-02190 (C.D. Cal. Aug. 26, 2025); *Jose*

J.O.E. v. Bondi, 2025 WL 2466670 (D. Minn. Aug. 27, 2025)*; Aguilar Vazquez v. Bondi,* 25-cv-03162 (D. Minn. Aug 19, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025); *Maldonado*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL1-190 2267803 (S.D.N.Y. Aug. 8, 2025); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238 (D. Mass. July 24, 2025); *Ferrera Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025).

48) An immigration judge in New York City held an individual hearing in Petitioner's removal case on October 1, 2025, and issued a written decision on October 14, 2025, ordering Mr. Cabrera-Hernandez removed from the United States. Filing No. 1-15, Order of Removal Oct. 14, 2025.

49) On October 21, 2025, Mr. Cabrera-Hernandez filed a notice of appeal of the I.J.'s decision to order him removed. Filing No. 1-16, EOIR-26, Notice of Appeal. During pendency of his appeal, the I.J.'s order of removal is not considered administratively final and thus the laws requiring pre-removal detention are not applicable in this case. 8 U.S.C. § 1231(a)(1)(B)(i).

50) Without relief from this court, Petitioner faces continued deprivation of his due process rights, prolonged detention and the prospect of months, or even years, in immigration custody, separated from his wife and children, unable to tend to their mental and physical well-being and to provide financially for their needs, despite a valid order from an immigration judge to release him on bond.

LEGAL FRAMEWORK

A. Violation of the Immigration and Nationality Act

51) A plain reading of the statute, 8 U.S.C. Sec. 1225, makes clear that the sections in this statute describe the process of "inspection by immigration officers," and who would be subject to the inspections when "seeking admission" into the United States. 8 U.S.C. Sec. 1225. Section 1225(a)(1)—"Aliens treated as applicants for admission"—defines "applicant for admission" as a noncitizen "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including [a noncitizen] who is brought to the United States after having been interdicted in international or United States waters). . . ." In turn, INA Sec. 1101(a)(13) defines "admission" to refer to "the lawful entry of [a noncitizen] into the United States after inspection and authorization by an immigration officer," excluding those paroled under Sec. 1182(d)(5), certain "alien crewmen" and lawful permanent residents returning to the United States except in limited circumstances. 8 U.S.C. § 1225(a)(1), § 1101(a)(13).

52) The other subsections in 8 U.S.C. Sec. 1225(a) describe actions pertaining to entry into the United States. Section 1225(a)(3) refers to "inspections," and states that "All aliens . . . who are applicants for admission or are otherwise *seeking admission* or *readmission* to or *transit* through the United States shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3) (emphasis added). Section 1225(a)(5) discusses statements pertaining to the purposes and intentions of the applicant in ***seeking admission*** to the United States. 8 U.S.C. § 1225 (a)(5) (emphasis added). Thus, a plain reading of the statute subsections, read together provides that 8 U.S.C. Sec. 1225 pertains to inspection of applicants for admission, who are at that moment seeking admission into the United States. *Id.*; *Pulsifer v. United States*, 601 U.S. 124, 133 (2024) (stating that one part of a statute can be discerned by examining the next part and read in

conjunction. "Or, as we usually say in statutory construction cases, by reviewing text in context.").

53) Assuming, *arguendo*, DHS's assertion that Mr. Cabrera-Hernandez is "an applicant for admission," because he is a noncitizen present in the United States who has not been admitted or paroled, the mandatory detention statute subsection at 8 U.S.C. Sec. 1225(b)(2) would still not apply in his case.

54) The INA at 8 U.S.C. Sec. 1225(b)(2)(A) states:

> Subject to subparagraphs (B) and (C), 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, the alien shall be detained for a proceeding under section 1229a of this title.
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> INA § 1225(b)(2)(A) (emphasis added).

55) For mandatory detention to apply, the plain text of Sec. 1225(b)(2)(A) requires an individual to be 1) an "applicant for admission"; 2) "seeking admission"; and 3) determined by an examining immigration officer to be "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see also Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025) (affirming these "several conditions must be met" for a noncitizen to be subject to mandatory detention under § 1225(b)(2)(A)). The second element of Sec. 1225(b)(2)(A)—which requires that he be ***seeking admission***—is not met in Petitioner's case, as he was not *seeking admission* when he was arrested and detained. In fact, he had long ago entered and had been living inside the United States for more than 11 years the first time he was arrested and detained, and for 23 years the second time. The statute, Sec. 1225(b)(2) only implicates noncitizens who are "*seeking admission*" into the United States. *Id.*

56) To ignore the plain language, which limits the application of 8 U.S.C. Sec. 1225(b)(2) to noncitizens in the process of seeking admission into the United States, is to not give effect to

the meaning of words and to make the words included in the statute superfluous. *Corley v. United States*, 556 U.S. 303, 314 (U.S. 2009). It would violate the most basic of interpretive canons, which is that "'[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant ....'". *Id.* (citing *Hibbs v. Winn,* 542 U.S. 88, 101, 124 S.Ct. 2276, 159 L.Ed.2d 172 (2004) (quoting 2A N. Singer, Statutes and Statutory Construction § 46.06, pp.181–186 (rev. 6th ed.2000)).

57) DHS, in its brief on appeal, argues that 8 U.S.C. Sec. 1226(a)—the authority that provides immigration judges the jurisdiction to grant conditional release or release on condition of bond to noncitizens—applies only to "aliens who have been admitted and are deportable who are subject to removal proceedings." Ex. 18, p. 19. This interpretation is not evident from the statute's plain language, does not stem from Congressional intent, and contradicts many years of established Agency understanding.

58) Section 1226(a)(2) describes when an I.J., the authorized delegate of the Attorney General, would have authority to redetermine immigration custody of an "alien" who has been arrested and detained. 8 U.S.C. 1226(a)(2). It also describes under what conditions the I.J. may do so. *Id.* It states: "On a warrant issued by the Attorney General, an ***alien*** may be arrested and detained pending a decision on whether the ***alien*** is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General- (1) may continue to detain the arrested ***alien***; and (2) may release the alien on- (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole[.]" *Id.*

59) The statute makes no modifiers or qualifiers to limit the subject of this law and provides that it applies to any "alien." An alien, as defined in the INA, is "any person not a citizen or national of the United States." 8 U.S.C. § 1101(a)(3).

60) A plain reading of the statute provides that 8 U.S.C. Sec. 1226(a) should apply to all noncitizens in the United States, regardless of their manner of entry, whether they are an immigrant or are a nonimmigrant. *United States v. Mitchell*, 366 F.3d 376, 379 (5th Cir. 2004) ("[O]ur interpretation is subject to ordinary rules of statutory construction, with attention to the plain meaning of the guidelines as written.") (citing *United States v. Boudreau*, 250 F.3d 279, 285 (5th Cir.2001)).

61) During the 1996 Congressional session, both Sections 1225 and 1226 were included or amended in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA").

62) While construing the meaning of statutes included or amended in IIRIRA, the Fifth Circuit Court of Appeals has in the past turned to the Congressional Conference Committee Report accompanying IIRIRA for guidance. *Moosa v. I.N.S.*, 171 F.3d 994, 1002 (5th Cir. 1999).

63) In the Congressional Conference Committee Report discussing Section 1226(a), the report explains the notion that the statute's application encompasses all noncitizens: "New section 236(a) [1226(a)] restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an ***alien*** who is not lawfully in the United States." H.R. CONF. REP. 104-828, 210 (emphasis added). Congress did not state in this Conference Report that the application was limited only to noncitizens who were lawfully admitted and are now not lawfully in the United States. *Id.* It states that an *alien* is subject to the law. *Id.*

64) If Congress had meant to narrowly define which noncitizens unlawfully present in the United States were subject to 8 U.S.C. Sec. 1226(a), it would have done so, as they had done in the same IIRIRA legislation in 8 U.S.C. Sec. 1225, which defined who was "an applicant for admission" subject to inspection by an immigration officer, upon arrival into the United States. *Pulsifer v. United States*, 601 U.S. 124, 133 (2024) (stating that one part of a statute can be discerned by examining the next part and read in conjunction. "Or, as we usually say in statutory construction cases, by reviewing text in context."). In Section 1225, Congress applied qualifiers, defining "an applicant for admission" as: "An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1).

65) In Section 1225(a)(1), Congress intentionally limited the class of noncitizens to whom this statute would apply. *Id.* In the same IIRIRA legislation, Congress made no such limitations in 8 U.S.C. Sec. 1226(a), even though they had the opportunity to do so. By applying standard rules of statutory interpretation, the absence of limitations in Section 1226(a) should be seen as deliberate, indicating Congressional intent that all noncitizens are to be covered under 8 U.S.C. Sec. 1226(a). *Nken v. Holder*, 556 U.S. 418, 430 (2009) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (citing *INS v. Cardoza–Fonseca*, 480 U.S. 421, 432 (1987)); *see also Russello v. United States*, 464 U.S. 16, 23 (1983).

66) Thus, to argue that 8 U.S.C. Sec. 1226 would not apply to all noncitizens in the United States would be contrary to the plain meaning of the statute, read in context with accompanying parts of IIRIRA, and Congressional intent.

67) The Supreme Court in *Jennings v. Rodriguez* acknowledged the plain meaning of Sec. 1226(a), stating that it "applies to aliens already present in the United States." U.S. 281, 303 (2018). The Supreme Court also said 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." *Id.*

68) The DHS, in its brief on appeal to the BIA, acknowledged that in fact, until recently, the Agency, alongside the Department of Justice, similarly interpreted the statute to also apply to noncitizens who were present without having been admitted or paroled. *See* Ex. 18, p. 9 (citing *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747 (BIA 2023); *Matter of R–A–V–P–*, 27 I&N Dec. 803, 803 (BIA 2020); *Matter of Garcia-Garcia*, 25 I&N Dec. 93, 94 (BIA 2009); *Matter of D– J–*, 23 I&N Dec. 572 (A.G. 2003). As recently as June this year, the BIA acknowledged that the detention or release of noncitizens present in the United States without having been admitted or paroled was governed by 8 U.S.C. Sec. 1226(a). *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025).

69) This Court should give weight to the Agency's earlier interpretations and deem the Agency's current revisionist theories as suspect, as an Agency's interpretations done closer in time to the legislation's enactment, are deemed more valid than later interpretations. *Loper Bright v. Raimondo*, 603 U.S. 369, 386 (2024). That is because "the longstanding 'practice of the government' "—like any other interpretive aid—"can inform [a court's] determination of 'what the law is.' " *Id.* (quoting *NLRB v. Noel Canning*, 573 U.S. 513, 525, 134 S.Ct. 2550, 189

L.Ed.2d 538 (2014)). Thus, given the decades of Agency interpretation on 8 U.S.C. Sec. 1226(a), stemming from contemporaneous interpretation of Congressional intent, this court should find the Agency's current novel interpretation that only noncitizens admitted into the United States should be included in 8 U.S.C. Sec. 1226(a) to be invalid. *See, e.g., Rodriguez v. Bostock*, at 1260; *Maldonado,* 2025 WL 2374411 at *11;

70) Furthermore, DHS's new interpretation that the INA at Sec. 1226(a) applies only to noncitizens who have been admitted into the United States would render recent amendments to the statute subsection in 1226(c) superfluous. *See* 8 U.S.C. 1226(c)(1)(E). While Section 1226(a) provides the right to seek release, 1226(c) carves out specific categories of noncitizens from being released— including certain categories of inadmissible noncitizens—and subjects them instead to mandatory detention. *See*, 8 U.S.C. 1226(a), 1226(c)(1)(A), (C). But if DHS's interpretation were correct—*i.e.*, if Section 1226(a) did not cover inadmissible noncitizens—there would be no reason to specify that Section 1226(c) governs certain persons who are inadmissible; instead, it would have only needed to address people who are deportable for certain offenses.

71) The Laken Riley Act, signed into law in January, added language to Section 1226 that directly references people who have entered without inspection or who are present without authorization. *See* Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025). Specifically, pursuant to the LRA amendments, people charged as inadmissible pursuant to Section 1182 (a)(6) (the inadmissibility ground for entry without inspection) or (a)(7) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to Section 1226(c)'s mandatory detention provisions. *See* INA § 1226(c)(1)(E).

72) By including such individuals under Section 1226 (c), Congress further clarified that, by default, Section 1226(a) covers persons charged under Section 1182(a)(6) or (a)(7). In other words, if someone is only charged as inadmissible under Section 1182(a)(6) or (a)(7) and the additional crime-related provisions of Section 1226(c)(1)(E) do not apply, then Section 1226(a) governs that person's detention. *See Shady Grove Orthopedic Assocs.*, P.A. v. Allstate Ins. Co., 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct).

73) DHS argues that rather than making clear that Section 1226(a) covers all noncitizens, the inclusion of the phrase, "is inadmissible under paragraph (6)(A), (6)(C), or (7)" of section 1182 in Section 1226(c)(1)(E) is "redundancy" to ensure that certain persons are detained. Ex. 18, p. 21. The Agency cites the Supreme Court's decision in *Barton v. Barr*, to justify this interpretation. 590 U.S. 222, 239 (2020). In *Barton*, the Supreme Court was discussing the inclusion of the offense of deportability under the INA at 8 U.S.C. Sec. 1227(a)(4) in two different subsections of the statute that would deny cancellation of removal for a legal permanent resident—in Sections 1229A(c)(4) and (d)(1)(B). *Id.* at 238. In that case, there were actual multiple references to Sec. 1227(a)(4) in the statute. *Id.* In this case, in Sec.1226, there is no redundant inclusion of the inadmissibility under 8 U.S.C. 1182(6)(A), (6)(C), or (7). 8 U.S.C. 1226. Those classes of inadmissible noncitizens are specifically included only in 8 U.S.C. Sec. 1226(c)(1)(E), and not mentioned elsewhere in Section 1226. *Id.* Therefore, the facts in this case are different than those in *Barton*, where a statute for removability was repeated within the statutory scheme. The inclusion of Sections 1182(6)(A), (6)(C), or (7) in Section 1226(c)(1)(E) was not a "redundancy" that was mentioned elsewhere in Section 1226.

74) Thus, it is clear that Congress had intended to make Section 1226(a) applicable to all noncitizens already physically present inside the United States. If it had not, there would not have been a need to include certain inadmissible noncitizens in the Laken Riley Act's amendments to the statute.

75) To conclude that 8 U.S.C. Sec. 1226(a) does not include all "aliens," particularly noncitizens who are present without having been admitted or paroled, would be to ignore the plain meaning of the statute, along with decades of historical Agency interpretation, and Congressional intent, and would be contrary to the judiciary's independent obligation to construe statutes, as described by the Supreme Court in *Loper Bright v. Raimondo*. 603 U.S. at 386.

76) As discussed, the district courts that have addressed this question have found overwhelmingly that the coordinated interpretations of the DHS and DOJ on 8 U.S.C. 1225 and 1226 agree that their novel interpretations are not lawful. *See Ortiz-Ortiz v. Bondi*, No. 5:25-CV-132, slip. op. at 5 (S.D. Tex. Oct. 25, 2025); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Tiburcio Garcia v. Bondi*, 25-CV-03219 (D. Minn. Aug. 29, 2025); *Ermeo Sicha v. Bernal,* 2025 WL 2494530 (D. Me. Aug. 29, 2025); *Lopez-Campos v. Raycraft,* 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025)*; Benitez v. Noem*, No. 5:25-cv-02190 (C.D. Cal. Aug. 26, 2025); *Jose J.O.E. v. Bondi,* 2025 WL 2466670 (D. Minn. Aug. 27, 2025)*; Aguilar Vazquez v. Bondi,* 25-cv-03162 (D. Minn. Aug 19, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass.

Aug. 19, 2025); *Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025); *Maldonado*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238 (D. Mass. July 24, 2025); *Ferrera Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025).

CLAIMS FOR RELIEF

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

77) Mr. Cabrera-Hernandez realleges and incorporates by reference the paragraphs above.

78) The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." Zadvydas, 533 U.S. at 690. Indeed, the liberty interest in freedom from detention "is the most elemental of liberty interests." Hamdi v. Rumsfeld, 542 U.S. 507, 529 (2004).

79) Mr. Cabrera-Hernandez has a fundamental interest in liberty and being free from official restraint, and the government's new, erroneous classification of Mr. Cabrera-Hernandez as an "arriving alien" who is "seeking admission" to the United States and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), despite an immigration judge's determination that he is not a public safety threat or a significant flight risk violates his substantive right to due process.

80) Respondents' insistence that Mr. Cabrera-Hernandez remain in immigration custody pursuant to these policies is a violation of Mr. Cabrera-Hernandez's due process rights.

COUNT TWO

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

81) Mr. Cabrera-Hernandez realleges and incorporates by reference the paragraphs above.

82) The Supreme Court has been clear that for noncitizens "on the threshold of initial entry . . . [w]hatever the procedure authorized by Congress is, it is due process." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (emphasis added). However, Mr. Cabrera-Hernandez—after many years in the United States—is clearly not on the threshold of initial entry. Indeed, it is well established that noncitizens like Mr. Cabrera-Hernandez who "once passed through our gates, even illegally" are entitled to greater constitutional protections. *Id.*; *United States v. Benitez-Villafuerte*, 186 F.3d 651, 656 (5th Cir. 1999) ("[Noncitizens] who have entered the United States unlawfully are assured the protection of the Fifth Amendment due process clause."); *see also Zadvydas*, 553 U.S. at 693 ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to [noncitizens] outside of our geographic borders."). Thus, even if the Government were to argue that Mr. Cabrera-Hernandez is properly detained under Sec. 1225(b)(2)—which he is not—his detention does not comply with due process.

83) In Respondents' contrasting version of the INA, as espoused in *Matter of Yajure Hurtado*, Mr. Cabrera-Hernandez may be stripped of any mechanism to require the government to justify his detention. Such a lack of any process, necessarily leading to an erroneous deprivation of liberty, cannot be supported by the Constitution.

COUNT THREE

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

84) Mr. Cabrera-Hernandez realleges and incorporates herein the allegations contained in the preceding paragraphs of the petition as if fully set forth herein.

85) The DHS's and the DOJ's new interpretation of the INA at 8 U.S.C. Sec. 1225(b)(2) and Sec. 1226(a) is contrary to the plain meaning of the statutes, Supreme Court precedents, the Agency's historic interpretations made contemporaneous with the enactment of IIRIRA in 1996, and Congressional intent.

86) For these reasons, the DHS's and DOJ's conclusion that noncitizens present in the United States without admission or parole can never be eligible for an immigration judge's grant of discretionary release on bond is unlawful.

PRAYER FOR RELIEF

Petitioner Lucas Cabrera-Hernandez respectfully requests this Court grant the following:

(1) Assume jurisdiction over this matter;

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

(3) Grant a preliminary injunction enjoining Respondents from continuing to detain Petitioner under 8 U.S.C. Sec. 1225(b)(2);

(4) Order the immediate release of Petitioner pending these proceedings, pursuant the Court's inherent power;

(5) If Petitioner is not immediately released, order Respondents not to transfer Petitioner out of this District during the pendency of these proceedings, to preserve jurisdiction;

(6) Declare that the DHS's and DOJ's new interpretation of 8 U.S.C. Sec. 1225(b)(2) pertaining to mandatory detention is unlawful.

(7) Declare that the DHS's and DOJ's new interpretation of 8 U.S.C. Sec. 1226(a), stating only persons with lawful admission are eligible for an immigration judge's grant of discretionary bond, is unlawful.

(8) Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. Sec. 2241 and order Respondents to immediately release Petitioner from custody in accordance with the bond order from IJ Larsen, or, in the alternative, order Respondents to show cause why this Petition should not be granted within three days;

(9) Award Petitioner 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 under law; and

(10) Grant any further relief the Court deems just and proper.

Respectfully submitted,

Lucas Cabrera-Hernandez
PETITIONER

By: /s/ *Analisa Nazareno*
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Counsel for Petitioner

Dated: October 29, 2025

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Lucas Cabrera-Hernandez, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 29th day of October, 2025.

s/*Analisa Nazareno*
Attorney Name