

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

Rigoberto MORENO GOMEZ,

Petitioner,

v.

Samuel OLSON, Field Office Director of
Enforcement and Removal Operations,
Chicago Field Office, Immigration and
Customs Enforcement;

Todd M. LYONS, Acting Director of U.S.
Immigration and Customs Enforcement, in his
official capacity;

Kristi NOEM, Secretary, U.S. Department of
Homeland Security;

U.S. DEPARTMENT OF HOMELAND
SECURITY;

Pamela BONDI, U.S. Attorney General;

EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW;

Brandon CROWLEY, Jail Commander at Clay
County Detention Center

Respondents.

Case No. 1:25-cv-13220

Judge Robert Blakey

AMENDED PETITION FOR WRIT OF HABEAS CORPUS INTRODUCTION

1. Petitioner Rigoberto Moreno Gomez is in the physical custody of Respondents at Clay County Jail in Brazil, Indiana. He is being unlawfully detained because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) of the

Department of Justice (DOJ) have erroneously concluded Petitioner is subject to mandatory detention.

2. Petitioner is a 41-year-old Mexican national who has continually lived in the United States since 2003. On October 29, 2025, Petitioner was arrested while he was working as a landscaper.

3. Petitioner was arrested by DHS without a warrant in Skokie, IL, in flagrant violation of the *Castañon Nava v. DHS* consent decree. Case No. 1:18-cv-03757, ECF No. 158 (N.D. Ill. Feb. 7, 2022).

4. Respondents have not stated any basis for detaining Petitioner or initiated any immigration proceedings against him (through a “Notice to Appear,” NTA). Based on current DHS practices Petitioner expects Respondents to issue an NTA charging him as being an alien present in the U.S. who has not been admitted or paroled and is removable for having entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i).

5. On July 8, 2025, DHS issued an unlawful new policy instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under Section 1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be an “applicant for admission” under Section 1225(b)(2)(A) and therefore subject to mandatory detention. Consistent with this policy, DHS has denied Petitioner release from immigration custody.

6. Petitioner’s detention on this basis violates the plain language of the Immigration and Nationality Act (INA). Petitioner initially entered the U.S. in 2003 and has been residing in the U.S. for the past 22 years. INA Section 1225(b)(2)—the apparent DHS basis for his detention—requires mandatory detention in the case of an “applicant for admission”; it does not apply to

individuals like Petitioner who are apprehended in the interior of the U.S. years after their initial entry. Instead, individuals like Petitioner who entered the country years ago are subject only to **discretionary detention** under Section 1226(a) with a right to seek release on conditional parole or bond.

7. Respondents' new legal interpretation of Section 1225(b)(2) to excuse mandatory detention of Petitioner and others like him is plainly contrary to the statutory text, statutory framework, Congressional intent, decades of agency practice, and decisions of federal courts across the nation.

8. Further, Respondents' 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.

9. Under the unlawful new DHS policy (and associated decision by the Board of Immigration Appeals in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)), DHS consistently denies bond hearings to any person detained by DHS who entered the country without inspection.

10. Accordingly, numerous judges in this District and in federal courts around the country, including this court, are consistently and quickly granting habeas petitions in situations like this one to either release the petitioner from the unlawful detention or order a prompt bond hearing. *See, e.g., Ochoa Ochoa v. Noem et al*, 1:25-cv-10865 (N.D. Ill. Oct. 16, 2025); *Sanchez v. Holt*, Case No. 1:25-cv-12453, ECF No. 16 (N.D. Ill. Oct 24, 2025); *GZT et al v. Smith et al*, Case No. 25-C-12802, ECF No. 14 (N.D. Ill. Oct. 21, 2025); *H.G.V.U. v. Smith*, Case No. 1:25-cv-10931, ECF No. 34 (N.D. Ill. Oct. 20, 2025). *See also Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020); *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021); *Gonzalez v. Barr*, 955 F.3d 762, 772 (9th Cir. 2020); *see, e.g., Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex.

Sept. 22, 2025) (ordering bond hearing within seven days or release); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (same); *Roman v. Noem*, 2025 WL 2710211 (D. Nev. Sept. 23, 2025) (same).

11. This Court should do the same for Petitioner. Petitioner seeks a writ of habeas corpus requiring that he be released immediately.

12. In the alternative, Petitioner requests a bond hearing under 8 U.S.C. § 1226(a) within five days, in which the Government shall bear the burden of justifying any ongoing detention by clear and convincing evidence of dangerousness or flight risk on account of the violation of Respondent's Constitutional rights.

JURISDICTION AND VENUE

13. At the time this Petition was filed on October 29, 2025, Respondent was detained at Broadview Processing Center located in Broadview, Illinois in the physical custody of Samuel Olson, Field Office Director of Enforcement and Removal Operations of the Chicago Field Office.

14. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

15. Under 28 U.S.C. § 2241 and § 1391(b), (e), venue is proper in this district. Venue is proper because, when this case was initiated, Petitioner was in Respondents' custody in the Northern District of Illinois. See, e.g., *Vidal-Martinez v. Prim*, 2020 WL 6441341, at *4-6 (N.D. Ill. 2020). Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this district, where Petitioner is now in Respondent's custody.

REQUIREMENTS OF 28 U.S.C. § 2243

16. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

17. 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).

PARTIES

18. Petitioner, Rigoberto Moreno Gomez is a 41-year-old Mexican national who has been residing in the United States since his entry in 2003. He was arrested by ICE without a warrant on October 29, 2025, while working as a landscaper in Skokie, Illinois, and transferred to the ICE Processing Center in Broadview, Illinois. On November 4, 2025, Respondents transferred Petitioner to Clay County Detention Center in Brazil, Indiana. Petitioner had no prior encounters with immigration officials and had never been in removal proceedings. Based on information available, he has no criminal history except minor traffic violations.

19. Respondent, Samuel Olson, is the Director of the Chicago Field Office of ICE’s Enforcement and Removal Operations division. As such, Samuel Olson is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He is named in his official capacity.

20. Respondent Todd Lyons is named in his official capacity as Acting Director of ICE. As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Petitioner. As such, he is also a legal custodian of Petitioner.

21. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. She has ultimate custodial authority over Petitioner and is sued in her official capacity.

22. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

23. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the U.S. Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

24. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

25. Respondent Brandon Crowley has physical custody of Petitioner at the time of filing this amended Petition. Respondent is the jail commander at Clay County Detention Center.

FACTUAL BACKGROUND

26. Petitioner is a 41-year-old Mexican national who has been residing in the United States since his entry without inspection in or about 2003.

27. Petitioner resides in Chicago, Illinois, and is the father to two U.S. citizen children, aged 16 and 18 years old.

28. Petitioner had never previously been detained by immigration officials. No immigration proceedings have ever been initiated against Petitioner in the past.

29. On October 29, 2025, DHS officers arrested Petitioner in Skokie, Illinois, while he was working as a landscaper. It appears that the arrest was made without a warrant or a Notice to Appear (for a pending immigration proceeding), and made in direct violation of the consent decree in *Castañon Nava v. DHS*, Case No. 1:18-cv-03757, ECF No. 158 (N.D. Ill. Feb. 7, 2022) (prohibiting DHS from arresting any person without a lawful warrant, which requires pending immigration proceedings).

30. Following the arrest, DHS officers took Petitioner to the ICE Processing Center in Broadview, Illinois.

31. On October 29, 2025, while Petitioner was being detained by Respondents in Broadview, Illinois, undersigned counsel filed a Petition for Writ of Habeas Corpus arguing that his detention violated the Due Process Clause and the Immigration and Nationality Act.

32. On November 4, 2025, Respondents transferred Petitioner to Clay County Detention Center in Brazil, Indiana, where he remains detained.

33. Based on information furnished by his family, Petitioner has no criminal history outside of minor traffic infractions.

34. Undersigned counsel is not yet in possession of an NTA as of the date of filing of this Petition, but believes Respondents will be charging Petitioner with being an alien present in the U.S. who has not been inspected or paroled and will be seeking to commence removal

proceedings against Petitioner on account of him being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

35. As an NTA has not yet been filed with the EOIR, immigration proceedings have hence not yet commenced.

36. Due to DHS policy preventing privileged attorney-client communications with individuals held at ICE's Broadview Processing Center, undersigned counsel has to date been unable to communicate with Petitioner on a confidential line or visit him in person. However, based on information obtained from his family, it appears Petitioner is eligible for Cancellation of Removal for Certain Nonpermanent Residents pursuant to INA § 240A(b) on account of his 22 years of residence in the U.S., his good moral character, and the exceptional and extremely unusual hardships his children will experience if he were removed from the United States.

37. Any request for bond redetermination before EOIR is futile as the BIA recently held in a published decision that persons like Petitioner are subject to mandatory detention as applicants for admission under 8 U.S.C. § 1225(b)(2)(A). *See Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in *Yajure Hurtado* renders prudential exhaustion futile).

38. Pursuant to Respondents' new policy, Petitioner remains in mandatory detention. Absent relief from this Court, he faces the prospect of months, or even years, in immigration custody without ever receiving an individualized hearing justifying his detention in violation of the INA and Due Process.

EXHAUSTION OF REMEDIES

39. No statutory requirement of administrative exhaustion applies to Petitioner's case. Moreover, the judicially created "general rule that parties exhaust prescribed administrative

remedies before seeking relief from the federal courts” does not apply to Petitioner’s present challenge, as there are no prescribed administrative remedies to which he could resort. *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992), superseded by statute on other grounds as recognized in *Woodford v. Ngo*, 548 U.S. 81 (2006).

40. In particular, DHS has taken the position that a noncitizen like Petitioner who entered without inspection is subject to mandatory detention under 8 U.S.C. § 1225, and the Executive Office for Immigration Review has affirmed that view. In a published decision, the Board of Immigration Appeals recently held that “Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission.” *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under the BIA’s interpretation, Petitioner is ineligible for bond as a noncitizen who entered the United States without inspection. Accordingly, there are no administrative remedies that he could exhaust before seeking habeas relief. *See Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219, at *3 (W.D. Ky. Sept. 22, 2025) (“[t]he United States has made clear their position on Section 1225, and it is being applied at all levels within the DHS. Therefore, it is unlikely that any administrative review would lead to the United States changing its position and precluding judicial review”); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *4 (E.D. Mich. Aug. 29, 2025) (“Because exhaustion would be futile and unable to provide Lopez-Campos with the relief he requests in a timely manner, the Court waives administrative exhaustion and will address the merits of the habeas petition.”).

41. Further, neither an immigration judge nor the Board of Immigration Appeals can rule on a petitioner’s constitutional claims. *See Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (B.I.A. 2020) (holding that IJs and the BIA lack any authority to consider the constitutionality of

the statutes or regulations governing immigration detention that they administer and are bound to follow); *Matter of C--*, 20 I. & N. Dec. 529, 532 (B.I.A. 1992) (“[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations.”); *see also Gonzalez v. O’Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that “the BIA has no jurisdiction to adjudicate constitutional issues”).

LEGAL FRAMEWORK

I. Detention Authority and Respondent’s Efforts to Expand Mandatory Detention

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

43. **First**, 8 U.S.C. § 1226 authorizes the **permissive** detention of noncitizens “already in the country.” *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Section 1226(a) “sets out the default rule: The Attorney General **may** issue a warrant for the arrest and detention of a [noncitizen] ‘pending a decision on whether the [noncitizen] is to be removed from the United States.’” *Id.* at 288 (quoting § 1226(a) (emphasis added)).

44. Individuals in Section 1226(a) detention are generally entitled to a bond hearing at the outset of their detention. *See* § 1226(a)(2); 8 C.F.R. §§ 1003.19(a), 1236.1(c)(8), (d)(1); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1247 (W.D. Wash. 2025) (“those detained under Section 1226(a) are entitled to a bond hearing before an [immigration judge] at any time before entry of a final removal order.”).

45. Section 1226(c) “carves out a statutory category” of noncitizens from Section 1226(a) for whom detention is mandatory, comprised of individuals who have committed certain “enumerated ... criminal offenses [or] terrorist activities.” *Jennings*, 583 U.S. at 289 (citing § 1226(c)(1)). Among the individuals carved out and subject to mandatory detention are certain

categories of “inadmissible” noncitizens. § 1226(c)(1)(A), (D), (E). Reference to such inadmissible noncitizens makes clear that, by default, people who are applicants for admission but encountered in the interior are afforded a bond hearing under subsection 1226(a). Courts have recently confirmed this understanding of Section 1226. *See 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)) (“When Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.”); *see also, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *6 (D. Mass. July 7, 2025) (“inadmissibility on one of the three grounds specified in Section 1226(c)(1)(E)(i) is not by itself sufficient to except [a noncitizen] from Section 1226(a)’s discretionary detention framework”).

46. **Second**, the INA provides for **mandatory** detention of certain categories of noncitizens “seeking entry into the United States” under 8 U.S.C. § 1225(b). *Jennings*, 583 U.S. at 297; *see* § 1225(b) (“Inspection of applicants for admission”).

47. In *Jennings*, the Supreme Court explained that this mandatory 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 inadmissible.” *Jennings*, 583 U.S. at 287 (emphasis added). Noncitizens subject to mandatory detention under Section 1225 may not be released except “for urgent humanitarian reasons or significant public benefit” under the parole authority provided by 8 U.S.C. § 1182(d)(5)(A). *See id.* at 300.

48. Section 1225 has two subparts requiring mandatory detention: subsection (b)(1) mandates detention of noncitizens charged with enumerated grounds of inadmissibility *and* placed in expedited removal proceedings, and subsection (b)(2) mandates detention of recently arrived noncitizens seeking entry at a border or port of entry. *See infra*.

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

50. This case concerns whether Petitioner may be detained with a right to a bond hearing pursuant to Section 1226(a) (as the law requires) or whether Petitioner falls within mandatory detention as an “arriving alien” under Section 1225(b)(2) as DHS policy erroneously requires.

51. Respondents have recently taken various steps seeking to expand their use of mandatory detention under Section 1225(b)(2) beyond its plain language.

52. 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. *See* U.S. Immigration and Customs Enforcement, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025), <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

53. The new policy claims that all persons who entered the United States without inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225 and therefore are subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

54. On September 5, 2025, the Board of Immigration Appeals (BIA) published a decision adopting this same position. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That decision holds that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are ineligible for immigration judge bond hearings.

II. Respondent’s Policy on Section 1225(b)(2) Is Incorrect

55. Respondent's policy that all undocumented noncitizens who entered without inspection are considered applicants for admission and subject to mandatory detention under Section 1225(b)(2)(A) is incorrect. Statutory text, statutory framework, Congressional intent, longstanding practice of the agency, and decisions of many federal courts across the nation – including this one – all limit Section 1225(b)(2)'s scope to recently arrived noncitizens seeking admission at a border or port of entry.

a. Statutory Text

56. The text of Section 1225, along with its placement in the overall detention scheme of the INA, make clear that the terms “applicant for admission” and “seeking admission” in Section 1225(b)(2) do not include individuals who have entered without inspection and are apprehended when already inside the United States.

57. Section 1225 is titled: “Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing.” (emphasis added). As courts have recognized, “[t]he added word of ‘arriving’ indicates that the statute governs ‘arriving’ noncitizens, not those present already.” *Beltran Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (citing *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025)). This limitation is particularly clear when compared to Section 1226's general title: “Apprehension and detention of aliens.”

58. Further, Section 1225(b)(2)'s specific subheading, “Inspection of Other Aliens,” subsection 1225(b)(2)(B)'s mention of “crew[m]e[n]” and “stowaway[s],” and subsection 1225(b)(2)(C)'s use of the active language “arriving,” reinforce the limited scope of Section 1225(b)(2)'s applicability to those who have recently arrived at a border or port of entry.

59. Finally, the term “seeking” in “seeking admission” “implies action – something that is currently occurring, and in this instance, would most logically occur at the border upon inspection.” *Lopez-Campos*, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025); *see also Beltran Barrera*, 2025 WL 2690565, at *4. Noncitizens who are present in the country for years are not “seeking admission.” *Lopez-Campos*, at *6; *Beltran Barrera*, at *4.

b. Statutory Framework

60. The statutory framework further supports that Section 1225(b)(2) does not apply to noncitizens, like Petitioner, who have lived in the United States for years and who were apprehended while residing within the United States.

61. The INA’s entire framework is premised on Section 1225 governing detention of “arriving [noncitizens]” while Section 1226 “applies to [noncitizens] already present in the United States.” *Jennings*, 583 U.S. at 288, 301; *see also Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025) (“[T]he line historically drawn between sections 1225 and 1226, which makes sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens ‘seeking admission into the country,’ whereas section 1226 governs detention of non-citizens ‘already in the country.’”) (cleaned up) (citing *Jennings*, 583 U.S. at 288-89); *Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (“The idea that a different detention scheme would apply to non-citizens ‘already in the country,’ as compared to those ‘seeking admission into the country,’ is consonant with the core logic of our immigration system”) (cleaned up) (citing *Jennings*, 583 U.S. at 289).

62. A fundamental principle of statutory construction is that courts must interpret statutes to give meaning to all provisions and avoid reading out or rendering superfluous any single provision. *Corley v. United States*, 556 U.S. 303, 314 (2009) (“one of the most basic interpretive

canons . . . [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[.]” (cleaned up). The government’s current reading of Section 1225(b)(2) violates this principle.

63. Section 1226(c) includes carve outs for certain categories of inadmissible noncitizens, who would otherwise fall under Section 1226(a), that are instead subject to mandatory detention. 8 U.S.C. § 1226(c)(1)(A), (D), (E). The inclusion of these carve outs in Section 1226(c) indicates that, contrary to Respondents’ interpretation, there are noncitizens who have not been admitted and that are not governed by Section 1225’s mandatory detention scheme. Indeed, if the government’s interpretation were correct, it would render these portions of Section 1226(c) superfluous since those same individuals would already be subject to mandatory detention under Section 1225(b)(2).

64. The recent amendment to Section 1226(c) confirms this statutory framework. Just this year, Congress passed the Laken Riley Act, which added additional categories of Section 1226(a) carve outs that are now subject to mandatory detention under Section 1226(c). Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). Specifically, the Laken Riley Act mandates the detention of noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens “present in the United States without being admitted or paroled”), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and who have been arrested for, charged with, or convicted of certain crimes. *Id.* Again, if Section 1225(b)(2) were already meant to subject these groups of inadmissible noncitizens to mandatory detention, it would render this portion of the Laken Riley Act redundant. *See Beltran Barrera*, 2025 WL 2690565, at *4; *Lopez-Campos*, 2025 WL 2496379, at *8.

c. Congressional Intent and Longstanding Agency Practice

65. Congressional intent and longstanding historical practice underscore Petitioner's reading of the statute.

66. The current detention system has been in place since the passage 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.

67. Following the enactment of the IIRIRA, the Executive Office for Immigration Review drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under Section 1225 and that they were instead detained under Section 1226(a) and eligible for bond and bond redetermination. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

68. In the decades that followed, most people who entered without inspection and were apprehended inside the United States were detained under Section 1226(a) and received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an immigration judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that Section 1226(a) simply "restates" the detention authority previously found at Section 1252(a)).

d. Recent Federal Court Decisions Confirming Petitioner's Position

69. Numerous federal courts, including this court, have reached conclusions consistent with Petitioner's position, with more reaching the same conclusion nearly every day.

70. For example, after immigration judges in the Tacoma, Washington, stopped providing bond hearings for persons who entered the United States without inspection, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely

unlawful and that Section 1226(a), not Section 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239.

71. Other courts, including this court, have reached the same conclusion, rejecting Respondent's erroneous interpretation of the INA both prior to and since ICE implemented its July 8, 2025, interim guidance. *See, e.g., Torres Maldonado v. Olson, et al*, Case No. 1:25-cv-12762, ECF No. 16 (N.D. Ill. Oct 24, 2025) (Daniels, J.); *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787 (N.D.Ill. Oct. 24, 2025) (Cummings, J.); *Sanchez v. Holt*, Case No. 1:25-cv-12453, ECF No. 16 (N.D. Ill. Oct 24, 2025) (Jenkins, J.); *Ochoa Ochoa v. Noem, et al*, Case No. 1:25-cv-10865, EFF No. 20 (N.D. Ill. Oct. 16, 2025) (Jenkins, J.); *GZT et al v. Smith et al*, Case No. 25-C-12802, ECF No. 14 (N.D. Ill. Oct. 21, 2025) (Ellis, J.); *Jose Alejandro v. Olson et al*, 1:25-cv-02027-JPH-MKK (S.D. Ind. Oct. 11, 2025); *H.G.V.U. v. Smith*, Case No. 1:25-cv-10931, ECF No. 34 (N.D. Ill. Oct. 20, 2025) (Coleman, J.); *Gomes v. Hyde*, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Jacinto v. Trump, et al.*, 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez-Campos*, 2025 WL 2496379; *Herrera Torralba v. Knight*, 2:25-cv-03166-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025).

72. The BIA's decision in *Yajure Hurtado* has not slowed the steady flow of decisions rejecting Respondents' position. *See, e.g., Ochoa Ochoa v. Noem et al*, 1:25-cv-10865 (N.D. Ill. Oct. 16, 2025) (rejecting *Matter of Yajure Hurtado* as it is non-binding and unpersuasive under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024) given the BIA's inconsistent views); *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787, at *1 (N.D.Ill. Oct. 24, 2025) (finding the decision in *Matter of Yajure Hurtado* unpersuasive for several reasons, including the BIA's inconsistent view, its conflict with implementing regulation, and district courts' overwhelming rejection of its expansive interpretation of 1225(b)); *Singh v. Lewis*, 2025 WL 2699219, at *3 (disagreeing with BIA's analysis and according no deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024)); *Beltran Barrera*, 2025 WL 2690565, at *5 (same); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *6-8 (same); *Sampiao v. Hyde*, 2025 WL 2607924, at *8 n.11 (D. Mass. Sept. 9, 2025) (same); *Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *9 (N.D. Cal. Sept. 12, 2025) (same).

III. Petitioner's Detention Violates the INA

73. Petitioner's detention is not authorized under Section 1225(b)(2).

74. As discussed above, mandatory detention under Section 1225(b)(2) applies only to recently arrived noncitizens seeking admission at a border or port of entry, not individuals who entered without inspection and were later detained inside the country.

75. Here, "there is nothing in the record to suggest that [Petitioner] ever attempted to gain lawful entry." *Lopez-Campos*, 2025 WL 2496379, at *6. Petitioner entered without inspection, never encountered a DHS official, and lived in the United States for 22 years prior to being detained. As such, Petitioner is not subject to mandatory detention under Section 1225(b)(2).

76. Petitioner's detention is not authorized under Section 1226(a), either. As discussed above, Section 1226(a)'s discretionary detention framework requires a bond hearing to make an individualized custody determination based on Petitioner's risk of flight or dangerousness. Here, Respondents have failed to provide such a hearing. Further, there is no information indicating that Petitioner is a flight risk or danger to the community.

77. Lacking any statutory basis for his detention, Respondent must release Petitioner or, in the alternative, promptly hold a bond hearing to determine whether he should remain in custody.

IV. Due Process Clause

78. Noncitizens are entitled to due process of the law under the Fifth Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). To determine whether civil detention violates a noncitizen's Fifth Amendment due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

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

a. Private Interest

80. As to the first *Mathews* factor, "[t]he interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 531 (2004). Petitioner has been detained at ICE's Broadview Processing Center, which is operating in practice

as a detention facility despite being a temporary processing facility lacking sufficient food, water, space, or sanitation facilities. This detention prevents him from supporting himself and his family and deprives him of any privacy and freedom of movement.

b. Risk of Erroneous Deprivation

81. As to the second *Mathews* factor, courts must “assess whether the challenged procedure creates a risk of erroneous deprivation of individuals’ private rights and the degree to which alternative procedures could ameliorate these risks.” *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at *8 (D. Minn. May 21, 2025). The current procedures cause an erroneous deprivation of Petitioner’s liberty interest in remaining free from detention.

82. As discussed above, the statutory text, statutory framework, Congressional intent, the longstanding practice of the agency, and the decisions of many federal courts across the nation leave no doubt that Section 1225(b)(2) applies only to recently arrived noncitizens seeking entry at a border or port of entry, not noncitizens who entered without inspection and were detained inside the country.

83. Here, Petitioner was not arriving at a border or port of entry when he was detained, nor was he ever seeking admission to the country. Instead, he entered without inspection, never had any encounter with DHS officials, and lived in the United States for over two decades before being detained. As such, Petitioner is not subject to mandatory detention under Section 1225(b)(2).

84. It is clear based on the foregoing that the government’s current procedure of subjecting Petitioner to mandatory detention under Section 1225(b)(2) creates a substantial risk of erroneous deprivation of Petitioner’s interest in being free from arbitrary confinement.

85. Additionally, there are reasonable alternatives available for Respondent to pursue. As discussed above, Section 1226(a) applies to noncitizens facing charges of inadmissibility,

including noncitizens like Petitioner who entered without inspection and were later detained while residing inside the country. As such, proper application of the INA’s detention scheme allows for the possibility of detaining Petitioner under Section 1226(a) but first requires a bond hearing to make an individualized determination of his risk of flight or dangerousness. Such a hearing has not occurred. Without it, the risk of erroneous deprivation of Petitioner’s freedom is high. *See Singh v. Lewis*, 2025 WL 2699219, at *9 (“the risk of erroneously depriving him of his freedom is high if the IJ fails to assess his risk of flight or dangerousness.”).

c. Government Interest

86. As to the third *Mathews* factor, the government’s interest in maintaining the current procedure is minimal here. The new interpretation of Section 1225(b)(2) – that people like Petitioner who have resided in the United States for years are now subject to mandatory detention – flies in the face of the statutory text, statutory framework, Congressional intent, almost three decades of prior practice, and the decisions of federal courts across the nation. Any government interest in public safety or ensuring that Petitioner attends future immigration proceedings would be satisfied through proper application of Section 1226(a), which requires a bond redetermination hearing where an immigration judge will consider Petitioner’s individualized facts and circumstances to determine whether he is a danger to the community or a flight risk.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

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

88. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the ground of inadmissibility under 8

U.S.C. § 1182(a)(6)(A)(i) for entering the U.S. without inspection. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being detained and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231. Respondents' actions also violate § 1226(a) because, to date, Respondents have refused to consider Petitioner for bond or release on his own recognizance without ever demonstrating that he is a flight risk or danger to others.

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

COUNT II

Violation of Due Process

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

91. 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).

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

93. Petitioner entered the country without inspection, had no contact with any DHS officials, and lived in the United States for 22 years before being detained. Such an individual may only be subject to discretionary detention under 8 U.S.C. § 1226, which provides for release on bond. Respondents now erroneously detain Petitioner under the mandatory provision in §

1225(b)(2). Respondents' 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.

Respondent Should be Granted a Bond Hearing within Five Days, and the Burden Should be Placed on the Government to Justify Ongoing Detention

94. When DHS has unlawfully and unconstitutionally detained individuals without access to a bond hearing, an “overwhelming consensus” of courts have placed the burden on the government to prove by clear and convincing evidence that the detainee poses a danger or flight risk to justify further detention. *Ochoa Ochoa v. Noem et al*, 1:25-cv-10865 (N.D. Ill. Oct. 16, 2025); *Sanchez v. Holt*, Case No. 1:25-cv-12453, ECF No. 16 (N.D. Ill. Oct 24, 2025); *G.Z.T. et al v. Smith et al*, Case No. 25-C-12802, ECF No. 14 (N.D. Ill. Oct. 21, 2025); *See also Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020); *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021); *Gonzalez v. Barr*, 955 F.3d 762, 772 (9th Cir. 2020); *see, e.g., Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025) (ordering bond hearing within seven days or release); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (same); *Roman v. Noem*, 2025 WL 2710211 (D. Nev. Sept. 23, 2025) (same). This modified the typical burden of proof at an immigration bond hearing where the noncitizen often bears the burden of proof. *See* 8 C.F.R. § 236.1(c)(8).

95. “The burden shifting [to the government] reflects the concern that a noncitizen ‘should not have to share the risk of error equally’ in the context of a due process violation and his ‘loss of liberty.’” *Ochoa Ochoa v. Noem et al*, 1:25-cv-10865 (N.D. Ill. Oct. 16, 2025) citing *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 214 (3d Cir. 2020) and *Lopez Santos v. Clesceri*, 2021 WL 663180, at *5 (N.D. Ill. Feb. 19, 2021). Accordingly, if Petitioner is not granted release, he should be granted a bond hearing before an immigration judge within five

days, and the Government should bear the burden of justifying ongoing detention by clear and convincing evidence of dangerousness or flight risk.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Immediately Respondents from moving Petitioner outside of the United State or transferring him to any federal judicial district other than those of the States of Illinois, Indiana, or Wisconsin.
- c. Issue a writ of habeas corpus requiring that Respondents provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within five days in which the government shall bear the burden by clear and convincing evidence of dangerousness or flight risk to justify continued detention;
- d. Declare that Petitioner's continued detention violates the INA and the Due Process Clause of the Fifth Amendment;
- e. 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
- f. Grant any other and further relief that this Court deems just and proper.

DATED this 5th day of October, 2025

Respectfully submitted,

/s/ Naiara F. Testai

Naiara F. Testai

Charles D. Wysong

Hughes Socol Piers Resnick & Dym

70 W Madison St Ste 4000

Chicago, IL 60602

Phone/fax: 312-604-2748, 312-604-2664
ntestai@hsplegal.com,
cwysong@hsplegal.com
Attorneys for Petitioner

VERIFICATION

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that the facts set forth in the foregoing Petition for Habeas Corpus are true and correct based on information available at the time of this filing.

Executed this 5th day of November, 2025.

/s/ Naiara F. Testai