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## I. INTRODUCTION AND BACKGROUND

1. This petition challenges the unlawful detention of Petitioner Nestor David Hernandez Hervert (“Mr. Hernandez Hervert”), a 40-year-old father of two U.S.-citizen children who has lived in the United States for more than twenty years. ICE arrested him after a routine traffic stop in Taylor, Texas. At the time of the stop he had a valid Texas driver’s license and employment authorization based on U.S. Citizenship and Immigration Services’ (USCIS) deferred-action grant incident to his bona fide (BFD) U-visa determination as the victim of an aggravated robbery at gunpoint. Exhs. 2 (Bona fide Determination under U-visa); 4 (Employment Authorization Document); 5 (Valid Texas Driver’s License). “Deferred action” is DHS’s choice to forbear from removing someone for a set period. The Supreme Court describes deferred action as the Executive’s forbearance from removal, with collateral benefits but no lawful status. *See Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1905–07 (2020). He is now confined at the T. Don Hutto Detention Center in Taylor, Texas. Exh. 1 (DHS Form I-862, Notice to Appear). He has not received a bond hearing.
2. Mr. Hernandez Hervert has one pending misdemeanor DWI charge from December 2024 in Williamson County. He has no convictions. He is employed as a contractor and he is the primary support for his household. He lives with his wife, Ana Hernandez, and their adult U.S. citizen children, Nestor (28) and Karime (23). Karime is in graduate school. N
3. On October 6, 2025, Petitioner moved to administratively close<sup>1</sup> his case based on his bona fide U-visa status. Immigration Judge (IJ) Tijerina denied that motion on October 7, 2025.

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<sup>1</sup> Administrative closure is a docket-management tool that temporarily removes a case from the active calendar without a merits decision; it confers no lawful status and either party may later move to recalendar. *See Matter of Avetisyan*, 25 I. & N. Dec. 688, 695–97 (B.I.A. 2012) (recognizing authority and listing factors); *Matter of W-Y-U-*, 27 I. & N. Dec. 17, 20–21 (B.I.A. 2017) (DHS opposition is relevant but not controlling; focus is whether closure promotes fair

Exh. 6 (Order Denying Motion for Administrative Closure). On October 22, 2025, Petitioner requested a custody bond redetermination under § 236(a). However, on October 28, 2025, IJ Tijerina denied that request on the basis that he lacked authority to hear a bond request under *Matter of Yajure Hurado*. Exh. 7 (Order Denying Bond Request).

4. Petitioner is currently scheduled for a master calendar removal hearing on November 3, 2025. Exh. 8 (Automated Case Information System Results).
5. DHS contends that 8 U.S.C. § 1225(b) mandates his detention. Congress created a separate detention framework in 8 U.S.C. § 1226(a) that governs interior arrests and provides for discretionary bond and immigration-judge review. That is the statute that applies here. DHS's novel position—recently endorsed in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 220 (B.I.A. 2025)—contradicts the INA's text and structure and Due Process. It collapses Congress's dual-track detention scheme and imposes categorical detention on long-time residents who present no danger or flight risk.
6. The human consequences are immediate and severe. Detention has upended the family's finances and caregiving. It has deprived the household of Mr. Hernandez Hervert's income, transportation, and daily support. This remains true despite USCIS's grant of a bona fide determination and deferred action, and his valid employment authorization and Texas driver's license. The Constitution, the INA, and basic principles of fairness do not permit detention under these circumstances.
7. Petitioner respectfully requests this Court grant the instant petition for a writ of habeas corpus under 28 U.S.C. § 2241, order release or at a minimum a bond hearing under §

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and efficient resolution); *Matter of Castro-Tum*, 27 I. & N. Dec. 271, 272–73 (A.G. 2018) (restricting), vacated by *Matter of Cruz-Valdez*, 28 I. & N. Dec. 326, 329–31 (A.G. 2021) (restoring *Avetisyan* framework). It is commonly used to await collateral USCIS adjudications (e.g., I-130/adjustment, VAWA, U/T, SIJ, TPS) where closure advances efficiency and fairness.

1226, and enjoin Respondent's continued detention of Petitioner to ensure his due process. In the alternative, he respectfully requests the Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C. § 2243.

**I. JURISDICTION AND VENUE**

8. Petitioner is detained in civil immigration custody in Williamson County at the T. Don Hutto Detention Center in Taylor, Texas. *See* Exh. 1. He has been detained since or about, September 16, 2025.
9. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq.
10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and where applicable Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.
11. Venue is proper in the Western District of Texas under 28 U.S.C. § 1391, because at least one Respondent is in this District, Petitioner is detained in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. Venue is also proper under 28 U.S.C. § 2243 because the immediate custodians of Petitioner reside in this District.

**II. REQUIREMENTS OF 28 U.S.C. § 2243, WRIT OF HABEAS CORPUS ISSUANCE, RETURN, HEARING, AND DECISION**

12. The Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response "within three days" unless this

Court permits additional time for good cause, which is not to exceed twenty days. 28 U.S.C. § 2243.

13. 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). The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time. *Rhueark v. Wade*, 540 F.2d 1282, 1283 (5th Cir. 1976); *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978). Due to the nature of this proceeding, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice.

### III. PARTIES

14. Petitioner Nestor David Hernandez Hervert is a 40-year-old citizen of Mexico. He entered the United States in or about 2005 without inspection and has resided here continuously for over 20 years.

15. Respondent Pamela Bondi is named in her official capacity as Attorney General of the United States. She is responsible for the administration of the Executive Office for Immigration Review (“EOIR”), including policies that bear on immigration judges’ jurisdiction over custody.

16. Respondent Kristi Noem is named in her official capacity as Secretary of the U.S. Department of Homeland Security (“DHS”). DHS is the department charged with administering and enforcing federal immigration laws. Secretary Noem is ultimately responsible for the actions of U.S. Immigration and Customs Enforcement (“ICE”) and is a legal custodian of Petitioner.

17. Respondent Todd M. Lyons is named in his official capacity as Acting Director of ICE. He oversees ICE operations, including detention and removal, and is a legal custodian of Petitioner.
18. Respondent Sylvester Ortega is named in his official capacity as Field Office Director of the San Antonio ICE Field Office. He is responsible for ICE enforcement in this District and is a legal custodian of Petitioner.
19. Respondent Charlotte Collins is named in her official capacity as Warden of the T. Don Hutto Detention Center in Taylor, Texas. She has immediate physical custody of Petitioner pursuant to an agreement with ICE to detain noncitizens.
20. Each Respondent is sued in his or her official capacity as a custodian and/or policymaker responsible for Petitioner's continued detention.

#### IV. FACTS

21. Petitioner was detained after a routine traffic stop in Taylor, Texas, on September 16, 2025. Despite having a valid driver's license and deferred action through his U-visa application, he was turned over to ICE and transported to the T. Don Hutto Detention Center in Taylor, Texas, where he remains. Exh. 1.
22. ICE has held Petitioner without bond and claims he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).
23. On October 22, 2025, Petitioner requested a custody bond redetermination under § 236(a). Immigration Judge Tijerina denied that request on October 28, 2025, finding that:  
  
[t]he Respondent failed to meet his burden of demonstrating he was lawfully admitted to the United States. Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant a bond to aliens who are present in the United States without admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

Exh. 7 (Order Judge denying bond).

24. On October 6, 2025, Petitioner moved to administratively close his case based on his BFD U-visa status and associated deferred action. IJ Tijerina denied that motion on October 7, 2025. Exh. 6.
25. Petitioner's next removal hearing is set for November 3, 2025. Exh. 8.
26. On January 22, 2019, Petitioner filed a U-visa petition after being the victim of an aggravated robbery at gunpoint. Exhs. 2 (Form I-918 BFD Determination) and 3 (USCIS Form I-1192 Advance Permission to Enter as a Nonimmigrant). On November 16, 2023, USCIS issued a bona fide determination on his petition. Exh. 2. USCIS found the filing bona fide and concluded he warranted a favorable exercise of discretion. *Id.* USCIS issued him employment authorization and deferred action for a period of four years. *Id.*; Exh. 4 (Employment Authorization Document). Deferred action is a prosecutorial-discretion decision that, as a matter of administrative convenience, places the case at a lower priority for removal during the grant. Exh. 2. A visa number is not yet available because Congress caps principal U visas at 10,000 per year. 8 U.S.C. § 1184(p)(2)(A)–(B). At the time of the traffic stop, Petitioner held a valid state driver's license and a valid employment authorization document based on this grant. Exhs. 4 and 5.
27. Petitioner has one pending misdemeanor DWI case from December 2024 in Williamson County. He has no convictions in over his 20 years in the United States.
28. Petitioner is a contractor and the primary financial support for his household. He lives with his wife, Ana Hernandez, and their adult U.S. citizen children, Nestor (28) and Karime (23). Karime is in graduate school. Petitioner works and helps support the household and

assists Karime while she studies. Petitioner’s detention has disrupted family finances, transportation, and daily care.

29. Petitioner’s ongoing detention impedes his ability to defend against removal. It limits his ability to gather evidence, to coordinate with counsel and witnesses, and to maintain the documentation that supports his U-visa case.

30. Petitioner remains detained because DHS has misclassified his custody under § 1225(b) rather than § 1226(a). That misclassification deprives him of immigration-judge bond jurisdiction and has resulted in detention despite unrevoked deferred action.

## V. LEGAL FRAMEWORK

### A. Due Process

31. The Fifth Amendment’s Due Process Clause applies to “all persons” within the United States, including noncitizens. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Id.* at 690. In the immigration context, detention is constitutionally justified only to prevent flight or protect the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

### A. Statutory Scheme

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

48. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of detention. *See* 8 C.F.R.

§§ 1003.19(a), 1236.1(d). Noncitizens arrested, charged with, or convicted of certain crimes are subject to mandatory detention. See 8 U.S.C. § 1226(c).

49. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred under § 1225(b)(2).

50. Last, 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).

### **B. Deferred Action and the U-Visa Bona Fide Determination**

51. Deferred action is the Executive’s decision to forbear removal during the grant period.

*Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1905–07 (2020).

See also *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483–84 (1999).

52. DHS administers the immigration laws and sets enforcement policies. See 8 U.S.C. § 1103(a)(3). Regulations authorize employment for those granted deferred action. See 8 C.F.R. § 274a.12(c)(14). For U-visa petitioners, USCIS “will grant deferred action or parole” while on the waitlist and may authorize employment. 8 C.F.R. § 214.14(d)(2). Congress caps principal U visas at 10,000 per fiscal year. 8 U.S.C. § 1184(p)(2)(A)–(B).

53. Mr. Hernandez Hervert filed a U-visa petition on January 22, 2019 after an aggravated robbery at gunpoint. USCIS issued a Bona Fide Determination on November 16, 2023. Exh. 2. USCIS exercised favorable discretion and granted four years of deferred action and work authorization. DHS has not revoked that grant.

## **VI. ARGUMENT**

### **A. Text, Practice, and Precedent Confirm § 1226(a) Applies to Interior Arrests**

54. This case concerns the detention provisions at 8 U.S.C. §§ 1226(a) and 1225(b)(2).

55. Congress enacted §§ 1226(a) and 1225(b)(2) in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Pub. L. No. 104–208, div. C, §§ 302–03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Congress most recently amended § 1226 in the Laken Riley Act. Pub. L. No. 119-1, 139 Stat. 3 (2025).
56. After IIRIRA, EOIR promulgated regulations clarifying that, in general, people who entered without inspection and were placed in § 240 proceedings are detained under § 1226(a), not § 1225. *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997).
57. For decades thereafter, noncitizens who entered without inspection and were placed in standard removal proceedings received bond hearings unless covered by § 1226(c). That practice aligned with earlier law in which non-arriving noncitizens were entitled to a custody hearing before an immigration judge or other officer. *See* 8 U.S.C. § 1252(a) (1994); H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting § 1226(a) “restates” prior detention authority).
58. In *Jennings v. Rodriguez*, DHS acknowledged that individuals already in the United States who are not apprehended near the border or immediately after entry fall under § 1226(a), not § 1225(b). *See* Transcript of Oral Argument at 7–8, *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (No. 15-1204) (Solicitor General confirming that those not detained within 100 miles or within 14 days are held under § 1226(a) and receive bond hearings). Having prevailed while advancing that position, DHS’s new litigation stance to the contrary lacks persuasive force.

59. On July 8, 2025, ICE announced new “Interim Guidance Regarding Detention Authority for Applicants for Admission,”<sup>2</sup> reversing longstanding understanding and practice.
60. That guidance asserts that all persons who entered without inspection are subject to § 1225(b)(2)(A) mandatory detention regardless of when or where apprehended and even after years of residence. *See* Todd M. Lyons, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025).
61. On September 5, 2025, the BIA adopted the same position in *Matter of Yajure-Hurtado*, holding that noncitizens who entered without admission or parole fall under § 1225(b)(2)(A) and are ineligible for immigration-judge bond hearings. 29 I. & N. Dec. 216 (B.I.A. 2025).
62. A “tsunami” of federal courts have rejected this new interpretation and have declined to follow *Yajure-Hurtado* where it conflicts with the INA’s text and structure.<sup>3</sup>

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<sup>2</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

<sup>3</sup> *See, e.g., Belsai v. Bondi, et al.*, No. 25-cv-3862 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, --- F.Supp.3d ---, 2025 WL 2712417 (N.D. Iowa Sept. 23, 2025); *Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 WL 2676729 (D. N.M. Sept. 17, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at \*7 (E.D. Mich. Sept. 9, 2025); *Chanaguano Caiza v. Scott*, 25-cv-00500, 2025 WL 2806416, at \*3 (D. Me. Oct. 2, 2025); *Luna Quispe v. Crawford, et al.*, No. 1:25-CV-1471-AJT-LRV, 2025 WL 2783799, at \*6 (E.D. Va. Sept. 29, 2025); *Vazquez v. Bostock*, No. 25-cv-05240, 2025 WL 2782499, at \*27 (W.D. Wash. Sept. 30, 2025); *J.U. v. Maldonado*, 25-CV-04836, 2025 WL 2772765, at \*5 (E.D.N.Y. Sept. 29, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at \*7 (D.N.J. Sept. 26, 2025); *Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at \*2 (M.D. Fla. Sept. 25, 2025); *Giron Reyes v. Lyons*, No. C25-4048, 2025 WL 2712427, at \*5 (N.D. Iowa, Sept. 23, 2025); *Singh v. Lewis*, No. 25-cv-96, 2025 WL 2699219, at \*3 (W.D. Ky. Sept. 22, 2025); *Pablo Sequen v. Kaiser*, No. 25-cv-06487, 2025 WL 2650637, at \*7-8 (N.D. Cal. Sept. 16, 2025); *Alvarez-Chavez v. Kaiser*, 25-cv-06984-LB 2025 WL 2909526 (N.D. Cal., Oct. 9, 2025); *Cerritos-Echevarria v. Bondi*, No. CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Padron-Covarrubias v. Vergara*, 5:25-cv-00112, (S.D. Tex. Oct. 8, 2025); *Santiago-Santiago v. Bondi*, EP-25-CV-361-KC, 2025 WL 2792588, (W.D. Tex. Oct. 2, 2025); *Cardin-Alvarez v. Rivas*, CV 25-02943 PHX GMS (CDB), 2025 WL 2898389 (D. Ariz. Oct. 7, 2025); *Buenrostro-Mendez v. Bondi, et al.*, No. CV H-25-3726, 2025 WL 2886346, at \*3 (S.D. Tex. Oct. 7, 2025); *Hernandez Lucero v. Bondi*, No. 4:25-cv-03981 (S.D. Tex. Oct. 23, 2025); *Ortiz-Ortiz v. Bondi*, No. 5:25-cv-00132 (W.D. Tex. Oct. 15, 2025). *But see Chavez v. Noem*, 3:25-cv-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025 (“by the plain language of § 1225(a)(1) the petitioners are “applicants for admission” and thus subject to the mandatory detention provisions of “applicants for admission” under § 1225(b)(2)[.]”); *Vargas-Lopez v. Trump, et al.*, 8:25CV526 2025 WL 2780351 (D. Neb. Sept. 29, 2025) (the petitioner is an alien within the “catchall” scope of § 1225(b)(2) subject to detention without possibility of release on bond through a proceeding on removal under § 1229a, per 8 U.S.C. § 1225(b)(2)).

63. In this District, courts have ordered relief. *See Pereira-Verdi v. Lyons*, No. 5:25-cv-01187-XR (W.D. Tex. Oct. 10, 2025) (TRO requiring § 236 process and enjoining re-detention without notice and a pre-deprivation hearing); *Hernandez-Ramiro v. Bondi*, No. 5:25-cv-01207-XR (W.D. Tex. Oct. 15, 2025)(granting TRO ordering a prompt bond hearing under § 1226, where the government bears the burden of showing danger or flight risk, or if no bond hearing is set ordering release); *Gonzalez Guerrero v. Noem*, No. 1:25-cv-01334-RP (W.D. Tex. Oct. 27, 2025) (order granting preliminary injunction, holding that § 1226—not § 1225(b)(2)—governs custody for long-resident noncitizens arrested in the interior because reading § 1225(b)(2) to apply broadly would render § 1226 superfluous.); *Santiago-Santiago v. Bondi*, EP-25-CV-361-KC, 2025 WL 2792588, (W.D. Tex. Oct. 2, 2025)(granting habeas petition for a DACA recipient).
64. Even before the nationwide shift, the Tacoma immigration court ceased providing bond hearings to long-resident respondents who had entered without inspection (EWI) The Western District of Washington found that reading likely unlawful and held that § 1226(a), not § 1225(b), applies to noncitizens not apprehended upon arrival. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).
65. These decisions reflect a clear judicial consensus that the government’s reliance on § 1225(b)(2) is misplaced where § 1226(a) applies.
66. The plain text confirms that outcome. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed.” Hearings to decide inadmissibility or deportability occur under § 1229a.
67. Section 1226 also expressly addresses persons charged as inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Specific mandatory carve-

outs confirm that, absent those exceptions, § 1226(a) governs and bond is available. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010); *Gomes*, 2025 WL 1869299, at \*7.

68. Section 1226 therefore applies to people charged as inadmissible who are already in the interior, including those present without admission or parole.

69. By contrast, § 1225(b) addresses inspection at the border and recent arrivals who are “seeking admission.” 8 U.S.C. § 1225(b)(2)(A). The Supreme Court has described that mandatory detention scheme as operating “at the Nation’s borders and ports of entry.” *Jennings v. Rodriguez*, 583 U.S. 281, 287, 846 (2018). That is not this case.

70. Section 1226(a) is the default custody authority “pending a decision on whether the alien is to be removed,” which describes § 240 proceedings like Petitioner’s. 8 U.S.C. § 1226(a). Section 1226(c) then carves out narrow mandatory categories, some tied to inadmissibility. 8 U.S.C. § 1226(c). Reading § 1225(b)(2) to control here would render § 1226(a)’s bond framework and § 1226(c)’s carve-outs superfluous.

71. Section 1225(b)(2)(A) uses present-tense inspection language. It applies when an officer determines a person “is seeking admission” and “is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). *Jennings* confirms this scheme operates at the border. 583 U.S. at 287, 846.

72. Deference does not salvage Respondents’ reading. After *Loper Bright*, courts do not defer to agency interpretations simply because a statute is complex. They apply the best reading. *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2262–63 (2024). *Yajure-Hurtado* is unpersuasive because it treats anyone never “admitted” as forever “seeking admission,” contrary to § 1225’s present-tense text and § 1226’s structure. 29 I. & N. Dec. at 221.

73. The constitutional backdrop points the same direction. Civil immigration detention is constrained by the Fifth Amendment. Persons facing significant restraints on liberty retain a protected interest and are entitled to meaningful process. At minimum, detention under § 1226 requires a prompt, individualized bond hearing with the Government bearing a clear and convincing burden. *See Zadvydas v. Davis*, 533 U.S. 678, 690–96 (2001); *Demore v. Kim*, 538 U.S. 510, 528–31 (2003); *Mathews v. Eldridge*, 424 U.S. 319, 333–35, 343–49 (1976).
74. The Court should hold that § 1226(a) governs Petitioner’s custody and order his immediate release, or at minimum require a prompt § 1226(a) bond hearing with the Government bearing the clear-and-convincing burden. *See* 8 U.S.C. § 1226(a); *Jennings*, 583 U.S. at 297, 302–03; *Zadvydas*, 533 U.S. at 690–96.
- B. Section 1226(a) governs this interior arrest. DHS’s § 1225(b) theory fails on the text and in practice.**
54. Mr. Hernandez Hervert was arrested in the interior and is in § 240 proceedings. Section 1226(a) controls and supplies bond jurisdiction. *Jennings*, 583 U.S. at 297, 302–03.
55. Federal courts confronting DHS’s new theory have rejected it and ordered relief, concluding that § 1226(a) governs noncitizens already in the country. *See, e.g., Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 1193850, at \*11–16 (W.D. Wash. Apr. 24, 2025); *Gomes*, 2025 WL 1869299, at \*4–7; *Lopez Benitez*, 2025 WL 2267803, at \*4–7.
56. The Laken Riley Act confirms that Congress preserved § 1226(a)’s discretionary bond regime for most inadmissible entrants arrested in the interior by adding a narrow new mandatory category under § 1226(c)(1)(E). If § 1225(b) already mandated detention for all inadmissible entrants, § 1226(c)(1)(E) would be redundant. *See Corley v. United States*, 556 U.S. 303, 314 (2009); *Van Buren v. United States*, 593 U.S. 374, 393 (2021). Congress

legislated against decades of practice applying § 1226(a) to interior arrests, and courts presume amendments harmonize with that practice. *Monsalvo v. Bondi*, 604 U.S. \_\_\_, 145 S. Ct. 1232, 1242 (2025).

57. *Yajure-Hurtado* does not compel a different result. *Jennings* construed statutory text and left open constitutional claims. 583 U.S. at 303. Post-*Loper Bright*, courts interpret the INA de novo. *Loper Bright*, 144 S. Ct. at 2262–63.

58. Longstanding agency materials confirm that interior encounters without admission were treated under § 236(a) and were “eligible for bond and bond redetermination.” 62 Fed. Reg. at 10,323. DHS historically limited “applicant for admission” to encounters within a short time and distance from the border. *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 121, 130 n.2 (2020) (describing the 14-day/100-mile policy).

59. Arrest authority reinforces the divide. Warrantless arrests are narrowly permitted under 8 U.S.C. § 1357(a). Otherwise, interior arrests proceed on warrant (Form I-200) and fall under § 236(a). *See Matter of Mariscal-Hernandez*, 28 I. & N. Dec. 666, 668–71 (B.I.A. 2022). Mr. Hernandez Hervert’s interior arrest should have been, and on information and belief was, effectuated under an I-200 warrant, which places him within § 1226(a).

60. Statutes must be read in context and given effect to every clause and word. *Gundy v. United States*, 588 U.S. 128, 141 (2019). *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023). Respondents’ view collapses §§ 1225 and 1226, nullifies § 1226(c), and contradicts the statutes structure.

**C. Petitioner’s U-visa posture: Deferred Action though BFD independently defeats continued civil detention.**

*i. Statutory and regulatory framework*

61. Congress created the U-visa at 8 U.S.C. § 1101(a)(15)(U); petitioning and adjudication are addressed in 8 U.S.C. § 1184(p); adjustment in 8 U.S.C. § 1255(m). Regulations provide that waitlisted U-petitioners “will be granted deferred action or parole” and may receive employment authorization. 8 C.F.R. § 214.14(d)(2); *see also* 8 C.F.R. § 274a.12(c)(14) (EAD for those granted deferred action). The Supreme Court recognizes deferred action as the Executive’s forbearance from removal during the grant period. *See Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1905–07 (2020).

ii. *Substantial statutory claim: a BFD functions as an administrative stay: DHS may not detain or remove without first revoking deferred action under governing regulations.*

62. Petitioner asserts that his U-visa BFD operates as an administrative stay of removal such that Respondents cannot lawfully detain or remove him without first revoking deferred action in accordance with the U-visa regulations. *See* 8 C.F.R. § 214.14(d)(2); *cf.* 8 C.F.R. § 274a.12(c)(14). His deferred action remains unrevoked under governing regulations.

63. A recent Southern District of Texas TRO squarely supports this position. Order Granting Temporary Restraining Order, *Maldonado v. Noem*, No. 4:25-cv-02541, Doc. 8 (S.D. Tex. June 5, 2025) (Ellison, J.). There, the court found a likelihood of success on due process where ICE detained a BFD recipient and sought removal “without notice, a hearing, or any opportunity to contest the revocation of his deferred action,” and recognized a “substantial statutory claim” that a BFD functions as an administrative stay unless and until deferred action is revoked under applicable regulations. *Id.* at 2–3, 5–6. The court also noted that Respondents offered “no pertinent authority” in the Fifth Circuit or otherwise to the contrary. *Id.* at 6.

64. *Maldonado* relied on parallel reasoning in Washington: *Velasco Gomez v. Scott*, No. 2:25-cv-00522-JLR-BAT, 2025 WL 1382855, at \*1–2, 2025 U.S. Dist. LEXIS 81249, at \*3, \*6 (W.D. Wash. Apr. 29, 2025) (likelihood-of-success favored petitioner with BFD where respondents sought removal absent required Secretary-level review). And it cited *Raghav v. Jaddou*, No. 2:25-cv-00408-DJC-JDP, 2025 WL 373638, at \*2, 2025 U.S. Dist. LEXIS 18889, at \*4 (E.D. Cal. Feb. 3, 2025) (after a prima facie showing satisfied by a BFD, “the decision to grant or deny a stay ... is solely in the discretion of the Secretary of Homeland Security”).

65. These authorities confirm the core proposition here: with a BFD and unrevoked deferred action on the books, DHS must follow the governing regulatory process before detention or removal that would effectively nullify that forbearance. See 8 C.F.R. § 214.14(d)(2); cf. *Regents*, 591 U.S. at \_\_\_\_.

iii. *Detention is irrational where DHS has already chosen forbearance.*

66. If DHS has granted deferred action (forbearance) and employment authorization, continued civil detention cannot be justified on the nonpunitive purposes of immigration custody (flight or danger). See *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. It also undercuts the U-statute’s victim-protection purpose and the regulatory structure that directs deferred action for waitlisted U-petitioners. See 8 C.F.R. § 214.14(d)(2).

**D. Remedy**

67. The Court should (1) declare that § 236(a), not § 235, governs custody; (2) order immediate release in light of USCIS-conferred BFD and unrevoked deferred action; or, in the alternative, (3) require a prompt, recorded § 236(a) bond hearing placing a clear-and-

convincing burden on DHS; and (4) enjoin removal pending further proceedings, consistent with *Maldonado*, No. 4:25-cv-02541, Doc. 8 (S.D. Tex. June 5, 2025).

## VII. CLAIMS FOR RELIEF

### FIRST CAUSE OF ACTION Violation of the Due Process Clause (Fifth Amendment)

68. Petitioner incorporates all allegations above.
69. Civil immigration detention is permissible only to ensure appearance or protect the community, and due process requires meaningful procedures commensurate with the liberty at stake. *See Zadvydas v. Davis*, 533 U.S. 678, 690–96 (2001); *Demore v. Kim*, 538 U.S. 510, 528–31 (2003).
70. Detaining Petitioner without a prompt, individualized bond hearing where the Government bears a clear-and-convincing burden violates substantive and procedural due process. *See Zadvydas*, 533 U.S. at 690–96; *Mathews v. Eldridge*, 424 U.S. 319, 333–35, 343–49 (1976).
71. The Fifth Amendment protects “all persons” in the United States, including long-resident noncitizens. *Zadvydas*, 533 U.S. at 693. Continued detention since September 16, 2025 without the required process or justification violates that protection.

### SECOND CAUSE OF ACTION Violation of the Immigration and Nationality Act (INA)

72. Petitioner incorporates all allegations above.
73. Petitioner’s interior arrest places his custody under 8 U.S.C. § 1226(a), not § 1225(b)(2). *See Jennings v. Rodriguez*, 583 U.S. 281, 297, 302–03 (2018) (distinguishing detention of persons “already in the country” under § 1226 from border inspection under § 1225).

74. Section 1226(a) authorizes discretionary detention with bond; Congress created narrow mandatory carve-outs in § 1226(c). Applying § 1225(b)(2) here would render § 1226(a) and § 1226(c) superfluous, which the Court must avoid. *See Jennings*, 583 U.S. at 297, 302–03.
75. DHS’s application of § 1225(b)(2) to Petitioner contradicts the INA’s text, structure, and long-standing practice reflected in post-IIRIRA regulations recognizing bond eligibility for interior EWI respondents. *See Inspection & Expedited Removal of Aliens*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997).

**THIRD CAUSE OF ACTION**  
**Procedural Due Process — Denial of Opportunity to Contest Misclassification**

76. Petitioner incorporates all allegations above.
77. By foreclosing IJ bond jurisdiction through a blanket § 1225(b)(2) designation, Respondents denied Petitioner a meaningful opportunity to contest mandatory detention and to receive the individualized bond process Congress preserved in § 1226(a). *See Mathews*, 424 U.S. at 333–35; *Jennings*, 583 U.S. at 303 (constitutional challenges preserved).
78. This denial of meaningful process violates the Fifth Amendment.

**FOURTH CAUSE OF ACTION**  
**U-Visa/Deferred-Action Forbearance (Statutory and Due Process)**

79. Petitioner incorporates all allegations above.
80. USCIS granted Petitioner a U-visa bona fide determination (BFD) with four years of deferred action and employment authorization. *See* 8 C.F.R. § 214.14(d)(2) (waitlisted U-petitioners “will be granted deferred action or parole” and may receive employment authorization); 8 C.F.R. § 274a.12(c)(14).

81. Deferred action is executive forbearance from removal during the grant period. Proceeding to detain or remove a BFD recipient without first revoking deferred action, or affording notice and an opportunity to be heard, violates due process and the governing U-visa regulatory framework. *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1905–07 (2020); *cf. Maldonado v. Noem*, No. 4:25-cv-02541, Order Granting TRO at 2–3, 5–6 (S.D. Tex. June 5, 2025); *Velasco Gomez v. Scott*, No. 2:25-cv-00522-JLR-BAT, 2025 WL 1382855, at \*1–2 (W.D. Wash. Apr. 29, 2025); *Raghav v. Jaddou*, No. 2:25-cv-00408-DJC-JDP, 2025 WL 373638, at \*2 (E.D. Cal. Feb. 3, 2025).

**FIFTH CAUSE OF ACTION**  
**Administrative Procedure Act (5 U.S.C. § 706)**

82. Petitioner incorporates all allegations above.

83. Petitioner challenges the following actions: (1) DHS's July 8, 2025 "Interim Guidance Regarding Detention Authority for Applicants for Admission" (the Lyons memo) and EOIR/DHS reliance on *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025), which together reinterpret 8 U.S.C. §§ 1225(b)(2) and 1226; and (2) DHS's as-applied decision to detain Petitioner—despite his BFD with unrevoked deferred action and employment authorization—without first revoking deferred action or considering required factors.

**A. Policy-Level APA Challenge (5 U.S.C. § 706(2)(A), (C); in the alternative § 706(2)(D))**

84. The Lyons memo and reliance on *Yajure-Hurtado* are "not in accordance with law" and "in excess of statutory jurisdiction" because they collapse the INA's dual-track scheme by extending § 1225(b)(2) to long-resident, interior arrests, rendering § 1226(a) and § 1226(c) superfluous. *See Jennings*, 583 U.S. at 297, 302–03; *Corley v. United States*, 556 U.S. 303, 314 (2009).

85. The policy is arbitrary and capricious because it disregards decades of consistent practice and post-IIRIRA regulations recognizing bond eligibility for interior EWI respondents. *See* 62 Fed. Reg. at 10,323; *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–24 (2016).
86. Post–*Loper Bright*, the reinterpretation is entitled to no Chevron deference and carries limited *Skidmore* weight given its inconsistency with prior positions. *See Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2262–63 (2024).
87. In the alternative, to the extent the Lyons memo operates as a substantive rule foreclosing IJ bond jurisdiction, it was adopted without required notice-and-comment. 5 U.S.C. §§ 553, 706(2)(D).

**B. As-Applied APA Challenge (5 U.S.C. § 706(2)(A), (C))**

88. Given Petitioner’s BFD with deferred action and EAD, detaining him without first revoking deferred action or affording required process is arbitrary, capricious, and contrary to law. *See* 8 C.F.R. § 214.14(d)(2); 8 C.F.R. § 274a.12(c)(14); *Regents*, 140 S. Ct. at 1905–07; *Maldonado*, Order Granting TRO at 2–3, 5–6; *Velasco Gomez*, 2025 WL 1382855, at \*1–2; *Raghav*, 2025 WL 373638, at \*2.
89. DHS failed to consider important aspects of the problem—including USCIS’s forbearance decision, the victim-protection purpose of the U-visa statute, Petitioner’s reliance and equities, and the mismatch between continued civil detention and the INA’s nonpunitive aims—rendering the detention unlawful. *See* 8 U.S.C. §§ 1101(a)(15)(U), 1184(p); *Zadvydus*, 533 U.S. at 690; *Demore*, 538 U.S. at 528.
90. Under 5 U.S.C. § 706, the Court should (1) set aside the Lyons memo interpretation and any reliance on *Yajure-Hurtado* as contrary to law and arbitrary and capricious; (2) declare

that Petitioner's custody is governed by 8 U.S.C. § 1226(a); (3) order immediate release or, at minimum, a prompt § 1226(a) bond hearing with a clear-and-convincing burden on the Government; and (4) enjoin removal or re-detention absent notice and lawful revocation of deferred action.

**SIXTH CAUSE OF ACTION**  
**Suspension Clause**

91. Petitioner incorporates all allegations above.
92. If 8 U.S.C. § 1252 were construed to bar review of these detention claims, it would be unconstitutional as applied because it would eliminate a meaningful opportunity to challenge unlawful executive detention. *See Boumediene v. Bush*, 553 U.S. 723, 771 (2008).
93. Petitioner satisfies Boumediene's factors: status and long-standing ties, domestic detention, and the lack of practical obstacles all support habeas review. *Id.* at 766.

**SEVENTH CAUSE OF ACTION**  
**Stay of Removal**

94. Petitioner incorporates all allegations above.
95. Absent a stay, Petitioner faces irreparable harm from removal while the Court adjudicates his statutory and constitutional claims, including misclassification under the INA and disregard of his deferred-action posture. *See Nken v. Holder*, 556 U.S. 418, 434–35 (2009).
96. The balance of equities and public interest favor preserving the status quo and the Court's jurisdiction.

**EIGHTH CAUSE OF ACTION**  
**Injunctive Relief**

97. Petitioner incorporates all allegations above.

98. Petitioner meets the standards for temporary and preliminary injunctive relief: likelihood of success on the merits, irreparable harm, balance of equities, and alignment with the public interest. *See Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 574 (5th Cir. 2012).

99. The Court should (a) declare § 1226(a) governs custody; (b) order immediate release, or alternatively a prompt § 1226(a) bond hearing with the Government's clear-and-convincing burden; and (c) enjoin removal and any re-detention absent notice and a pre-deprivation hearing and, for deferred-action issues, lawful revocation consistent with governing regulations.

## VIII. RELIEF SOUGHT

WHEREFORE, Petitioner respectfully requests that this Court:

- (1) Assume jurisdiction and take the Petition under consideration;
- (2) Declare that Petitioner's custody is governed by 8 U.S.C. § 1226(a), not § 1225(b)(2), and that DHS's misclassification under § 1225(b)(2) is contrary to the INA's text and structure; further declare that, in light of Petitioner's USCIS-issued U-visa bona fide determination with unrevoked deferred action and employment authorization, DHS may not detain or remove him absent lawful revocation of deferred action consistent with 8 C.F.R. § 214.14(d)(2) and 8 C.F.R. § 274a.12(c)(14), and that DHS has identified no valid basis of flight risk or danger to justify continued detention;
- (3) Order Respondents to show cause within three days why the writ should not be granted, *see* 28 U.S.C. § 2243;

- (4) Order Respondents to file the complete administrative record for Petitioner, including the A-File, EOIR Record of Proceedings, and all ICE/ERO custody records and guidance relied upon for detention and classification;
- (5) Enjoin Respondents from transferring Petitioner outside the Western District of Texas (or otherwise beyond this Court's jurisdiction) during the pendency of this action without prior leave of Court;
- (6) Grant the writ and order Petitioner's immediate release on recognizance, parole, or reasonable supervision; or, in the alternative, order a prompt custody redetermination under § 1226(a) before an Immigration Judge within seven days, with the Government bearing a clear-and-convincing burden of flight risk or danger on the record and with findings consistent with *Matter of Guerra* and *Matter of Siniauskas*; and, if Respondents continue to assert mandatory detention, order a Joseph-type hearing to test the legal and factual predicates, with release if such hearing is not held by the deadline;
- (7) Enjoin Respondents from removing Petitioner or taking any action inconsistent with his U-visa bona fide determination and deferred-action grant unless and until DHS lawfully revokes deferred action with notice, an opportunity to respond, and a reasoned decision grounded in the governing regulations;
- (8) Award costs and, if permissible, attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, preserving Petitioner's position that EAJA may apply in habeas notwithstanding *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023), and noting contrary authority, including *Vacchio v. Ashcroft*, 404 F.3d 663, 670–72 (2d Cir. 2005); *In re Petition of Hill*, 775 F.2d 1037, 1040–41 (9th Cir. 1985); *Abioye v. Oddo*, 2024 U.S. Dist. LEXIS 174205 (W.D. Pa. 2024); and *Arias v. Choate*, 2023 U.S. Dist. LEXIS 119907 (D. Colo. 2023);

(9) Grant such other and further relief as the Court deems just and proper.

**PRAYER FOR EXPEDITED CONSIDERATION**

Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests expedited consideration. Each day of unlawful detention inflicts irreparable harm on Petitioner and his U.S. citizen children, depriving them of their father's care, stability, and support. Prompt judicial intervention is necessary to protect Petitioner's constitutional rights and his family's well-being.

Respectfully submitted,

/s/ Maria Nereida Jaimes  
Counsel for Petitioner  
O'Connor & Associates PLLC  
7703 N. Lamar Blvd, Ste. 300  
Austin, Texas 78752  
Tel: (512) 617-9600  
maria@oconnorimmigration.com

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

I represent Petitioner, Nestor David Hernandez Hervert, 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 31st day of October 2025.

**/s/ Maria Nereida Jaimes**  
Counsel for Petitioner  
O'Connor & Associates PLLC  
7703 N. Lamar Blvd, Ste. 300  
Austin, Texas 78752  
Tel: (512) 617-9600  
[maria@oconnorimmigration.com](mailto:maria@oconnorimmigration.com)