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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

Juan PEREZ SANTILLAN,

Petitioner-Plaintiff,

v.

Kristi NOEM, in her Official Capacity, Secretary, U.S. Department of Homeland Security;

Pam BONDI, in her Official Capacity, Attorney General of the United States;

Todd M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Jason KNIGHT, Salt Lake City Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security; and

Darin BALAAM, Sherriff, Washoe County Detention Center.

Respondents-Defendants.

Agency No.

A [redacted]

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Challenge to Unlawful Incarceration Under Color of Immigration Detention Statutes; Request for Declaratory and Injunctive Relief

INTRODUCTION

1. Petitioner Juan Perez Santillan ("Mr. Perez Santillan"), Agency Number [redacted], by and through his undersigned counsel, respectfully submits this petition for a writ of habeas corpus and a complaint for declaratory and injunctive relief to stop the U.S. Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) from unlawfully detaining him in immigration custody while his removal proceedings are pending.

2. Petitioner requests his immediate release from custody at the Washoe County Detention Center, where ICE is unlawfully detaining him without providing clear and convincing evidence that he poses a flight risk or danger to the community, as required by the Due Process Clause of the Fifth Amendment. Alternatively, he seeks a constitutionally compliant bond hearing at which the government bears the burden of justifying his continued detention.

3. By way of background, Mr. Perez Santillan has been in custody since August 2, 2025. ICE first encountered him while he was held at the Churchill County Jail following an arrest for domestic battery and sexual assault. Subsequently, ICE formally took him into custody and transferred him to the ERO Salt Lake City – Reno Sub Office for processing. He was subsequently housed at the Washoe County Detention Center, where he remains today.

4. On August 14, 2025, the Domestic Battery and Sexual Assault charges against Mr. Perez Santillan were dismissed by the Churchill County Court, and the case was formally closed. Following that, on August 29, 2025, Mr. Perez Santillan submitted a request to the Las Vegas Immigration Court for a bond redetermination hearing.

5. A bond hearing was conducted on September 4, 2025, During the bond hearing, the Department of Homeland Security made two arguments. First, DHS asserted that Mr. Perez Santillan was an applicant for admission and, therefore, that the Court lacked jurisdiction to grant him bond. When the Immigration Judge rejected this contention, DHS alternatively argued that Mr. Perez Santillan was ineligible for bond in light of his arrest and the provisions of the Laken Riley Act. Immigration Judge An Mai Nguyen accepted the government's argument and denied bond.

6. Mr. Perez Santillan's prolonged detention violates the Due Process Clause of the Fifth

Amendment, as DHS has failed to establish, by clear and convincing evidence, that Mr. Perez Santillan is either a danger to the community or a flight risk. Furthermore, Mr. Perez Santillan is not subject to mandatory detention and therefore entitled to a bond hearing.

7. Mr. Perez Santillan respectfully seeks immediate release from detention, or in the alternative, a constitutionally adequate bond hearing at which the government bears the burden to justify detention.

CUSTODY

8. Mr. Perez Santillan is currently in custody of ICE at the Washoe County Detention Center in Reno, Nevada. Mr. Perez Santillan is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

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 over this action pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. §§ 2201 *et seq.* (Declaratory Judgment Act), the All Writs Act, 28 U.S.C. § 1651, Article I, Section 9, Clause 2 of the U.S. Constitution (the Suspension Clause), Article III of the U.S. Constitution, and under the common law.

REQUIREMENTS OF 28 U.S.C. § 2243

11. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to 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).

12. 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).

13. Habeas corpus must remain a swift remedy. Importantly, "the statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted). The Ninth Circuit warned against any action creating the perception "that courts are more concerned with efficient trial management than with the vindication of constitutional rights." *Id.*

VENUE

14. Venue is proper in this Court under 28 U.S.C. § 1391(e) because the Respondents are officers or employees of the United States acting in their official capacities.

15. Mr. Perez Santillan is currently under the supervision of the ERO Salt Lake City – Reno Sub Office, which falls within the jurisdiction of this District. This action does not involve any real property.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. In the context of habeas corpus claims, exhaustion of administrative remedies is a *prudential* requirement rather than a *jurisdictional* one, as it is not explicitly required by statute. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Courts have discretion to waive prudential exhaustion where administrative remedies are inadequate or ineffective, when pursuing them would be futile, when irreparable harm would result, or where the administrative process would be void. *Id.* (citing *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). The burden is on the party seeking waiver of prudential exhaustion to demonstrate that at least one of the *Laing* factors applies. *Aden v. Nielsen*, 2019 WL 5802013, at 2 (W.D. Wash. Nov. 7, 2019).

17. Although the Immigration Judge rejected the government's argument during the bond

hearing that Mr. Perez Santillan was an applicant for admission, since that decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), has been issued. Accordingly, even if Mr. Perez Santillan were to overcome the government's argument under the Laken Riley Act, he would nonetheless be deemed ineligible for bond and subject to mandatory detention. The Ninth Circuit has made clear that exhaustion is not required where administrative recourse would be futile—such as when the agency's position on the relevant issue is already established and the outcome of the appeal is certain. *El Rescate Legal Servs., Inc. v. Exec. Off. of Imm. Rev.*, 959 F.2d 742, 747 (9th Cir. 1992).

18. The *Matter of Yajure Hurtado* was issued as a precedential decision by the BIA. Under 8 C.F.R. § 1003.1(g)(1), such decisions are binding in all cases involving the same issue(s); see also 8 C.F.R. § 1003.1(d)(1)(i). Because the BIA has already exercised its expertise and reached a conclusive determination in *Yajure Hurtado*, further exhaustion is unnecessary. The decision establishes that individuals found inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)—that is, those present in the U.S. without being admitted or paroled—are subject to mandatory detention without bond under 8 U.S.C. § 1225(b)(2) upon BIA review.

19. Therefore, Mr. Perez Santillan respectfully requests that the Court waive the prudential exhaustion requirement on grounds of futility. As established in *Aden*, 2019 WL 5802013, at 2, satisfying just one of the *Laing* factors is sufficient; therefore, analysis of the remaining factors is unnecessary.

PARTIES

20. Mr. Perez Santillan is a citizen and national of Mexico who last entered the United States

in March 2000 and has continuously resided in the country since that time. He is a resident of Fallon, Nevada, and is currently detained and under the direct custody and control of Respondents and their agents.

21. Respondent Darin Balaam is the Sherriff of the Washoe County Detention Center, where Petitioner is currently held. He has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and, as such, serves as one of Petitioner's legal custodians.

22. Respondent Jason KNIGHT is sued in his official capacity as the Acting Director of the Salt Lake City Field Office of U.S. Immigration and Customs Enforcement. Respondent KNIGHT is a legal custodian of Petition and has authority to release him.

23. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Mr. Perez Santillan.

24. Respondent Kristi NOEM is the Secretary of DHS and is named in her official capacity. DHS is the federal agency encompassing ICE, which is responsible for the administration and enforcement of the INA and all other laws relating to the immigration of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the administration and enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal custodian of Mr. Perez Santillan.

25. Respondent Pam BONDI is the Attorney General of the United States and the most senior official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She has the authority to interpret immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

STATEMENT OF FACTS

Mr. Perez Santillan is a fifty-year-old native and citizen of Mexico who has built his entire adult life in the United States over the course of more than three decades. He first entered this country without inspection in 1993, at approximately eighteen years of age, seeking the opportunity to work and build a stable future. In early 2000, Mr. Perez Santillan briefly returned to Mexico to visit his ailing mother. During his attempts to reenter, he was apprehended twice—on January 23, 2000 and February 16, 2000—and each time was granted voluntary return. He successfully reentered the United States without inspection in March 2000 and has remained continuously present ever since.

Since that time, Mr. Perez Satillan has resided in Fallon, Nevada, where he has been continuously employed in the agricultural and ranching industry for the same employer for nearly twenty-five years. His employer, recognizing his loyalty, dependability, and work ethic, provides Respondent and his family with on-site housing—a benefit reserved for trusted long-term employees. Mr. Perez Satillan is known within the community as a quiet, hardworking man who has contributed to the local economy and demonstrated unwavering reliability. Beyond his work, he has also co-owned two properties in Fallon, one of which provides modest rental income and another occupied by a former partner, further evidencing his financial responsibility and rootedness in the United States.

Family Relationships and dependents

Mr. Perez Santillan is married to Monica Gonzalez Silva (now Monica Perez), a Mexican national who has resided in the United States since 2004. The couple met in 2017 under uniquely compassionate circumstances. Each was spending long days in the hospital caring for a seriously ill child—Monica's daughter, [redacted] was undergoing treatment for cancer, and Mr. Perez Santillan's son, [redacted] was battling end-stage renal disease. Over time, the shared experience of caring for their critically ill children fostered a deep emotional bond based on empathy, mutual support, and resilience. What began as friendship developed into a partnership founded on mutual caregiving and compassion for their families. They began a committed relationship in 2019 and were married on April 11, 2023.

The couple shares one U.S.-citizen child, [redacted], born [redacted] is a bright and affectionate five-year-old who is deeply attached to his father, depending on him for daily care, structure, and emotional support. Mr. Perez Satillan is also a devoted father figure to [redacted], Monica's son from her prior marriage, and to [redacted] Monica's adult daughter and cancer survivor. In addition, Mr. Perez Satillan maintains an active parental relationship with Miguel Perez (age 26), his U.S.-citizen son from a previous relationship, and continues to support Iris, the daughter of his former partner, who regards him as her father.

Mr. Perez Satillan's Humanitarian Acts and Medical Condition

Mr. Perez Santillan's character is perhaps best illustrated by his selfless decision to donate one of his kidneys to his son Miguel when Miguel's renal disease reached a life-threatening stage. This act of extraordinary parental sacrifice saved Miguel's life but left Mr. Perez Santillan with only one functioning kidney, rendering him medically vulnerable. As a result, he must undergo regular laboratory testing to monitor kidney function and must avoid medications—particularly NSAIDs such as ibuprofen or naproxen—that can cause renal damage. Living with a single kidney also exposes him to serious medical risk if proper medical supervision is unavailable. Despite these limitations, Mr. Perez Santillan has continued to work full-time in physically demanding ranch labor to provide for his family.

Mrs. Perez confirms that her husband's health remains a constant concern. She fears that removal to Mexico—where access to consistent, specialized medical monitoring is limited—would place him in grave danger of kidney failure. His health condition not only affects him personally but also directly endangers the wellbeing of his family, who depend on him emotionally, medically, and financially.

Mrs. Perez's developed ocular herpes, resulting in permanent blindness in her right eye, and was later diagnosed with borderline glaucoma. This irreversible vision loss ended her ability to work or drive and left her vulnerable to recurrent depression and anxiety.

For years she lived in isolation and despair until meeting Mr. Perez Santillan, whose compassion helped her recover emotionally and regain hope. Today, she remains medically

disabled and wholly dependent on Respondent for transportation, income, daily support, and emotional stability. Without him, she faces the real possibility of homelessness and mental-health relapse. She fears that the stress of his removal would trigger another physical and psychological decline similar to the one that left her partially blind.

[redacted] the couple's five-year-old son, has never been separated from his father for an extended period. Juan Perez-Santillan has been a hands-on parent—feeding, bathing, attending school events, and nurturing his child's emotional growth. Since Mr. Perez Satillan's detention in August 2025, [redacted] has exhibited confusion and distress, repeatedly asking for his father and struggling to understand his absence.

Johary Alexander Lozano, Monica's nineteen-year-old son, is currently enrolled at the University of Nevada, Reno, on a full academic scholarship. Monica attributes much of Johary's educational success to Respondent's mentorship and encouragement. He routinely helped Johary with coursework, guided him through scholarship applications, and instilled confidence during difficult times. Should Mr. Perez Satillan be removed, Johary would likely have to abandon his studies to support his disabled mother and care for his younger brother—a profound disruption to his educational trajectory and emotional wellbeing.

Miguel Perez, Mr. Perez Satillan's adult son and kidney-transplant recipient, continues to require regular nephrology follow-up and laboratory testing. He relies heavily on his father for emotional support and stability. Monica Perez's statement details that Miguel's chronic condition and the stress of losing his father could precipitate another health crisis. Moreover, Miguel's four young children view Mr. Perez Santillan as a grandfather figure and would also suffer emotional harm from his deportation.

Commencement of immigration proceedings

On July 19, 2025, Respondent was arrested in Churchill County, Nevada after an incident stemming from his wife's adverse reaction to Sumatriptan, a prescription medication for migraines. The drug caused her to suffer acute hallucinations and panic during a private interaction with her husband. Police were called when she appeared disoriented; her son informed officers that she was "hallucinating and going crazy." Despite her condition, Mr. Perez Satillan

was taken into custody. Once the effects of the medication subsided, Monica immediately clarified the misunderstanding to law enforcement. As a result, all criminal charges were dismissed on August 14, 2025.

However, Mr. Perez Satillan's arrest brought him to the attention of Immigration and Customs Enforcement. The Department of Homeland Security initiated removal proceedings with a Notice to Appear dated August 2, 2025, charging him as removable under INA § 212(a)(6)(A)(i) (present without admission) and INA § 212(a)(7)(A)(i)(I) (lack of valid entry documents). Both charges were sustained. Mr. Perez Satillan applied for Cancellation of Removal for Certain Non-Permanent Residents under INA § 240A(b)(1). He remains detained, having been denied bond based on a finding of mandatory detention under the Laken Riley Act.

On October 30, 2025, Immigration Judge An Mai Nguyen denied Mr. Perez Santillan's Application for Cancellation of Removal, finding that he had not met his burden to establish the requisite hardship. However, on October 31, 2025, Mr. Perez Santillan timely filed an appeal with the Board of Immigration Appeals. Accordingly, his removal proceedings remain pending.

LEGAL BACKGROUND

Right to Liberty and Due Process

The Fifth Amendment of the U.S. Consitituion guarantees that "[no] person shall… be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. Importantly, the supreme court has clarified that this protection extends to noncitizens, stating: "Once an alien teres the country, the legal circumstances changes, for the Due Process clause applies to all 'persons" within the United States. *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001).

Civil immigration detention is meant to serve limited regulatory purposes: ensuring appearance at proceedings and protecting the community. The Supreme Court in *Demore v. Kim*, 538 U.S. 510 (2003), emphasized that detention may only last for the "brief period necessary for… removal proceedings" and cannot be punitive.

Where detention extends beyond those limited purposes or rests on mere allegations, it

violates due process. As the Court stressed in *Zadvydas:* "freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that the Clause protects." 533 U.S. at 690.

Civil Nature of Immigration Detention

The Supreme Court has repeatedly held that immigration detention is civil, not punitive. In *Bell v. Wolfish*, 441 U.S. 520, 535 (1979), the Court explained: "If a restriction or condition is not reasonably related to a legitimate governmental objective, it amounts to punishment."

FIRST CAUSE OF ACTION

I. Procedural Due Process

Under the Due Process Clause of the Fifth Amendment to the United States Constitution, no person shall be "deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. That interest is particularly weighty when government detention is at issue. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001).

These due process rights apply to noncitizens residing in the United States. The Supreme Court has firmly established that "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693; *see also Trump v. J.G.G.*, 604 U.S. 670, 673, 145 S. Ct. 1003, 221 L. Ed. 2d 529 (2025) ("It is well established that the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings." (*citation omitted*)). Indeed, once a noncitizen is present in the United States, they have a "weighty" liberty interest in remaining in the United States, as they stand to lose rights to "stay and live and work" in the country and "to rejoin [their] immediate family." *Landon v. Plasencia*, 459 U.S. 21, 34, 103 S. Ct. 321, 74 L. Ed. 2d 21 (1982) (citation omitted). This is true "regardless of how someone entered the country: '[O]nce passed through our gates, even illegally,' noncitizens 'may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law.'"

Make the Rd., 2025 WL 2494908, at 10 (*quoting Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212, 73 S. Ct. 625, 97 L. Ed. 956 (1953)).

a. Petitioner Is Not Subject to Mandatory Detention Under 8 U.S.C. § 1225.

Although the Immigration Judge initially rejected this argument, the decision in *Matter of Yajure Hurtado* was issued shortly thereafter. As a result, this issue will now be relevant.

8 U.S.C. § 1225

Section 1225 applies to "applies to 'applicants for admission,' who are, as relevant here, noncitizens 'present in the United States who [have] not been admitted.'" *Gomes v. Hyde*, 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299, at 2 (D. Mass. July 7, 2025) (quoting 8 U.S.C. § 1225(a)(1)). Under this Section, all applicants must be inspected by an immigration officer. 8 U.S.C. § 1225(a)(3). Under subsection (b), certain applicants for admission may be subject to removal proceedings. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108-09, 140 S. Ct. 1959, 207 L. Ed. 2d 427 (2020). Because Section 1225 is mandatory, a "noncitizen detained under Section 1225(b)(2) may be released only if he is paroled 'for urgent humanitarian reasons or significant public benefit.'" Gomes, 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299, at 1 (emphasis added). However, Section 1225(b) only "authorizes the Government to detain certain aliens seeking admission into the country." 8 U.S.C. § 1225(b). (emphasis added).

8 U.S.C. § 1226

While section 1225 "authorizes the Government to detain certain aliens seeking admission into the country," section 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings." *Jennings v. Rodriguez, 583 U.S. 281, 289, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018)* (emphasis added). Section 1226(a) sets out the "default rule" for noncitizens already present in the country. *Id.* at 288. It provides:

> 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. . . [T]he Attorney General--(1) may continue to detain the arrested alien; and (2) may release the alien on--(A) bond . . . ; or (B) conditional parole . . .

8 U.S.C. § 1226(a). "Section 1226(a), therefore, establishes a discretionary detention framework." *Lopez Benitez*, 2025 WL 2371588, at 3 (*internal citations omitted*). An immigration officer makes the initial determination to either detain or release the noncitizen, but after that decision has been made, the noncitizen may request a bond hearing before an immigration judge. 8 C.F.R. § 1236.1(c)(8), (d)(1). At any such bond hearing, "the burden is on the non-citizen to 'establish to the satisfaction of the Immigration Judge . . . that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.'" *Hernandez v. Sessions*, 872 F.3d 976, 982 (9th Cir. 2017) (*citing In re Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006)).

Recently, Congress amended 8 U.S.C. § 1226. While Section 1226(a) is a discretionary framework, Congress added two new mandatory detentions to Section 1226 codified in Section 1226(c) through the Laken Riley Act. Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025). Added as a two-step process, the Attorney General must detain a noncitizen if (1) they are inadmissible because they are in the United States without being admitted or paroled, obtained documents or admission through misrepresentation or fraud, or lacks valid documentation and (2) "is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person." U.S.C. §§ 1226(c)(1)(E)(i)-(ii).

"Summarizing the relevant distinctions. . . noncitizens detained under Section 1225(b)(2) must remain in custody for the duration of their removal proceedings, while 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." *Vazquez v. Bostock*, 779 F. Supp.3d 1239, 1247 (W.D. Wash.

2025). In other words, Section 1225(b) "supplement[s] § 1226's detention scheme." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022).

i. Section 1225(b)(2)(A) Does Not Apply to Mr. Perez Santillan.

Here, the government contends that Mr. Perez Santillan is properly detained under Section 1225 because he is "seeking admission" into the United States, even though he has been in the United States for the last twenty-five years.

The text of Section 1225 reads as, an "applicant for admission" is "an alien present in the United States who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(1). "Admission" and "admitted" are defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13). Section 1226 more broadly states that a noncitizen can be detained on "a warrant issued by the Attorney General." 8 U.S.C. § 1226(a).

The question before the Court is whether "an alien present in the United States who has not been admitted" includes someone like Mr. Perez Santillan, who is not presently seeking admission and has been in the United States for the last twenty-five years without inspection or authorization. In other words, present without admittance.

Section 1225 is titled *"Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing,"* and the inclusion of the term *"arriving"* indicates that the statute applies specifically to noncitizens who are arriving at the border, rather than those already present in the United States. *Pizarro Reyes*, 2025 U.S. Dist. LEXIS 175767, 2025 WL 2609425, at 5. This interpretation is supported by the statutory text, which centers on inspection procedures for individuals entering as "crewmen" or "stowaways." 8 U.S.C. § 1225(b)(2). These narrow and specific categories of entry suggest that § 1225 applies only to

noncitizens at the border or a port of entry who are actively seeking admission to the United States. *See Pizarro Reyes*, 2025 WL 2609425, at 5 (citing *Dubin v. United States*, 599 U.S. 110, 118, 143 S. Ct. 1557, 216 L. Ed. 2d 136 (2023)). This analysis supports a more limited interpretation of § 1225. *Id.*

Beyond its title, the placement and context of Section 1225 within the broader statutory framework offer further interpretive guidance. Courts are instructed to interpret statutes as a whole, not as isolated provisions. *King v. Burwell*, 576 U.S. 473, 486, 135 S. Ct. 2480, 192 L. Ed. 2d 483 (2015). In this context, the Supreme Court has identified Section 1226 as the "default rule" governing the detention of noncitizens who are already physically present in the United States. *Jennings v. Rodriguez*, 583 U.S. 281, 288, 301, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018). As noted in *Pizarro Reyes*, the structure of the statute suggests that Congress intentionally placed the broader, catchall provision of Section 1226 after the more specific and narrowly focused Section 1225 to encompass noncitizens who do not fall within the categories defined in Section 1225. *Pizarro Reyes*, 2025 U.S. Dist. LEXIS 175767, 2025 WL 2609425, at 5; *see also Vazquez*, 779 F. Supp. 3d at 1258.

Recent Congressional amendments must also be taken into account—specifically, the Laken Riley Act, which modified Section 1226, as discussed above. As the Supreme Court has recognized, "when Congress acts to amend a statute, we presume it intends the amendment to have real and substantive effect." *Stone v. I.N.S.*, 514 U.S. 386, 397, 115 S. Ct. 1537, 131 L. Ed. 2d 465 (1995). The Laken Riley Act introduced a new subsection under Section 1226(c), imposing mandatory detention for certain individuals, within an otherwise discretionary detention framework. As other courts have observed, this amendment reflects Congress's intent

to expand specific mandatory detention provisions without altering the default applicability of Section 1226 to noncitizens already present in the United States.

> If § 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless' and this Court, too, 'will not find that Congress passed the Laken Riley Act to 'perform the same work' that was already covered by § 1225(b)(2).

Lopez-Campos v. Raycraft, 2025 U.S. Dist. LEXIS 169423, 2025 WL 2496379 at 8 (E.D. Mich. Aug. 29, 2025) (*quoting Maldonado v. Olsen*, 2025 U.S. Dist. LEXIS 158321, 2025 WL 2374411, at 12 (D. Minn. Aug. 15, 2025)). If "Congress had intended for Section 1225 to govern all noncitizens present in the country, who had not been admitted, then it would not have recently adopted an amendment to Section 1226 that prescribes a subset of noncitizens be exempt from the discretionary bond framework.".

In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA described it as a "legal conundrum" for an individual to be physically present in the United States without having been admitted, yet no longer considered "seeking admission." *Id.* at 221. The BIA concluded that such individuals fall under Section 1225 because they fail to cite any legal authority establishing that, after residing unlawfully in the interior for an unspecified period, they are no longer applicants for admission. *Id.*

We respectfully urge this Court to reject that interpretation for several reasons. First, courts are not required to defer to agency interpretations of law simply because a statute is ambiguous. As the Supreme Court recently held in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412–13, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024), "[c]ourts must exercise their independent judgment in deciding whether an agency has acted lawfully," and under the Administrative Procedure Act, deference is not warranted solely due to statutory ambiguity.

Second, the structure and context of the Immigration and Nationality Act make it difficult to classify a noncitizen as "seeking admission" when they have never presented themselves at a port of entry or made any affirmative attempt to enter. Interpreting the statute to cover individuals who have lived in the interior for years without lawful status stretches the meaning of "seeking admission" beyond recognition.

Third, while the BIA in *Yajure Hurtado* maintained that its reading of Section 1225(b) does not render the Laken Riley Act superfluous, *id.* at 222, this position is unconvincing. As discussed above, if the BIA's interpretation were adopted, it would effectively nullify the recent statutory amendments enacted through the Laken Riley Act—contrary to the principle that congressional amendments are presumed to have meaningful effect. *See Lopez-Campos*, 2025 U.S. Dist. LEXIS 169423, 2025 WL 2496379, at 8.

The Immigration Judge's holding that section 1225(b)(2)(A) applies to all noncitizens present in the United States without admission is erroneous as the interpretation of the statute (1) disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226; (3) would render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice.

Other district courts have reached a similar conclusion. *See*, e.g., *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 U.S. Dist. LEXIS 153952, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at 9 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299, at 8 (D. Mass. July 7, 2025); *Vasquez Garcia v. Noem*, 2025 U.S. Dist. LEXIS 171714, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 U.S. Dist. LEXIS 169423, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v.*

Trump, No. 3:25-cv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025); Doc. 11, *Benitez v. Noem*, No. 5:25-cv-02190 (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 U.S. Dist. LEXIS 165015, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 U.S. Dist. LEXIS 160622, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 U.S. Dist. LEXIS 157488, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted 2025 U.S. Dist. LEXIS 156336, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); Doc. 11, *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, (C.D. Cal. July 28, 2025).

Aside from the Board of Immigration Appeals' recent decision in *Matter of Yajure Hurtado*, no authority has been identified that holds noncitizens like Petitioner—who have resided in the United States for many years—subject to section 1225(b)(2)(A).

b. The Laken Riley Act Does Not Make Detention Mandatory When Charges Are Dismissed Without a Conviction or Admission of Guilt.

After determining that Petitioner's removal proceedings are not governed by § 1225, the question turns to whether detention is mandatory under § 1226(c)(1), which, as relevant here, states:

> The Attorney General shall take into custody any alien who—
>
> ....
>
> (E) (i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title; and
>
> (ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny,

> shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person,
> when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

Section 1226(c)(1)(E) was added in early January 2025 as part of the Laken Riley Act.

Petitioner does not dispute that § 1226(c)(1)(E)(ii) required federal officials to take him into custody when he was arrested for and charged with domestic battery and sexual assault. The language of the statute is unambiguous in that regard, stating that the Attorney General "shall take into custody any alien who ... is charged with [or] is arrested for ... any crime that results in death or serious bodily injury to another person." *Id.* Accordingly, the statute required Petitioner to be taken into custody after he was arrested and charged with domestic battery and sexual assault. The disputed issue is whether it requires him to remain in custody without the possibility of bond now that the charges have been dismissed without a conviction or admission of wrongdoing.

On that issue, there are two potential interpretations of the statute. The first is that the ultimate disposition of the charge is irrelevant: once a person has been charged with one of the enumerated offenses, the Attorney General has no authority to do anything except keep the person in custody for the duration of removal proceedings. The second interpretation is that detention is no longer mandatory once the charges are dismissed.

The plain language of § 1226(c)(1)(E)(ii) supports the second interpretation. As relevant here, it requires detention of a person who "is charged with" one of the enumerated offenses. The use of the present tense is conspicuous and important. *See Stanley v. City of Sanford*, 145 S. Ct. 2058, 2063, 222 L. Ed. 2d 331 (2025) ("'[T]o ascertain a statute's temporal reach,' this Court has 'frequently looked to Congress' choice of verb tense." (*quoting Carr v. United States*, 560 U.S.

438, 448, 130 S. Ct. 2229, 176 L. Ed. 2d 1152 (2010)). Under common usage of the English language, if criminal charges against someone have been dropped, we would not continue to say the person "is charged with" that crime, present tense. By using the present tense, § 1226(c)(1)(E)(ii) establishes that detention is mandatory only so long as the charges either remain pending or are resolved in a way that triggers one of the other clauses of the statute. *See Stanley*, 145 S. Ct. at 2064 (rejecting interpretation of statute that failed to attach significance to Congress's use of the present tense).

This interpretation is supported by the fact that section 1226(c)(1)(E)(ii) also makes detention mandatory for a person who "is convicted of" an enumerated offense. Because a person cannot be "convicted" of an offense without first being "charged" with it, it would not make sense to interpret the statute as treating the mere fact of a charge as triggering mandatory detention for the remainder of the removal proceeding regardless of whether the person is ultimately convicted. Such an interpretation would make the words "is convicted of" superfluous, thus violating one of the "most basic interpretive canons" of statutory interpretation. *Corley*, 556 U.S. at 314. Indeed, the fact that "is charged with" and "is convicted of" arise in the very same legislative enactment is especially important because "the canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." *Marx v. Gen. Rev. Corp.*, 568 U.S. 371, 386, 133 S. Ct. 1166, 185 L. Ed. 2d 242 (2013).

The plain-language interpretation of § 1226(c)(1)(E)(ii) is reinforced by the surrounding language in other ways, too. In relevant part, § 1226(c)(1)(E)(ii) makes detention mandatory in five scenarios involving enumerated offenses: (1) "is charged with," (2) "is arrested for", (3) "is convicted of," (4) "admits having committed, and (5) "admits committing acts which constitute

the essential elements of." These categories track the progression of a criminal case. Criminal cases start either with the filing of charges ("is charged with") or the arrest of a person ("is arrested for") pending the filing of such charges. Either way, section 1226(c)(1)(E)(ii) compels the Attorney General to take the person into custody. At some point, however, all charges are resolved, including, in many instances, through a conviction. Because a person who "is convicted of" a crime no longer "is charged with" that crime, the words "is convicted of" establish that detention remains mandatory following conviction.

The rest of § 1226(c)(1)(E)(ii) recognizes that charges can be resolved in other ways, too. In many state court systems, a person may enter a deferred prosecution agreement or receive a deferred judgment, often on the condition that the person admit the underlying conduct. Detention remains mandatory in those scenarios thanks to § 1226(c)(1)(E)(ii)'s inclusion of the words "admits having committed." Similarly, in some instances, plea negotiations may result in a conviction for a different crime than the one originally charged. Nonetheless, § 1226(c)(1)(E)(ii) again makes detention mandatory in many plea bargain situations by including the words "admits committing acts which constitute the essential elements of [an enumerated offense]." This means, for example, that a person who pleads guilty to "criminal mischief" after being charged with "theft" will remain subject to mandatory detention if the underlying factual admissions are sufficient to meet the elements of theft.

The point is that § 1226(c)(1)(E)(ii) recognizes that a person "is charged with" a crime (present tense) only until those charges are resolved. If the resolution is a conviction ("is convicted of") or involves the person making some other admission of guilt ("admits having committed" or "admits committing acts which constitute the essential elements of"), then § 1226(c)(1)(E)(ii) continues to make detention mandatory. By contrast, based on the recurring use

of the present tense for each stage of the criminal process, the statute no longer requires mandatory detention when charges are resolved via acquittal or dismissal and none of the other clauses apply.

SECOND CAUSE OF ACTION

II. Substantive Due Process

Substantive due process forbids arbitrary or punitive detention. As the Supreme Court has emphasized, "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Due Process Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In the context of civil immigration proceedings, the government's authority to detain is limited to two legitimate purposes: (1) protecting the public from danger, and (2) ensuring the individual's appearance at future proceedings. *Demore v. Kim*, 538 U.S. 510, 518–19 (2003). Detention that does not serve either purpose amounts to unconstitutional punishment.

Here, although Mr. Perez Santillan was initially detained following an arrest, the criminal charges were later dismissed. He has presented substantial evidence demonstrating that he poses neither a danger to the community nor a flight risk. As the Supreme Court held in *Bell v. Wolfish*, 441 U.S. 520, 535 (1979), "[i]f a restriction or condition is not reasonably related to a legitimate governmental objective, it amounts to punishment." Petitioner's continued detention—based on speculation rather than evidence—bears no reasonable relation to a lawful objective and is therefore punitive and unconstitutional.

a. Application of the *Mathews v. Eldridge* Balancing Test

To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). The Court must weigh: (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 United

States' interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id.* at 335.

Private Interest

It is beyond dispute that Mr. Perez Santillan has a compelling and constitutionally protected interest in avoiding continued detention. The right to be free from government-imposed confinement is among the most fundamental of all liberty interests. As the Supreme Court held in *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004), "[l]iberty is the most elemental of liberty interests." Similarly, in Zadvydas v. Davis, 533 U.S. 678, 690 (2001), the Court reaffirmed that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty the Due Process Clause protects."

In assessing due process violations, courts may also examine the conditions of confinement to determine whether civil detention is effectively indistinguishable from criminal incarceration. *Martinez v. Noem*, 2025 U.S. Dist. LEXIS 174415, 2025 WL 2598379, at 2 (W.D. Tex. Sep. 8, 2025). Mr. Perez Santillan is currently confined at the Washoe County Detention Center under conditions that mirror those of penal detention and is unjustly separated from his wife and children. Such confinement, absent a lawful and individualized justification, is a grave intrusion on his liberty and runs afoul of due process protections.

Risk of Erroneous Deprivation

The second *Mathews* factor considers "the risk of an erroneous deprivation of [Petitioner's] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). In this case, that risk is substantial.

Federal Respondents have failed to provide any evidence that Mr. Perez Santillan poses a danger to the community or is a flight risk. Without such a showing, the likelihood of an unjustified deprivation of his fundamental liberty interest is unacceptably high. The absence of meaningful procedural safeguards—such as a constitutionally adequate bond hearing—only amplifies the risk of error and underscores the urgent need for judicial intervention.

Government's Interest

The third and final *Mathews* factor examines "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

While the government's interests in protecting the public from dangerous noncitizens and ensuring an individual's eventual removal are undeniably important, *Rodriguez Diaz*, 53 F.4th 1189–90, those interests are fully addressed through an individualized bond determination by an Immigration Judge under § 1226. As the Ninth Circuit has made clear, "the government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions." *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017).

Where the government cannot articulate any specific justification for continuing to detain a noncitizen who has already prevailed—or would prevail—at a proper bond hearing, the detention ceases to serve a lawful immigration purpose. As Justice Kennedy warned in *Demore v. Kim*, such circumstances raise serious constitutional concerns: "[w]hether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Demore*, 538 U.S. 510, 532–33 (Kennedy, J., concurring).

Conclusion on Causes of Action

Mr. Perez Santillan's continued detention violates both procedural and substantive due process. The Immigration Judge denied his liberty based on a misapplication of the law, and DHS failed to carry its burden of proving that Mr. Perez Santillan poses a flight risk or danger to the community. Despite this, his detention persists without any lawful or evidentiary basis.

Accordingly, the Constitution requires either Petitioner's immediate release or, at minimum, a custody redetermination hearing that fully complies with due process.

PRAYER FOR RELIEF

WHEREFORE, Mr. Perez Santillan prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Declare that the IJ's September 4, 2025, Order Denying Motion for Bond Determination and detention of Mr. Perez Santillan was an unlawful exercise of authority;

(3) Order ICE to immediately release Mr. Perez Santillan from his unlawful detention;

(4) Declare a hearing can be held before a neutral adjudicator to determine whether his re-incarceration would be lawful because the government has shown that he is a danger or a flight risk by clear and convincing evidence;

(5) Declare that Mr. Perez Santillan cannot be re-arrested unless and until he is afforded a hearing on the question of whether his re-incarceration would be lawful—i.e., whether the government has demonstrated to a neutral adjudicator that he is a danger or a flight risk by clear and convincing evidence;

(6) Award reasonable costs and attorney fees; and

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

Dated this 3rd day of November 2025

Respectfully submitted,

Karen S. Monrreal, Esq.
Attorney for Mr. Perez Santillan

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this 3rd day of November 2025 in Reno, NV.

Karen S. Monrreal
Attorney for Petitioner Perez Santillan