UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

GILBERTO RODRIGUEZ CORTINA, Petitioner, v. **MARY DE ANDA-YBARRA,** Field Office Director, ICE El Paso Field Office; **TODD LYONS**, Acting Director of U.S. Immigration and Customs Enforcement **KRISTI NOEM**, Secretary of the U.S. Department of Homeland Security; and, **PAMELA BONDI,** Attorney General of the United States, in their official capacities Respondents.	)	**Case No. 3:25-cv-523**

PETITION FOR WRIT OF HABEAS CORPUS
INTRODUCTION

1. Gilberto Rodriguez Cortina (hereinafter referred to as "Gilberto," "Mr. Rodriguez Cortina," or "Petitioner") seeks to file this Petition for Writ of Habeas Corpus with the Court.

2. Mr. Rodriguez Cortina is a Mexican citizen who entered the U.S. in or around July of 2009. Before detention, Petitioner was residing at [redacted] Chelsea, MA 02150.

3. Since entering the U.S., Mr. Rodriguez Cortina has established strong ties to the community.

4. Petitioner has a pending I-130 Petition for Alien Relative that was filed with USCIS on October 15, 2025. *See* Exhibit A, I-130 Receipt Notice.

5. On September 10, 2025, Mr. Rodriguez Cortina was detained by Immigration and Customs Enforcement ("ICE"). He was transferred out of state to Camp East Montana Detention Center, where he remains detained.
6. Petitioner requested a bond hearing before the Immigration Court. However, based on recent decisions by the Board of Immigration Appeals, especially *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Immigration Judge denied jurisdiction over Petitioner's bond case and allowed the government to continue detaining Petitioner indefinitely without an opportunity for an independent judge to analyze his custody.
7. An Immigration Judge previously closed Petitioner's removal proceedings due to a failure to prosecute by Respondents, and Respondents have yet to submit a new notice to appear to re-commence removal proceedings against Petitioner.
8. Petitioner's detention violates federal law, as well as the Fifth Amendment of the United States Constitution.
9. Accordingly, to vindicate Petitioner's statutory and constitutional regulatory rights, this Court should grant the instant petition for a writ of habeas corpus. Mr. Rodriguez Cortina requests that this Court immediately release him from detention, also enjoining Respondents from re-detaining him unless there are changes in the circumstances that would justify detention.
10. Furthermore, Petitioner also requests this Court to issue a restraining order to prevent him from being transferred from the state of Texas for the duration of these proceedings.

JURISDICTION

11. This action arises under the Constitution of the United States and the Immigration and

Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), and 28 U.S.C. § 1331 (federal question).

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

VENUE

14. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States, and the Petitioner is currently detained within the jurisdiction of this District. 28 U.S.C. § 2241.

PARTIES

15. Petitioner is a Mexican citizen who entered the U.S. in or around July of 2009. He has not left the country since. He is currently detained at Camp East Montana Detention Center, in El Paso, TX, and he is in custody and under the direct control of Respondents and their agents.

16. Respondent, Mary de Anda-Ybarra, is sued in her official capacity as the Field Office Director of U.S. Immigration and Customs Enforcement ("ICE") in El Paso, Texas. She is a legal custodian of Petitioner, with authority over decisions regarding his detention and release. Because Petitioner is confined in an ICE facility within her jurisdiction, she is the local official directly responsible for his custody.

17. Respondent, Todd Lyons, is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. He is responsible for the overall administration, supervision, and enforcement of immigration detention and removal

operations nationwide, including policies governing the custody and release of noncitizens. Respondent Lyons is therefore a legal custodian of Petitioner.

18. Respondent, Kristi Noem, is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security ("DHS"). She is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees ICE, the component agency that administers Petitioner's detention. Respondent Noem is therefore a legal custodian of Petitioner.

19. Pamela Bondi, Attorney General of the United States, is sued in her official capacity and as the legal representative of the U.S. government.

STATEMENT OF FACTS

20. Mr. Rodriguez Cortina was born in Tezuitlan, Puebla, Mexico in 1987. He is a Mexican citizen who entered the U.S. in or around July of 2009. Before detention, Mr. Rodriguez Cortina was residing at [redacted] Chelsea, MA 02150.

21. On September 10, 2025, Mr. Rodriguez Cortina was detained by Immigration and Customs Enforcement ("ICE"). He was transferred out of state to Camp East Montana Detention Center, where he remains detained.

22. Petitioner requested a bond hearing before the Immigration Court. However, based on recent decisions by the Board of Immigration Appeals, especially *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Immigration Judge denied jurisdiction over Petitioner's bond case and allowed the government to continue detaining Petitioner indefinitely without an opportunity for an independent judge to analyze his custody.

23. The reason for Petitioner's detention remains unclear, especially as he did not have an opportunity to be heard by an Immigration Judge to consider the reasons for his

detention, and as Respondents have failed to prosecute Petitioner's case before the Immigration Court.

24. Respondents transferred Petitioner from Massachusetts to Texas. This transfer has not only caused significant difficulties for him to receive legal representation but also placed him at risk of being a victim of potential illegal measures by the government due to incorrect screenings, as reported by the press.[1]

25. Petitioner's detention violates the Fifth Amendment of the United States Constitution. Petitioner is detained without even having an opportunity to have a bond hearing conducted.

LEGAL FRAMEWORK

26. The Supreme Court held in *Zadvydas v. Davis* that civil incarceration is only acceptable "in certain special and narrow non-punitive circumstances, where a special justification . . . outweighs the individual's constitutionally protected interest." 533 U.S. 678, 690 (2001). The Supreme Court further established the principle that noncitizens in deportation or removal proceedings are just as entitled to due process protections as anyone else. *See Zadvydas*, 533 U.S. at 690 (2001) ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]" any "person . . . of . . . liberty . . . without due process of law.'"). The Ninth Circuit has also recognized that individuals detained under non-mandatory detention, especially Section 1226(a), are entitled to several protections including "several layers

[1] Patrick Smith & Gary Grumbach, *A Man Was Sent to El Salvador Due to 'Administrative Error' Despite Protected Legal Status*, NBC News, Apr. 1, 2025, available at https://www.nbcnews.com/news/us-news/man-was-sent-el-salvador-due-administrative-error-protected-legal-stat-rcna199010.

of review of the agency's initial custody determination, an initial bond hearing before a neutral decisionmaker, the opportunity to be represented by counsel and to present evidence, the right to appeal, and the right to seek a new hearing when circumstances materially change. *See* generally 8 U.S.C. § 1226(a)(1)–(2); 8 C.F.R. §§ 236.1, 1003.19." *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022)

27. Under 8 U.S. Code § 1225, "An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission." Applicants for admission are among the individuals who can be placed in expedited removal, in which case they are subject to mandatory detention. INA § 235(b)(1)(B)(i)(IV).

28. If a noncitizen, however, is detained after entering the United States, he is no longer detained under INA § 235, but rather under INA § 236. 8 U.S. Code § 1226(a). In *Jennings*, the Supreme Court confirmed that § 1226 governs "the process of arresting and detaining" noncitizens who are living "inside the United States" but "may still be removed," including those "who were inadmissible at the time of entry." *Jennings v. Rodriguez*, 804 F. 3d 106 at 288. The Court summarized the distinction succinctly: "U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)." *Id.* at 289.

29. However, Immigration Courts have shifted their long-standing interpretation. Recent decisions by the Board of Immigration Appeals ("BIA") have stripped Immigration Judges of jurisdiction over such cases. *See Matter of Q. LI*, 29 I&N Dec. 66 (BIA 2025); *also Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The latter decision is based on a position that every individual who unlawfully entered the U.S. is an "applicant for admission."

30. The recent interpretation by the BIA, which was adopted after a novel interpretation of the law by DHS, violates the Fifth Amendment, and is also contrary "to the plain text of the statute and the overall statutory scheme." *Aguiriano Romero v. Hyde*, No. 25-cv-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *also Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025); *see also, e.g.*, *Rodriguez Vazquez v. Bostock*, — F. Supp. 3d —, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025) (holding same); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025) (same); *Garcia v. Hyde*, Civ. No. 25-11513 (D. Mass. July 14, 2025) (same); *Rosado v. Bondi*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (same), *report and recommendation adopted without objection*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, — F. Supp. 3d —, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (same); *dos Santos v. Lyons*, 2025 WL 2370988 (D. Mass Aug. 14, 2025) (same); *Aguilar Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (same); *Escalante v. Bondi*, 2025 WL 2212104 (D. Minn. July 31, 2025) (granting preliminary relief after positively weighing likelihood of success), *report and recommendation adopted sub nom. O. E. v. Bondi*, 2025 WL 2235056 (D. Minn. Aug. 4, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15,

2025) (granting individualized bond hearings on *ex parte* motion for temporary restraining order after finding likelihood of success); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025) (granting relief from stay of bond order pending BIA appeal); *Mayo Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025) (same); *Rodrigues De Oliveira v. Joyce*, 2025 WL 1826118 (D. Me. July 2, 2025) (recognizing disagreement as to the detention statutes and granting habeas petition on due process grounds). *But see Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025).

31. Mr. Rodriguez Cortina's detention by DHS violates his rights under the Due Process Clause of the Fifth Amendment to the United States Constitution. The habeas petition is the only way for the Petitioner to have his custody analyzed by a Court, since the Immigration Courts have denied jurisdiction.

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Immigration and Nationality Act (INA)

32. The Immigration and Nationality Act (INA) established the statutory framework governing the entry, presence, and removal of noncitizens in the United States. Regulations promulgated by the agencies charged with enforcing the INA set forth specific procedures for classifying noncitizens.

33. Petitioner was detained after spending sixteen years in the United States, following his entry without admission in or around July of 2009. However, based on recent changes in interpretation of the law by DHS and DOJ, Petitioner is being treated as an

"applicant for admission" and being denied the opportunity to have a bond hearing before the Immigration Court.

34. Mandatory detention for all applicants has only been the official policy of the Department of Homeland Security ("DHS") since July 8, 2025, when Acting Director of U.S. Immigration and Customs Enforcement, Todd M. Lyons, issued an internal memorandum explaining that the agency had "revisited its legal position."[2] *See Martinez v. Hyde*, No. CV 25-11613-. BEM, 2025 WL 2084238.

35. Recently, the BIA, a part of the Executive Office for Immigration Review ("EOIR"), which operates under the DOJ authority, agreed with that interpretation in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). One of the measures of the current administration was to reduce the number of judges at the BIA from 28 to 15, ensuring that most of the judges currently serving on the board were appointed by the current presidential administration, either during this term or in the prior one.[3][4]

36. The DOJ is part of this process, and the internal memorandum discussing the change in interpretation indicates that the decision to strip immigration judges of jurisdiction over bond hearings was made "in coordination with the DOJ," affirming that § 1225 "is the applicable immigration detention authority for all applicants for admission."[5]

---

[2] The existence of the memorandum was first reported by the Washington Post on July 14, 2025. Maria Sacchetti & Carol D. Leonnig, *ICE declares millions of undocumented immigrants ineligible for bond hearings*.
[3] *Reducing the Size of the Board of Immigration Appeals*, 90 Fed. Reg. 15,525 (Apr. 14, 2025).
[4] Adriel Orozco, *While Federal Firings Focus on Immigration Processing, Funding for Immigration Enforcement Expands*, AM. IMMIGRATION COUNCIL (Mar. 6, 2025), https://www.americanimmigrationcouncil.org/blog/federal-firings-immigration-processing-enforcement-expands/
[5] *See Diaz Martinez*, 2025 WL 2084238, at *4 & nn.10–11 (citing Acting ICE Director Todd M. Lyons's July 8, 2025 memorandum, "Interim Guidance Regarding Detention Authority for Applicants for Admission").

Furthermore, former immigration judges have reported that they were "told to rule in a certain way" by superiors, and there was "pressure from above."[6]

37. This position would render significant portions of 8 U.S.C. § 1226 meaningless, violating one of the most basic canons governing the interpretation of federal statutes, which provides that a statute "should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant ..." *Corley v. United States*, 556 U.S. 303, 314 (2009) (internal quotations omitted); *Shulman v. Kaplan*, 58 F.4th 404, 410-11 (9th Cir. 2023). "This principle ... applies to interpreting any two provisions in the U.S. Code, even when Congress enacted the provisions at different times." *Bilski v. Kappos*, 561 U.S. 593, 607-08 (2010).

38. Here, the DOJ and DHS's position is that Petitioner is subject to the mandatory detention provision, and so he should be detained until the finality of his removal proceedings without the opportunity to have a bond hearing. If their interpretation of § 1225 is correct and this section's mandatory detention provisions apply to all noncitizens present in the United States who have not been admitted, it would render superfluous provisions of § 1226 that apply to certain categories of inadmissible noncitizens. *See* § 1226(c)(1)(A), (D), (E); *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023); *Torres v. Barr*, 976 F.3d 918, 930 (9th Cir. 2020) (en banc). Under Respondents' proposed interpretation, which is based on a recent change in DHS's policies, § 1226(c)(1)(E)'s mandated detention for inadmissible noncitizens who are implicated in an enumerated crime, including those "present in the United States

[6] Oscar Margain, *Fired immigration judges describe threat to judicial independence from Justice Dept.*, NBC BOSTON, https://www.nbcboston.com/news/local/fired-us-immigration-judge-interviews/3776340/ (July 25, 2025) [https://perma.cc/G6FL-8D73].

without being admitted or paroled," would be meaningless and superfluous because "all noncitizens who have not been admitted" would already be governed by § 1225's mandatory detention authority. *See Shulman*, 58 F.4th at 410-11. *See also Corley v. United States,* 556 U.S. 303, 314 n.5 (2009) (explaining that seemingly conflicting statutes read in isolation can be reconciled if read in their broader context, which includes observing the "antisuperflousness" canon).

39. The Supreme Court's decision in *Jennings* likewise supports harmonizing §§ 1225 and 1226 in a manner contrary to Respondents' position. The Court described § 1225 as part of the process that "generally begins at the Nation's borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). In contrast, the Court explained that § 1226 governs "the process of arresting and detaining" noncitizens who are living "inside the United States" but "may still be removed," including those "who were inadmissible at the time of entry." *Id.* at 288. The Court summarized the distinction succinctly: "U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)." *Id.* at 289.

40. Notably, several of the exceptions in § 1226(c) that would be rendered superfluous under the IJ's interpretation of §§ 1225 and 1226 were only recently enacted by Congress in the Laken Riley Act ("LRA"). "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. INS*,

514 U.S. 386, 397 (1995) (citation omitted). Enacted in January 2025, the LRA amended multiple INA provisions, including §§ 1226 and 1225. See LRA, Pub. L. No. 119-1, 139 Stat. 3 (2025). Pertinent here, the LRA added a new category of noncitizens to § 1226(c)'s mandatory detention authority—those deemed inadmissible, including for being "present in the United States without being admitted or paroled," who have been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); LRA, Pub. L. No. 119-1. By specifically excepting these criminally implicated inadmissible noncitizens from § 1226(a)'s default discretionary detention framework, Congress necessarily left all other inadmissible noncitizens—those without the specified criminal involvement—subject to § 1226(a). *See Jennings*, 583 U.S. at 289; *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010).

41. Additionally, Congress enacted the LRA in the context of the longstanding agency practice of applying § 1226(a) to inadmissible noncitizens already residing in the country. Another "customary interpretive tool" is the principle that "[w]hen Congress adopts a new law against the backdrop of a 'longstanding administrative construction,'" courts "generally presume[] the new provision should be understood to work in harmony with what has come before." *Monsalvo Velazquez v. Bondi*, 604 U.S. ___, 145 S. Ct. 1232, 1242 (2025) (quoting *Haig v. Agee*, 453 U.S. 280, 297–98 (1981)). In *Monsalvo Velazquez*, the Court emphasized that when a statute is "susceptible" to more than one reasonable interpretation, courts should adopt the reading that is "consistent" with the statute's "longstanding administrative construction." *Id.* Congress's amendments to § 1226(c) in the LRA were made with full awareness of decades of agency practice treating inadmissible noncitizens – such

as Mr. Rodriguez Cortina – under § 1226(a)'s discretionary detention framework. Congress, therefore, presumably intended to preserve "the same understanding" of the statute as had been consistently applied by the agency. *Id.*

42. The legislative history of § 1226 reinforces that it governs the detention of noncitizens – like Petitioner – who were found in the United States after not having applied for admission. Prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), the predecessor to § 1226(a) governed deportation proceedings for all noncitizens arrested within the United States. *See* 8 U.S.C. § 1252(a)(1) (1994) ("Pending a determination of deportability ... any [noncitizen] ... may, upon warrant of the Attorney General, be arrested and taken into custody."); *Hose v. INS*, 180 F.3d 992, 994 (9th Cir. 1999) (noting that a "deportation hearing" was the "usual means" of proceeding against a noncitizen physically present in the United States). Like § 1226(a), the predecessor statute authorized discretionary release on bond. *See* 8 U.S.C. § 1252(a)(1) (1994). When Congress enacted IIRIRA, it expressly stated that § 1226(a) "restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond" a noncitizen "who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229; see also H.R. Rep. No. 104-828, at 210. Because noncitizens in Mr. Rodriguez Cortina's position were entitled to discretionary detention under the predecessor statute, and Congress confirmed that IIRIRA did not narrow that authority, § 1226 should likewise be interpreted to allow discretionary release on bond for similarly situated noncitizens.

43. Additionally, Respondents' interpretation of § 1226 is undermined by the Department of Homeland Security's longstanding practice of treating noncitizens taken into custody while residing in the United States—including those who were initially found inadmissible upon inspection but released into the country with the government's acquiescence and who have committed no crimes since—as detained under § 1226(a). See *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024). "[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court's] determination of what the law is." *Id.* (internal quotations omitted, second brackets in original). The Supreme Court has further recognized that deference to executive interpretations of federal statutes is "especially warranted when [the interpretation] was issued roughly contemporaneously with enactment of the statute and remained consistent over time." *Id.* This principle is particularly compelling here, where an individual who has resided in the United States with the government's acquiescence for years is subjected to an infringement of liberty interests – discussed *infra* – solely due to a regime change seeking to expedite removal of non-criminal noncitizens under discretionary conditions.

44. Furthermore, DHS's and the DOJ's selective reading of the statute – which disregards its "seeking admission" language – violates the rule against surplusage and undermines the plain meaning of the text. *See United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) ("'[E]very clause and word of a statute' should have meaning."), quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883); *United States v. Abbas*, 100 F.4th 267, 283 (1st Cir. 2024) ("'We begin, as always, with the text of the statute' and read it 'according to its plain meaning at the time of enactment,'" quoting

United States v. Winczuk, 67 F.4th 11, 16 (1st Cir. 2023), cert. denied, 145 S. Ct. 319 (2024)). The statutory phrase "seeking admission" is not explicitly defined but necessarily conveys a present-tense, ongoing action. *See Matter of M-D-C-V-*, 28 I.&N. Dec. 18, 23 (B.I.A. 2020) ("The 'use of the present progressive, like use of the present participle, denotes an ongoing process,'" quoting *Al Otro Lado v. Wolf*, 952 F.3d 999, 1011–12 (9th Cir. 2020)).

45. Finally, Respondents' interpretation of the statute also directly contradicts the position of the Fifth Circuit. The Circuit has already decided that § 1226(a) applies to "inadmissible aliens who are already 'inside the United States'" *See* ***State v. Biden*, 20 F.4th 928, 940 (5th Cir. 2021). The Fifth Circuit found that:**

> **Section 1226(a) provides its own detention-and-parole scheme that applies to aliens who have already entered the United States – in contradistinction to the applicants for admission covered by** § 1225(b)(2) and § 1182(d)(5). *See Jennings*, 138 S. Ct. at 837 (explaining § 1226 'generally governs the process of arresting and detaining' inadmissible aliens who are already 'inside the United States'); *see also* Part IV.B, *infra* pages 98–106 (explaining the distinction). **This provision generally requires DHS to obtain an administrative warrant before arrest. *See* § 1226(a) ('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.'). DHS may release such 'arrested alien[s]' on either bond (at least $1,500) or conditional parole (subject to restrictions). § 1226(a)(2)–(3).**
> ***See State v. Biden*, 20 F.4th 928, 940 (5th Cir. 2021).**

46. Therefore, Petitioner has been detained under § 1226(a), and the interpretation applied by Respondents is unlawful. Both the BIA's jurisdictional determination and Mr. Rodriguez Cortina's continued detention, absent a hearing to determine whether he poses a danger to persons or property or is likely to appear for future proceedings, are contrary to the laws of the United States.

COUNT TWO

Violation of Fifth Amendment Protections and Right to Due Process

47. Petitioner's detention by DHS violates his rights under the Due Process Clause of the Fifth Amendment to the United States Constitution. The allegations in the above paragraphs are realleged and incorporated herein. Immigration detention violates due process if it is not reasonably related to the purpose of ensuring a noncitizen's removal from the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92, 699-700 (2001); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Where removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and is unlawful. *See id.* at 699-700.

48. The Supreme Court has also established the principle that noncitizens in deportation or removal proceedings are just as entitled to due process protections as anyone else. *See Zadvydas*, 533 U.S. at 690 (2001) ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]" any "person . . . of . . . liberty . . . without due process of law.'"). *Id.*

49. In *Jennings v. Rodriguez,* the Supreme Court made a clear distinction between noncitizens who are detained while entering the country and noncitizens who are already present in the United States. *Jennings v. Rodriguez*, 804 F. 3d 106. The opinion of the Supreme Court recognizes that **"§ 1226 applies to aliens already present in the United States. . . ." and that "§ 1226(a) authorizes the Attorney General to arrest and detain an alien 'pending a decision on whether the alien is to be removed from the United States.'"** § 1226(a) (emphasis added). As long as the

detained alien is not covered by § 1226(c), the Attorney General "may release" the alien on "bond . . . or conditional parole." § 1226(a). Furthermore, federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention. *See* 8 CFR §§ 236.1(d)(1), 1236.1(d)(1).

50. This understanding has long been supported by the Supreme Court, indicating that noncitizens have fewer protections in their ***initial entry***.

51. In *Landon*, the Court held that an alien seeking **initial admission** to the United States requests a privilege and is therefore afforded fewer constitutional rights. *See Landon v. Plasencia,* 459 U.S. 21, 32 (1982) (emphasis added). However, the Court explained that "once an alien gains admission to our country and begins to develop the ties that go with permanent residence, his constitutional status changes accordingly." *Id.*

52. In *Shaughnessy v. United States ex rel. Mezei,* the Court states that "it is true that aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *See Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). Thus, the due process guarantees of the Constitution attach to noncitizens who are already within the United States, regardless of the legality of their entry.

53. In *Thuraissigiam*, the Court reinforces the limited protections for individuals seeking **initial entry to the United States**. *See Department of Homeland Security v. Thuraissigiam,* 591 U.S. 199, 220 (2020). (emphasis added). But they create a *clear* distinction between noncitizens who are trying to enter the country from those who have already entered the country and have established ties to the U.S. *Id.* The Supreme concludes that "an alien who is detained shortly after unlawful entry cannot be said to

have 'effected an entry'... For due process purposes, he stands on the threshold of initial entry, and his constitutional rights are limited accordingly." *Id.* at 1982-1983. The Supreme Court in *Thuraissigiam* reaffirmed *Landon v. Plasencia* and *Zadvydas* stating that "while aliens who have established connections in this country have due process rights in deportation proceedings, the same is not true for an alien at the threshold of initial entry." *Id.* at 1983.

54. Therefore, there is no question that the Supreme Court has long recognized a ***distinction*** between those who are arrested at the border trying to enter the country and those arrested while in the country.

55. The ultimate question is whether noncitizens who have resided in the United States for several years are entitled to fundamental due process protections, including a hearing before an independent adjudicator to determine the lawfulness of their detention. As supported in this brief, there are numerous legal arguments to support the conclusion that they are entitled to such rights. Beyond the technical legal analysis, however, it is also a matter of basic fairness and common sense: all individuals, regardless of immigration status, are entitled to fundamental protections of liberty.

> Were it true that "arriving" noncitizens have no due process rights, it would mean that such individuals – including those living freely among us on parole – could "be subjected to the punishment of hard labor without a judicial trial." *Clerveaux*, 397 F. Supp. 3d at 316 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 704 (2001) (Scalia, J., dissenting)). And it would mean that a noncitizen living here on parole could be taken into custody and beaten by local police without any violation of the Fourth Amendment. That cannot be the law.
> *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493, 2025 WL 1953796, at *16 (W.D.N.Y. July 16, 2025)

56. Petitioner cannot be expected to be reasonably removed from the country, and his detention violates the Due Process Clause of the Fifth Amendment. DHS has failed to

demonstrate that he is a danger to the community or a flight risk, and the government has failed to give him an opportunity to have her custody reconsidered by an immigration judge. Furthermore, as an alternative to detention, ICE could employ its Intensive Supervision Appearance Program ("ISAP").[7] Government data suggests that this program has been highly successful in preventing flight risk.[8]

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

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

(3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, as well as the Fourth Amendment;

(4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;

(5) Issue a Restraining Order preventing Respondents from moving Petitioner out of Texas;

(6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(7) Grant any further relief this Court deems just and proper.

[7] *ERO Alternatives to Detention Infographic*, U.S. Immigration and Customs Enforcement, Apr. 2021, available at https://www.ice.gov/doclib/detention/atdInfographic.pdf.

[8] *Immigration: Alternatives to Detention (ATD) Programs*, Congressional Research Service, Jul. 8, 2019, available at https://crsreports.congress.gov/product/pdf/R/R45804 (citing GAO study of ISAP program where 99% of those monitored returned to court).

Respectfully submitted,

/s/ Eloa Celedon
Eloa J. Celedon, Esq.
Bar No. 697365
Celedon Law PC
277 Main Street, Ste 305
Marlborough, MA 01752
508-573-3170
eloa@celedonlaw.com

Attorney for Petitioner

Dated: November 3, 2025

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

I, Eloa J. Celedon, hereby submit this verification on behalf of Petitioner, Gilberto Rodriguez Cortina, as his attorney. The events described in this Petition have been discussed with Mr. Rodriguez Cortina. On the basis of those discussions, on information and belief, I hereby verify that the factual statements made in the foregoing Verified Writ of Habeas Corpus under 28 U.S.C. § 2241 are true and correct to the best of my knowledge.

Date: November 5, 2025

/s/ Eloa Celedon
Eloa J. Celedon, Esq.
Bar No. 697365 (*pro hac vice forthcoming)*
eloa@celedonlaw.com

CERTIFICATE OF SERVICE

I, Eloa Celedon, hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the NEF (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated this 5th day of November 2025.

/s/ Eloa Celedon
Eloa J. Celedon, Esq.